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DG Internal Market and Services
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Green Paper on Corporate Governance in financial institutions and remuneration policies

Ladies, Gentlemen,

The European Association of Co-operative Banks (EACB) welcomes the opportunity to comment on the Commission's *"Green Paper on corporate governance in financial institutions and remuneration policies".*

Please find our general, specific remarks and answers to the questions on the following pages.

Do not hesitate to contact us should you have any questions.

We will remain at your disposal,

Yours sincerely,

Hervé Guider
General Manager

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GENERAL COMMENTS

Introduction

The members of the EACB appreciate the Commission's efforts to examine corporate governance rules and practices within financial institutions in the light of the financial crisis.

In the same manner as all banks, cooperative banks endorse the objective of strengthening governance in order to remedy any weaknesses in the corporate system in the banking sector in a proportionate and suitable manner.

Certainly, the current crisis also requires cooperatives to reflect on the efficiency and the functioning of their corporate governance in the same way as other financial institutions. However, any improvements of the corporate governance of cooperative banks should be made within the framework of their cooperative systems.

Specific Features of cooperative banks

The cooperative business model has developed in different ways in the different Members States of the European Union. Today, the co-operative form of enterprise is common and is recognized in all Member States. At European level, the cooperative legal form as such is recognized by **the Treaty of Rome. Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society** underlines the efforts of the European Union to contribute to the economic development of co-operatives[1].

Co-operative banks serve more than 159 million customers in Europe with an average market share in SME financing of around 29%. They have naturally expanded the scope of their activities in recent years by moving into cross-border markets and rolling out new services. However, this expansion has respected their core values and their corporate governance rules. In fact, it has to be underlined that co-operative banks in the different Member States, despite numerous differences, share some common and defining features.

Member-ownership

The cooperative banks are effectively owned and controlled by their local customers who are at the same time the members through the membership concept. The member ownership concept is not only central to the co-operative approach but is also a unique aspect. It leads to a consensus-driven approach and hence more thorough, albeit conservative decisions suited to a long-term time horizon[2].

[1] Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).

[2] Oliver Wyman, 2008. Co-operative bank: Customer Champion, p. 18, 22. see: http://www.oliverwyman.com/ow/pdf_files/OW_En_FS_2008_CooperativeBank.pdf.

Promotion of Members' Economic Interest

Moreover, the statutory aim of cooperative banks is explicitly defined as promoting economic interest of its members rather than maximizing profit. Thus, the primary mission of co-operative banks is to provide services to their members/customers who are typically, individuals, household and SMEs, i.e. retail banking. This leads to a more prudent approach to banking, to a focus on retail banking and finally to a longer term perspective to business.

Member ownership entails that ownership in a cooperative is thus different from being a shareholder in a joint stock company and it implies that cooperative banks are not capital-market orientated.

Distribution of Profit on an Equitable Basis

In most cases, members' participation in profit is limited, as the distribution of the net profit for the financial year is on an equitable basis. In most cases there is no access to net assets (reserves) either. The benefit and added value produced by a cooperative accrues to the owners in the form of servicing members/customers' interest or the development of members/customers' economic activities. Members of co- operative banks therefore typically take a longer term, risk-adverse view than shareholder-owned banks, with a correspondingly lower expected return. Moreover, financial rewards are not the primary reason for customers () to be owners via membership – the provision of good value products and services is assumed to take precedence over profits as a motivating factor[3].

Democratic control principle

Another feature that distinguishes corporative banks is the 'one person- one vote' principle which ensures democratic control and prevents the predominant control of separate shareholders.

This "one person- one vote" principle offers optimal protection for the democratic participation of all members of a co-operative. It ensures a fair representation of the interests of all individual members/customers through multiple voting rights. These specific ownership rights (e.g. the right to vote and to speak in the General Assembly, the election of directors etc.) are vested in the individual, not in the share according to, *the principle of the primacy of the individual.*

Due to the equality of voting rights of each member, the decisions taken by the General Assembly illustrate democracy as a feature of corporate governance. This democratic decision-making process ensures that member owners of a cooperative are in a position to ascertain that the financial institutions is managed in the general interest of all owners and not just the largest one(s). There is thus in principle a control over management by the members/customers which fosters a better understanding, close to the grassroots level, of the bank's functioning and strategy. Moreover, the democratic principle leads to a consensus-driven approach and hence more thorough, albeit conservative decisions suited to a long-term time horizon[4].

[3] Oliver Wyman, 2008. Co-operative bank: Customer Champion, p. 18, 22. Online available at: http://www.oliverwyman.com/ow/pdf_files/OW_En_FS_2008_CooperativeBank.pdf.

[4] Oliver Wyman, 2008. Co-operative bank: Customer Champion, p. 18, 22. Online available at: http://www.oliverwyman.com/ow/pdf_files/OW_En_FS_2008_CooperativeBank.pdf.

Local banks own central bodies:

Cooperative banks have been created gradually, as networks of local and regional credit cooperatives. The specific feature of cooperative banks that created the member ownership structure is that they are developed "from bottom-up", on the basis of the two or three tier system, implying, local, regional and national banks.

As a general rule, political power emanates from the base. The groups' governance implies that local needs are taken into consideration in any business policies designed at central level. Typically, central institutions (re owned, directly or indirectly, by local banks.

Importance of diversity

All those elements together with the other specificities of co-operative banks allows for sound management and risk control and must be taken into account when defining corporate governance rules at EU level.

It is therefore important for bank regulators to recognise that this diversity of business and governance models enhances the stability in banking. Corporate governance principles should therefore be sufficiently flexible to promote this diversity.

The diversity is a fundamental asset for the European banking sector. The importance of the diversity and pluralistic structure of the European banking market is even more critical today in the context of the financial crisis that we face since 2008. Different financial actors will follow different objectives according to their respective business model and this will contribute to balance the banking sector in particular. In the interest of both European firms and European consumers, only the co-existence of different structures and sizes guarantees efficient and competitive financial actors.

Europe needs an accountable and solid set of banks, well capitalized and well connected to the regions, to the economic tissue and to the real economy. This is the way to ensure a balanced and diverse banking sector and macroeconomic stability. In this respect co-operative banks have a fundamental role to play.

SPECIFIC COMMENTS

Introduction

As regards the Green Paper, any recommendations or even proposals for regulatory measures for corporate governance should take into account the effectiveness of existing regulatory framework i.e. national corporate governance codes which were required to be drawn up under Directive 2006/46/EC, and their role in the financial crisis.

Any guidance for corporate governance should be designed to allow the most appropriate application in accordance with laws, codes, regulations and other relevant social and economic factors of individual jurisdictions.

Corporate Governance and the crisis

With the core values and corporate governance model of cooperative banks in mind, we would like to remind the Commission services that cooperative banks were not at the root of the crisis and have shown to be more resilient during the crisis[5]. Instead, cooperative banks were able to better withstand the crisis because of the importance of their retail banking activity which remains as close as possible to their members. Cooperative banks are developing diversified operations in order to be able to respond to their members' expectations.

Their greater resilience to the crisis is also explained by the lesser dependence on networks in the financial markets. This has made it possible for cooperative banks to reassure their members and to maintain their operations. This robustness of the cooperative model as well as cooperative banks' contribution to financial stability during the crisis are largely recognized. More specifically, the report prepared by the International Labour Organisation concerning the cooperative economic model's resilience during times of crisis, as published in 2009, concludes that "future regulations that might result from this crisis must clearly recognize that cooperative financial institutions were not the source of these problems, were materially less affected by the economic crisis, and should not be punished by being included in a series of new rules adopted in order to correct a problem that they did not cause"[6].

The proportionality principle

The proportionality principle should be a central element in examining corporate governance rules and any suggestions for recommendations or regulatory measures.

In that respect, we fully share the position of the European Commission that the practical application of the solutions should be proportionate and may vary depending on the legal form, size, nature and complexity of the institution relevant financial and legal model as referred to in the third paragraph on page 3 and fourth paragraph on page 11. This approach seems essential given that each institution has its own legal and economic model and its corporate culture.

[5] International Labour Organisation, 2009. Resilience of Cooperative Business Model in Times of Crisis, p. 35. Online available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_108416.pdf.

[6] International Labour Organisation, 2009. Resilience of Cooperative Business Model in Times of Crisis, p. 35. Online available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_108416.pdf.

In addition to the type, complexity and systemic relevance, we consider that the focus of activity should also play a role. In this respect, the Commission is requested to concretely take into account the proportionality principle in its broadest sense in any future guidance for corporate governance principles.

