



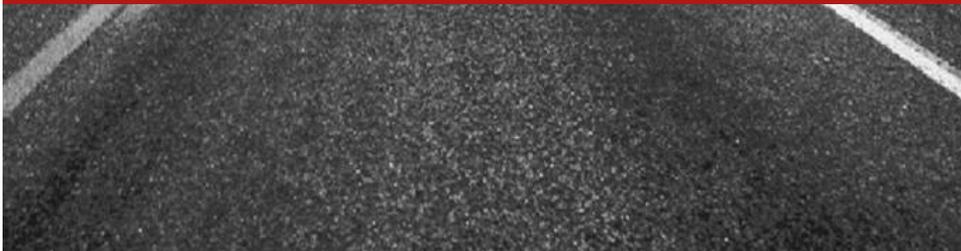
# The EU-Green Paper on Corporate Governance in financial institutions...and what comes next

Grand Colloque International, Paris

Daniela Weber-Rey

**C L I F F O R D**  
**C H A N C E**

29 October 2010





"Strengthening Corporate Governance is at the heart of the Commission's programme of financial market reform and crisis prevention"

Green Paper Corporate Governance in financial institutions and remuneration policies

2 June 2010



## Agenda

- Green Book Definition – Corporate Governance
- Corporate Governance Action Plan
- Developments in Europe
- Impact of the financial crisis in the development of Corporate Governance
- Green Paper on Corporate Governance: Main issues
- Lessons and tendencies for the future



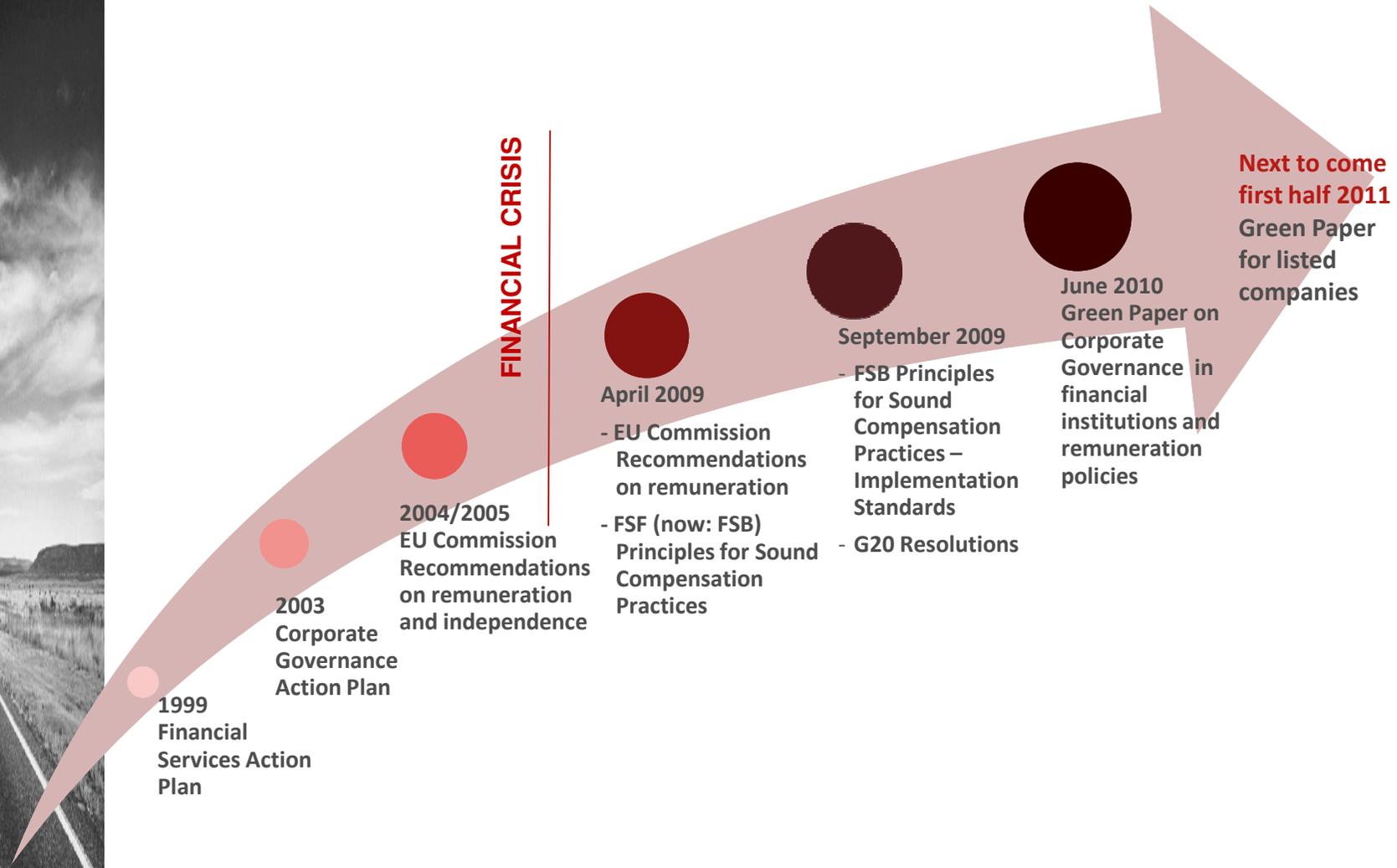
## Green Book Definition – Corporate Governance

