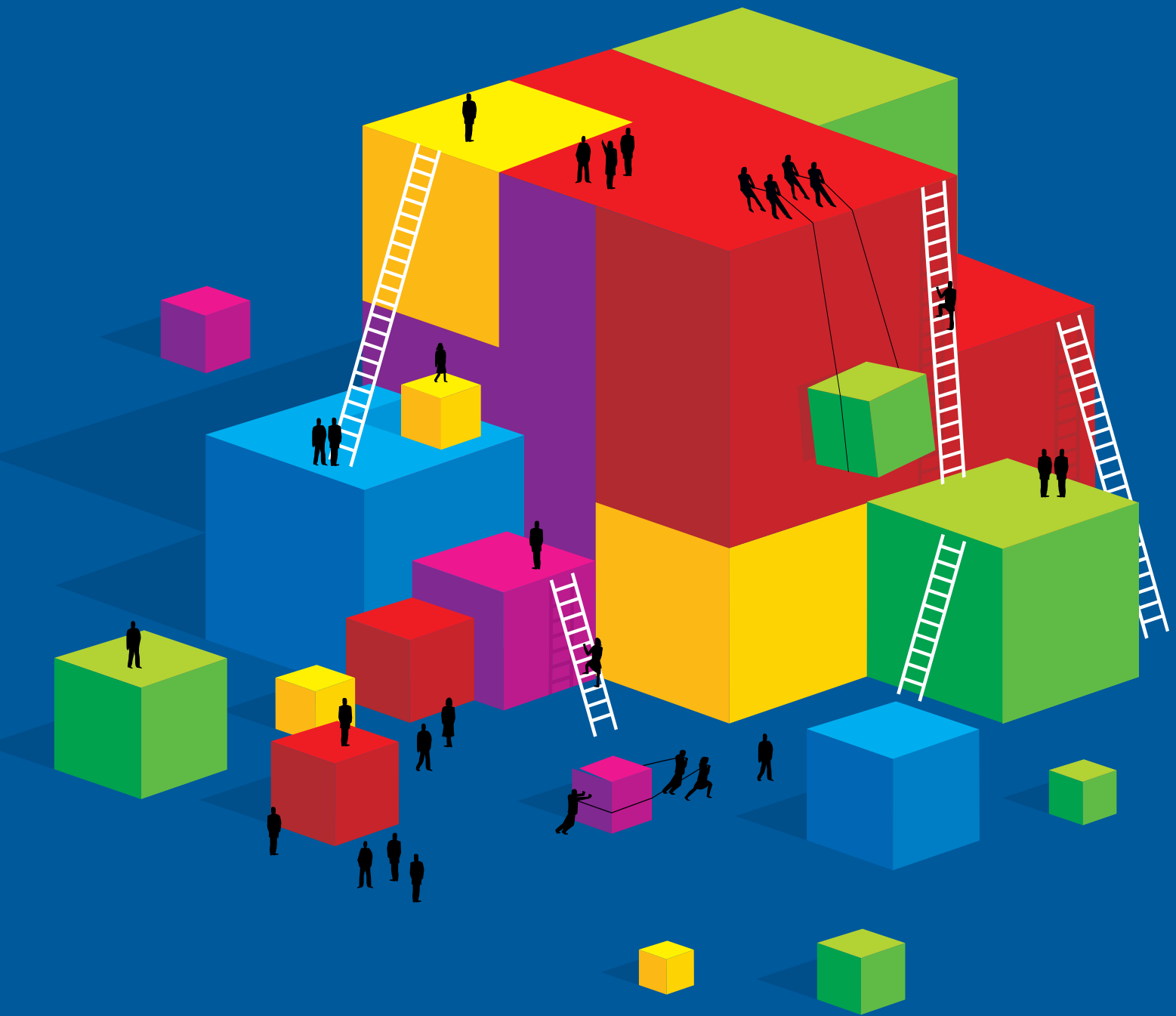


dti

PROMOTING COMPETITIVENESS

The UK approach to  
EU company law and  
corporate governance





The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

# Foreword

by **Alan Johnson**

Company law and good corporate governance are corner-stones of economic activity. Company law sets the framework within which companies are formed, financed, operated and managed, ultimately for the benefit of millions of savers and pensioners. Good corporate governance promotes trust and confidence in business, encourages investment and provides the basis for the sound commercial decision making which is integral to successful, sustained corporate performance.

The Company Law Reform White Paper published in March underlined the Government's commitment to reforming company law in ways which promote enterprise and competitiveness. It also made it clear that we want to see action in Europe under the Commission's Company Law Action Plan which complements this and helps to promote competitiveness and wealth creation across the European Union.

What the EU does on company law and corporate governance is fundamentally important to the UK. The right measures will make it easier for UK companies and investors to operate across national boundaries and help to improve the ability of EU capital markets to service corporate requirements.

Improving business efficiency and competitiveness by reducing costs and increasing flexibility is one of the central themes of the Action Plan. Recent Commission pronouncements have also emphasised its commitment to better regulation and the simplification and modernisation of existing legislation, and to closer consultation with business and other stakeholders.

I believe that it is very much in the UK's best interests that we work constructively with the Commission and like minded Member States to shape the development of the Action Plan in ways which benefit Europe as a whole.

The DTI's approach to the Action Plan already reflects our close working relationship with stakeholders but we need more people to get more involved in delivery.

In this area, as in others, influencing developments in Europe is all about teamwork – Government, regulators, business and other stakeholders working together to agree common objectives and shape the future EU agenda; presenting arguments effectively and consistently; and using all available channels of communication to get messages across early enough to have an impact not just on the Commission and the Parliament but on decision makers in other Member States. The more we do and the more joined up we are the more effective we will be in getting our messages over.

I am therefore very pleased that this booklet is being published with the support of the CBI, the Institute of Directors, the Association of British Insurers and other stakeholder organisations and that they are actively working with us to encourage business to get involved.

I know that companies have limited resources and that day to day business has to take priority but by focusing our efforts we can shape the framework for future business activity in Europe in ways which help to promote wealth creation and the competitiveness of UK business.

I hope that this booklet encourages more of you to get involved.

**Alan Johnson**  
**Secretary of State for**  
**Trade and Industry**

# Executive Summary

In May 2003, the European Commission issued an Action Plan on *Modernising Company Law and Enhancing Corporate Governance in the European Union*. The Plan is designed both to improve the operation of the European Single Market and address concerns about corporate governance raised by Enron, Parmalat and other recent corporate collapses. Annex 1 provides a brief description of each measure and outlines where things stand in terms of implementation.

## Key Elements of the Action Plan

The Action Plan contains 24 measures. Some of the measures have already been adopted; some are currently being negotiated; and most measures are meant to be adopted before 2009.

A wide range of areas relevant to UK business is covered. Some key issues are set out below:

**Board Members' Responsibility:** A special investigation right as well as a wrongful trading rule are planned to be part of a measure to enhance board members' responsibility.

**Directors' Pay:** All EU Member States are now encouraged to ensure directors' remuneration policy is disclosed. A Recommendation based on UK practice has already been adopted.

**Capital Maintenance Regime:** A fundamental review of the current capital maintenance regime is envisaged being carried out by the Commission. This could eventually lead to the current regime being replaced.

**Corporate Restructuring across Borders:** Business across borders is planned to be facilitated by several measures covering issues such as cross-border mergers or transfer of a company's registered seat.

**Shareholders Rights:** Facilitating the exercise of basic shareholders rights is a key measure in the Action Plan. The Commission is currently consulting on issues which might be addressed in a draft Directive.

