Stichting Corporate Governance Onderzoek voor Pensioenfondsen

European Commission
Attn. Mr. F. Bolkestein
Internal Market Directorate General
Directorate F
200 Rue de la Loi (C-107 3/74)
B-1049 Brussels
BELGIUM

August 29, 2003

Re: EU Corporate Governance Action Plan

Dear Mr. Bolkestein,

The Foundation Corporate Governance Research for Pension Funds (*Stichting Corporate Governance Onderzoek voor Pensioenfondsen* ("SCGOP")) was founded in 1998 to enable Dutch pension funds to work on improving the corporate governance of the companies in which they invest. Founding members are the pension funds of KLM, Philips, Shell and Unilever, ABP, PGGM, KPN/TPG and *Spoorwegpensioenfonds* (Railway Pension Fund). 28 pension funds and the Dutch Association of Industry-wide Pension Fundsare are presently affiliated with SCGOP. Collectively these pension funds manage more than 80% of the total capital invested by Dutch pension funds.

We write to you to express our support for your recently published Action Plan on Company Law and Corporate Governance. We share the concerns of the European Commission (EC) on the problems facing us and we agree on the goals that you have set out for the improvement of company law in the EU in the nearby future. The EU can simply no longer afford to stay behind in ever further internationalising business community. The Action Plan contains concrete and valuable suggestions that will bring the EU a considerable step forward. We hope you will appreciate that we

Secretariaat:
Postbus 2889
6401 DJ Heerlen
Tel. 045 5791613
Fax: 045 5792143
E-mail: scgop@abp.nl
http://www.scgop.nl

nevertheless have a few suggestions which we ask you to take in consideration in the further process.

EU corporate governance code is desirable

The EC suggests that rather than trying to develop a European corporate governance code, it should focus on the reduction of so-called participation barriers and information barriers. We regret this. Apart from the fact that the one does not exclude the other, we feel that it should very well be feasible to develop general principles applicable throughout the EU, which can be tailored in greater detail at the national level. The EC recognises that the already existing national codes show a remarkable degree of convergence and that the differences are found in differing company law and securities regulation (p. 11). This in our mind means that there is a uniform sense of where we should get, and that the difference is only where we are getting from. The absence of an EU-code as reference point for member states (and the EU itself) may result in the current patchwork to remain, instead of a coherent framework to arise. Together with additional regulation where appropriate, an EU-code with general guiding principles could give a powerful impulse to the creation of a genuine level playing field that will prevent a race to the bottom. Together with the co-coordinating role of the EU, it would furthermore be a powerful tool to stimulate further convergence: with every evaluation it can be reviewed to what extent the scope of the EU-code can be expanded. Last but not least, such a framework would make things much more clear, transparent and easy to deal with, not in the least for the (multi-national) enterprises themselves.

Responsibility of institutional investors

We fully support the provisions on full disclosure by institutional investors on their corporate governance policy and activities (3.1.1.). As trustees of their investments they should properly discharge their responsibilities as shareholders towards their beneficiaries. An important concern in this respect is the (potential) conflicting interests of institutional investors that may inhibit an independent execution of these responsibilities. In this respect we suggest to obligate investors to also incorporate in their policy guidelines what procedures they have in place to safeguard that such conflicts will not jeapordise the interests of their beneficiaries. We refer to the Statement on Responsibilities of Institutional Investors of the International Corporate Governance Network (ICGN) that has recently been adopted and contains similar provisions.

Secretariaat:
Postbus 2889
6401 DJ Heerlen
Tel. 045 5791613
Fax: 045 5792143
E-mail: scgop@abp.nl
http://www.scgop.nl

We regret furthermore that the EC intends to make this a priority on the medium term. We disagree that current technical impediments to efficient cross-border voting should stand in the way of a more expedient approach. It is the responsibility, in our mind, of each institutional investor to consider voting in each case where there are no reasons of practicability or cost-effectiveness that make voting unbeneficial. The number of markets where proxy voting is possible in a relatively efficient way are growing. Apart from that, there are various service-agents that provide relatively cost-efficient services to help the investor implement a coherent voting policy. Accountability on how these activities are executed should not depend on the complex process of upgrading international voting procedures.

