

European Issuers

Annual Policy Report

2012

ABOUT US

EuropeanIssuers is a not for profit membership association based in Brussels, which represents the **interests of quoted companies across Europe.**

Our aim is to persuade policymakers to create a favourable EU regulatory environment for financial markets that serves the needs of their end users, being companies and investors. We believe that the success of the EU regulatory environment should be judged on whether companies can deliver growth in end shareholder value over the longer term, can raise capital through public markets, and can grow to create jobs for individuals, whilst stakeholders are informed and protected.

Our members consist of both national associations and of issuers themselves, being EU companies quoted on the stock exchange, from all different sectors – manufacturing, consumer services, utilities, finance, etc. We currently cover 14 European countries (Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Italy, Netherlands, Poland, Portugal, Spain, Switzerland, UK), and are always interested to hear from those countries not currently in membership.

Chairman: Didier Lombard

Secretary General: Susannah Haan

OUR CORE ACTIVITIES

Our representative office in Brussels is well placed to promote the interests of European issuers with the European institutions. Located at the heart of the EU, the Secretariat maintains regular contact with them and with other players, such as peer associations or think-tanks. The Secretariat provides updates on EU regulatory activities and represents the views of issuers at the various roundtable meetings, conferences and hearing organised by the EU institutions and others in Brussels.

We deal with EU regulation affecting companies in the following areas:

- Capital markets – central securities depositaries, credit rating agencies, investment banks, stock exchanges
- Company law – divisions, mergers, takeovers, transfer of seat
- Corporate governance – role of the board and of directors, dialogue with shareholders
- Listing rules – market abuse, prospectus, transparency obligations
- Investment chain – asset managers, custodian banks, registrars, proxy voting agencies

OUR STRENGTHS

Profound knowledge of both financial markets and companies

We have a network of national experts to analyse what financial market regulation may mean for the non-financial corporates. We have expertise in company law and corporate governance, and their interconnection with financial regulation.

We are able to draw on views from different functions within companies; i.e. directors, company secretaries, investor relations, treasury, etc.

Representing the real economy

Our national member associations have a majority of their country's market capitalisation in their own membership and thus have a strong base in the real economy.

Practical knowledge of the EU structures

Through our representative office in Brussels, as well as our national member representatives with strong links to national governments in the European Council and to their national MEPs, we have established a wide network of contacts in Brussels. We follow EU legislative processes closely in order to provide timely briefings to the EU institutions.

External Representation

Our members represent the interests of issuers in the following external fora:

- European Securities and Market Authority's Securities and Markets Stakeholder Group and some individual working groups
- European Corporate Governance Codes network
- European Market Implementation Group on common standards for general meetings and corporate actions
- Business and Advisory Committee to the OECD
- Advisory Council of the International Accounting Standards Board

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1. MESSAGE FROM THE CHAIRMAN



Dear Member,

The EU regulatory machine continues to grind forwards. Areas on which we have been active on behalf of companies in 2012 and where I believe we have made a difference include:

- Keeping the comply or explain regime for corporate governance, whereby it is up to shareholders rather than up to regulators to decide how boards should be run, which was under attack in the wake of the financial crisis;
- Avoiding mandatory EU rules on board composition (CEO / chairman, limit on directorships)

Areas that we are still working on include:

- Avoiding Sarbanes-Oxley via the back door in the draft audit regulation, which contains provisions on internal control and some implementing powers over audit committees for the securities regulators in ESMA;
- Mandatory rotation of audit firms and credit rating agencies, prohibition on non-audit services and a move to pure audit firms

Please do not hesitate to contact me or the team at EuropeanIssuers with any questions or for further briefing on any of the issues above.

Yours sincerely,

Didier Lombard
Chairman of EuropeanIssuers

2. REPORT FROM THE SECRETARY GENERAL

2012 has seen the first signs that the relentless focus on the financial crisis and regulating the banks is diminishing somewhat. Despite various conferences on financial stability and growth in Brussels, most of the debate has been on stability and the growth part has often only appeared in the title.



In the second half of 2012, however, policymakers finally started to debate where we are going next, instead of how to prevent a reoccurrence of the past. We still have a very long way to go in order to ensure that EU regulation and financial markets create an environment fit for our members, but for the first time in 2 ½ years, the debate in Brussels is at least starting. This gives us opportunities for influence in 2013. In the meantime, this Report gives you the highlights from 2012.

2.1. *Achievements in 2012*

Long-term direction of EU financial markets

DG Markt has been working on a Green Paper on long-term investment, which we see as an opportunity to get the debate away from regulation of the banks and towards some more fundamental questions of how well markets work for their end users.

We have tried to push these issues forward and highlight the corporate perspective on financial markets during 2012. In particular, we published a [position paper](#) on “What EU quoted companies want as users of financial markets”, following the very successful debate with Professor John Kay, who spoke at our [March conference](#) on the future of EU equity markets, together with Miroslaw Kachniewski of our Polish member association the SEG on behalf of companies and Guillaume Prache of EuroFinUse for the retail investors. We continued this theme at our November conference in Milan, co-hosted with Assonime. Carlo Bozotti, Chairman and CEO of STMicroelectronics, spoke about their experience of the additional costs imposed by audit regulation in the Sarbanes-Oxley Act, which should serve as a lesson for Europe to avoid. We also debated whether corporate governance codes are useful or not. On the whole, it was acknowledged that codes are useful, but that over-regulation at EU level is not. Many participants preferred national codes in this area.

Both the Chairman & Secretary General have spoken at external conferences & seminars to put forward corporate perspectives on growth and financial regulation to EU institutions & financial market participants. We have also worked with DG Enterprise regarding access to finance and the development of measures of support for the pipeline of smaller companies which may come to list on stock exchanges; further details are given below.