The UK supports the Action Plan as a platform for action to promote competitiveness and raise corporate governance standards across Europe. The Government believes, however, that the Action Plan must be a living document capable of responding to changing circumstances and market conditions; concerned as much with simplifying and modernising existing requirements as with new legislation; and focused on establishing and underpinning basic principles rather than prescriptive rules. There may be circumstances where new EU legislation is necessary or desirable but, wherever practicable, action to achieve EU objectives should be taken at national level so as to reflect the different circumstances of the different Member States.

There is an opportunity here to create a practical, non-prescriptive framework for economic activity in Europe which promotes growth, competitiveness and wealth creation and helps European companies to thrive.

Seizing the opportunity means influencing thinking in Europe and shaping the future agenda to get the best outcome for Britain and the EU as a whole. We can only do this effectively, however, if companies and investors are prepared to work with Government in getting UK messages over to the Commission, the European Parliament and other Member States.

This booklet tells you what's happening and how you can contribute. Section 1 and 2 set out the DTI's objectives in relation to the Action Plan and the basis on which it intends to carry them forward. Section 3 outlines the opportunities for shaping the future development of the Action Plan and what needs to be done in order to take

advantage of them. Section 4 explains how business can get involved.

#### The key messages for business are:

- The Action Plan is important. The right measures will make it easier for companies and investors to operate across EU borders. The wrong ones could inhibit their ability to carry on business both in the EU and within the UK.
- The Commission has made it clear that the Action Plan is not set in stone and that it is open to ideas both about what should be done and how action should be taken forward. The Commission is also committed to applying better regulation principles, legislating only where necessary, subjecting proposals to full consultation and Impact Assessments, and simplifying existing legislation.

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“ The Action Plan must stay in tune with the needs of companies and shareholders. In order to keep its finger on the pulse, the Commission needs companies' feedback to ensure we are responsive to needs. We have consulted widely and will continue to do so. My door is always open. The Commission values your views and will take account of them in its further implementation of the Action Plan. ”

**Commissioner Charlie McCreevy**

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- The fundamental question – for DTI and the Commission – is what can or should be done to improve the operation of EU capital markets and make it easier for companies and investors to operate across EU borders; and how can this best be achieved. By making its views known, business can help to determine what happens next;
- Over and above that, there is a need to
  - increase the ability of EU shareholders to hold boards to account for performance; *and*
  - raise corporate governance standards across Europe by sharing good practice and promoting the development of effective national regimes.
- The UK needs to get in early and shape the terms of the future agenda. Trying to influence detailed proposals once the agenda has been set is much less effective.
- Business can get involved:
  - **In the UK** through representative organisations and by talking directly to DTI.
  - **In Europe** by talking to the Commission, lobbying relevant Committees and Members of the European Parliament and sharing views with, or joining forces with, business contacts or business organisations in other Member States.

**Achieving positive results means being clear about what we want to achieve; shaping the agenda rather than reacting to formal proposals; and working closely with EU partners. Getting in early and getting messages over today rather than tomorrow is essential. The focus has to be on improving the operation of markets and raising corporate governance standards across Europe rather than on narrow UK considerations. That is the most effective way of promoting UK objectives and delivering benefits for UK companies and investors.**

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“ Keeping the content of the Action Plan under review and ensuring individual measures conform to the better regulation agenda are both essential to enhance confidence in EU capital markets. But business cannot expect to realise these aims unless it gets involved in the ongoing development of the Action Plan and the detailed proposals made under it. The IoD recognise that along with other business organisations we have a vital role to play in ensuring that the voice of business is heard. ”

**Miles Templeman**  
**Director General, Institute of Directors**

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# 1 UK Objectives for the Action Plan

DTI's prime objective for the Action Plan is that, like the UK company law reform programme, it should promote enterprise, enhance competitiveness, and stimulate investment and wealth creation. Company law and corporate governance should be recognised as facilitative, enabling business and investment to flourish and generate returns for pensioners, savers and investors. As with UK reform, better regulation principles should be applied rigorously to ensure these objectives are met.

## Criteria for action

After extensive consultation with stakeholders during 2004, the Department identified five types of cross-border action at EU level that could contribute to this objective:

- Action to enhance financial stability and market confidence.
- Action to remove cross-border barriers to the efficient operation of markets, improving access to capital for companies.
- Action to create the trust in EU companies and markets that will attract international investment and those seeking capital from around the world.
- Action to extend investment opportunities across EU borders and increase cross-border investment flows, in particular by enhancing shareholders rights.
- Action to make it easier for companies to set up cross-border operations.

All EU proposals should be judged against these criteria and the extent to which they can help to promote wealth creation.

Consultation also underlined the fundamental importance of maintaining, and further developing, Europe's principles based approach to regulation rather than the rules based approach which operates in the US. In particular, the focus should be on increasing the accountability of companies to shareholders and investors within a framework which recognises the different circumstances of different Member States rather than on disclosure of information to the market in accordance with prescriptive rules.

## Financial stability and market confidence

Recent corporate collapses have shown that a market failure in one country can undermine confidence in markets around the world. Within the EU, it is in the clear interests of each Member State that markets in the other States are stable and operate efficiently and effectively. This was recognised by EU Finance Ministers when they agreed in 2002 that the EU should explore ways of improving corporate governance as a means to increasing market confidence. Their initiative was reflected in the preparation of the Action

Plan, and a number of its short term measures were designed principally to enhance confidence in the EU markets.

The UK has a highly-developed corporate governance regime based ultimately on consensus around key principles relating to disclosure, transparency and the accountability of company boards and active dialogue between companies, shareholders and investors. It may be tempting to create a fortress UK, opposing any EU action for fear that it might weaken those high standards. However, the UK has an overriding interest in ensuring that markets throughout the EU are stable. We need to work with the Commission and EU partners to raise standards across the board. Companies and investors across Europe will reap the benefit in terms of easier access to capital, improved performance and higher returns.

### **Improving the operation of markets and access to capital for companies**

A major objective of the EU Financial Services Action Plan (FSAP) has been to create deeper and more liquid capital markets, improving access to capital for companies. Capital raised in the financial markets is essential for investment and wealth creation, and the jobs, pensions and higher living standards it supports. However, differences in corporate governance and company law regimes currently limit the availability of capital and increase its cost:

- Investors are deterred from investing across EU borders where shareholder rights are inadequate or national regimes place obstacles in the way of non residents exercising their rights.
- Different national requirements mean that companies are faced with additional compliance costs.

UK companies have traditionally looked first to the London market to service their capital requirements and then to the US. Major European companies have similarly made extensive use of the New York market. However, changes to US regulation in the light of Enron, in particular the Sarbanes-Oxley Act, have substantially increased the costs and administrative hassle involved in complying with US rules and requirements and companies are increasingly questioning whether maintaining a US listing makes business sense.

The Action Plan provides a real opportunity for the EU to establish itself as a low-cost alternative source of capital for UK and European companies. DTI will support EU action that, by establishing flexible common principles, helps to increase the accessibility of capital in EU markets and encourages EU investors to invest across EU borders. There are substantial benefits to be had from getting it right.

### **An EU that attracts international investment and those seeking capital**

Deeper EU capital markets and increased investment opportunities depend in part on the willingness of third country investors and companies to invest and raise capital in Europe. When taking action on company law and corporate governance, the EU cannot afford to look only within its own borders. If increased investment across EU borders is bought at the price of reduced investment from third countries, our markets will suffer. We need both. DTI will therefore support EU action that enhances the ability of EU markets to attract foreign investors and encourages foreign companies to use them for servicing their capital requirements.

### Extending investment opportunities across borders

Investors focus on markets whose standards are reliable and familiar, and where they have the information and ability to assess performance and effectively hold companies to account. Across the EU different forms of regulation and variations in disclosure requirements add costs for investors and potentially deter them from looking outside their domestic market. Equally, in many Member States, non resident investors find it difficult to exercise voting rights and influence company decision making.