Level of application

The application of any guidance should reflect the differences in terms of consolidated and non-consolidated groups. Consolidation implies the power to govern the financial and operating policies of the consolidated entity so as to obtain benefits of its activities.

As regards corporate governance, such distribution of power as described above must also have implications on corporate governance standards. The application of the proportionality principle in such cases should result in the implementation of the corporate governance principles at group level with an emphasis on the parent undertaking.

In highly integrated consolidated groups as described in Art. 3 CRD and Art 69 CRD such control may even imply that the central liquidity management, the central solvency management, a cross guarantee system and other far reaching institutional powers, and the full implementation of principles should only be possible on a consolidated level.

Principle based approach

In this context, we urge the Commission that when it decides to regulate in addition to the existing corporate governance rules, to develop guidance, based on thorough impact assessments, and come forward with proportionate measures based on "framework principles" rather than prescriptive rules. It is the role of the supervisory authority to ensure that these principles are applied by financial institutions. This should be tested as part of a permanent and structured dialogue with financial institutions.

The main aim of any guidance should not be box-ticking exercise. The guidance should best serve to achieve what this exercise ultimately aims at: the effective implementation and practical application of principles.

Given the differences in governance models, in our opinion guidance in the field of corporate governance should remain principle-based, balanced and adequately flexible to reflect the different national structures and business models. As financial institutions vary in size, activities, complexities, structure, economic significance and risk profile, we believe that a 'one size fits all' solution would just not be efficient and successful. It could be suggested to opt for non-binding regulation, self-regulation and/or recommendations in combination with the 'comply or explain' principle. Therefore, any proposed guidance by the EU policymakers should not be too specific to be meaningful in practice and reality.

Board of Directors

General question

1. Interested parties are invited to express whether they are in favour of the proposed solutions concerning the composition, role and functioning of the board of directors, and to indicate any other measures they believe would be necessary.

We understand that when the Commission is referring the Board of Directors, it is focusing on the supervisory role of the Board as stated in footnote 15 on page 6, and thus specifically addressing the non-executive directors. In this context, we think that it is essential that financial institutions make a clearer distinction between the decision-making and supervisory functions.

Cooperative banks acknowledge that the skills, role and responsibility of the boards of directors in the banking sector need some clarifications.

However, it should be mentioned that any measures for the Board should not be applied to cooperative banks in the same way as for joint stock companies.
In co-operative banks, the power of all bodies originally emanates from the members which exert influence through the General Assembly. The General Assembly, as the body representing all members, is the body that controls the orderly conduct of corporate governance as a whole. The powers of the General Assembly include the elections of the Board and the approval of annual accounts and balance sheet. The members control the actions of elected officials. They can in the last resort sanction violations of the mandate given by the removal of the elected official from their post. Furthermore, the General Assembly can refrain from adopting the annual report and thereby demonstrate their control over decisions taken by the directors.

The democratic participation of the members in the General Assembly very efficiently maintains the balance of power among the members, as owners and the directors of co-operative banks. In fact there are no majority shareholders that can control the General assembly and determine board members.

For instance in Austria, the General Assembly of a cooperative bank can equally take up any question as the Board[7]. In addition, in Germany, the General Assembly has to decide on the commencement or giving up of any area of operation[8].

While we acknowledge that there is room for improvements regarding strengthening measures to prevent conflicts of interest, clearly defining the role, skills and responsibilities of the chairman; increase the efficiency of the board's work; formalising the procedure for evaluating the board's performance; strengthening the duties and responsibilities of the board's role in risk supervision; and enhancing the duty of care, any such modification should not question the core principles of cooperative banks as they have done relatively well in the face of the crisis. Indeed, the International Labour Organization paper on cooperatives in time of crisis clearly states that "cooperatives financial institutions were not the source of these problems were materially less affected by the economic crisis and **should not be punished by being included in a series of new rules adopted in order to correct a problem that they did not cause"**..

[7] Article 27, Genossenschaftsgezets
[8] Article 30(m), Mustersatzung fĬr Volksbanken und Raiffeisenbanken mit Vertreterversammlung (ohne Warengeschaft) [Standard Statutes of German Cooperative Banks].

This concerns especially the need to have recruitment policies that clearly define the skills and needs of the board members and policies to ensure the diversity of the composition of the board. Due to the core values of cooperative banks: member–ownership, 'one person - one vote' principle and the democratic election procedures, the recruitment of board members within cooperative banks is more a pragmatic question than a question of policy.

Therefore, future European corporate governance regulation on Boards of Directors should remain principle based and should not be too detailed. It could be suggested to opt for recommendations under the 'comply or explain' principle.

At the same time, we stress that the proportionality principle has to be taken into account, as the same corporate governance obligations on the one hand for the major international commercial and investment banks and on the other hand for the minor low-risk retail banks (such as cooperative banks) are neither needed nor appropriate.

Specific questions

1.1. Should the number of boards on which a director may sit be limited (for example, no more than three at once)?

While such limitations exist in certain Member States, we consider that limiting the number of mandates to address the issues is not the right approach.

- *Distinction internal and external mandates*

It seems appropriate to make a separation between on the one hand 'internal' mandates which are positions within the same banking group and to which other positions are linked, and on the other hand 'external' mandates which are positions outside of the banking group for boards in different institutions. As such the mandates of a director for all the different (technical, major subsidiary specialized in one area of banking) subsidiaries of the cooperative bank group must not be counted in the limitation of the number of mandates. Therefore, all the internal mandates within the same group which are linked to the position of the director should be considered as one internal mandate. This means that if a non-executive director fulfils his internal mandate(s) in the group, he can still assume mandates for external commitments.

- *Cooperative banks: Influence General Assembly*

Moreover, for co-operative banks, given the democratic election in cooperative organization, the General Assembly of a cooperative bank may have a voice as regards the number of mandates of directors. The General Assembly may indirectly influence the number of mandates suitable for a candidate based on his individual profile at time of the recruitment

> *For instance in Austrian corporate law provides for an ex-ante scrutiny by the general assembly, which is in the position to acquaint itself with the candidate, since he has to disclose all his other activities to the General Assembly (see Art 87 para 2 Austrian Securities Act).*

- *Suggested approach*

The aim must be to ensure that members of the supervisory board dedicate sufficient time to their mandates. Therefore, the approach as mentioned in the Walker Report of 2009[9] which looks at the time commitment of non-executive board members could be considered

The expected time commitment for a non-executive director to a board should be made clear from the outset of the recruitment. In this way, these board members can have an indication of the necessary time that they have to commit for the specific function beforehand. This is important as a candidate for a board may have other mandates already.

- Individual situation

In addition, the number of boards in which a director can sit the situation depends very much on the individual circumstances. For others who perform other professional activities, even five supervisory board mandates in large companies may be excessive. In each individual case a threshold based on a cap of board mandates could be too high or too low; thus it seems advisable to rely on the time commitment approach.

Nevertheless, any criteria for limiting mandates should be subject to the proportionality principle. Since there is a difference in a mandate of on the one hand a non- executive director of a small bank and on the other hand a non-executive director of a large bank. Therefore, the mandates on supervisory board of an international large investment bank cannot be compared to supervisory board mandates of local or regional credit cooperatives , which do not appear on the capital market [see Art 39 Directive 2006/43/EC], but mainly engage in traditional retail business..

1.2. Should combining the functions of chairman of the board of directors and chief executive officer be prohibited in financial institutions?

- *No possibility of conflict in a two-tier system*

In a dualistic model, combining functions of management board with supervisory board is excluded and it is not possible to have this problem within a legal entity as there should be a clear distinction. For those cooperative models which have a dualistic model, the question is not of relevance to cooperative banks.

> *For example, in Italy and Finland it is already prohibited for certain cooperative banks to combine the functions of chairman of the Board of directors and chief executive officer (managing director) and clearly distinguish the two functions.*
>
> *In France however, a freedom is granted by law for the company to decide regardless of the particular situation of an enterprise on the separation of functions of the CEO and the chairman of the supervisory board.*

[9] Walker (2009), *A Review of Corporate Governance in UK Banks and other Financial Industry Entities*. Online available at: http://www.audit-committee-institute.be/dbfetch/52616e646f6d4956f9ed6cb8ae5277dbec35c233bab54a5b/walker_review_consultation_160709.pdf, pp. 42-43.

