ASSOGESTIONI
associazione del risparmio gestito

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European Commission
DG Internal Market and Services
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Reply to the European Commission Green Paper on "The EU corporate governance framework"

Assogestioni welcomes the opportunity to comment on the EU Commission's Green Paper *The EU corporate governance framework* (the "Green Paper").

The topics raised in the Green Paper are of importance for the Italian investment management industry under two different perspectives:

- in managing assets of their clients, our members are institutional investors in European companies. Therefore Assogestioni's members take great interest in governance imposed on investee companies and questions of shareholder engagement in these companies;
- Italian investment management companies could be affected by the regulation on corporate governance, particularly in case it is applied to unlisted companies.

We think it is important that the Commission takes different legislative and regulatory systems into account since there are significant differences in the legislative and regulatory frameworks for financial and non-financial institutions and in different countries. We also deem it is of the utmost importance that the Commission analyzes the regulatory differences between asset managers, other financial institutions and listed companies.

General questions

(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.

Assogestioni supports EU corporate governance measures that are differentiated by size of the listed companies. Therefore, differentiation should be scaled according to companies' market capitalization.

(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?

Assogestioni does not consider that to be necessary. The most important target group are the listed companies, but unlisted companies may choose to adhere voluntarily to corporate governance code for listed companies.

Boards of directors

(3) Should the EU seek to ensure that the functions and duties of the chairperson of the board of directors and the chief executive officer are clearly divided?

We strongly support that the functions and duties of the chairperson of the board of directors and the chief executive officer should be clearly separated.

In the event that the chairman of the board of directors is the chief executive officer of the company, as well as in the event that the office of chairman is covered by the person controlling the issuer, it is necessary to arrange some devices to counterbalance the combined role and guarantee an independent board monitoring. Therefore, in such case, the majority of the board shall be composed by non-executive independent directors and the board shall designate a lead independent director, who represents a referee and coordinator for the requests and contributions of non-executive directors and, in particular, those who are independent.

(4) Should recruitment policies be more specific about the profile of directors, including the chairman, to ensure that they have the right skills and that the board is suitably diverse? If so, how could that be best achieved and at what level of governance, i.e. at national, EU or international level?

According to the best practice, the board must have a size and composition that enables it to manage the company's affairs efficiently and with integrity.

We deem that an adequate number of non-executive directors should be independent, in the sense that they do not maintain, nor have recently maintained, directly or indirectly, any business relationships with the issuer or persons linked to the issuer, of such a significance as to influence their judgment.

(5) Should listed companies be required to disclose whether they have a diversity policy and, if so, describe its objectives and main content and regularly report on progress?

(6) Should listed companies be required to ensure a better gender balance on boards? If so, how?

We support the overall view on diversity. However, gender is only one of the several factors to be taken into account to reach the most important aim: the members must be suitable to conduct the board's tasks.

Assogestioni agrees that listed companies should aim at a better diversification at the level of directors. Diversity has to be appropriate to the activity, the size and business strategy of the company. Diversity should also not be limited to the board of directors but also be applied to the management.

(7) Do you believe there should be a measure at EU level limiting the number of mandates a non-executive director may hold? If so, how should it be formulated?

Assogestioni strongly supports the policy that the number of mandates a non-executive director may hold must be limited. However, the limits have to take into account several factors, eg. the size and complexity of the company's activities; the role (executive, non-executive, lead independent director...) related to any mandate, etc. Due to difference among countries and companies, we do believe that such limit must be assessed in each individual case by the AGMs.

(8) Should listed companies be encouraged to conduct an external evaluation regularly (e.g. every three years)? If so, how could this be done?

The evaluation should primarily be a tool for the board to improve its own performance. Therefore we are in favour of a mandatory evaluation procedure to assess the functioning of the board and its committees. This could be set up as a self-assessment or could be carried out by external experts. Furthermore, companies should not be required to make the results of the evaluation public and in case of external evaluation, the companies should disclose the potential conflicts of interest of the advisor.

(9) Should disclosure of remuneration policy, the annual remuneration report (a report on how the remuneration policy was implemented in the past year) and individual remuneration of executive and non-executive directors be mandatory?

In Italy such disclosure is already mandatory. Therefore we would welcome a mandatory disclosure of the remuneration policy and the annual remuneration report.