Detailed Financial and Other Regulation

EU financial market regulation in recent years has been all about the banking crisis and the need for politicians to be seen to be “doing something”. The needs of the real economy have generally been ignored or given only lip service. Over the past year, we have tried to put forward companies’ views on the many current legislative initiatives, as you will see from the working group reports below. The most difficult area in which to make progress has been audit although recent developments have been more favourable.

2.2. Other Events & Meetings with EU institutions

We have organised regular meetings with other EU corporate associations in Brussels: BusinessEurope, EcoDa, European Roundtable of Industrialists, European Institute for Internal Audit, Federation of European Risk Managers; we also liaise with the corporate treasurers, company secretaries, and investor relations associations.

In addition to the public conferences and committee meetings, we organised a private discussion between corporate members and Kay Swinburne MEP, in addition to the other meetings mentioned, in response to member demand for ways to participate in policy debates outside the previous committee structure. Kay gave us all a very helpful overview of developments on issues such as audit and CSDs in the ECON Committee of the European Parliament, which could affect quoted companies. We plan to organise more such events in 2013.

In 2012, we surveyed our national member associations, to see what they do for their corporate members at national level, and thus to see which services, if any, can usefully be replicated or reinforced at EU level. A copy of the comparative table is available to interested members.

2.3. *Legal Committee*

During 2012, the Legal Committee made further use of members' expertise via the working groups. Their individual reports are set out below. In addition, the committee held discussions with invited guests including several members of the company law and corporate governance unit in January 2012, with Arvind Wadhera, Head of Unit on audit policy at the European Commission, in April 2012 and with Carlos Tavares, Vice Chairman of ESMA, on current financial market regulation, the role of ESMA and future developments in EU securities regulation, at a meeting kindly hosted by our member association the AEM in Lisbon in July 2012.

In November 2012, we decided to replace the current structure of the secretariat-led Legal Committee with a new member-led Policy Committee in 2013, to be chaired by Carmine di Noia of Assonime. We are delighted to have Carmine's support as the new committee chairman and I wish him and the other Policy Committee members every success.

Susannah Haan
Secretary General & Chairwoman of the Legal Committee
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3. PRIORITIES

3.1. *Corporate Governance*

2010 and 2011 each saw the publication of Green Papers on corporate governance, and 2012 finally saw the publication of an Action Plan on company law and corporate governance.

The main areas covered in the Green Papers had been:

- Board of directors (board composition, remuneration, risk management)
- The role of shareholders and
- The effectiveness of comply or explain.

The Action Plan itself was much better than some of the proposals floated in the Green Papers, which had taken a much harder line on regulation and a desire for a single rulebook in the wake of the financial crisis. We were concerned that this would spill over into additional regulation on the non-financial corporates, and had set up various working groups to deal with the many areas covered. Their reports are included below, but overall we are pleased that the Action Plan appears to have taken many of our earlier comments on board.

Board Composition

Gender diversity was a hot topic among European Commissioners in 2012, with a proposal for a Gender Diversity Directive for improving gender balance on company boards published in mid November. The proposals would set a 40% objective of the under-represented sex in non-executive board-member positions in publicly listed companies (with the exception of small and medium enterprises) to be met by 2020. Furthermore, the proposals would create an obligation for listed companies to set themselves specific individual, self-regulatory targets for the gender diversity of their executive directors by 2020 (or 2018 in the case of public undertakings). Under this proposal, companies would have to report annually on their progress against these targets. In 2013 the proposal will be discussed at the European Parliament with EP FEMM Committee taking the lead and EP IMCO, ECON and JURI Committees being involved.

EuropeanIssuers position has been that corporate governance needs to be practical and consistent with the different ways in which companies operate across Europe, and that this is best done at the national level, consistent with the national company law structures.

In mid December 2012, the European Commission also published its Action Plan on European company law and corporate governance, following 2 Green Papers which had also discussed board composition. One of the key issues discussed in the Green Papers had been the mandatory separation of the roles of CEO and chairman, which we believed should be left to national codes. We were therefore pleased to see that this proposal was not included in the Action Plan published in December 2012.

Pierre Marsal

Chair of the Board Composition Working Group

Shareholders

In our earlier response to the Green Papers on corporate governance, we had supported disclosure of voting policies by investors, in order to assist companies to understand their shareholders' approach and to ensure greater understanding in advance of any possible areas of disagreement. We were therefore pleased to see that the Action Plan specifically mentions this as an area where the European Commission is considering what further action may be appropriate, either in the shareholders' rights directive or in stewardship codes, in order to facilitate better dialogue between companies and their investors.

Susannah Haan

Chair of the Shareholders' working group

Shareholder Identification

In 2012 we made good progress towards better shareholder identification. EuropeanIssuers' conference in March 2012 included a panel discussion on the topic, with representatives from the European Commission and from different countries and perspectives. Mark Hynes of Capital Precision in the UK kindly shared with members their analysis of the effectiveness of different shareholder identification regimes worldwide, while Kirsten Rooijers of Georgeson and Konrad Nussbaum of Adeus gave their own perspectives as Dutch advisor and German infrastructure provider.

The European Commission then included the action point "Better identification of shareholders by issuers" in their December 2012 action plan to modernise company law and corporate governance and also in several papers on different topics, e.g. securities laws.

Moreover, the European Post Trade Group was set up and included "shareholder identification" on its list of top priorities. Currently a working group is being set up, which aims to make proposals to achieve

the goal of shareholder transparency across Europe, addressing both legal aspects as well as operational aspects of a solution. It is intended to base its work on the 2011 report “Market Analysis of Shareholder Transparency Regimes in Europe” by the T2S Task Force on Shareholder Transparency.

Markus Kaum

Chair of the shareholder identification working group

Risks

The EI Risks Working Group was set up to respond to the initial EC consultation on Corporate Governance of non-financial institutions (one in five sub-WGs). The action taken by EI was to present its response to the EC, as part of the broader exercise on this consultation. The feedback shows that most of our concerns are addressed at this stage. This is a tangible, rather than future-oriented outcome, which is worth stressing, even if we cannot be sure about it until the issuance of legislative proposals.