As regards cooperative banks where it is possible to decide on separation no evidence has been found that this should be changes

- *Not applicable to mother-daughter company*

We think that the limitation of functions only makes sense in one single legal entity and not in relation to a mother- daughter company.

> *For example in Austria, in practice such combinations are inevitable in cooperative groups. The director of the central institution can at the same time be the chairman of the subsidiary's supervisory board whereby, a group steering/management is performed*.

Thus the combination of such functions is quite common within groups of credit institutions, including cooperative networks and probably in groups of companies. They should not be prohibited. For cooperative networks and holding groups, it should be allowed as long as it does not take place at the same level i.e. local, regional or central level.

It should be mentioned that these combinations in cooperative groups have hardly been subject to discussion and a prohibition would be counterproductive for the cooperative structure.

1.3. Should recruitment policies specify the duties and profile of directors, including the chairman, ensure that directors have adequate skills, and ensure that the composition of the board of directors is suitably diverse? If so, how?

- *Cooperative banks: democratic elective system*

Most cooperatives have a democratic elective system to appoint directors. Thus local cooperative banks have a pragmatic approach that ensures adequate skills and a diversified supervisory board.

- *Cooperative Banks: Diversity in General Assembly and Boards*

This democratic elective system, which is a fundamental feature of the governance of cooperative banks, ensures that the enterprise will be controlled by its members in the General Assembly. Moreover, these General Assemblies from which the directors are elected are in itself source of diversity as they are composed of local entrepreneurs with diverse professions, skills and experiences, and diverse local backgrounds corresponding to the territories in which the local banks are located. This characteristic that board members are chosen among the members ensures that the composition of the board is suitably diverse.

We underline that the strength of cooperative banks lies in the fact that Board members have different backgrounds, are involved in the activities of their cooperatives and understand the cooperative's business model.

- *Policies for professionalism and training policies*

In addition to this democratic election system, due to the diversity of cooperative banks some banks have ((non-)statutory) policies in place which specify criteria of

professionalism and competences of board members and established specific training policies. The objective pursued by these programmes is clear: to strengthen the elected officials' initial skills in order to enable them to optimally discharge their office as directors.

- ***Specific criteria***

In France for instance, the Caisse d'Epargne and Banques Populaires provides external qualified persons the opportunity to become censors, which can give advisory opinion to the board.

Moreover, the Caisse d'Epargne in France applies specific stricter criteria to the chairman of the Board who shall sign a specific document that outlines the regulatory and ethical elements and is illustrated with examples of best practices.

In Italy, pursuant to article 26 of the Consolidated Law on Banking and the Supervisory Provisions of the Bank of Italy, the directors of Banche Popolari are already selected according to criteria of professionalism and competence among persons who have gained experience of at least three years through the exercise of:

> *a) activities of administrative or supervisory or managerial tasks in enterprises;*
>
> *b) professional activities in matters pertaining to the banking sector, financial, securities, insurance or other functional activity of the bank;*
>
> *c) the activities of university education in legal or economic;*
>
> *d) administrative or managerial functions in public or government sector in respect to credit, financial, securities or insurance or public bodies or public authorities which are not relevant to these areas provided that the functions involving the management of economic and financial resources.*

In Italy, the managing director and general manager must possess a specific expertise in credit, financial, insurance or securities acquired through work experience in a position with appropriate responsibilities for a period not less than five years.

In Germany, Art 36 Para 3 of the Banking Code stipulates that all supervisory board members of a bank must have an adequate knowledge in order to understand the bank's commercial operations, to evaluate the risks resulting from these operations and, if necessary, to enforce changes of the structure of the executive board. The compliance with this rule is monitored by the German national banking supervision who has just published a bulletin about the governance of administrative and supervisory board members in order to promote the understanding and the adherence of this section.

- ***Training***

In Germany and the Netherlands, most of the items for the permanent education of the executive and supervisory board members are recommended by the Banking Code.

As such the board members of Rabobank get for instance a one-day master class in 2011 on the following subjects: Risk management, Basel III, Operational risk/forensic accounting, Competition (antitrust) law, Compliance, IT policy and the future of banking.

The cooperative banks in France have also implemented ambitious training plans for directors. These plans contribute to enrich their banking skills and to better meet the requirements of supervisory authorities. It should be noted that in the Banque Populaire and Caisse d'Epargne in France there are between 1200 non-executive directors of the Board and at Credit Mutuel there are more than 24 000 non-executive directors. In Germany, there are several thousand non-executive directors as well as in Austria were there are at least 3000 non-executive directors.

The Italian Credit Cooperative Banks are involved in a widely national training program for directors; moreover, in a number of banks, according to a provision of self regulation, there are also specific rules for the training of new directors.

Within Credit Agricole there is IFCAM which is a training unit for officers and directors of Credit Agricole SA and the regional banks. Furthermore, training is provided by the regional banks for their new administrators

These requirements expressed by financial institutions themselves e.g. efficient training programs (banking, finance, anti-money laundering, risk management, etc.) are developed for directors in compliance with the proportionality principle.

- Importance of collective knowledge Board

In any case, more than defining a rigid profile for candidate board members in recruitment policies, which would not allow necessary diversity within a board, it would be better to adopt a principle by which it is to be ensured that board of directors, of particularly local cooperative banks, have the ***collective*** knowledge, skills and understanding of the business to enable them to contribute effectively.

1.4. Do you agree that including more women and individuals with different backgrounds in the board of directors could improve the functioning and efficiency of boards of directors?

- *Cooperative banks: pragmatic recruitment policies, democratic elective system*

We share the idea that diversity in all its forms is a source of enrichment of the Board of Directors. Cooperative entities are to a large extent the social and cultural examples in this respect. We like to underline that the strength of cooperative banks lies in the fact that Board members have different backgrounds, which includes women and individuals of different backgrounds, and are involved in the activities of their cooperatives and understand the cooperative's business model.

As mentioned, it is difficult to talk about real recruitment policies in most cooperative banks in the strict sense as cooperative banks rather have pragmatic recruitment policies. Non-executive directors of cooperative banks are democratically elected exclusively from among members. This democratic elective system, which is a

fundamental feature of the governance of cooperative banks, ensures that the enterprise will be controlled by its members.

- *Cooperative Banks: Diversity in General Assembly and Boards*

This democratic elective system, which is a fundamental feature of the governance of cooperative banks, ensures that the enterprise will be controlled by its members in the General Assembly. Moreover, these General Assemblies from which the directors are elected are in itself source of diversity as they are composed of local entrepreneurs with diverse professions, skills and experiences, and diverse local backgrounds corresponding to the territories in which the local banks are located. This characteristic that board members are chosen among the members ensures that the composition of the board is suitably diverse.

We like to underline that the strength of cooperative banks lies in the fact that Board members have different backgrounds, in respect of gender, social and cultural background and professional experiences, and are involved in the activities of their cooperatives and understand the cooperative's business model.

- *Board composition: competence of bank and importance collective knowledge*

In general, this goal of diversity should not be pursued throughout the setting of standards. Differences in social and cultural backgrounds should be considered when composing boards, but should be decided by the boards themselves. It should be suitable for cooperative banks that the board collectively has the necessary skills, experience and cultural and educational backgrounds.

> *In the Austrian code of corporate governance which is applied by the Austrian Raiffeisen cooperative bank, the General Assembly are already requested to take due care to ensure a balanced composition of the supervisory board with respect to the structure and the business of the company as well as the expertise and the personal qualifications of the supervisory board members*

It is therefore suggested to take this principle as a general approach as there are different initiatives and perspectives in the different Member States with regard to this issue, and not to interfere with these policies at European level.
In any case, more than defining a profile for candidate board members in recruitment policies, which would not necessary allow for diversity within a board, it would be better to adopt a principle by which it is to be ensured that board of directors, of particularly small local cooperative banks, have the ***collective*** knowledge, skills and understanding of the business to enable them to contribute effectively.

1.5. Should a compulsory evaluation of the functioning of the board of directors, carried out by an external evaluator, be put in place? Should the result of this evaluation be made available to supervisory authorities and shareholders?

- *Evaluation: responsibility national supervisor*

An evaluation process is may be useful in order to permanently improve the functioning of the Board of Directors and adjust its composition. In principle, the evaluation and control is the responsibility of the General Assembly, an external evaluator could therefore only provide assistance in the proper functioning of board of directors. Such an

additional external control would therefore be deemed inappropriate – even for large institutions. In addition, it could also lead to excessive administrative burdens given the duplication of work.

