

European Commission  
Directorate General Internal Market and Services/  
Company Law, Corporate Governance and Financial Crime  
Unit  
SPA2 03/103  
1049 Brussels  
Belgium

Brussels, 22<sup>nd</sup> July 2011

By e-mail only: markt-complaw@ec.europa.eu

Dear Sirs,

**Re: FERMA response to the consultation document Green Paper on corporate governance**

The Federation of European Risk Management Associations (“FERMA”) welcomes the opportunity to comment on the European Commission’s staff working document, “Green Paper on the EU corporate governance framework”.

FERMA gathers the national risk management associations from 17 European countries, including 14 EU Member States. FERMA’s 4,000 individual members represent major industrial and commercial companies as well as public authorities in their respective countries. These members manage complex risks and insurance matters on a daily basis in their companies.

FERMA welcomes the Commission's goal to ensure that corporate governance rules and practices are fit for purpose. As a leading forum for risk management professionals, this is a matter close to members' hearts and therefore FERMA is grateful for the opportunity to comment on the green paper.

Our contribution includes some opening remarks in support of better corporate governance in the EU, specific comments on the risk management aspects of the green paper, followed by other corporate governance issues dealing with risk management.

FERMA would be delighted to provide further advices on any risk management and insurance issue to contribute to build a European market where enterprises can compete fairly, develop, for their own benefit and the European economy, whilst respecting their social responsibilities.

Yours faithfully,



Peter den Dekker  
President

## OPENING REMARKS

FERMA heartily supports the European Commission's goal to create a strong and successful single market. Europe's growth depends on ambitious initiatives, including further market integration where appropriate.

FERMA is of the opinion that there is a close correlation between the aspects of the green paper regarding disclosure and the 8<sup>th</sup> EU Company Law Directive on statutory audit ("the Directive"), most specifically the duty of the board and audit committee to provide transparent and reliable information on significant and evolving risks and the way these risks are managed (Article 41). In September 2010 FERMA and ECIIA published a Guidance for Boards and Audit Committees, on how to exercise this duty ("the Guidance Paper"). We refer to aspects of the Guidance Paper, where relevant, throughout this letter. FERMA recognises that the Directive is not fully harmonised, and therefore Member States have the flexibility to be more or less stringent. Member States implementation should be further analysed before the Commission takes any further action to regulate this duty.

FERMA welcomes the Commission's aim to ensure that companies publish accurate and responsibly produced information, which goes beyond superficial compliance or mere "ticking the box". FERMA is very supportive of the Directive, considering that risk management must not be only used as a additional internal control system, but more than that as a real tool for decision-taking. This does not necessarily require new regulatory approaches. FERMA believes that implementation and robust enforcement of existing rules is as essential. When considering the next steps, we respectfully urge the Commission to make certain that the right balance is struck between investor protection and making sure EU-based companies compete fairly with their competitors in other regions of the world.

Further detail on the FERMA and ECIIA Guidance Paper on monitoring the effectiveness of internal control, internal audit and risk management systems is provided on the FERMA website: [http://www.ferma.eu/Portals/2/documents/press\\_releases/20100921-ecia-ferma-guidance-on-the-8th-eu-company-law-directive.pdf](http://www.ferma.eu/Portals/2/documents/press_releases/20100921-ecia-ferma-guidance-on-the-8th-eu-company-law-directive.pdf).

## RISK MANAGEMENT ISSUES

***(11) Do you agree that the board should approve and take responsibility for the company's "risk appetite" and report it meaningfully to shareholders? Should these disclosure arrangements also include relevant key societal risks?***

As outlined in the Guidance Paper, FERMA agrees with the Commission's view that the board plays a key role in setting an organisation's risk appetite and monitoring senior management's response to risk. FERMA believes that the board should include members with experience and awareness of risk management, ideally in the context of the company's business activities. The board, and indeed senior executives, should be supported in these duties by operational management; risk management and compliance as well as the audit functions. We refer to this in our Guidance Paper as the "three lines of defense".