Better access to information and improvement of ancillary shareholder rights is a necessity

As the Winter Committee has stressed already, modernising EU Company Law will not be complete without a coherent, high quality improvement of access to information and facilitating the use of shareholder rights throughout the EU, making full use of modern technology. We disagree with your assessment (in 2.1) that the time has not yet come where the use of these means can be imposed on companies. Financial markets and the business community have internationalised very rapidly over the last decades. Shareholders however are often still left with poor and out of date means of obtaining the relevant information to make an assessment of the governance of companies and to use their rights. This takes a disproportionally intensive effort. In relation to the large number of holdings, we think for that reason alone many institutional investors refrain from making such efforts. If checks and balances in the EU are to be a success, then making real progress in this field is a necessity. At a minimum, companies should be required to maintain a specific section on their website for full disclosure of all relevant corporate governance data, including all legal and other information it is required to file and disclose.

We furthermore welcome your acknowledgment that improvement of (facilitating the use of) basic shareholder rights a matter for the short term. But in view of the aforementioned, we urge you to include the use of modern technology in the approach of the problems.

Secretariaat:
Postbus 2889
6401 DJ Heerlen
Tel. 045 5791613
Fax: 045 5792143
E-mail: scgop@abp.nl
http://www.scgop.nl

One share one vote should be the principle rule, at least in "peace time"

We regret that so far no results have been reached on the 13th Directive. We urge the EC however not to make the corporate governance measures in "peace time" dependent on the outcome of that process. These measures are simply too important for that. For a system of checks and balances to work properly, we feel an efficient market for corporate control is needed, as we have indicated earlier in our letter to you of March 28, 2002. However, the other instruments to achieve that are as important. A transparent company structure in which shareholders can play a meaningful role presupposes in this respect full acceptance of the one share one vote principle. If anti-takeover devices are to be allowed until an EU consensus has arisen on the approach thereof, they should in any case inflict as little damage as possible on the regular process of decision making in "peace time". As long as there is no threat of a hostile take over, one share one vote should therefore be the principle rule. We see no reason to further study the effects thereof when this more pragmatic approach is taken (as is suggested in 3.1.2.). The EU must take alert and vigorous action to address the current problems. Adoption of the one share one vote principle across the EU is vital in this respect. The suggested approach therefore enables the EU to take such action.

Executives should not bear the responsibility for nomination of board members

In 3.1.3. it is suggested that, unlike the audit committee and the remuneration committee, the nomination committee should consist mainly of executives. The reason would be that they have the knowledge of the challenges facing the company and of the skills and experience of the human resources grown up within the company. We do not agree with this line of reasoning. Succession is one of the most important factors in the future success of the company. As with issues like auditing and remuneration, the non-executive directors should play a leading role there. Obviously the executive directors will in practice be a dominant factor in the selection process, but they need to convince the non-executives of their ideas. Apart from the further practical complexity that it would for obvious reasons also be undesirable that executives would select their own supervisors, non-executives should also not be enabled to refrain from taking full responsibility for the (consequences of the) selection of executives.

Secretariaat:
Postbus 2889
6401 DJ Heerlen
Tel. 045 5791613
Fax: 045 5792143
E-mail: scgop@abp.nl
http://www.scgop.nl

Overall, we commend the European Commissions efforts in structuring an action plan that will enable the EU to live up to the enormous task ahead, and we sincerely hope that these suggestions will assist you in the further process.

Yours sincerely,

Peter de Koning

Chairman

Secretariaat:
Postbus 2889
6401 DJ Heerlen
Tel. 045 5791613
Fax: 045 5792143
E-mail: scgop@abp.nl
http://www.scgop.nl