- Principle of proportionality

Given the number of regional and local banks a cooperative group comprises, it is necessary to take the principle of proportionality into account. It seems more adequate not to have a compulsory evaluation approach and to strengthen and enhance the practice of self-assessment.

- Existing external evaluation in annual accounts

It should be noted that in some jurisdictions cooperative banks are required to be subject to an external evaluation of certain activities of the Supervisory Board. They therefore already communicate the results of such evaluation to the supervisory authorities and a compulsory evaluation would be deemed redundant.

> *In France, Germany and Austria, the report of the auditors on the Chairman of the Supervisory Board (on internal control procedures, managing risks relating to information processing and financial accounting) are part of the audit of annual accounts and – on a more intensified basis - part of the cooperative revision in the form of self-evaluation.*

- *Self evaluation*

In addition to the existing external evaluation, we consider that only a self-evaluation of both the managing directors' and the board's activities would have a positive effect. In any case, given the large number of local credit institutions of which a cooperative group is comprised, it seems more realistic, according to the principle of proportionality, to systematize the practice of self-assessment. Moreover, the cost of compulsory evaluation for especially local cooperative banks could be remarkable.

The realization of the self- evaluation of the supervisory board - discussing the efficiency of its activities, in particular, its organization and work procedures - could be mentioned in the annual report or at the general meeting of the credit institution.

1.6. Should it be compulsory to set up a risk committee within the board of directors and establish rules regarding the composition and functioning of this committee?

The setting up a risk committee within the board is a question of proportionality in the first place. First, it should be assessed based on the size and the magnitude of and the risks taken by a financial institution whether a risk committee within the board is necessary and/or compulsory. As a reference, the principle of proportionality was applied in the EU Statutory Audit Directive 2006/43/EC which stipulated in Art. 41(6) sub (d) that cooperative banks are not required to have a separate audit committee based on their risk activities. Therefore especially for local cooperative banks, it seems not necessary to require the setting up of a risk committee within the board of directors or local cooperative banks.

A risk committee could be appropriate body in sufficiently large banks or central bodies but detrimental and bureaucratic in small ones. However, it is also a matter of organisation of work, because in the individual case there could be a weighing of

advantages and disadvantages of treating issues in a restricted group risk committee, i.e. a small group or within the Board a (large) committee. That is why some say that multiply the number of committees as they are harmful to an efficient functioning of a company by diluting the responsibility. It should thus be left to the financial institutions to decide whether it is appropriate to have such additional risk committee within the board of directors.

For example, in Credit Agricole and Credit Mutuel such Risk Committee exists at the central level of the cooperative group.

Furthermore, in principle the supervisory board deals with the supervision of the risk management system and the audit committee is concerned with risk management and reports to the management board. It does not deem necessary for cooperative banks to complement the work of such committees. This could create an additional constraint, limit the audit committee in part of its competences and would probably hamper the proper functioning of the cooperative governance structure. In addition, it could also cause unnecessary difficulties in small retail banks.

In order to enhance risk assessments, it could be suggested to have additional Risk Assessments in the Audit Committee which are conducted several times a year. The principal based guidance with the acceptance of proportionality should be a sufficient requirement.

1.7. Should it be compulsory for one or more members of the audit committee to be part of the risk committee and vice versa?

We consider that both committees' roles are to assist the board and not to operate as a decision-making body. If a separate risk committee is established, the creation of risk committees is decided by the Board of Directors which shall determine its composition. In this case, it seems appropriate to recommend participation of one or more members of the audit committee in the risk committee and vice versa without it being mandatory.

For example in France at Credit Mutuel and Credit Agricole, there is a mix of directors and non-executive directors in each committee.

1.8. Should the chairman of the risk committee report to the general meeting?

The option as suggested seems of lesser relevance for cooperative groups where major shareholders are limited.

In principle, the Chairman of the Audit Committee and Risk Committee should report to the Board which was appointed by the General Assembly. The risk committee's role is supportive of the board.

When the Chairman of the Risk Committee, if ever established, would directly report to the General Assembly, it could undermine the collegiality of the Board by giving a special role to the committee.

1.9. What should be the role of the board of directors in a financial institution's risk profile and strategy?

The board should primarily keep its responsibility to oversee the overall strategy and not to engage in the day to day management which is the role of the management board. In most national laws or Articles of Association the competences of the Board are described.

> *As according to French Law 97-02, which defines very precisely the role of the Board of Directors including in relation to strategy and risk profile of banks, the main tasks are the following:*
>
> - *Define the strategic direction of the bank and ensure their implementation;*
> - *Check the company management, the policy of controlling risks and the veracity of the accounts;*
> - *To approve the accounts and ensure the quality of financial reporting.*

It should be noted that in some cases the General Assembly of cooperative banks can have an influence on the financial institution's risk profile and strategy

> *For instance in Austria, the General Assembly of a Cooperative bank can equally take up any question at the Board[10]. In addition, in Germany, the General Assembly has to decide on any commencement or giving up of any area of operations[11].*

A suggestion with regard to the risk profile is that it is necessary to periodically assess the broad policy guidelines for risk and ensure that the executive has the relevant information about the risks.

> *For example in the French law 97-02, as amended on this point in January 14, 2009, the Board is required to periodically evaluate the effectiveness of policies, systems and procedures for risk management in place.*

1.10. Should a risk control declaration be put in place and published?

We consider that a risk control declaration should be transparent and easily accessible but not necessarily published. In this respect there is already some national legislation in place which we consider sufficient.

> *For example, in France and Austria[12] credit institutions including cooperative banks are already required under national company law to submit annually to a Prudential Regulatory Authority a report i.a. measuring and monitoring risk; and describing the relevant risks and uncertainties the company is exposed to; and to clarify responsibilities.*
>
> *In France the report, presented to the Board and the Auditors, is established under the sole responsibility of the CEO. It is considered*

[10] Article 27, Genossenschaftsgezets.

[11] Article 30(m), Mustersatzung fĬr Volksbanken und Raiffeisenbanken mit Vertreterversammlung (ohne Warengeschaft) [Standard Statues of German Cooperative Banks]

[12] Pursuant to Art 243 para 1 Austrian Companies Act (UGB)

inappropriate to make the report public, especially as the CEO already signed a certificate of authenticity of the reference document describing the key risks.

According to Art 340a of the German Uniform Commercial Code, all banks have to publish an annual review on the business development and the company result. This review has to include an evaluation of the substantial opportunities and risks as well as a report on the risk management, liquidity and non-payment risks, fluctuations of the cash flow and the basics of the bank's remuneration system.

In general and especially Austria, there is the view that an additional affirmation of the annual risk statement is unnecessary. Rather, we suggest that the financial institution's risk policy should be put in place, be published and be transparent.

1.11. Should an approval procedure be established for the board of directors to approve new financial products?

Generally no approval is required from the Board of Directors for new financial products as it is a competence of the management to make decisions regarding new products.

For example, the introduction of new financial products is a management matter and shall not automatically and independently be surcharged with the approval requirement by the supervisory board as within the Austrian Raiffeisen Bank and Italian Banche Populari.

However, when product is linked to strategy of the financial institution and/or company changes risk profile the Board may requested for approval.

For example, for cooperative banks under French Law (Article 11-1 of the Rules CRBF 97-02), the Board can only determine the direction of the business strategy of the company and verify that a validation procedure for new products has been implemented and, oversee their implementation, but it is not qualified to approve new financial products. Approval should only be required if the new financial product means a fundamental change from the business policy and if the products influence the risk profile.

Financial products of Banque Populaire and Caisse d'Epargne are subject to national approval by a special committee of the central body, namely the New Products Committee coordinated by the Directorate of Compliance.

In certain cooperative banks, the General Assembly may have a crucial role to play.

As an example, the General Assembly in Austria can upon request of another body within the cooperative group or at its own initiative decide, with binding force, over any issue[13].

As stipulated before, the General Assembly in Germany has to decide over the commencement and giving up certain area of operation[14].

[13] Article 27, Genossenschaftsgezets.

[14] Article 30(m), Mustersatzung fĬr Volksbanken und Raiffeisenbanken mit Vertreterversammlung (ohne Warengeschaft) [Standard Statutes of German Cooperative Banks].

1.12. Should an obligation be established for the board of directors to inform the supervisory authorities of any material risks they are aware of?

A continuous dialogue between the bank and the supervisory authority is obviously fundamental. However, an obligation to inform supervisors about material risks, if any, should be limited to exceptional and serious cases (for instance if the survival of the bank is at risk).