Increasing the pool of potential investment opportunities open to EU investors is an essential part of improving the efficiency and effectiveness of EU capital markets and reducing cost of capital for EU business. DTI is therefore working closely with the Commission on the proposed Shareholders Rights Directive and will support further proportionate action that makes cross-border investment more attractive and increases the accountability of companies to shareholders.

### Setting up cross-border operations

One of the fundamental principles of the Single Market is that businesses should have the right to establish operations throughout the EU. This is an important element of providing EU companies with the benefits of a market of over 460 million consumers. It also provides greater consumer choice, increasing the range of products and services available in their home market.

Companies need to be able to restructure and reorganise as their businesses and markets develop. A company that builds up its business within the UK may want to expand into a number of other EU states.

It should be able to organise itself as business demands dictate but in some Member States legal and regulatory requirements restrict companies' flexibility to act. The Department will support suitably targeted EU action to remove such restrictions and enable companies to organise themselves in ways which best serve their needs and maximise added value.

### Better regulation

In pursuing these objectives, the Department will expect the Commission to abide by better regulation principles. There are three broad elements to the better regulation agenda:

- The form that regulation takes;
- The process by which it is made;
- Effective implementation and evaluation – does it actually achieve the intended effect.

The Government is determined that all these elements should be at the core of the Action Plan.

The **form** that EU action should take will vary according to the market failure that is being corrected. In some areas, effective action will require legislation that applies across all Member States. Improving shareholder rights and making it easier to set up cross border operations are prime examples of situations where existing barriers in national laws can only be removed effectively through the adoption of common rules. In many instances, however, EU legislation either will not be necessary or best focused on establishing common principles or standards for implementation at national level in ways which reflect the different circumstances of different Member States. And, where appropriate, market led

approaches may be more effective and cheaper than regulatory solutions. The setting up of the European Corporate Governance Forum is particularly important in this context because it provides a direct link to the market and a means of improving EU corporate governance standards without recourse to EU legislation.

Where legislation is necessary, the Department believes that it should take the form of high-level principles, leaving flexibility for Member States on detailed implementation. EU legislation that attempts to regulate in detail may be counterproductive and become an obstacle to change. Convergence on higher standards is likely to be achieved more easily by focusing on implementation and effective application of common principles. Differences between national company law frameworks may mean, however, that in some areas legislation is required to embed principles or achieve results which for UK purposes are addressed as part of the Combined Code.

“ The IoD strongly supports the UK Government’s initiatives to put better regulation at the top of the EU agenda. Strengthening impact assessment, simplifying cumbersome regulations and introducing accurate measurements of administrative burdens are crucial if we are to tackle the regulatory culture. ”

**Miles Templeman**  
**Director General, Institute of Directors**

The **process** of making regulation has two stages. The first is to consult those directly involved and establish whether there is a real market failure that requires correction. The second, assuming there is a market failure, is to identify the most efficient way

of dealing with it. Again, this assessment must be carried out using full consultation with market participants. Decisions on what to do should not be taken until this process has been completed.

Effective **implementation** is essential if EU action is to have effect. The Commission’s Green Paper on Financial Services Policy (2005 – 2010)<sup>1</sup> published in May notes that the next phase for financial services in the EU should consist of consolidation, effective implementation and enforcement by national authorities, and continuous ex-post evaluation of rules in practice. The Green Paper adds that the Commission will not hesitate to modify or even repeal measures that are not delivering the intended benefits. Although the Company Law Action Plan is at an earlier stage than the FSAP, the same principles should apply to measures adopted under it and to the existing body of EU company law.

“ The Action Plan is a means to an end not an end in itself. The overriding aim must be to encourage enterprise and the competitiveness of EU businesses. Competitiveness is enhanced by elements of competition within high-level common principles. This is more likely to encourage ongoing development and enhancement of governance standards than are prescriptive rules. Europe will not move forward unless it accepts that differences are not bad in themselves, only when they inhibit the desire of shareholders to invest and others to do business because of inadequate rights. ”

**Ian Mullen**  
**Chief Executive,**  
**British Bankers’ Association**

1 Green Paper on Financial Services Policy (2005-2010). COM (2005) 177.

## 2 How does the Action Plan shape up to UK Objectives?

This section sets the UK's objectives for EU company law in the context of the Government's overall approach to company law and corporate governance.

The Government's goal for domestic reform, set out in the White Paper *Company Law Reform*, is that company law should promote enterprise and market confidence, enhance competitiveness and stimulate investment, by encouraging the efficient allocation of capital. This is to be achieved by focussing on four key objectives:

- Enhancing shareholder engagement and a long-term investment culture;
- Ensuring better regulation and a "Think Small First" approach;
- Making it easier to set up and run a company; and
- Providing flexibility for the future.

This is very much in line with the Commission's approach set out in the Action Plan. The Commission makes clear that its general aim is to foster the efficiency and competitiveness of business, create confidence in business relationships and strengthen EU capital markets, allowing companies to raise capital at the lowest cost. The Action Plan also reflects the Commission's view that action to improve corporate governance standards across the EU should be based on the development of national Codes rather than the creation of a single EU Code; and its commitment to a principles rather than rules based approach based on 'comply or explain'.

There is also much common ground in terms of how objectives are to be achieved:

- While the Action Plan talks of shareholder rights and the White Paper of shareholder engagement, both promote a similar range of measures to achieve the common objective of facilitating an effective relationship between those who own companies and those who run them. Among these measures are transparency of information, the use of electronic communications, the enfranchisement of indirect investors, the protection of minority shareholders and clarification of the responsibility owed by directors to shareholders.
- A key measure of the Companies Bill will be deregulatory reform of the capital maintenance regime. In relation to public companies, the extent of that reform is limited by the provisions of the 2nd Company Law Directive on the maintenance of capital. Proposals in the Action Plan to review those provisions could widen the scope for reform in the UK.
- The White Paper's objective of ensuring better regulation and a "Think Small First" approach is mirrored by the Action Plan objective that a more flexible company law framework should be available for small and medium sized enterprises.
- The White Paper's objective of making it easier to set up and run a company finds its parallel in the Action Plan measures designed to facilitate corporate restructuring and mobility across EU borders.

## Commission objectives for the Company Law Action Plan

A dynamic and flexible company law and corporate governance framework is essential for a modern, dynamic, interconnected industrialised society. Essential for millions of investors. Essential for deepening the international market and building an integrated European capital market.

Future actions at EU level in the area of company law should seek ... to meet two policy objectives:

**Strengthening shareholders' rights and third parties' protection:** ensuring effective and proportionate protection of shareholders and third parties... in view of the increasing mobility of companies within the EU; increasing confidence in business relationships as a fundamental condition for business efficiency and competitiveness; and strengthening the foundations of the capital markets for the long term in a context of diversified shareholding within the EU, [thereby allowing] companies to raise capital at the lowest cost.

**Fostering efficiency and competitiveness of business:** by setting up a proper balance between actions at EU level and actions at national level. For a number of specific cross border issues... Community action may be the only way to achieve the pursued objectives – [and in other areas] a certain degree of harmonisation of defined national issues [can] reduce legal uncertainties. [But] some company law rules are likely to be best dealt with, and updated, more efficiently at national level, and some competition between national rules may actually be healthy for the efficiency of the single market.

The adoption of [an EU Corporate Governance Code] would not contribute significantly to the improvement of corporate governance in the EU [but] in view of the growing integration of European capital markets a common approach should be adopted at EU level with respect to a few essential rules and adequate coordination of corporate governance codes should be ensured.