The European Commission's Action Plan for company law and corporate governance suggests for 2013 to enhance the reporting requirements concerning the management of non-financial risks, but no longer mentions new responsibilities for the board, as suggested in the 2010 Green Paper (approve and take responsibility for the company's "risk appetite"; report to shareholders; ensure that the company's risk management arrangements are effective and commensurate with the company's risk profile (a profile that would be defined, according to the strategy followed, under the primary responsibility of the board)).

Francis Desmarchelier

Chair of the Risk Management Working Group

3.2. *Smaller Issuers*

Our Committee continued its work throughout 2012, meeting quarterly to discuss the different frameworks in each country and the issues of concern at EU level. The Committee also provided a forum for members in Belgium, France, Holland and Portugal to exchange views on the NYSE Euronext proposals for an Entrepreneurial Exchange.

We updated our list of “Proposals for simplification of existing EU regulations” for smaller issuers but felt that all the directives under review were all going in the wrong direction.

- Prospectus: no truly proportionate disclosure regime, no substantial cost saving;
- MAR: the scope is to be extended to MTFs and OTFs, which will include alternative markets for smaller companies – simplification has, however, failed to appear;
- Transparency: we will benefit from the elimination of the duty to prepare interim management statements & the extension of the publication deadline for the half-yearly report but will still be subject to the other reporting requirements (CSR ...);
- Audit: the proposals will lead to a loss of flexibility and an increase in costs.

Overall we agreed that beside EU resistance to adopt true proportionate measures, the issue is the definition of smaller issuers and the need for tailored markets, attractive to investors.

A first step could be the definition of Smaller Issuers and SME growth market in the revised MIFID. But the thresholds used to define which companies would be eligible that have been discussed so far are far below the expectations of issuers, financial analysts and investors, and clearly out of the market.

We also submitted comments to the rapporteurs in the European Parliament for their report on SME access to finance, although this report was more concerned with bank, venture capital and public finance than with market finance. Other issues we have been working on with the aim to facilitate access to finance for SMEs include:

- **Creation of a new class of assets:** the idea would be to designate smaller quoted companies as a distinct asset class, which would enable regulators and policymakers to make proportionate rules and would make it easier for funds to invest in these companies.
- **Reduction of the burden of IFRS:** some members of the committee had exchanged letters with Mr Prada (chairman of IFRS Foundation), who acknowledged that the current volume of annexes and disclosures is too heavy on smaller companies and ends in complex reports. But waiting for an IASB solution would take too long. In the meantime, one way of action is through a joint

initiative by national standard setters. EuropeanIssuers' Smaller Issuers Committee will also look into the various consultation papers out on disclosure, notably from EFRAG.

- Support to DG Enterprise initiatives to create an online **European listing guide for SMEs** and an **award ceremony** for successful listings and to investigate the barriers to better provision of better research and information on listed SMEs in Europe.
- Support to the **recommendations by ESMA Stakeholder Group on access to finance for SMEs**: The own-initiative report by the Securities Markets Stakeholder Group to the ESMA Board of Supervisors argues that an effective overall funding environment in Europe must seek to ensure an appropriate regulatory framework for issuers. This framework should not prove burdensome for issuers and also win investor confidence and attract a wider set of investors to smaller, growing businesses by reducing regulatory and fiscal burden on SME investors. In this report, up to now, SMEs are defined as companies under €500m market capitalization, in line with the US Jobs Act. Carmine Di Noia (Assonime), a member of the ESMA Stakeholder Group, presented the report at the September meeting. It is the first time that the current EU definition for SME is officially regarded as inappropriate and the legislation impeding investment in SMEs officially listed. EuropeanIssuers expressed its support to the paper published by ESMA MSG.

We also invited Standard & Poors as a guest speaker at one of the meetings. Their current business is mainly focused on the biggest companies but they are looking into the rating of companies from €30m-500m as a new business opportunity. They underlined their belief that a lack of comparable data is preventing many investors from entering this market and we discussed ways in which credit ratings might better assist investors and companies.

In 2013, it is suggested that EuropeanIssuers should push for an EU Jobs Act, given that simplification of individual listing directives following the Demarigny Report in 2010 has been a failure overall. ESMA's Stakeholder Group report could thus serve as the basis for discussion of a possible Jobs Act / SME directive / Green Paper.

Caroline Weber
Chair of the Smaller Issuers Committee

4. LISTING REQUIREMENTS

4.1. *Market Abuse*

The working group had an intense exchange of information and comments on procedural developments. In order to effectively communicate our position, I spoke at the public hearing on market abuse organized by the European Parliament on 24th January 2012.

Our key messages were:

- Clarification of disclosure obligations for issuers and/or more certainty on the possibility to delay disclosure;
- It is not appropriate to extend disclosure obligation to issuers traded on demand only on MTFs (or exchange regulated markets);
- Simplification or exemption of the rules on insider lists should apply to all SMEs (small and medium issuers), wherever traded (regulated markets or MTFs);
- A higher threshold for the communication of managers' transactions should be supported. However, every time the threshold is reached, the calculation of the threshold should restart from zero;
- Communication of managers' transactions should not be shortened from 5 working days;
- A rule allowing an Authority to delay public disclosure only when the information is of systemic importance and in the public interest is not appropriate.

In October 2012, EuropeanIssuers' position on ECON's compromise amendments was finalised and circulated. On 5th October 2012, EuropeanIssuers alerted the ECON secretariat and MEPs on some confusion in ECON's compromise amendments concerning article 12§4 and 5. Later on, EuropeanIssuers' position addressing the Proposal for a Regulation on Market Abuse (COM (2011)651) in the context of trilogies was developed.