> *Already today, in France and to a certain extent in Finland, it is the case that credit institutions are required to report to the Prudential Controlling Authority incidents of significant operational risks (physical hazards) identified according to the criteria and thresholds established by the Board. The regulation explicitly states that such incidents should be forwarded to the supervising authority by Chair, the latter also having the responsibility to inform the Board.*
>
> *In Austria and Germany, auditors take their obligation to alert the competent authority about such facts seriously as required under Art 63 Para 3 Austrian Banking Act, respectively Art 29 Para 3 German Banking Code. It shall be noted that German and Austrian law subjects auditors of annual accounts to serious (sometimes exorbitant) sanctions, if they violate their information obligation. It should be mentioned that credit cooperatives in Austria and Germany have established a well functioning cooperation and an intensive exchange of information between the supervisors and auditing associations (Revisions- und Prüfungsverbände), which are in charge of the banking audit of credit cooperatives.*

Considering that there is already to a large extent national regulation in place, we do not consider it necessary to provide a specific duty on the Board of Directors to notify the supervisory authorities. Furthermore, we doubt the relevance of reporting individual risk perceptions and its possibilities to react appropriately to single notices or reports. Therefore, we would opt for a principle based approach and would avoid detailed provisioning.

1.13. Should a specific duty be established for the board of directors to take into account the interests of depositors and other stakeholders during the decision-making procedure ('duty of care')?

By definition, one of the fundamental particularities cooperatives group is promoting and serving members' interest. As stated in the Statute for a European Cooperative Society Art. 1.3. 'An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities (...). An SCE may also have as its object the satisfaction of its members' needs by promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national cooperatives'.

Corresponding clauses are found in all statutes coop banks. It is therefore evident that as this is primary goal in the cooperative business model, it is not necessary to require it as a specific duty on part of cooperative banks.

Risk-related functions

General question

2. Interested parties are invited to express whether they are in favour of the proposed solutions regarding the risk management function, and to indicate any other measures they believe would be necessary.

The role of the risk management has currently and must also in the future have a very central position in the bank's core activities.

However, the Commission should take into account that co-operative banks are mainly retail banks. The cooperative features of member ownership entail a conservative banking approach with a longer term perspective and a focus on retail banking. The primary mission of co-operative banks is to provide services to their members/ customers who are typically, individuals, household and SMEs, i.e. retail banking.

Ownership in a cooperative is different from in a joint-stock company. For members of cooperatives there is limited participation in profit, and there is no access to net assets. The benefit and added value produced by a cooperative accrues to the owners in the form of servicing members' interest.

As such the issue of risk related function is to a lesser extent applicable to cooperative banks, as they are characterised by relatively lower risks, lower volatility and more stable returns. The statutory aim of cooperative banks is therefore explicitly defined as promoting economic interest of its members instead of profit maximisation.

Nevertheless, we support in common the evaluations of the risk management expressed in the Green Paper for especially joint stock companies.

Specific questions

2.1. How can the status of the chief risk officer be enhanced? Should the status of the chief risk officer be at least equivalent to that of the chief financial officer?

In order to ensure a strong role and authority of the CRO, it seems necessary to establish close relations between the CRO and the Board of Directors by directly reporting any risk related problems to the Board and CEO.

> *For example in France the issue with regard to risk in financial institutions is regulated by a ministerial decree of 19 January 2010 on "risks" within the system control operations and internal procedures which amended Regulation CRBF 97-02.*

Furthermore, the role of the CRO can be enhanced by adopting an adequate and transparent internal organization and by ensuring that the Board and the CRO are explicitly responsible for their own tasks and activities. The direct connection from the CRO ensures a uniform status of a bank and overall coordination within the bank.

> *In France, the CRO is attached to the Director General. In regional banks the CRO presents its findings to the Board of Directors*

However, it should be noted that in some co-operative banks, and in particular small local banks, due to limited number of staff, certain functions are undertaken on a part-time basis. In such circumstances, the status of the Chief Risk Officer (CRO) cannot easily be enhanced by giving the CRO the same status as that of the Chief Financial Officer. This equivalence would also imply a significant rise of administrative costs, thus reducing the bank competitiveness.

Therefore, the full segregation and independence of risk management function may in certain cases, especially for small cooperative banks be impracticable.

2.2. How can the communication system between the risk management function and the board of directors be improved? Should a procedure for referring conflicts/problems to the hierarchy for resolution be set up?

The communication between the risk management function and the board of directors could be improved as follows:

- by the risk management function's regular and sufficiently frequent reporting to the board
- by setting an obligation/right for the risk management function to attend regularly the board meetings and especially concerning the specific issues (e.g. new products, the strategic changes) with a right to speak
- by setting for the risk management function an obligation and right to make questions and answers to the board passing by the senior management/executives.

For example in some jurisdictions such as France, it is already required that the CRO reports directly to the General Assembly or, where appropriate, the Audit Committee (or Committee risks if any). It should be noted that in France, the responsible person in the Risk department warns the executive body. If the executive body considers it necessary, it reports to the Board of Directors

Furthermore, within the Banque Populaire and Caisse d'Epargne Group all civil Risk Managers (Risk Manager, Director of Compliance, and Director of the Inspectorate) are invited to the meetings of the audit and risk committee.

According to the German Banking Risk Management Minimum Requirements (MaRisk), it is mandatory that the board of directors of a bank informs the supervisory board at least quarterly about the situation of risks. Also, the head of the supervisory board and the national banking supervision have to be informed immediately about severe detections made by the internal auditor concerning the board of directors.

Given existing regulation for the communication between the risk management and the board, it is in principle not deemed necessary for an additional specific procedure for referring conflicts to the hierarchy for resolution to be set up. However, there should be an effective and sufficient procedure for the risk management function's right and obligation should to be heard in place.

2.3. Should the chief risk officer be able to report directly to the board of directors, including the risk committee?

As mentioned in answer to question 2.1, in certain jurisdiction as the French according to CRBF 97-02 (Article 11-8 3rd paragraph), the CRO is to report directly or should be able to directly inform CEO or the Board of Directors, at the request of the CEO or at the request of the Board, when it considers it necessary.

2.4. Should IT tools be upgraded in order to improve the quality and speed at which information concerning significant risks is transmitted to the board of directors?

In general, it is in the interest of institutions to have adapted and efficient tools available to enable efficient flow of information within their group. This applies of course also the risk information.

However, it should be noted that insufficient risk reporting to the supervisory board on existing risk is not merely a matter of IT. It would be more important to create systematic modes and utilize the IT tools to support the information transmission in an integrated way.

Within cooperative banks, the democratic nature of cooperatives presupposes member communication and information transmission. Therefore, the culture of communication is different in cooperative banks. Any improvements of quality and speed of information transmission should take this democratic nature into account.

Moreover, as in certain jurisdiction such as France, it is already required to periodically evaluate the effectiveness of the policy, systems and management procedures, and set up of risks. These can result in necessary improvements to the IT tools for better transmission of information.

Given the existence of these requirements, it is should be left for institutions to define their IT infrastructure and improve it if necessary. It should be only suggested to require the period evaluation of effective information transmission.

2.5. Should executives be required to approve a report on the adequacy of internal control systems?

In principle, it seems appropriate and necessary that the executive verifies and evaluates the adequacy of internal control systems. However, these investigations must not be a formal statement from the executive especially as it is not one of the tasks of the executives to approve a report. The general task of the executive is to inform the legislative body at least once a year about the functioning of the internal control system and not to approve it as such.

Therefore, there should not be an approval requirement on part of the executive on the adequacy of internal control systems.

In Members States law, the adequacy of internal control is already regulated.

> *For example in French law, the control of the adequacy of internal control is done through the President's report on the Board's procedures and internal controls and risk management. In addition, the executive informs*

the legislative body at least once a year about essential and key lessons that can be extracted from the analysis and monitoring of risks associated with the activity and results of measures taken to ensure business continuity and control of outsourced activities (Article 39 CRBF 97-02).

Section AT 4.4 of the German Banking Risk Management Minimum Requirements (MaRisk) says that any bank's internal auditor has to assess and evaluate the efficiency and adequacy of the bank's risk management, the system of internal controls and the correctness of all the bank's actions and that the internal auditor has to report on his findings to the board of directors.

It is suggested that the report should be approved by other internal Bodies, such as for instance the Audit Committee instead of by the executive body in order to ensure an independent evaluation on the adequacy and effectiveness of internal control systems.