For investment managers, very detailed rules on remuneration have recently been introduced or are about to be introduced in the revisions of the CRD and UCITS Directive and in the AIFMD. In particular the AIFMD provides for disclosure of remuneration paid by the AIFM in the annual report of the AIF. Assogestioni does not believe that additional rules over and above what is required in the CRD, UCITS Directive and AIFMD would be useful.

(10) Should it be mandatory to put the remuneration policy and the remuneration report to a vote by shareholders?

In Italy it is mandatory that the remuneration policy and remuneration report be put to an advisory vote by shareholders.

Regarding the legally binding effect of the vote, we deem that such vote should have a purely advisory nature owing to the fact that a major dissent poses a clear signal to the company for change.

(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?
(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?

An effective internal control and risk management system contributes to safeguard the company's assets, the efficiency and effectiveness of business transactions, the reliability of financial information, the compliance with laws and regulations.

Shareholders

(13) Please point to any existing EU legal rules which, in your view, may contribute to inappropriate short-termism among investors and suggest how these rules could be changed to prevent such behaviour.

We do not have an example of rules that may contribute to inappropriate short-termism among investors. We want to underline that asset managers' decisions reflect the mandates given by our clients.

(14) Are there measures to be taken, and if so, which ones, as regards the incentive structures for and performance evaluation of asset managers managing long-term institutional investors' portfolios?
(15) Should EU law promote more effective monitoring of asset managers by institutional investors with regard to strategies, costs, trading and the extent to which asset managers engage with the investee companies? If so, how?
(16) Should EU rules require a certain independence of the asset managers' governing body, for example from its parent company, or are other (legislative) measures needed to enhance disclosure and management of conflicts of interest?

Assogestioni considers that for investment managers, detailed rules on remuneration have already been introduced and are about to be introduced in the revisions of the CRD and UCITS Directive and in the AIFMD.

We do not believe that additional rules over and above what is required in the CRD, UCITS Directive and AIFMD would be useful. Anyway any measure about the

incentive structures for and performance evaluation of asset managers managing long-term institutional investors' portfolios must put up for discussion in the further revisions of those directives.

Conflict of interest and independence rules for asset managers are already addressed in a very detailed manner in the UCITS Directive, MiFID Directive and in the AIFM Directive and their respective implementing measures.

Moreover, those conflicts could affect the decision-making process and, consequently, the strategies and concrete operations to be executed. In this respect, Assogestioni has adopted a Protocol for the management of conflicts of interest (hereinafter, "Protocol") – attached to the present letter. The Protocol is applied to the Italian asset management companies on a voluntary basis by a 'comply or explain' mechanism. It provides recommendations regarding the identification of the conflicts of interest and procedures for the efficient management of those conflicts. In particular, the Protocol should assure: (i) a central role for the independent directors to monitor the asset management companies' activities and to contribute to the decision making process; (ii) the companies' autonomy within the group; (iii) a substantive prohibition of the overlapping of internal functions. Assogestioni believes that the measures recommended by the Protocol may be taken into account by the Commission for the definition of effective corporate governance rules, with the aim to guarantee an adequate protection of investors, a correct management of the companies and, therefore, the stability of the financial system.

Further, Assogestioni does not see any reason why questions 14, 15 and 16 are refered to asset managers and not to other market participants.

(17) What would be the best way for the EU to facilitate shareholder cooperation?

We do not think that a "magic formula" for every company in every country should exist.

We believe there are different solutions in the different countries/models. According to the Italian law and Italian company ownership structures, the slate voting mechanism for the election of minority directors and auditors has worked very well and has fostered cooperation among institutional investors.

(18) Should EU law require proxy advisors to be more transparent, e.g. about their analytical methods, conflicts of interest and their policy for managing them and/or whether they apply a code of conduct? If so, how can this best be achieved?

It is uncommon for Italian institutional investors to use the service of Proxy advisor. The majority of Italian institutional investors rely on their internal structure to manage funds' voting rights. On the other hand, International institutional investors voting at the AGMs of Italian listed companies make use of proxy advisors extensively. We have had a lot of very positive contacts with proxy advisors. In our

experience their work has been extremely valuable on the occasion of the presentation of the slates for the election of independent minority director for Italian listed companies.