Some of EuropeanIssuers' comments were positively taken into consideration in the ECON report and Council general approach. Amongst them are:

- The Council general approach followed our suggestion by deleting article 6, paragraph 1, sub-paragraph e, which would unnecessarily extend the definition of inside information leading to a 'catch-all' definition introducing a grey area and raising uncertainty and massive compliance problems as to what has to be considered as inside information

- Re-introduction of the former recital 29 and 30 of the directive (safe harbour) as article 3.2a and 3.2b of the ECON report to the Regulation allowing not to consider as inside dealing per se activities related to merger and acquisition operations
- Good result regarding article 4.a of ECON report and 8 of the Council general approach on accepted market practices
- Good achievement regarding article 26 of the Council general approach on sanctions
- A slight improve of article 14 of the Council general approach (3 days instead of 2 days for the communication of inside information).

I also spoke at a seminar at CEPS held on 23rd January 2013. Amongst other speakers were: MEP McCarthy, ECON rapporteur on MAR. Meetings were held with the key MEPs e.g. Wolf Klinz, Arlene McCarthy, Gianni Pittella, financial attaché of Italian Permanent Representative Office in Brussels, Cypriot and Irish Presidency officials and many others. We will continue to follow closely the trilogue and Level 2 legislation at the EC and ESMA levels during 2013.

Carmine Di Noia
Chair of the Market Abuse WG

4.2. Prospectus Directive

In 2012 the European Commission published two sets of delegated acts: Commission Delegated Regulation (EU) No 486/2012 of 30 March 2012 amending Regulation (EC) No 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements; and Commission Delegated Regulation (EU) No 862/2012 of 4 June 2012 amending Regulation (EC) No 809/2004 as regards information on the consent to use of the prospectus, information on underlying indexes and the requirement for a report prepared by independent accountants or auditors.

The European Commission decided to allow the proportionate disclosure regime for SMEs/companies with reduced market capitalisations to be used in the case of IPOs or admission to regulated markets, which was not originally supported by ESMA. As this is what we had been lobbying for, this can be considered a success.

Kate Jalbert
Chair of the Prospectus WG

4.3. *Transparency and Country By Country Reporting*

Following tough negotiations, the European Parliament's (EP) Legal Affairs Committee (JURI) reached a compromise in the discussion about country by country financial reporting obligations in mid-September 2012. This brings a temporary close to a long parliamentary debate that was continuously fuelled by business representatives and non-government organisations.

In future, companies in the extractive industry, e.g. in the commodities sector and logging in primary forests, in telecommunications, construction or the banking sector, must report payments to government bodies separately in their financial reports, if these exceed 80,000 EUR. In addition, there will be a project-related reporting obligation for the extractive and timber industry, i.e. the payments to be reported must be allocated to the company's individual commitments. These so-called county by country reporting obligations that are being discussed are on the one hand to provide increased transparency for investors, and to promote the international fight against corruption, particularly in third world countries rich in raw materials. This objective was set in the final declaration of the 2011 G8 summit in Deauville.

Criticism and Challenges

As expected there was criticism of the compromise from both business and non-government organisations (NGOs), for opposing reasons of course. Whilst NGO representatives basically criticise the threshold for the reporting obligation as too high and demand a reporting obligation for all business sectors, representatives from business speak in favour of placing the threshold for reporting obligations much higher.

Negotiations should be conducted with a sense of proportion during the remaining legislative process. The search for a compromise that serves the interests of investors, without damaging the company and European economic location as a whole, remains the key challenge. However, it is to be feared that the pendulum may swing at the expense of the economy. For example, the extra cost for accounting and auditing associated with county by country reporting is disproportionate to the completely inverse benefits of such reporting obligations, particularly from the aspect of transparency for the benefit of investors. As investors above all demand consolidated reporting, which provides an overall picture of a company's situation. The additional obligation to report project related county by country statements could also enable inferences to be made about project details, which could deliberately be used by the reporting company's competitors to their disadvantage. This definitely runs counter to the creditors' and shareholders' interests of the reporting company.

Furthermore, the benefits of county by country reporting for the global fight against corruption appears to be very limited despite good intentions. As by international comparison, country by country reporting so far only exists sporadically, e.g. in the USA. In many emerging economies, e.g. in Asia, with whom the EU is particularly in competition, they are virtually completely lacking. Competitive disadvantages are therefore inevitable for European companies.

Conclusions

It is still to be hoped that a compromise can be found in negotiations between the European Parliament, the European Council and the European Commission, which preserves the interests of investors without damaging the company and European economic location as a whole. Homemade competitive disadvantages for the European economy must be avoided, especially if they are not accompanied by any adequate benefits.

Jan Bremer & Gerrit Fey
Chairs of the Transparency Directive WG

5. OTHER GOVERNANCE & FINANCIAL REGULATION

5.1. *Audit*

EuropeanIssuers' Working Group on Audit is monitoring developments with respect to the proposals for an EU audit regulation and directive. Key elements of these proposals include the introduction of mandatory rotation rules, separation of audit and non-audit services, strengthening the composition and role of the audit committee, the content of the audit report and related disclosure requirements, and stricter requirements with respect to the supervision of audit firms.

Following the publication of the EU audit proposals at the end of 2011, EuropeanIssuers' Audit Working Group convened several times during 2012.

The Secretary General, Susannah Haan, participated on behalf of EuropeanIssuers in various debates and conferences, such as QED lunch debate on the audit proposals in February 2012, to which relevant stakeholders, including the European Commission and the shadow rapporteur of the European Parliament participated, and a roundtable in Brussels on 14th September with the IAASB.

The Audit Working Group prepared key messages on the audit regulation and directive, taking into account working document of MEP Karim (rapporteur). EuropeanIssuers' position paper was finalised in August 2012 and shared with relevant stakeholders.