*Source: Communication from the Commission to the Council and the European Parliament: Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward. COM (2003) 284 final*

- Like the White Paper, the Action Plan recognises the need for legal and regulatory requirements to take account of the different circumstances of different types and size of company and the limitations of one size fits all approaches.

However, whilst the Action Plan promotes shareholder (and creditor) protection as a condition for competitiveness, it sees it as

an end in itself rather than setting it in the context of the range of factors which impact on competitiveness. And whilst it notes the need to address a range of cross-border issues, it also asserts the need to harmonise "defined national issues" to reduce legal uncertainty. The risk in both cases is that EU legislation damages rather than protects the interests of shareholders and creditors by inhibiting the competitiveness on which they rely.

It is for this reason that the criteria outlined in section 1 focus on cross-border actions that are pre-conditions for enhancing competitiveness at EU level and, in particular, on the development of shareholders rights as:

- The prime means of holding company boards to account for performance.
- An essential pre-requisite for the successful implementation of principles based approaches to regulation based on comply or explain rather than US style prescription.

The next step is to apply those criteria to individual proposals in the Action Plan and assess how EU and domestic reform can work side by side. The next section sets out the steps by which the Department intends to achieve this.

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“ There are two reasons why investors like us want to be involved. First, we want the best regulation for the UK, and everything that happens in Europe plays back to what we do here. Second, consistent high standards of governance across Europe will give us real choice in investment decisions and allow us to play a full part in the efficient allocation of capital. But we must have balance. In seeking consistent regulation, it is vital that we also leave companies free to generate wealth and prosperity.”

**Peter Montagnon**  
**Director of Investment Affairs,**  
**Association of British Insurers**

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## 3 How we can shape Action Plan Proposals

EU measures are not imposed on us by “Brussels”. They are the result of dialogue between the Member States, the Commission, the European Parliament and stakeholders. By working with our EU partners, the UK can help to shape the Action Plan in ways which will develop the Internal Market to promote growth and competitiveness.

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“ I am determined to have Member States take greater ownership of the Internal Market. It is after all their Internal Market and that of their citizens and businesses. It is not the Commission’s. ”

**Commissioner Charlie McCreevy**

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This section sets out the opportunities for shaping the Action Plan that are open to us and the steps we need to take in order to take advantage of them.

The next section identifies the key targets for UK messages and explains how you can contribute and make your views known.

### Opportunities for shaping the Action Plan

**Commission commitment to clear economic objectives.** The new Commission has made clear its commitment to ensuring that all EU legislation meets clear economic objectives, and that the economic impacts are rigorously assessed. This commitment results from two general initiatives that the UK has strongly advocated:

- The “Lisbon Agenda”, under which the European Council agreed in Lisbon the need to develop an EU economy that focuses on growth and jobs.
- The Better Regulation Initiative, sponsored by successive Presidencies of the EU, including the UK, which highlights the need to assess proposals using economic criteria and test the impact of them using economic assessment.

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“ Enhancing shareholders’ confidence in EU companies and capital markets is a key objective of the Commission’s Company Law Action Plan. The Action Plan is also about ensuring the EU’s capital markets are an attractive place to do business. Companies should have a flexible framework which makes it easier to operate across the EU and spurs them on to be competitive internationally. ”

**Commissioner Charlie McCreevy**

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The Commission's commitment to economic objectives is reflected in their approach to the Action Plan.

**Better Regulation.** In addition to this focus on economic objectives, the Commission has underlined its determination to apply better regulation principles and, in particular

- to use legislation only where necessary;
- to ensure that any legislation is subject to extensive consultation and rigorous Impact Assessment; *and*
- to simplify or modernise (or even repeal) existing legislation where there is a clear case for doing so.

“ The better regulation agenda is about assessing whether legislation is necessary, and, where it is, ensuring that only good high quality rules are adopted... Good rules help businesses and citizens by removing obstacles, tackling distortions in competition and/or addressing market failures; bad rules are a drain on Europe's competitiveness and its job creation potential<sup>2</sup> ”

**Commissioner Charlie McCreevy**

## The European Corporate Governance Forum

The establishment of an EU Corporate Governance Forum was considered a short term priority in the Action Plan with the overall objective to co-ordinate corporate governance efforts of Member States. The Forum has 15 members representing various stakeholders from across the Community and was officially set up by the Commission in October 2004.

The two UK members of the Forum are Alastair Ross Goobey, Chair of the Shareholder Rights Committee, ICGN, and Peter Montagnon, Director of Investment Affairs at the Association of British Insurers. Both UK members are serving on the Forum in a personal capacity and are therefore always open to hearing the views of all UK stakeholders. A full list of Forum members is at Annex 2.

The Forum has met twice to date and intends to meet every 4-6 months. At its first meeting in January 2005 Bertrand Collomb, Chairman of Lafarge, was unanimously elected as spokesperson.

Additional information on the European Corporate Governance Forum can be found on the following Commission website: [http://europa.eu.int/comm/internal\\_market/company/ecgforum/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/ecgforum/index_en.htm).

<sup>2</sup> 7 April 2005, European Policy Centre Breakfast Policy Briefing, "From Quantity to Quality: the Future of Internal Market Regulation. Speech/05/203

### In implementing the Action Plan the Commission is doing exactly that:

- It has used non-legislative measures such as Recommendations as the basis for action in key areas such as directors' pay and the independence of non-executive directors.
- It has set up an EU Corporate Governance Forum of market practitioners to develop corporate governance standards through non-legislative means, including monitoring of national codes, exchange of information and best practice. The Forum provides a major opportunity for the market, rather than regulators, to develop standards. The decision to set it up also underpins the Commission's view of a single EU Corporate Governance Code as unnecessary and undesirable.
- It has set up an Advisory Group of market experts to complement the web-based public consultations that it undertakes on draft proposals and to contribute to the process of preparing draft legislation. This should help to ensure that legislation achieves its intended purpose and works with the grain of the market. The Group could potentially also play an important role in identifying new opportunities for simplification and modernisation of existing company law measures.

Now that the first phase of the Action Plan is coming to an end, the Commission has also made it clear that it would welcome views from Member States and stakeholders on how best to proceed and on the priority which should be given to individual proposals. The UK Presidency corporate governance conference to be held in London in November will provide a platform for stakeholders to make their views known.

### The Advisory Group

The Commission has set up an expert Advisory Group to provide detailed technical advice on preparing corporate governance and company law measures. Its members are drawn from various backgrounds (issuers, investors, employees' representatives, academics, regulated professions etc.) with particular experience and knowledge of the subject.

The two UK members of the group are Vanessa Knapp, Chair of the Law Society's Company Law Committee and a partner of Freshfields Bruckhaus Deringer, and Colin Perry, a Council member of the Financial Reporting Council and Chairman of LTE Scientific Ltd. A full list of members is at Annex 3.

Additional information on the Advisory Group can be found on the following Commission website: [http://europa.eu.int/comm/internal\\_market/company/advisory/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/advisory/index_en.htm).

### Making use of these opportunities for the future

The task now is to ensure that working with EU partners we take full advantage of these opportunities to shape the future development of the Action Plan as a whole and the individual measures within it. This means

- working with the Commission on the preparation of **Impact Assessments** for proposals due in the near future. The intention is that these Assessments should set the standard against which assessments for future proposals can be measured.

- being clear about what we want and what we don't want in the medium and longer term. In line with the approach set out in section 1, we are assessing all the proposals in the Action Plan which have yet to come forward and testing the potential impact on UK companies and investors. We expect that this process will identify proposals that should be dropped from the Plan; proposals that should be kept but implemented in a different form; and new proposals that could be added, e.g. to enable markets to operate more effectively by improving information flows between national regulators and making information about companies across Europe more accessible.
- ensuring that stakeholders in the UK and other Member States are fully engaged in the work of the **EU Corporate Governance Forum** and actively promoting its work. Best practice can be effective only through dialogue involving all market participants.
- in all cases, working closely with UK stakeholders to ensure that the Commission is fully aware of the views of the UK practitioners.