External auditors

General question

3. Interested parties are invited to express whether they are in favour of the proposed solutions concerning the role of external auditors, and to indicate any other measures they believe would be necessary.

In most jurisdictions, the external auditors of cooperative banks have to report their perceptions and possible deviations to the board of directors and general assembly/shareholders' meeting. In addition, they also report to the supervisory authorities.

> *For example, in Austria, auditors have a strict obligation to alert the competent authority as required under Art 63 Para 3 Austrian Banking Act; BWG. It should be noted that Austrian law subjects auditors of annual accounts to serious (sometimes exorbitant) sanctions, if they violate their information obligation. Furthermore, credit cooperatives in Austria have established a well functioning cooperation and an intensive exchange of information between the supervisors and revisor associations (Revisionsverbände), which are in charge of the banking audit of credit cooperatives.*

As external auditors of cooperative banks perform their duty of alert not only to the board and the supervisory authority but also to their General Assembly, it is not deemed necessary for cooperatives to extend reporting requirements of external auditors or enhance the role of external auditors in reporting risk related information.

> *In Finland, the auditors' reports are provided to the Board and the General Assembly and are also available for the financial supervisory authority.*

As regards the cooperation between external auditors and supervisory authorities, the auditor's advisory role would change if the auditor's and the supervisory authority's cooperation would be intensified and the supervisor would have a bigger role in producing the published material.

Therefore, in our opinion any new measures should merely increase the transparency on the reporting by external auditors to the Board and supervisory authorities to ensure that duty of alert is being performed. Furthermore, as regards conflicts of interests, we consider that it is necessary that external auditors should be independent and that it should be transparent by whom they are remunerated.

Specific questions

3.1. Should cooperation between external auditors and supervisory authorities be deepened? If so, how?

Cooperatives banks have established a well functioning cooperation and an intensive exchange of information between the supervisors and external auditors. As external auditors of cooperative banks perform their duty of alert not only towards the board and the supervisory authority but also towards their General Assembly, it is not deemed necessary for cooperatives to extend reporting schemes of external auditors or enhance the role of external auditors should play in reporting risk related information.

For example, in Spain, that cooperation is guaranteed in two ways: a) there are external auditors representatives present at the Supervisory authorities and vice versa b) there is one representative from the financial supervisor present at the main national Institute of Accounting and Accounts Auditing,

In France, the cooperation between external auditors and supervisors of banks is also already the subject of domestic regulations. The Prudential Regulatory Authority gives its approval to the appointment of external auditors (Section 511-11 D of the Monetary and Financial Code). In addition, the Prudential Regulatory Authority (ACP) may ask the auditors any information on the activity and financial position of the institution. The auditors must report to the CPA, especially violations of the laws or regulations which are likely to have significant effects on the financial status of establishment (Article L 613-19 of the Monetary and Financial Code.

The cooperation between external auditors and the German banking supervision is regulated in Art 26 ff. of the German Banking Code. Hereafter, the auditor's report has to be made available to the banking supervision immediately after its completion. Severe risks and perpetrations have to be reported to the banking supervision immediately as well. Furthermore, the banking supervision is entitled to set further auditing standards for any bank.

Furthermore, the auditor's advisory role could change if the auditor's and the supervisory authority's cooperation would be intensified and the supervisor would have a bigger role in producing the published material. From our point of view therefore, the cooperation between external auditors and supervisory authorities should not be changed in a way to alternate the competences.

3.2. Should their duty of information towards the board of directors and/or supervisory authorities on possible serious matters discovered in the performance of their duties be increased?

It should be noted that external auditors of cooperative banks inform next to the board and supervisory authorities also the General Assembly. This already increases the exposure of their information. For external auditors of cooperative banks it is not deemed necessary to increase the duty of information.

In practice in many jurisdictions, the obligation to inform of the external auditors to the Board of Directors and supervisors is already strictly regulated in detail.

For example in France and in Germany there is an ongoing dialogue during the year between the auditors and the supervisory authorities as regards cooperative banks.

3.3. Should external auditors' control be extended to risk-related financial information?

In principle this is not the direct role of the external auditor. In our opinion, the existing national conditions for external auditor's control are sufficient and there should not be such an extension.

For example, in the French jurisdiction, the external auditors' task is to

present a report attached to the general report, with comments on the Chairman's report on procedures for internal control and risk management relating to the preparation and processing of financial and accounting information.

Furthermore, it could be cumbersome and costly as financial information often has to be rendered very quickly. As such, it should not be subject to external auditors' control. It could be suggested to improve and clarify the internal risk management mechanisms and responsibilities.

Supervisory authorities

General question

4. Interested parties are invited to express whether they are in favour of the proposed solutions concerning the role of supervisory authorities, and to indicate any other measures they believe would be necessary.

- *Need to reform supervisory authorities' responsibilities*

Most important is that if any modifications are going to be implemented for credit institutions, reform of the supervisory authorities' responsibilities should take place alongside, because as indicated by the Commission effective supervision failed. Especially, national supervision was neither sufficient nor effective when credit institutions pursue their activities on a cross-border basis. Therefore, we agree that the cooperation between supervisory authorities should be enhanced as regards cross-border financial institutions.

- *No need to redefine and strengthen the role of supervisory authorities in the internal governance*

As regards the other proposed measures concerning the role of the supervisory authorities, we are not in favour as the supervision of cooperative banks has been functioning well. We consider that it is neither necessary to redefine and strengthen the role of supervisory authorities in the internal governance of cooperative banks nor to creating a duty for supervisory authorities to check the correct functioning and effectiveness of the board of directors and to regularly inspect the risk management function to ensure its effectiveness.

- *limited supervisory authorities' role to the external supervision of corporate governance*

The supervisory authorities' role should be separated from the internal governance as it would only cause public liability litigation for omitted board action on the one hand and - driven by the aforesaid – and excessive prudence on the other hand.

The supervisors' competences and tasks should be limited to the external supervision of corporate governance in financial institutions. Supervisors have a role in enforcement of compliance with operating rules of governance. Therefore, the supervisors should not interfere with the internal governance of financial institutions. Furthermore, supervisory authorities should pay attention to the different business models in the banking sector – a one size fits all –approach would not be pursued as it will not be successful.

As such, we support in general the idea to ensure a clear delimitation of roles and responsibilities between supervisors and the governing bodies of the financial institutions respectively for the external and internal supervision of corporate governance in the financial institution.

Specific questions

4.1. Should the role of supervisory authorities in the internal governance of financial institutions be redefined and strengthened?

The senior management/executives need to take the responsibility concerning the internal corporate governance code. Supervisors have a role in enforcement of compliance with operating rules of governance. Therefore, the supervisors should not interfere with the internal governance of financial institutions.

The supervisory authorities' role should be separated from the internal governance as it would only cause public liability litigation for omitted board action on the one hand and - driven by the aforesaid – and excessive prudence on the other hand.

4.2. Should supervisory authorities be given the power and duty to check the correct functioning of the board of directors and the risk management function? How can this be put into practice?

The supervisor must in principle be informed of Board's actions in the field of risk management. However, it should be reminded that the supervisory authorities have a power of inspection but not a power of injunction. If the supervisory authorities were given these powers they would take over the responsibility of managing banks which is belongs strictly to the board of directors. In other words, the supervisor could intervene at the highest level of decision making in a financial institution. If the board of directors does not longer have this power, the directors would lose their responsibilities which would bring a strong dispersion of responsibilities among different interlocutors. There is thus no need to give these powers to the supervisory authorities

Furthermore, the control of supervisory authorities is already defined in the Member States.

> *For example in France, supervisors can obtain the necessary information about the functioning of the Board and the Risk Management. Regulation 97.02 provides that summary of the meetings of the Board are automatically routed to supervisors with regard to deliberations on the remuneration policy and those on internal control.*
>
> *In Germany, the supervisory authorities already are entitled to check the correct functioning of the risk management of a bank (Art 44 German Banking Code).*

It seems not advisable to give them the additional power and duty to check the correct functioning of the board of directors.

4.3. Should the eligibility criteria ('fit and proper test') be extended to cover the technical and professional skills, as well as the individual qualities, of future directors? How can this be achieved in practice?

- *Supervisory authority not final arbiter*

The eligibility criteria "fit and proper test" includes already a possibility to evaluate the total competence and so we do not see any need for improvements. If there would be

some requirements for the supervisor of the evaluation of the eligibility, several difficulties would be encountered – as how to measure the criteria from outside of the organisation / how to set criteria for the skills and individual qualities / how to avoid unnecessary challenges in small retail banks.