The main EuropeanIssuers' concern is that the audit proposals could adversely affect some 12,000 publicly quoted companies in Europe by adding considerable costs at a time when the European economy is in need of growth. EuropeanIssuers maintains that there is an undue spill-over of regulation aimed at the financial industry and the banking sector to the end users of capital markets, which are listed companies that produce goods and services for the real economy.

On the basis of the August 2012 position paper, the Audit Working Group prepared a document with proposed amendments to the draft regulation and directive, which was shared with relevant stakeholders, in particular individuals in the European Parliaments' JURI, ECON and ITRE committees. (JURI is leading on this subject, ECON, ITRE are giving their opinion). ITRE released its opinion on 29th November 2012, ECON vote after being postponed couple of times is foreseen on 11th March 2013 and the final JURI vote is scheduled for 11th March 2013. Further lobbying actions are foreseen targeting MEPs as well as Permanent Representatives in 2013.

Other members may be interested to know that, at the end of 2012, the Netherlands introduced local legislation that provides for mandatory audit firm rotation and separation of audit and non-audit

services. This act will enter into full effect as of 2016. Relevant EU developments will be monitored by the Dutch Ministry of Finance and may have an impact on the content and entry into force of this act.

Arthur van den Hurk
Chair of the Audit Working Group

5.2. Corporate Social Responsibility (CSR)

The working group started the year 2012 by examining the Commission communication of 25 October 2011 on a renewed EU strategy for CSR, the announcement of a legislative proposal on the transparency of the social and environmental information provided by companies of all sectors, and the roadmap prepared by DG MARKT, including its impact assessment.

The members of the working group exchanged views on recent national developments in the field of CSR reporting and noted diverging national legal requirements and practices, which is precisely the reason for the Commission to propose harmonisation. For the time being, no official position of EuropeanIssuers has been adopted for the following two reasons:

- On the one hand, EuropeanIssuers awaits the official adoption of a proposal for a directive on non-financial transparency obligations for large European companies;
- On the other hand, no clear consensus among members has emerged: companies from Member States such as France, where a prescriptive and comprehensive legal framework on CSR reporting already exists, believe the Commission's approach well balanced. Companies from other Member States with a strong self-regulatory tradition are more reserved.

All members of the working group on CSR agree however that EuropeanIssuers should be a constructive and positive party in the discussions that are likely to take place on the issue during the legislative procedure in 2013.

Elisabeth Gambert
Chair of the Corporate Social Responsibility WG

5.3. *Central Securities Depositories*

EuropeanIssuers published a position on CSD in July. Our key concerns were:

- Free choice regarding location

CSD Regulation must ensure that issuers have the right to choose any CSD established in the EU for recording their securities and receiving CSDs services, and that that right is subject to consistent and timely implementation across Europe.

- Integrity of the issuance

CSD Regulation must ensure that the amount of issued securities always corresponds exactly to the amount of securities that are entered into the holding system.

- Primacy of applicable corporate law

All questions related to the creation of the securities, to the rights and obligations it expresses, to the relation between the securities holder and the issuer, and to the question of who qualifies as securities holder must be governed by the law of the country under which the security has been created.

- Settlement security

CSD Regulation must ensure that settlement is as risk free as possible, to remove the possibility of reversals. CSDs, as core market infrastructures, should not be directly exposed to banking risk.

- Free choice regarding form

CSD Regulation must not prejudice the right of investors to hold securities in certificated form.

- No increase in costs

After implementation, the CSD Regulation must be followed by consistent ex-post review and systematic assessment, to determine if it worked as intended and, specially, to identify inadvertent or adverse consequences for Issuers, particularly related to any kind of cost increase.

- Shareholder transparency

The European capital market needs the principle of effective Shareholder Identification acknowledged at EU level.

- Common harmonised legal framework

In order to ensure and enhance the safety, efficiency and competitiveness of post-trade financial market infrastructures, the CSD regulation must be consistent with global standards already in place or in course of preparation.

The Working Group also considered and discussed other initiatives related to the harmonisation of securities settlement in the European Union, like the Target 2 Securities project.

The position paper presentation was presented to other organisations and EU officials (e.g., the European Commission). These have stated to us that the European Commission's policy intention for market infrastructure is that it should be made to work better for the end users, such as companies and investors.

Abel Sequeira Ferreira
Chair of the CSD Working Group

5.4. Company Law

In February 2012, the EU Commission launched a consultation on the future of company law. The consultation took place in form of an online consultation questionnaire to be completed by the stakeholders. EuropeanIssuers' Company Law Working Group discussed the questionnaire and subsequently submitted comments to the Commission on 14th May 2012.

On 12th December 2012 the Commission released its Company Law Action Plan, which announced 16 different initiatives to modernise European Company Law and Corporate Governance.

Key elements of the action plan in the field of company law are:

- Further investigation on a possible initiative on the cross-border transfer of seats for companies;
- Facilitating cross-border mergers;
- Clear EU rules for cross-border divisions;
- Follow-up of the European Private Company statute proposal with a view to enhancing cross-border opportunities for SMEs;
- An information campaign on the European Company/European Cooperative Society Statute;
- Targeted measures on groups of companies, i.e. recognition of the concept of the interest of the group and more transparency regarding the group structure.

We were very happy to see that our view on mergers, divisions and groups were reflected in the Action Plan.

Based on the Action Plan, the Commission will hold further consultations. A first consultation has recently been released with respect to the cross-border transfers of registered offices of companies. The Secretary General of EuropeanIssuers also recently attended a roundtable discussion at the Commission. EuropeanIssuers has also co-organised a conference on the topic on 4th February 2013 with ecoDa and ACCA, in which members of the Company Law Working Group will actively contribute.

The Company Law Working Group will continue to closely follow the further developments and respond to the upcoming consultations resulting of the Action Plan.