- "The traditional definition of Corporate Governance refers to relations between a company's senior management, its board of directors, its shareholders and other stakeholders, such as employees and their representatives."
- "It also determines the structure used to define a company's objectives, as well as the means of achieving them and of monitoring the results obtained."

## Corporate Governance Action Plan (CGAP, 2003)

Scope and Objectives	Key highlights	Results
<ul style="list-style-type: none"><li>▪ 22 measures in the areas of CG and company law</li><li>▪ Objectives<ul style="list-style-type: none"><li>– Fostering efficiency and competitiveness of business</li><li>– Strengthening shareholders rights</li><li>– Third parties protection</li></ul></li></ul>	<ul style="list-style-type: none"><li>▪ European initiatives in the areas of CG and company law are based on the CGAP, e.g.<ul style="list-style-type: none"><li>– SE Regulation</li><li>– Shareholders' Rights Directive</li><li>– Cross-border Mergers Directive</li></ul></li></ul>	<ul style="list-style-type: none"><li>▪ Not all measures have been implemented</li><li>▪ Priorities were reassessed and adapted in 2006</li><li>▪ Among the most recent initiatives are the two Recommendations on remuneration (April 2009)</li></ul>

# Developments in Europe





"The Steering Group's first two reports found that corporate governance weaknesses in **remuneration, risk management, board practices** and the **exercise of shareholder rights** had played an important role in the development of the financial crisis."

*(Third report on corporate governance and the financial crisis, OECD 2010)*

# Impact of the financial crisis



# Green Paper of the EU Commission

## Scope and Objectives

- Green Paper on Corporate Governance in financial institutions  
2 June 2010  
End of consultation period: 1 September 2010
- Main aims of the Green Paper
  - Status Corporate Governance in financial institutions
  - Suggestions to improve CG
  - A sustainable growth
  - Risk awareness
  - Healthy management of risks
- Corporate Governance regime either
  - Inefficient or
  - Poorly implemented



# Green Paper of the EU Commission

## Key highlights

- Refers to the de Larosière-Report of 2009
- Identified weaknesses and deficiencies in CG

Conflicts of Interest

Risk Management

Implementation of  
CG Principles

Shareholder Role

Boards of Directors

Role of Supervisory  
Authorities

Role of Auditors

→ New Green Book



# Green Paper of the EU Commission

## Results

- Consultation closed on 1 September 2010
- Results should be available as of autumn 2010
- The EU Commission will decide on any initiatives until the first quarter 2011
- Subsequent to the Green Paper the European Parliament adopted amendments to the CRD requiring credit institutions to have sound remuneration policies
- The EU Commission will launch a review on corporate governance in listed companies in general in 2011 which will in particular focus on shareholders



# Green Paper – effects on listed companies

## Review on Corporate Governance for listed companies

- Place and role of shareholders
- Distribution of duties between shareholders and boards of director regarding supervising senior management teams
- Composition of boards of directors
- Corporate social responsibility



## Green Paper – effects on listed companies

Area	Financial sector companies	Listed companies
Boards of directors	X	X
Risk management	X	
Auditors	X	
Supervisory authorities	X	
Shareholders	X	X
Remuneration	X	X
Conflicts of interest	X	X

## Green Paper – main proposals and consultation areas



Implementation of CG principles

Boards of Directors

Risk-related Functions

Conflicts of Interest

Supervisory Authorities

Shareholders

External Auditors

Remuneration



## Implementation of Corporate Governance principles

- Role of control mechanisms
- Checks and balances
- Qualitative assessment of existing principles in lieu of box-ticking exercises
- Clear allocation of roles and responsibilities re implementing the principles
- Effective and efficient penalties to achieve behavioural change with persons concerned