In addition, we do not think the supervisor should be the final arbiter on the board's skills appropriateness and balance. This should remain the domain of the financial institutions' board.

- *Cooperative banks: democratic election system of directors*

Especially, it should be noted that in cooperative banks directors are democratically elected and there are no recruitment policies in the strict sense. The diversity membership of cooperative banks ensures that the elected board members have a diverse background, have a strong knowledge of the different components of the economy, are competent and bring a lot of value added by their strong knowledge of the local business. A lot of efforts have been made to improve the participation of members to the General Assembly meetings in order to develop the training and the information of the member-customers and also reinforce the legitimacy of the directors.

- *Training programmes*

Therefore, especially for cooperative banks the fit and proper test should not extend to technical and professional skills and individual qualities. This would primarily be a board (and shareholders meeting) and management responsibility. Moreover, at national level, training programme initiatives for directors already exist to enhance the technical and professional skills.

> *The Crédit Agricole Group for instance provides training for directors once they are appointed by the General Assemblies of Local Banks, Regional Banks and central body.*
>
> *In Germany, the auditing associations provide training facilities, courses and literature for directors as well. It would go against freedom vested in the Board of Directors to propose to the General Assembly candidates who seem most appropriate to requiring prior to the appointment proficiency tests of professionals.*

- *Avoid narrow focus and need to emphasize collective knowledge*

Furthermore, the fit and proper test must not only take into account the degree of banking knowledge but a broader notion of knowledge which will take into account the specificities and strengths of our directors: a strong understanding of the local setting and a diverse professional background. In addition, the collective knowledge of the board of directors should be taken into account.

- *Application 'fit and proper test': proportionality principle*

In addition, we suggest that the any 'fit and proper test' should only be applied to the chairman and the general manager of the local branch, at the regional level and at the national level. Credit Mutuel in France for example has approximately 24 000 non-executive directors. It cannot be requested that each and every director has to pass this test. Therefore, the proportionality principle should be taken into account: efforts by cooperative will be made in proportion of their size and their business means.

Shareholders

General question

5. Interested parties are invited to express their view on whether they consider that shareholder control of financial institutions is still realistic. If so, how in their opinion would it be possible to improve shareholder engagement in practice?

- *Cooperative banks: member ownership*

This is not an issue for cooperative banks as the membership of cooperative banks is totally different from the one of joint stock companies. An important characteristic of our co-operatives banks is that the 'shareholders' are members and not merely shareholders. In cooperatives are still effectively controlled by members/customers according to member principle.

> *In Italy for example the participation of members at the General assembly of Credit Cooperative Banks is at about (30% to 40%of the total number of members).*

Furthermore, members are all users of the services of their banks. The main aim of cooperative banks is not the gain of profit but aimed to the members' and customer satisfaction. In addition, there are no institutional investors in cooperatives in European Union.

- *Joint Stock Companies*

Nevertheless, as regards joint stock companies we think that reviewing shareholder's engagement and effective control of financial institutions is important and still realistic. In our opinion, the majority of the proposed measures enhance this engagement i.e. disclosure of institutional investors voting practices, adherence to a 'stewardship codes' best practices, identification of potential conflicts of interest, disclosure of remuneration policies for intermediaries, and providing shareholders with better information could be effective to a certain extent. However, we consider it necessary to provide an incentive to shareholders to be and maintain involved and to control the financial institutions' practices in the long term by means of increased shareholder cooperation and dialogue. It is of importance that shareholders obtain the feeling to be involved and informed.

Finally, we think that it is necessary to reconsider the strenghtening of shareholders' rights in the contents of this Green Paper, in the light of the recently implemented the Directive 2007/36/EC on Shareholders rights which, and which is not yet completely implemented. Thus, in reviewing this issue the effects on corporate governance of the implementation of the Directive 2007/36/EC in all Member States should be fully assessed and taken into account over a reasonable period of time.

Specific questions

5.1.	**Should disclosure of institutional investors' voting practices and policies be compulsory? How often?**

This question does not concern the cooperative banks. The membership of cooperative banks is totally different from the one of joint stock companies. An important characteristic of our co-operatives banks is that the 'shareholders' are members and not merely shareholders.

However, as for joint stock companies we have the following views. In the first place, the term "institutional investor" needs to be clarified, especially since it does not a priori concern management companies in terms of UCITS.

- The exercise by the "investors" (which can be private or semi-public) of their right to vote is a separate issue from that of governance and deserves in-depth studies before being proposed as such or mandatory;
- With regard to management companies, the French legislation requires them to publish their voting policy (Article 314-100 of the AMF General Regulation).

In principle, we can agree to have an obligation to disclose on annual basis investors' voting practices and policies in collective but not of individual cases.

5.2.	**Should institutional investors be obliged to adhere to a code of best practice (national or international) such as, for example, the code of the International Corporate Governance Network (ICGN)? This code requires signatories to develop and publish their investment and voting policies, to take measures to avoid conflicts of interest and to use their voting rights in a responsible way.**

This is not an issue for cooperative banks. The cooperative banks are effectively owned and controlled by their local customers through the membership concept. Cooperatives therefore do not have shareholders as in joint stock companies.

As regards joint stock companies, we are in favorable of making use of a code of best practices at national level. However, we do not believe in a mandatory obligation.

5.3.	**Should the identification of shareholders be facilitated in order to encourage dialogue between companies and their shareholders and reduce the risk of abuse connected to 'empty voting'?**

This question does not concern the cooperative banks. The membership of cooperative banks is totally different from the one of joint stock companies. An important characteristic of our co-operatives banks is that the 'shareholders' are members and not merely shareholders.

As regards joint stock companies, we are supportive of a facilitation of the identification of shareholders.

> *In France, the Law on New Economic Regulations 2001 ensures that shareholders are requested to cast their vote (which commits the company and all other stakeholders for a long time) unless they have business*

interests in the real economy

It should be noted that this possibility does not exist in all European countries, especially those who have not encouraged the holding of registered shares. For those countries where there is the possibility, it is desirable to regulate strongly the "loan-borrowing" of securities. Furthermore, it is necessary to take into account the constraints of crossing thresholds liabilities.

5.4. Which other measures could encourage shareholders to engage in financial institutions' corporate governance?

This is not an issue for cooperative banks. The cooperative banks are effectively owned and controlled by their local customers through the membership concept. Cooperatives therefore do not have shareholders as in joint stock companies.

As for joint stock companies, we consider it necessary to establish a dialogue with shareholders.

In BPCE and Credit Agricole SA a dialogue between shareholders and members in a cooperative entity exists

It is furthermore important to provide information at the right level. Thus, the most virtuous institutions in this area are those in which CROs are involving their members.

Effective implementation of corporate governance principles

General question

6. Interested parties are invited to express their opinion on which methods would be effective in strengthening implementation of corporate governance principles?

In the context of the crisis, cooperative banks think it is worth considering senior management's legal accountability for the correct implementation of corporate governance principles.

- *Cooperative banks resilient during crisis*

With the core values and corporate governance model of cooperative banks in mind, we would like to remind the Commission services that cooperative banks were not at the root of the crisis and have shown to be more resilient during the crisis[15]. Instead, they were able to better withstand the crisis because the democratic decision-making process, which is a fundamental feature of the governance of cooperative banks, indicates that member owners of a cooperative are in a better position to ensure that the enterprise is managed in the general interest of all owners and according to the corporate governance principles. There is thus in principle a control over management by owners which fosters better understanding, close to the grassroots level, of the bank's functioning and strategy.

- *Joint Stock Companies*

As regards joint stock companies therefore, we consider that indeed an in depth study is necessary on the effectiveness of increasing the manager's civil and criminal liability, recognising the existing liabilities and Member States; competence on matters of criminal law.

Specific questions

6.1. Is it necessary to increase the accountability of members of the board of directors?

The accountability of members of the Board of Directors is very important. A banks' board of directors and a supervisory board answer for their activities in total. Considering that the accountability of board members is regulated in some jurisdictions, we do not consider it necessary to increase accountability of the Board as long as personal accountability is functioning properly and effectively.

> *For example, under French law the liability of members of the Board of Directors is already regulated. Members of the Boards are responsible for every offense they commit, regardless whether the consequences are large or small, and without any qualification requirement of the seriousness of the misconduct. It is furthermore not necessary, that they make a positive*

[15] International Labour Organisation, 2009. Resilience of Cooperative Business Model in Times of Crisis, p. 35. Online available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_108416.pdf.

act for liability, negligence or failure to commit sufficient personal liability.