Christian Stiefel and Jacques Beglinger
Chairs of the Company Law Working Group

5.5. Securities Law

During 2012, the European Commission has held discussions with the Member States on securities law. EuropeanIssuers' Securities Law Working Group issued a position to contribute to the debate in the autumn. Key points raised in our position were:

- Securities should be treated as property, not as cash, since securities can only be issued by their issuing company, not by intermediaries through transformation;
- EuropeanIssuers has a strong preference for segregated accounts, while securities may only be held in omnibus accounts where the investor takes a duly informed decision;
- Exercise of corporate actions and casting of votes needs to be better organised throughout the holding chain;
- Shareholder identification, along the lines of the ECB Taskforce Report, should be facilitated.

Meetings took place with the representatives of several Member States (mostly authorities from Ministries of Finance and Central Banks), as well as with the appropriate officials from the G2 Unit of the DG Internal Market of the European Commission.

The integrity of issue, as well as the importance of shareholder identification, has been acknowledged by the EU institutions. Determination of the securities owner (we believe there is no need to harmonise ownership rules) is still an ongoing discussion. Although the European Commission has said that it does not intend to harmonise company law, it is possible that some proposals could inadvertently cause problems for companies and we remain alert to this possibility.

Thiebald Cremers
Chair of the Securities Law Working Group

5.6. *Credit Rating Agencies*

In late November 2012, the Council and the European Parliament reached an agreement on the European reform on credit rating agencies, which was approved in early December by the Permanent Representatives of the Member States and adopted in EP's plenary in January 2013. The compromise text can now be formally adopted in first reading by the Council.

The initial legislative proposals of the European Commission were likely to affect the quality, monitoring and updating of credit ratings issued, to increase the risk for investors and to increase funding costs for issuers.

However, **the compromise adopted globally meets the expectations of issuers** in four areas:

- Issuers generally remain free to **choose their rating agencies**:
 - Mandatory rotation of agencies, which was proposed for all financial instruments, including conventional bonds, is eventually limited to re-securitisations. Given the lack of reliable alternative to large agencies, for large companies, mandatory rotation would have led to disruptions to their ratings and to lower international recognition;
 - An issuer choosing to use two credit rating agencies would no longer be obliged to resort to a smaller agency. However it should, examine the possibility of using at least one rating agency whose market share is not higher than 10 % and which it feels is able to rate the issuance or the entity, and it should, where necessary, document its decision not to retain this possibility;
 - The EC did not propose to set up a European credit rating agency. It is now up to the EC, by 2016, to prepare a report on the situation in the credit rating market and, if necessary, to make legislative proposals.
- **A European civil liability regime of credit rating agencies** is introduced for intentional misconduct or gross negligence, **but without reversal of the burden of proof**:
 - An investor or issuer may claim damages based on the infringements listed in the European Regulation if there is a causal link between the infringement and damages caused by the rating. For an investor, the damage may relate not only to an investment decision, but, as requested, to a holding or divestiture decision;
 - The burden of proof would no more lie with the rating agency, but the complainant should submit evidence establishing the precise and detailed infringement; the competent court should take into account the fact that the complainant does not have access to the same information than the rating agency; it would then be for the rating agency to prove that the complaints are unfounded. The reversal of the burden of proof would have resulted in an increase in litigation

and costs, including those linked to overly conservative ratings, and was therefore opposed by issuers;

- **The “issuer-pays” model** for conventional financial instruments is not in question at this stage;
- Approval by ESMA of **changes in the methodologies** used by rating agencies has not been retained. Issuers argued that it could have affected the perception of the ratings of European issuers by introducing differences between the methodologies used in the European Union and those used outside.

However, rating agencies shall disclose on their websites, on an ongoing basis, information about all entities or debt instruments submitted to them for their initial review or for preliminary rating.

Francis Desmarchelier

Chair of the Credit Rating Agencies Working Group

6. EXTERNAL REPRESENTATION

6.1. *ESMA – Securities and Markets Stakeholder Group (SMSG)*

Report from Carmine Di Noia, Deputy Director General of Assonime and representative of issuers at ESMA's Stakeholder Group

I joined ESMA's Stakeholder Group during 2011 as representative of issuers. The group was created as foreseen in the Regulation creating ESMA in order to give advice regarding ESMA's work. It is therefore composed of several stakeholders – issuers, shareholders, stock exchanges, fund managers, etc.

The role of ESMA SMSG is to:

- “Facilitate” consultation with stakeholders through consultation (by ESMA and Commission) on draft technical standards and guidelines (obligation to act)
- Submit advice to ESMA on any issue related to the tasks of the Authority (“on demand” but at least 4 meetings per year)
- Ask ESMA to investigate alleged breaches / non-application of Union law by competent authorities, not by member states

ESMA SMSG is composed of 30 members including a chairman and 2 vice-chairmen who have to ensure that all views are reflected. Twelve balanced working groups were created: AIFMD, CRA, EMIR, Exchange-traded funds, High-Frequency Trading, Investor protection, MiFID investor protection and intermediaries, Short-selling, Prospectuses, Proxy voting, Shadow Banking, Small and Medium-sized Enterprises (SME).

ESMA's support to SMSG is based on providing early information, strategic more than technical involvement and identifying on the fields where SMSG can add particular value.

ESMA SMSG programme for 2013 is following:

- MiFID/MiFIR Commission proposals
- MAD/MAR Commission proposals
- Transparency Directive Commission Proposal
- ESMA supervision of trade repositories; CCP colleges supervision

- Investment management: AIFMD, UCITS V, PRIIPS, shadow banking
- Identification of investor protection concerns
- Implementation of EMIR
- CRA III, including CRA supervision issues
- SME's including the regulation of venture capital
- Support ESMA on the ESFS evaluation 2013
- Ensure capital markets and investment professionals are serving the interests of the real economy

Preliminary 2014 work programme is based on ESMA's medium term work programme and includes: MiFID, MAD, CRA3, Transparency Directive, Prospectus Directive, UCITS, EMIR, CSD Regulation/Directive and Securities Law legislation, Short selling, Audit Regulation, AIFMD, Venture Capital (VC) and Social Entrepreneurship Funds (SEFs) and Supervisory Convergence.