FERMA does not necessarily agree that explicit disclosure of a company's risk appetite to shareholders is the most appropriate course of action. Reporting to shareholders should strike an appropriate balance between providing meaningful information on which to base investment decisions and investment protection, which inevitably requires a certain level of confidentiality. A great deal of information is already disclosed: financial reporting provides an indication of the company's approach (debt, gearing etc.) and other aspects can be implied from the risk management reports. FERMA believes this is sufficient.

We should also recall that key societal risks such as health and safety or environmental protection are already highly regulated in most countries and reporting expectations are already advanced. Nevertheless, there may be scope for improving reporting as regards corporate social responsibility ("CSR") and to this end, FERMA would support further European work to develop this.

FERMA does not support the proposition to disclose more information about risk appetite, because it may harm companies' competitive position, will not improve its risk management culture, and will not provide more assurance to stakeholders that risks are better under control. FERMA would support any initiative encouraging companies to implement a risk management system as a management tool in order to enhance their development and empower the control on their activities.

***(12) Do you agree that the board should ensure that the company's risk management arrangements are effective and commensurate with the company's risk profile?***

FERMA supports the Commission's view that the board should ensure proper oversight of the risk management process and that it should set company-wide risk policy. The board should bear primary responsibility for defining the risk management profile of the company, endorsing the company's strategy and monitoring its operation for effectiveness. FERMA recognises that there are a variety of legal frameworks governing board structure (dual or unitary structures) but that in each case, the risk management roles and responsibilities should be clearly defined throughout the company, and include, as appropriate, contributions of other stakeholders.

To define the risk appetite of the company means defining a risk profile that explains the activities that are the most at risk and discloses it through information about strategy of the company. One of the first roles and responsibilities of boards is to define the strategy and to accept whether or not to take the risks defined within it.

Our analysis of the existing national corporate governance legal framework on the obligation to communicate risks suggests that positive communication should be encouraged. It would reinforce Article 41-2b of the Directive where the board is required to deepen its knowledge about risks and their development.

## **OTHER CORPORATE GOVERNANCE ISSUES DEALING WITH RISK MANAGEMENT**

***(1) Should EU corporate governance measures take into account the size of listed companies? How? Should a differentiated and proportionate regime for small and medium-sized listed companies be established? If so, are there any appropriate definitions or thresholds? If so, please suggest ways of adapting them for SMEs where appropriate when answering the questions below.***

FERMA considers that the principles of corporate governance should apply to all companies irrespective of their size. However, a variety of factors such as the size, complexity of business operations, geographical scope, sector and risk profile point to the need for a “proportionate approach” to applying measures to individual companies.

***(2) Should any corporate governance measures be taken at EU level for unlisted companies? Should the EU focus on promoting development and application of voluntary codes for non-listed companies?***

FERMA believes that EU corporate governance measures should be applied to unlisted companies on a voluntary basis only. Disclosure requirements should be different for companies that do not raise capital on the stock markets. In making this choice, they accept particular financial constraints that listed companies don't have. This would not prevent unlisted companies from taking voluntary initiatives to ensure they apply good corporate governance measures and opportunities should be made available to encourage them to do this (such as Professional associations initiatives providing forums to exchange good practice).

***(24) Do you agree that companies departing from the recommendations of corporate governance codes should be required to provide detailed explanations for such departures and describe the alternative solutions adopted?***

FERMA agrees that a fundamental principle of such codes is "comply or explain" and so would encourage companies to provide explanations and outline, where possible, the reasons for taking an alternative course of action.

***(25) Do you agree that monitoring bodies should be authorised to check the informative quality of the explanations in the corporate governance statements and require companies to complete the explanations where necessary? If yes, what exactly should be their role?***

FERMA considers monitoring bodies should assure the information quality in compliance with their existing responsibilities. FERMA regards monitoring bodies as carrying out an essential role in benchmarking and sharing good practice. Such bodies should be encouraged to provide publicly accessible information to companies on ways to continually improve internal control and risk management.

***FERMA is available to provide any detailed explanations on its points of view that would be needed by the EU Commission.***