### Working with EU partners

In order to achieve our objectives for the Action Plan, we must work with our EU partners and take account of their different business cultures and different company law regimes. We need to identify common objectives - market confidence, increased investment and access to capital, improved company mobility, competitiveness in a global market – and find ways of achieving those objectives within a flexible regime that can accommodate different cultures and approaches.

To date, the Department, regulators and stakeholders have tended to plough their

own furrows in seeking to influence EU partners. However, where we share objectives, the UK message will be heard more clearly if we work in partnership and adopt a co-ordinated approach. There will, of course, be occasions when individual stakeholders take a different view from the Department on an issue, and will wish to make that view clear to others in the EU. But where we share the same goal, we must act together.

The next section identifies the key targets for UK messages and explains how you can contribute and make your views known.

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“ The UK has developed a very strong culture of corporate governance in which companies and investors are engaged in dialogue. This does not mean that they always agree – far from it – but at the end of the day, both are concerned about companies' competitiveness in the global economy and their prospects for growth. It is important for UK companies to engage now in Europe in order to take ownership of the EU agenda and to ensure that the outcomes reflect real business needs and the UK system, which is a proven winner. But in order to achieve those outcomes for business, companies themselves need to engage more. ”

**Sir Digby Jones**  
**Director-General**

**Confederation of British Industry**

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## 4 How you can get involved

Many UK stakeholders are already active in seeking to influence the development of EU proposals. In the areas of both financial services and company law, UK responses to Commission consultations usually outnumber those from any other Member State. A number also have good and established contacts with the Commission and the European Parliament and operate through European representative organisations. But if we are going to be more effective in getting UK messages across more stakeholders need to be involved and we need to open up more channels of communication both in Brussels and with other Member States. We also, crucially, need to act early enough to shape the terms of the debate on policy issues rather than reacting to detailed proposals.

### Who to influence

Shaping the EU agenda means understanding how EU processes work and how decision making can be influenced by smartly targeted lobbying.

The box [on page 18] provides a high level overview of the EU legislative process as it applies to company law and corporate governance. It highlights the central role of the Commission and the increasingly important role of the European Parliament in considering and proposing changes to draft

legislation agreed by Member States through the Council of Ministers.

**The Commission** is responsible for proposing new EU legislation or changes to existing legislation. It is also responsible for monitoring the implementation of EU legislation and application by the Member States of common rules and requirements. It sets the agenda and largely determines the terms of debate.

Company law and corporate governance issues are the responsibility of a unit within the Internal Market Directorate of the Commission. The Commissioner responsible is Charlie McCreevy.

The Commission welcomes contact with stakeholders. It is used to being lobbied and keen to understand the perspectives of individual stakeholders and different Member States.

This willingness to engage with stakeholders has been reinforced by the new commitment to better regulation and the emphasis on improving consultation processes and the quality of consultation documents. In line with this, the Commission is now increasingly seeking stakeholder views on how it should address specific issues as well as on the detail of draft proposals. Accordingly, the door is open for UK stakeholders to influence what the Commission does and how it does it. This is an opportunity not to be missed since clearly there is much more to play for and much more room for manoeuvre at this stage. In general terms, the earlier representations are made to the Commission, the more effective they are likely to be.

The Commission's focus, however, is necessarily on the EU as a whole rather than the position of any one individual Member State. Propositions therefore need to be put to it with this pan-European context in mind. Detailed information about UK practice in a particular area may be helpful to the Commission but will not

necessarily cause it to change its approach. For example, the circumstances of other Member States may be such that the Commission considers new legislation is required in areas which in UK terms are dealt with adequately through the Combined Code.

## The EU legislative process stage by stage

**1 Commission Proposal.** The right to propose new legislation or changes to existing legislation lies with the Commission. Proposals are developed by the relevant Directorate General but approved by the Commission as a whole, usually after consultation and discussion with stakeholders. In line with its commitment to better regulation, the Commission is now increasingly seeking views on how it should address specific issues as well as on draft proposals.

Most EU legislation, including measures relating to company law and corporate governance (and other aspects of the Internal Market), has to be agreed by the Council and the Parliament under the so called 'co-decision procedure' so Commission proposals go simultaneously to both bodies.

**2 Council Discussion.** The Council is made up of representatives from each Member State. Proposals are first examined in detail by officials and then put to the Council of Ministers for further consideration and approval. The Commission proposals can be amended by consensus at any stage of the process.

Proposals on company law and corporate governance are examined by a Company Law Working Group where officials from DTI and UKREP represent the UK. Proposals subsequently go either to the Competitiveness Council or the Economic and Financial Council (ECOFIN) for Ministerial approval. DTI Ministers represent the UK on the Competitiveness Council. Treasury Ministers sit on ECOFIN.

**3 Consideration by the Parliament.** The Parliament can either accept a Commission proposal as it stands or propose amendments to it. Proposals are examined in detail by the Parliament's relevant standing committee which produces a report for consideration by the Parliament as a whole. This process may take place in parallel with Council consideration but, in practice, the Parliament often discusses proposals after the Council has agreed on its approach. The Parliament then delivers its opinion.

**4 Adoption.** Under the co-decision procedure measures can only be adopted when there is agreement between the Council and the Parliament. After the Parliament has given its opinion, the Council has a choice as to whether to accept the Parliament's opinion resulting in a "first reading" deal or negotiate with a view to ultimately reaching agreement on a text.

You can keep track of EU consultations by:

- signing up to a mailing list on the EU website to receive information about forthcoming EU consultations: [http://europa.eu.int/yourvoice/index\\_en.htm](http://europa.eu.int/yourvoice/index_en.htm); or by
- going to the EU Internal Market Consultation website where all consultations relevant to the Internal Market are listed: [http://europa.eu.int/comm/internal\\_market/consultations/index\\_en.htm](http://europa.eu.int/comm/internal_market/consultations/index_en.htm). To find individual consultation documents follow the link to the respective dossier.

**The European Parliament's** activities on company law and corporate governance are primarily channelled through the Committee on Legal Affairs (JURI) but other committees of the Parliament, notably the Committee on Economic and Monetary Affairs (ECON) and the Committee on Employment and Social Affairs (EMPL), also have a close interest.

The key members of each Committee are identified on page 20. On specific issues it is best to focus either on the relevant UK members of the Committee or the rapporteur. The rapporteur is the MEP leading on the preparation of the Committee's report. He/she is pivotal in the decision-making process since it is his/her findings which are finally put to a vote. Stakeholders can obviously also register their views through contacts with their local MEPs. Again, it makes sense to make your views known as early as possible.

A link to each individual committee's website outlining its responsibilities, members and agenda can be found at: [http://www.europarl.eu.int/committees/home\\_en.htm](http://www.europarl.eu.int/committees/home_en.htm). For additional information on how the Parliament works, official Parliament documents and useful references go to: [http://www.europarl.eu.int/home/default\\_en.htm](http://www.europarl.eu.int/home/default_en.htm).

Achieving results in Brussels also means influencing views and decisions taken in **other Member States**. Generally, the more support there is for a particular proposition, the easier it will be to set it in the sort of pan European context which will make it attractive to the Commission and to the Parliament. Like the UK, other Member States are also interested in shaping the EU agenda so we also need to be aware of policy initiatives at national level and how they might affect EU thinking.

DTI and Treasury Ministers and officials have regular bilateral meetings with colleagues in other Member States but it is also important to get UK messages to stakeholders in other Member States so that they can influence not just the Commission but the thinking of their national governments and MEPs.