6.2. *The European Corporate Governance Codes Network*

Report from Odile de Brosse, AFEP, EuropeanIssuers representative at The European Corporate Governance Codes Network

The European Corporate Governance Codes Network is open to organisations responsible for writing and/or monitoring the implementation of national corporate governance codes within EU Member States. Several EI members are involved in the Network, whose purpose is to:

- Share information on code-related developments at the national level;
- Exchange views on matters of common interest;
- Provide a forum for similar discussions with organisations carrying out the same sort of functions in countries outside the EU;
- When requested, and where appropriate, providing factual advice and other input to European-level and international authorities on the implementation of corporate governance policies.

The Network meets about twice a year and invites representative of the European Commission. The main discussions in 2012 were about the quality of reporting and specifically how to improve the quality of the explanations when a company deviates from a recommendation of the corporate governance

code, whether there were advantages in having a standard format for corporate governance reports. Members share also experience on how codes are monitored in the different member states.

As mentioned in the Action Plan, the Commission intends to encourage further cooperation between the national bodies in charge of monitoring the application of the corporate governance codes, in particular through exchange of best practices developed in different Members States.

6.3. General Meeting Market Standards

Report from Markus Kaum, Munich Re (representing Deutsches Aktieninstitut) and chairman of the General Meeting Joint Working Group

The standards are intended to enable the timely and efficient exchange of information related to general meetings and to allow all shareholders across Europe to exercise their shareholders rights in issuers domiciled and listed in Europe. They are built on three pillars:

1. Standardised messaging of the meeting notice from the issuer to the end investor;
2. Record date and proof of entitlement for the end investor to put them into a position to participate in general meetings;
3. Notification of participation in a general meeting, be it in person or by proxy.

Foreign ownership of shares continues to grow across Europe. The right to vote at general meetings is often impeded by technical barriers and inefficiencies of intermediaries' processes. The standards aim to bring a practical solution by harmonising and streamlining communication between issuers and investors.

In 2012 two further workshops of the European Market Implementation Group (EMIG) have taken place. The discussions have been based on questionnaires sent out to all European markets. Compliance with the standards both in purely domestic and in cross-border situations has been addressed by national Market Implementation Groups (MIGs). Significant progress has been made during the two workshops on a European level and in the national MIGs. For instance, two national markets have reported 100 %-compliance of their national set-up. A third will follow this spring. The results of the European workshops and the work undertaken in between have been very encouraging:

- The workshops have shown strong engagement from issuers, investors, custodians, banks and other. 2012 a higher percentage of reporting (21 markets out of 30, 4 more than the last time), and an even larger attendance to the workshop have shown that we are on the right path.

- The approach of the EMIG has proved to work well and has allowed for constructive peer pressure and positive exchange of experience and practices among participants. Some member states have already introduced fully electronic solutions, other member states have already harmonised the contents of meeting notices;
- The discussions have allowed a positive reassessment of individual standards by several MIGs.
- Participants agreed on priorities (e.g. focus on domestic general meetings first) for the next steps;
- We also discussed other issues some market participants believe to have effects on the implementation of the market standards, e.g. the question of record dates across Europe. It was agreed to transfer that discussion to the GMJWG.

The GMJWG has had two further meetings in which additional clarifications to the standards and proposed amendments to the Q & As were discussed and resolved. The discussion on record dates led to a better understanding of the aspects of the topic and the different angles from which different market participants look at the topic. We are planning to deepen the discussion and to develop a paper which should list the aspects of the topic in order to serve for further discussions.

The conclusion I have drawn is that all market participants across Europe are strongly committed to improving the situation for the effective communication and exercise of shareholders rights cross-border within Europe. The next workshop on General Meetings will take place in June 2013 in Stockholm, together with the European Market Implementation Group for Corporate Action Standards. I am even more convinced that the work of the two groups should be regarded as a major success both for European issuers and the European market as a whole. It proves that a constructive dialogue and the ambition to cooperate for the better of all European citizens and companies can lead to real progress for our continent.

6.4. IFRS Advisory Council

Report from Christoph Hütten, Chief Accounting Officer SAP AG, EuropeanIssuers' Representative at the IFRS Advisory Council

I am representing EuropeanIssuers and the European Roundtable on the IFRS Advisory Council. The IFRS Advisory Council is the formal advisory body to the IASB and the Trustees of the IFRS Foundation. It is comprised of a wide range of representatives from user groups, preparers, financial analysts, academics, auditors, regulators, professional accounting bodies and investor groups that are affected by and interested in the IASB's work.

The most important items on the IFRS Advisory Council's agenda in 2012 were:

- The consultation on the IASB's future agenda which will impact what topics the IASB will deal with over the coming years;
- The challenges around disclosure (usefulness of current disclosures, disclosure overload, disclosure framework)
- The IASB's network and external involvement in the IASB's standard setting process
- Consistent application of IFRS
- Evolving IASB agenda topics like Agriculture, Rate Regulated Activities

Additionally, the chairman of the IASB provided a status report in each of the three Council meetings to inform about the status of the IASB's activities (available on the IASB's website www.ifrs.org). Updates were also received from the Trustees and the Monitoring Board of the IFRS Foundation.

Key topics expected for the 2013 agenda of the Council include the establishment of an Accounting Standards Advisory Forum (ASAF) which is planned to be a forum consisting of national accounting standard setters with the task of advising the IASB on technical accounting matters, and XBRL (eXtensible Business Reporting Language).

6.5. *IOSCO Technical Committee*

Report from Adolfo García, Banco Santander, representing EuropeanIssuers at the IOSCO Technical Committee Meeting with Financial Market Stakeholders in Madrid

On 11 April 2012 the IOSCO Technical Committee Meeting with Financial Market stakeholders in Madrid was for the first time chaired by the new General Secretary David Wright.