However conflict of interest for a proxy advisor could happen when they also provide corporate governance ratings to companies and issue at the same time proxy voting recommendations to investors for the same companies by which they have been retained for the rating. We believe that an appropriate measure to minimize the potential conflict of interest and the consequent harm could be the mandatory publication of: (i) conflicts of interest policies; (ii), conflicts of interest statements; (iii) devices put in place to keep the conflicting business units separate (e.g. firewalls); (iv) and the general principles used to make recommendations.

(20) Do you see a need for a technical and/or legal European mechanism to help issuers identify their shareholders in order to facilitate dialogue on corporate governance issues? If so, do you believe this would also benefit cooperation between investors? Please provide details (e.g. objective(s) pursued, preferred instrument, frequency, level of detail and cost allocation).

The Transparency Directive and the shareholder rights directive already made possible for issuers to identify their shareholders.

(21) Do you think that minority shareholders need additional rights to represent their interests effectively in companies with controlling or dominant shareholders?

We believe there are different problems and solutions in the different countries/models. According to the Italian law and Italian company ownership structures, the best way is the slate voting for the election of minority directors and auditors.

In our opinion a good way to improve the institutional shareholder rights (and consequently shareholder engagement) would be by the introduction of slate voting for the election of the boards of the listed companies (similar to the system provided by the Italian law). This mechanism should enhance an effective collective engagement in the listed companies by the institutional investors. Furthermore this would allow the shareholders to nominate independent board members[1] who could oversee the activities of the managers.

In Italy, the investment management companies that are members of Assogestioni are active in external corporate governance through:

[1] The independent directors elected by the minorities (especially by the institutional investors) avoid also the problem that non-management directors are highly susceptible to "capture" by the management of the listed companies.

- the presentation of slates for the election of one or more independent members of the board of directors and the board of statutory auditors of Italian listed companies [2];
- the participation and vote in the AGMs of the listed companies[3];
- the engagement of the listed companies through letters or meetings organized by the corporate governance committee of Assogestioni[4].

The fact that several investment management companies cooperate in such activities has minimized possible conflicts of interest and has contributed to improve their level of engagement (on a collaborative basis).

(22) Do you think that minority shareholders need more protection against related party transactions? If so, what measures could be taken?

Italian market authority has just introduced a new regulation concerning related party transaction that could, in our opinion, be applied at the EU level.

The regulation confers a pivotal role upon independent directors, who work in committees and have the right to be assisted by advisors. Independent directors shall be called upon to provide *ex ante* opinions on related-party transactions. Under the new provisions, independent directors will have to be involved in the negotiation and preparatory phases leading up to material related-party transactions.

In order not to make related-party transactions excessively burdensome, the regulation provides for a simplified regime for recently listed issuers, small-size issuers and widely held unlisted issuers, as well as exemptions for certain categories of transactions.

Continuous disclosure obligations are also provided. A material related-party transaction shall trigger an obligation on the part of the issuer to publish an *ad hoc* disclosure document. As to the continuous disclosure, on the other hand, the annual management report and the interim management report shall contain specific information on related-party transactions.

(23) Are there measures to be taken, and if so, which ones, to promote at EU level employee share ownership?

In our opinion, the existing regulation is sufficient.

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[2] Italian law states that the members of the board of directors and members of the board of statutory auditors of the listed companies must be elected on the basis of the lists of candidates presented by the shareholders. Furthermore, at least one member of both boards shall be elected from a slate presented by one or more minority shareholders not linked in any way, even indirectly, with the controlling shareholders (that have elected the majority of the boards).

[3] The Italian asset management companies participate only in the AGMs of the companies in which they have a significant position related to the fund portfolios that they manage.

[4] The corporate governance committee of Assogestioni is composed of the representatives of the major Italian and foreign asset management companies.

Monitoring and implementation of Corporate Governance Codes

(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?

Assogestioni strongly agrees that companies departing from the recommendations of corporate governance codes to which they have adhered have to provide detailed explanations and describe the alternative solutions adopted. "Comply or explain" systems are only meaningful if sufficient explanations are provided in case of non compliance.

(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?

Monitoring bodies should be authorized to check the informative quality and completeness of the explanations and should ask companies to complete the explanations where necessary. We strongly believe that regulators should not interfere or argue on the solution chosen by the companies.

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We remain at your disposal for any further information or clarification.

Best regards,

The Director General