This is obviously an area where UK teamwork comes into its own. Effective targeting of key decision-makers and opinion-formers and consistent presentation of UK messages is crucial.

**The European Corporate Governance Forum** is also potentially an important target for UK stakeholders. The Forum's working processes are still evolving but, given its role as a link to the market, it clearly has a direct interest in the views of companies and investors. The Forum's current agenda is outlined on page 21.

Members of the Forum will be speaking about these issues and the Forum's work more generally at the corporate governance conference to be held in London in November as part of the UK Presidency. This will be the third such conference organised by the incumbent Presidency – the first took place last October in The Hague. Future conferences of this sort would provide a means by which the Forum could communicate with stakeholders and keep them in touch with its work.

Committee	Rapporteurs	UK Members
<p><b>JURI: Committee on Legal Affairs</b> The Committee on Legal Affairs is responsible for dealing with all EU Acts in the area of company law, civil and commercial law, intellectual property law and procedural law. <i>The Chairman is Giuseppe Gargani.</i></p>	<p><b>Piia-Noora Kauppi</b> (European People's Party) is leading on the preparation of the Committee's report on the 2nd Company Law Directive (capital maintenance), <b>Bert Doorn</b> (European People's Party) is the rapporteur for the 8th Company Law Directive (Audit) and <b>Klaus-Heiner Lehne</b> (European People's Party) is leading on the preparation of the Committee's report on the 4th/7th and 10th Company Law Directives.</p>	<p><b>Alliance of Liberals and Democrats:</b> Diana Wallis <b>Socialist Group:</b> Arlene McCarthy <b>European People's Party:</b> Malcolm Harbour</p>
<p><b>ECON: Committee on Economic and Monetary Affairs</b> ECON covers matters in the area of economic and monetary policies of the Union, the free movement of capital and payments and the regulation and supervision of financial services, institutions and markets including financial reporting, auditing, accounting rules, corporate governance and other company law matters specifically concerning financial services. <i>The Chairwoman is Pervenche Berès.</i></p>		<p><b>Alliance of Liberals and Democrats:</b> Sharon Margaret Bowles, Graham Watson, Baroness Sarah Ludford <b>Socialist Group:</b> Peter Skinner, Robert Evans <b>European People's Party:</b> John Purvis (Committee's Vice-Chairman), Jonathan Evans, Charles Tannock <b>Group of the Greens/European Free Alliance:</b> Ian Hughton <b>Independence/Democracy Group:</b> John Whittaker</p>
<p><b>EMPL: Committee on Employment and Social Affairs</b> The Committee on Employment and Social Affairs is responsible for employment policy and all aspects of social policy such as working conditions, social security and social protection. <i>The Chairman is Jan Andersson.</i></p>		<p><b>Alliance of Liberals and Democrats:</b> Elizabeth Lynne, Elspeth Attwooll <b>Socialist Group:</b> Stephen Hughes, Richard Howitt, Claude Moraes <b>European People's Party:</b> Philip Bushill-Matthews, Roger Helmer, Struan Stevenson, Richard James Ashworth, Martin Callanan, David Sumberg <b>Independence/Democracy Group:</b> Derek Roland Clark <b>Group of the Greens/European Free Alliance:</b> Jean Lambert</p>

## Agenda of the European Corporate Governance Forum

The Forum is currently considering three issues:

- The role of shareholders, focusing primarily on shareholder rights with a view to the proposed Shareholders Rights Directive while identifying also other issues that should be dealt with at a later stage. **Rapporteur: Alastair Ross Goobey.**
- Questions linked to the principle of “comply or explain”. **Rapporteur: Peter Montagnon.**
- The functioning of companies (focusing on internal control and the independence of directors). **Rapporteur: Jaap Winter.**

### How you can contribute

There are a number of ways in which stakeholders can feed in views at UK level and contribute to promoting messages in Europe.

In the UK, you can make your views known through your representative organisation or directly to DTI. The CBI, IoD, ABI and other

representative organisations actively engaged with EU business are keen to hear from members who wish to be more involved. They are also active in Europe on their own account; through European representative organisations and in collaboration with equivalent organisations in other Member States. A list of contacts is below.

### UK Representative Organisations: Contacts List

CBI: Susannah Haan (susannah.haan@cbi.org.uk)

IoD: Patricia Peter (patricia.peter@iod.com)

ABI: Peter Montagnon (peter.montagnon@abi.org.uk)

ICSA: Giles Peel (gpeel@icsa.co.uk)

ICAEW: Robert Hodgkinson (robert.hodgkinson@icaew.co.uk)

QCA: John Pierce (john.pierce@qcanet.co.uk)

BBA: Paul Chisnall (paul.chisnall@bba.org.uk)

Law Society: Steven Durno (steven.durno@lawsociety.org.uk)

In line with the Government's commitment to better regulation, DTI produces consultation documents on EU proposals as they arise. For each proposal, we also set up a small stakeholder group to work with us and provide detailed advice on specific issues as they arise.

Consultation documents are posted on the DTI website at <http://www.dti.gov.uk/cld/current.htm>. The site also includes links to Commission consultation documents and other relevant publications.

In addition, as well as talking directly to the Commission and lobbying the Parliament or the Forum you can help by

- using subsidiary companies or partner organisations in other Member States to gather intelligence on what is happening; identify lobbying opportunities; and get UK messages across;

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“ I am convinced that the best way to influence policy and outcomes is to work together. Often this means ensuring that a common UK voice is heard. But over and above we need to show that the UK is not an isolated voice. In the past few months the IoD has been instrumental in creating ECODA so as to give company directors in Europe a European voice. ”

**Miles Templeman**  
**Director General, Institute of Directors**

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- using sectoral and other European business networks to build support for UK objectives and positions;
- talking to European business contacts in the course of normal business and, where they share your views, encouraging them to lobby their own governments and in Brussels.

In order to maximise impact it is essential that UK messages are presented effectively and consistently to the wider EU audience. DTI's EU Strategy Group exists to support this process. Its role is to help the Department identify key priorities and contribute to the development of targeted plans for influencing the Commission, the Parliament and other Member States. Members of the Group would be pleased to talk to people who have ideas to offer or would like to help in some way.

A list of its members can be found on page 23.

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“ As a lobby group for quoted companies in the UK we have learned the importance of working with our European counterparts to gain the attention of the Commission. As a result of sharing experiences and ambitions since 2003, the Union of Issuers Quoted in Europe (UNIQUE) was formed in April 2005. We're already achieving positive results in terms of influencing Commission thinking, but the more joined up we are, the more effective we will be. ”

**John Pierce**  
**Chief Executive,**  
**Quoted Companies Alliance**  
**Chairman, UNIQUE**

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## Members of DTI EU Strategy Group

Robert Hodgkinson (Technical Director, ICAEW)

Keith Jones (Chief Executive Officer, Morley Fund Management)

Paul Boyle (Chief Executive, FRC)

Alan Porter (Company Secretary, BAT)

Vanessa Knapp (Partner, Freshfields Bruckhaus Deringer)

David Jackson (Company Secretary, BP)

Andrew Smith (Chairman of QCA and Director of Corporate Finance, Collins Stewart)

Daniel Trinder (Head of European & International Financial Services, HM Treasury)



# Annex 1

## The Company Law Action Plan

### History

The Company Law Action Plan was published by the European Commission in May 2003 and outlines the approach that the Commission intends to follow in the area of company law and corporate governance. It is the Commission's response to a report presented by a High Level Group of Company Law Experts appointed by the Commission in September 2001 to make recommendations on a modern regulatory framework in the EU for company law and corporate governance. The High Level Group's final report was published in November 2002.