IOSCO is concerned about the comments in the international financial press on poor global regulatory framework and they are trying their best to appease criticisms. Their focus on derivatives, the increasing requirements of further capital and leverage for financial institutions which is putting pressure on sovereign debt was discussed.

IOSCO was preparing a proposal for a foundation to a) help in financial education and training, b) provide technical assistance to emerging markets so they could move up the ladder to the higher standards and c) to deepen into research capabilities. It would also be related to other issues like challenges within emerging markets on corporate bonds, institutional investors and financing of SMEs.

On the focus are derivatives and principles of FMIs (Financial Market Infrastructures). IOSCO was about to finalise the principles which would tackle global resolution regimes for CCPs (considered of systemic importance). The principles would constitute a global benchmark and follow the G-20 commitments. They would not contain implementation deadline clause but the standards would have to be applied by regulators as quickly as possible. Points such as collateral segregation per client and indirect access to CCPs would be included. Big part of the debate was on the possible inconsistencies between the already 100% non-consistent with each other EMIR and Dodd Frank on one side, and these principles on the other. It was pointed out that there was or would be local regulation in other parts of the world (e.g. Brazil, Canada, Japan, Australia, Hong Kong, Singapore, etc.). For a global practitioner it is hard to comply with a wide set of different rules and therefore IOSCO should spearhead a movement to avoid creation of additional gaps.

Reorganisation of IOSCO structures to a more simplified one was also on the table, as well as how to cope with enforcement and implementation of the standards that they produce.

Technical committees were particularly devoted to the consultation report on disclosure for asset-backed securities with the deadline of 20th April 2012. The aim of the consultation was to provide guidance for regulation and better disclosure and information levels aiming at investor's protection. The question raised was how much issuers of those securities should be responsible and transparent on the supervision of the issue rating.

Another consultation discussed was on suitability requirements with respect to the distribution of complex financial products issued in February 2012 with a deadline of 21st May 2012 and final report expected for year-end. It was a reaction to a G-20 request about customer protection. IOSCO wished to define the concept of distribution and to differentiate between advisory, non advisory and portfolio management distribution with the aim of increasing trust in financial markets and to address conflicts of interest.

A consultation report on margin requirements for non-cleared derivatives to be launched in June 2012 was also mentioned.

Other topics discussed were retail Forex trading (popping up, unregulated and without control and audit (audit quality, auditor's reporting and audit firms' transparency)).

7. CONFERENCES

In 2012 EuropeanIssuers organised two conferences. **The 2012 Annual EuropeanIssuers' Conference** was organised in **Brussels on 29th March**.

The debate evolved around the three fundamental questions:

- **Do European capital markets serve the needs of their end users?**

Capital markets should exist to serve the real economy – companies and investors. What we need to ask ourselves is: are markets doing this job? Are companies interested in being listed? Do the benefits of listing compensate for the costs and burdens?



- **Have European policymakers learned the right lessons from the financial crisis?**

Current regulation on financial entities often seems designed to capture non-financial corporates that had nothing to do with the crisis.



- **Is the current and future European environment likely to help companies achieve growth?**

It is not clear whether a centralised EU approach will be successful as regards quoted companies. The “comply or explain” system was debated as well as the need to make national codes work well. It was mentioned that the additional costs on companies would not help growth.

The conference had two panels: on Shareholder Identification and the Future of EU Capital Markets. The speakers included Professor John Kay, one of Britain's leading economists and author of the famous Review of UK Equity Markets and Long-Term Decision-Making, and Chris Redmond, Seconded National Expert at the Unit of Financial Markets Infrastructure at the European Commission.

The main conclusions of the debates were that there is a need for improvement of the EU framework on shareholder identification and that there is the need for markets to serve their end users, for better and simpler financial intermediation as well as better regulation on companies. [To read the conference summary click here.](#)

The second conference, on **"The Future of European Equity Markets"**, was organised **jointly with Assonime on 28th November** and held in the prestigious **Borsa Italiana** in Milan. Carlo Bozotti, Chairman and CEO of STMicroelectronics, spoke about their experience of the additional costs imposed by audit regulation in the Sarbanes-Oxley Act, which should serve as a lesson for Europe to avoid. We also debated whether corporate governance codes are useful or not. On the whole, it was acknowledged that codes are useful, but that over-regulation at EU level is not. Many participants preferred national codes in this area. Speakers included: Vittorio Grilli (Italian Minister of Economy and Finance), Emil Paulis (Director of Financial Markets at the European Commission), Xavier Rolet (CEO of London Stock Exchange), and Carlos Tavares (Vice-Chairman of ESMA). [To view the full programme click here.](#) We also encourage you to watch the [video report from the conference](#) kindly produced by VZMD, the PanSlovenian Shareholders' Association.

The conference was followed by an extraordinary visit of the "Last Supper" by Leonardo Da Vinci and dinner at the convent of Santa Maria delle Grazie where the painting is located. The meeting was enriched by the speech of Pier Carlo Padoan, Deputy Secretary General and Chief Economist of OECD.

8. EuropeanIssuers' Team (2012)

Chairman: **Didier Lombard** (Didier.Lombard@europeanissuers.eu)

Secretary General: **Susannah Haan** (Susannah.Haan@europeanissuers.eu)

Policy Adviser: **Paulo Pina da Silva**

Office Manager: **Joëlle Daem** (Joelle.Daem@europeanissuers.eu)



In June 2012, Paulo Pina da Silva decided to take on the challenges of a new job and left EuropeanIssuers after almost 4 years with the thanks and warm wishes from all the staff and members. His place was temporarily filled by Manfred Kohler, and then by Aleksandra Palinska from 1 January 2013.

European Issuers