6.2. Should the civil and criminal liability of directors be reinforced, bearing in mind that the rules governing criminal proceedings are not harmonised at European level?

In some jurisdictions like in France, the liability of board members under civil and criminal law is already quite severe. The fact that compensation is not claimed in each case has other reasons; one being the company's valid objective not to get headlines for such litigation. In addition, in France, board members are educated and informed about their liabilities, which is considered as an effective device.

In our opinion, there is thus no need to reinforce the civil and criminal liability of directors. It will be difficult to reinforce it as it is not harmonized at European level.

Remuneration

General question

7. Interested parties are invited to express their views on how to enhance the consistency and effectiveness of EU action on remuneration for directors of listed companies.

The remuneration of directors of cooperative banks are not under discussion here and have not posed a problem until present.

On the structure and governance of compensation policies in financial services, we support policies and practices of responsible pay for sound and effective risk management.

In principal, it would be possible to enhance the consistency and effectiveness of EU action on remuneration policies, but we would question the need for that as for the banking sector is concerned, new measures would not be necessary because:

- National jurisdictions have transposed international principles and standards of the Financial Stability Board (FSB).
- At European level, the Council and Parliament have recently adopted Directive "3 CRD" which transposes the European norms and standards of the FSB.

In this context, the priority is to ensure consistent implementation of these measures in all the countries concerned rather than to further strengthen the EU rules.

We recall that some G20 countries, *de facto* do not apply the principles of the FSB, thus undermined the competitiveness of European banking institutions.

Specific questions

7.1. What could be the content and form, binding or non-binding, of possible additional measures at EU level on remuneration for directors of listed companies?

Considering that at European level, the Council and Parliament have recently adopted Directive "3 CRD" which transposes the European norms and standards of the FSB, additional measures do at present not seem necessary.

Nevertheless, it should be mentioned that some Member States have changed their remuneration policies

> *For example, in France the remuneration policies in the banking industry are since November 2009 subject to a very detailed and prescriptive rules (Decree of 3 November 2009 relating to the remuneration of personnel whose activities may affect the risk exposure of credit institutions and investment firm).*

These measures are very ambitious and go beyond a certain number of points under the standards of the Council for Financial Stability (FSB), adopted 25 September 2009 and endorsed by the G-20 Pittsburgh.

Moreover, the French rules have a field of application outside of Europe in that they are apply in principle to French banking groups on a consolidated basis, that is to say also to professionals outside of France, outside of Europe.

Considering the upcoming CRD III and existing national legislation and its scope, additional measures do not seem necessary. The priority is to ensure consistent implementation of these measures and rapid in all the countries concerned rather than to further strengthen the European rules. We note that some G20 *countries,* de *facto,* no 'not apply the principles of the FSB, thus undermined the competitiveness of European banking institutions.

7.2. Do you consider that problems related to directors' stock options should be addressed? If so, how? Is it necessary to regulate at Community level, or even prohibit the granting of stock options?

Stock options are primarily a tool to retain employees, as options can only be taken advantage of at maturity. It is in line with the principles of deferred remuneration as promoted by the international bodies and the Commission. Insofar as the practices are transparent and are subject to recommendations of codes of governance space, EU legislation seems irrelevant and an unconditional prohibition is unnecessary and would represent a far too black-and-white viewpoint.

In some jurisdictions, regulations have been established to address directors' stock options or codes of corporate governance stated conditions under which these options could be granted and exercised.

According to Supervisory provisions of the Bank of Italy, for instance, stock options must take account of the risk borne by banks and structured so as to avoid generating incentives that conflict with their long- term interests.

Under French law (December 30, 2006) a duty to retain shares from option exercises was also established for executive directors. this was framed very recently which led to the development of plans bonus shares.

Furthermore, the practices of French companies have significantly advanced. Now the stock option plans include performance conditions at the end of the period of unavailability to the final award of the option. Performance conditions are also published and are subject to an assessment by fund managers on behalf of others.

7.3. Whilst respecting Member States' competence where relevant, do you think that the favourable tax treatment of stock options and other similar remuneration existing in certain Member States helps encourage excessive risk-taking? If so, should this issue be discussed at EU level?

As taxation is the responsibility of Member States, it must maintain to be considered in the context of the overall social environment and tax applicable at national level.

In some Member States like in France, the tax and social policy options

were recently amended by the regulations and the tax benefit tied to stock options has been considerably reduced. The tax treatment of stock options and other similar remuneration is now more favorable.

7.4. Do you think that the role of shareholders, and also that of employees and their representatives, should be strengthened in establishing remuneration policy?

In our opinion, it would be contrary to the principle of responsibility of the legislative body to strengthen the role of shareholders or members in our case, and a fortiori, employees and their representatives in setting compensation policies for corporate officers.

It should be noted that members and employees in some cooperative banks have already an indirect role to play as regards remuneration policies.

In Italy the general assembly of must approve the remuneration criteria for all directors and equity-based or performance-based compensation for directors, employees or collaborators.

In France, the representation of employees is also organized by the national legislation in the context of employee representation on the Boards of Directors / supervisory.

In Germany, the supervisory board, consisting of and representing all members, is responsible for the remuneration of the directors.

As for joint stock companies, it could be recommended that decisions of the Board on the salaries of officers are presented annually in detail to the General Assembly of shareholders.

7.5. What is your opinion of severance packages (so-called 'golden parachutes')? Is it necessary to regulate at Community level, or even prohibit the granting of such packages? If so, how? Should they be awarded only to remunerate effective performance of directors?

With regard to severance packages, we consider it not thus no need to prohibit moderate severance packages or other relative arrangements as long as the practice of golden parachutes is strictly regulated at national level taking into account the national specificities. There is thus no need to regulate it at Community level.

If someone is appointed for a term of e.g. five years, but dismissed prior to the expiry of the term, one is typically entitled to claim the outstanding remuneration. One cannot interfere with this claim without violating the principle of objectivity. Alternatively, the employment contract could provide for a respective termination clause.

For example, the practice of golden parachutes is strictly regulated which is already the case in France and will be regulated by CRD III at EU level.

General question

7a	**Interested parties are also invited to express their views on whether additional measures are needed with regard to the structure and governance of remuneration policies in the financial services. If so, what could be the content of these measures?**

Please see answer to questions 7 and 7.1.

Specific questions

7.6.	**Do you think that the variable component of remuneration in financial institutions which have received public funding should be reduced or suspended?**

In principle, we consider that the variable component should be affected if a bank has received public funding for the situation of poor financial position. However, it depends on the amount of the variable component of remuneration on the one hand and on the success underlying this remuneration on the other hand.

In addition, CRD III now regulates remuneration policies comprehensively. A patchwork of regulation should be avoided.

Conflicts of interest

General question

8. Interested parties are invited to express whether they agree with the Commission's observation that, in spite of current requirements for transparency with regard to conflicts of interest, surveillance of conflicts of interest by the markets alone is not always possible or effective.

We consider that surveillance of conflicts of interest by the markets alone is possible and can be effective. Conflicts of interest are not abnormal, provided that institutions are able to manage them. It is true however, that the identification of conflicts of interest can be complex.

Specific questions

8.1. What could be the content of possible additional measures at EU level to reinforce the combating and prevention of conflicts of interest in the financial services sector?

According to the principles adopted by the MiFID, conflicts of interest are not abnormal, provided that institutions are able to manage them. It is true however, that the identification of conflicts of interest can be complex results from the implementation of MiFID. A normative contribution on typical situations of conflict of interest would be useful for companies to specify their management and establish control repositories.

It is therefore important that the conflict of interests is clearly represented to the board in a transparent manner. This is already possible on the basis of our current legislation.

8.2. Do you agree with the view that, while taking into account the different existing legal and economic models, it is necessary to harmonise the content and detail of Community rules on conflicts of interest to ensure that the various financial institutions are subject to similar rules, in accordance with which they must apply the provisions of MiFID, the CRD, the UCITS Directive or Solvency 2?

In most banks which distribute both banking, investment and insurance, it is already the practice that they apply de facto principles of the MiFID for conflict of interest to all of its activities. An alignment and simplification of conflicts of interests as regards these different aspects at EU level is essential not only to ensure that the different financial institutions are subject to similar rules but also to insure a harmonisation of the different EU legislation on this topic.