The Action Plan proposes a set of short- (2003-05), medium- (2006-08) and long-term measures (2009 onwards) to create "a dynamic and flexible company law and corporate governance framework" so as to deepen the integration of European capital markets. The experience of a number of financial scandals in 2001 and 2002 prompted the Commission's belief that EU action in the area of company law and corporate governance was required.

The objective of completing the single market in the area of company law and corporate governance also formed an element of the Financial Services Action Plan (FSAP). The FSAP was published in May 1999 and was endorsed by the Lisbon European Council in March 2000. A number of measures adopted under the FSAP also bear directly on UK company law. Two measures due to be adopted under the FSAP (cross-border mergers and transfer of a registered seat of a company) were subsequently incorporated by the Action Plan.

### Measures

The measures set out in the Action Plan cover a wide range of issues in the area of corporate governance, capital maintenance, groups of companies and pyramids, corporate restructuring and mobility, European legal forms of enterprises and transparency of national legal forms of enterprises.

A number of these measures take the form of legislative initiatives which are either EC Regulations, directly applying in all Member States, or EC Directives which have to be transposed into national law. Several of these amend existing Directives (e.g. on capital maintenance). Others are non-legislative, including Recommendations and the establishment of the European Corporate Governance Forum.

The normal procedure for legislative measures – i.e. Regulations and Directives – is that they are proposed by the Commission and adopted by "Co-decision", under which the Council of Ministers and the Parliament have to agree on the final content of the proposal. Commission Recommendations are not binding and not subject to the same process.

The following table gives a brief description of each Action Plan proposal under 6 different subject-headings: corporate governance; capital maintenance; groups of companies and pyramids; corporate restructuring and mobility; European legal forms of enterprises; and transparency of national legal forms. For measures which have been completed or are currently under consideration, it also outlines the current state of play.

There is one other company law measure – revision of the 8th Directive which deals with the regulation of auditors – which is currently under consideration but which is not formally part of the Action Plan. The Commission proposal clarifies the duty of statutory auditors and sets out certain

principles to ensure their objectivity so that investors and other interested parties can rely on the accuracy of audited accounts. Provisional agreement on a draft text was reached by Member States in the Council in December 2004. The Parliament has yet to finalise its position.

## A – Corporate Governance

Action completed or under way	Action yet to be proposed
<p><b>Three measures have already been completed:</b></p> <ul style="list-style-type: none"> <li>■ <b>A Recommendation regarding role of independent non-executive directors</b> was published by the Commission in February 2005. It establishes the basic principle of board balance and independence, urging Member States to ensure a strong role for independent directors particularly in three key areas: board remuneration, audit of the accounts and appointment of board members.</li> <li>■ <b>A Recommendation regarding directors' remuneration</b> was published by the Commission in December 2004, inviting Member States to adopt measures in four key areas: disclosure of remuneration policy in the annual accounts, prior advisory vote by shareholders on remuneration policy, disclosure of remuneration of individual directors, prior approval of share and share option schemes by the annual general meeting.</li> <li>■ <b>The European Corporate Governance Forum</b> was set up by the Commission in October 2004. It is a committee of 15 members including 2 UK representatives meeting every 4-6 months. Its objectives are to examine best practice in EU Member States with a view to facilitate convergence of national corporate governance codes, and to provide strategic advice to the Commission.</li> </ul>	<p><b>Five measures have yet to be proposed</b></p> <ul style="list-style-type: none"> <li>■ <b>A Directive on shareholders' rights</b> is intended to help facilitate the exercise of basic shareholders' rights and solve problems in the cross-border exercise of such rights, particularly voting rights. A draft Directive is expected before the end of 2005. DTI lead: <b>David Styles</b> – tel: 020 7215 0211; email: david.styles@dti.gsi.gov.uk</li> <li>■ <b>A proposal for a Directive to enhance disclosure by institutional investors</b> of their investment and voting policies is due to be published by the Commission in the medium term.</li> <li>■ <b>A proposal for a Directive to allow all listed companies to choose between monistic and dualistic (one or two tier) board structures</b> follows a recommendation by the HLG and is planned to be published in the medium term.</li> <li>■ <b>A proposal for a Directive to enhance responsibilities of board members</b> introducing a special investigation right, a wrongful trading rule and directors' disqualification is planned to be published in the medium term.</li> <li>■ <b>A study to examine the consequences of an approach aiming at achieving a full shareholder democracy for listed companies</b> (one share/ one vote) is expected to be carried out in the medium term.</li> </ul>

## A – Corporate Governance (continued)

Action completed or under way	Action yet to be proposed
<p><b>One measure is still under way</b></p> <ul style="list-style-type: none"> <li>■ <b>A proposal to amend the 4th and 7th Company Law (Accounting) Directives</b> was published by the Commission in October 2004 containing two measures in the area of corporate governance: Confirming at EU level the collective responsibility of board members for financial statements and key non-financial information and the introduction of a separate corporate governance statement. Additionally, it contains new disclosure requirements regarding off-balance sheet arrangements and related party transactions. The proposal has been agreed by the Council and is currently being considered by the European Parliament with a plenary vote expected in the autumn.</li> </ul> <p>DTI lead: <b>Mike Edbury</b> – tel: 020 7215 0231; email: michael.edbury@dti.gsi.gov.uk</p>	

## B – Capital Maintenance

Action completed or under way	Action yet to be proposed
<p><b>Two measures are under way</b></p> <ul style="list-style-type: none"> <li>■ <b>A Proposal to amend the 2nd Company Law Directive</b> was published by the Commission in October 2004. It is being discussed in Council working groups and is currently being considered by the European Parliament. This proposal aims to simplify some of the rules governing the capital maintenance regime to make it easier and quicker for public limited liability companies to make changes in their capital structure. It proposes some small changes to the existing rules and introduces “squeeze-out” and “sell-out” rights.</li> </ul> <p>DTI lead: <b>Jane Peters</b> – tel: 020 7215 6730; email: jane.peters@dti.gsi.gov.uk</p> <ul style="list-style-type: none"> <li>■ <b>A Study into an alternative to the current capital maintenance regime</b> will be carried out by the Commission in 2005/06 to evaluate the feasibility of an alternative to the current regime of minimum capital as established by the 2nd Company Law Directive. A contract notice should be published in the Official Journal shortly. The successful tenderer is expected to sign the contract in October 2005. The final report is expected at the end of 2006.</li> </ul> <p>DTI lead: <b>Jane Peters</b> – tel: 020 7215 6730; email: jane.peters@dti.gsi.gov.uk</p>	<p><b>One measure has yet to be proposed</b></p> <ul style="list-style-type: none"> <li>■ <b>The introduction of an alternative to the current capital maintenance regime as set out in the 2nd Directive</b> depends on the outcome and recommendations of the feasibility study due to be completed by the end of 2006.</li> </ul>

## C – Groups of Companies and Pyramids

Action completed or under way	Action yet to be proposed
	<p><b>Two measures have yet to be proposed</b></p> <ul style="list-style-type: none"> <li>■ <b>A proposal for a Directive providing a framework rule for groups</b> that would allow the adoption at subsidiary level of a co-ordinated group policy is due to be published in the medium term.</li> <li>■ <b>A proposal for a Directive to prohibit abusive pyramids</b> being listed on the stock exchange is expected to be published in the medium term. A pyramid is defined as chains of holding companies with the ultimate control based on a small total investment due to the extensive use of minority shareholders.</li> </ul>

## D – Corporate Restructuring and Mobility

Action completed or under way	Action yet to be proposed
<p><b>One measure is still under way</b></p> <ul style="list-style-type: none"> <li>■ <b>A proposal for a Directive on cross-border mergers</b> was agreed by the Council in November 2004 and in similar terms by the Parliament in May. The proposal requires Member States to put in place a legal framework enabling public and private companies within the EU to engage in “mergers” across borders.</li> </ul> <p>DTI lead: <b>Mike Edbury</b> – tel: 020 7215 0231; email: michael.edbury@dti.gsi.gov.uk</p>	<p><b>Three measures have yet to be proposed</b></p> <ul style="list-style-type: none"> <li>■ <b>A formal proposal for a Directive on cross-border transfer of registered office</b> would provide a legal framework for companies registered in the EU to transfer their registered office from one Member State to another.</li> <li>■ <b>A proposal to relax some of the requirements currently contained in the 3rd Company Law Directive</b> (legal mergers of public limited liability companies) is planned to be published in the medium term.</li> <li>■ <b>A proposal to simplify some of the requirements currently contained in the 6th Company Law Directive</b> (legal divisions of public limited liability companies) is expected to be published in the medium term.</li> </ul>

## E – European Legal Forms of Enterprises

Action completed or under way	Action yet to be proposed
<p data-bbox="212 427 616 461"><b>Two measure are under way</b></p> <ul style="list-style-type: none"> <li data-bbox="212 488 799 1003">■ <b>A feasibility study to asses practical needs for – and problems of – a European Private Company</b> is currently being carried out by the Commission. The European Private Company is a potential legal entity parallel to the Societas Europaea (European public company) and would primarily serve the needs of SMEs which are active in more than one Member State. Depending on the findings and recommendations of the study the Commission might publish a proposal for a Statute for a European Private Company in the medium term.</li> <li data-bbox="212 1032 783 1245">■ <b>Proposals for a European Association and a European Mutual Society</b> were originally published by the Commission in 1993. Council working groups and the Parliament have considered these proposals.</li> </ul>	<p data-bbox="834 427 1394 461"><b>Two measures have yet to be proposed</b></p> <ul style="list-style-type: none"> <li data-bbox="834 488 1374 701">■ <b>The publication of a proposal for a Statute for a European Private Company</b> will depend on the findings and recommendations of the study currently being carried out by the Commission.</li> <li data-bbox="834 730 1422 1133">■ <b>A study to assess the need for the creation of other EU legal forms for enterprises</b> such as a European Foundation is envisaged being carried out by the Commission in the medium term. The study would take account of the lessons drawn from the adoption and use of the other pan-European vehicles (Societas Europaea, European Cooperative, European Association, European Mutual Society).</li> </ul>

## F – Transparency of National Legal Forms

Action completed or under way	Action yet to be proposed
	<p data-bbox="834 1485 1358 1518"><b>One measure has yet to be proposed</b></p> <ul style="list-style-type: none"> <li data-bbox="834 1547 1410 1906">■ <b>To preserve fair competition and to prevent company law from being abused for fraud, terrorism or other criminal activity</b> the Commission intends to propose a Directive amending existing legislation which would introduce basic disclosure rules for all legal entities with limited liability. This proposal is expected to be published in the medium term.</li> </ul>

## Annex 2

# List of European Corporate Governance Forum Members

**Antonio Borges (PT)**, Vice Chairman of Goldman Sachs International and Board Member for several corporations;

**Igor Adam Chalupec (PL)**, President of the Management Board and CEO of PKN Orlen (energy company);

**Bertrand Collomb (FR)**, Chairman of Lafarge and of Association Française des Entreprises Privées (AFEP);

**Gerhard Cromme (DE)**, Chairman of the Supervisory Board of ThyssenKrupp, President of the German Corporate Governance Code Commission;

**David Devlin (IE)**, Partner PwC, Chairman of the European Federation of Accountants (FEE);

**Emílio Gabaglio (IT)**, Former General Secretary of the European Trade Union Confederation;

**Jose Maria Garrido Garcia (ES)**, Head of Legal Service and Secretary to the Governing Council, CNMV (Spanish securities and exchange commission);

**Peter Montagnon (UK)**, Director of Investment Affairs, Association of British Insurers;

**Ms Colette Neuville (FR)**, Chairman of ADAM (Association de défense des actionnaires minoritaires);

**Roland Oetker (DE)**, Chairman of DSW (German Association of private investors);

**Alastair Ross Goobey (UK)**, Chair of the Shareholders Rights Committee, ICGN;

**Rolf Skog (SE)**, University of Stockholm;

**Andreas Trink (EE)**, Chairman of the Management Board of the Estonian Financial Supervision Authority;

**Jaap Winter (NL)**, University of Amsterdam;

**Eddy Wymeersch (BE)**, Chairman of CBFA (Belgian SEC) and member of the Committee of European Securities Regulators (CESR).

# Annex 3

## List of Advisory Group Members

**Gintautas Bartkus (LT)**, Managing Partner, Professional Law Partnership Jurevicius, Balciunas & Bartkus; Lecturer, Faculty of Law, Vilnius;

**Theodor Baums (DE)**, Professor, University of Frankfurt;

**Francesco Chiappetta (IT)**, Secretary of the Board of Directors and General Counsel of Telecom Italia; Chairman of the Company Law Working Group of UNICE; Professor, University Bocconi (Milano);

**Thomas Courtney (IE)**, Head of Legal and Compliance – Personal lending, Bank of Ireland Group; Chairman of the Company Law Review Group in Ireland;

**Jean-Pierre Hellebuyck (FR)**, Vice-president, AXA Investment Managers; Chairman of the Commission on corporate governance of AFG (French Association on financial management);

**Erich Kandler (AT)**, Partner, Deloitte Group Austria; Chairman of the working party on corporate governance and company law of the European Federation of Accountants (FEE);

**Ms Vanessa Knapp (UK)**, Partner, Freshfields Bruckhaus Deringer; Chairman of the Company Law Committee of the Law Society of England and Wales;

**Vratislav Kulhánek (CZ)**, Chairman of the Supervisory Board of Skoda Auto;

**Jukka Mähönen (FI)**, Professor, University of Turku;

**Stilpon Nestor (EL)**, Principal, Nestor Advisors (Corporate governance advisory services to corporations);

**Jesper Bo Nielsen (DK)**, International Coordinator, Danish Financial Services Employees' Union (Finasforbundet), affiliated to the Confederation of the Nordic Bank, Finance and Insurance Unions (NFU);

**Josef Okolski (PL)**, Professor, University of Warsaw; Counsel to Weil, Gotshal & Manges;

**Leonardo Peklarič (SI)**, Chairman, Supervisory Board Telekom Slovenije; Vice President, Supervisory Board Members Association of Slovenia, CEO of Socius Consulting;

**Colin Perry (UK)**, Chairman of three SMEs in the UK, Member of the Council of the Financial Reporting Council in the UK (responsible for the UK's Combined Code on corporate governance);

**Enrique Piñel López (ES)**, Director, Banca March and Corporación Financiera Alba; Member of the European Banking Federation working group on company law and corporate governance;

**Geert Raaijmakers (NL)**, Senior Legal Counsel, Investment Department of the ABP Pension Fund; member of the Working Group Corporate Governance-Pension Fund Governance of the European Federation for Retirement Provision (EFRP); Professor, University of Maastricht;

**Ms Joëlle Simon (FR)**, Legal Affairs Manager of MEDEF (French Business Confederation);

**Mario Stella-Richter (IT)**, Legal Counsellor to Assogestioni (Italian Investment Management Association); Partner Studio Legale Stella Richter; Professor, Universities of Macerata and Bocconi (Milano);

**Ms Daniela Weber-Rey (DE)**, Board Member of the German Private Equity and Venture Capital Association (BVK); Partner, Clifford Chance;

**Patrick Zurstrassen (BE)**, Managing Partner, Finor Luxembourg; Chairman, The Directors' Office, Luxembourg; Professor, Catholic University of Louvain-la-Neuve.