## Boards of Directors

- Key role as a principal decision-making body
- Technical expertise and ability to raise objections against CEO
- Balance between independence and skills
- Diversity re board composition (in terms of gender, social, cultural and educational background)
- Limitation of number of boards and combining the functions of chairman of the board and CEO
- Compulsory evaluation of the functioning of the board
- Reinforcement of mandate and responsibilities, in particular role of risk supervision
- Interests of all stakeholders – "duty of care"



## Boards of Directors: Capacity to challenge and group think - excursus

- Constructive challenge
- "*A willingness to challenge the consensus*", Richard Lambert, Director-General CBI, 11 March 2010, LSE
- Independence of mind
- Use of existent networks for boards
- Risks of group think and group speak
  - Insufficient reflection alternatives
  - Wrong risk assessment
  - Insufficient questioning of decisions taken
  - Insufficient inclusion of external expertise
- Green Paper: Raise objections and questions



## Risk-related functions

- Relevance only for the financial sector
- Strengthen the independence and authority of the risk management function
- Improve the risk management function and in particular the authority of these functions and the system for risk-related communication and information
- Implementation of a policy to increase awareness of risk problems
- Ensure quality of nomination and evaluation procedure



## Conflicts of interest

- Harmonisation of the regulation in the financial sector
- Conflicts of interest should be at least partly regulated by clear rules rooted in law
- In the financial sector, a clearly defined role must be attributed to the supervisory authorities in monitoring the correct implementation of the rules



## Supervisory Authorities

- Relevance only for the financial sector
- Redefine and strengthen the role of supervisory authorities in the internal governance
- Clear delimitation of roles and responsibilities between internal and external supervision
- Strengthen cooperation between supervisory authorities cross-border
- Supervisory authorities to highlight shortcomings in the functioning and effectiveness of boards
- Supervisory authorities to extend eligibility criteria for directors to cover technical and professional skills



## Shareholders

- Strengthen shareholder cooperation through the creation of discussion platforms
- Disclosure by institutional investors of their voting practices at shareholders' meetings
- Institutional investors adherence to 'stewardship codes' of best practice
- Identification and disclosure of potential conflicts of interest by institutional investors
- Disclosure by institutional investors of the remuneration policy for intermediaries
- Providing shareholders with better information on risk



## External Auditors

- Relevance only for the financial sector
- Extend the reporting scheme by which external auditors alert the board of directors and supervisory authorities of any substantial risks
- Strengthen cooperation between external auditors and the supervisory authorities
- Review the role that external auditors should play with regard to risk-related information
- External auditors should validate a greater range of information which is relevant to shareholders



## Remuneration

- Numerous measures for the financial sector – Uniform implementation in the EU-Member States required
- EU-Recommendations (April 2009) – more to come
- Regulation regarding the attribution of share options to managers
- Regulation regarding the prohibition of golden handshakes
- Role of shareholders and employees in the structuring of the remuneration
- Introduction of similar legislative measures for the other financial services sectors, in particular UCITS and insurance companies to prevent distortions of competition



## Lessons and tendencies for the future

- The financial crisis brought a new spark to the debate on the costs and benefits of regulation
- The responses to the Consultation on the Green Paper show a tendency to reject regulation overkill
- However, market players must be prepared to live in a more regulated environment
- Certain issues, however, can and should be dealt with by soft law
  - In these cases, adequate monitoring and compliance mechanisms should be put in place, in particular regulatory supervision



## The challenge of Corporate Governance

"Corporate Governance is concerned with holding the **balance between economic and social goals** and **between individual and communal goals**. The corporate governance framework is there to encourage the efficient use of resources and equally to require **accountability for the stewardship** of those resources. The aim is to **align** as nearly as possible **the interests of individuals, corporations and society.**"

*(Sir Adrian Cadbury  
in 'Global Corporate Governance Forum', World Bank, 2000)*

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Partner in the Frankfurt office of Clifford Chance since 1989. Member of the Partnership Council since May 2010. Member of the Global Steering Committee for the insurance sector. Admitted to the German bar in 1984. LL.M. Columbia University 1985 and Attorney-at-Law (New York) since 1986. Daniela Weber-Rey advises mainly German and international clients – most of them being major international companies, banks and insurance undertakings, other financial services providers, institutional investors and municipal entities – in the fields of corporate law and capital markets law on company acquisitions (M&A), including company restructurings and public takeovers with a certain emphasis on the insurance and financial sector as well as in the energy sector.

Since 2005 Daniela has been repeatedly appointed as member of Expert Groups at the EU Commission. On 21 May 2008 she was appointed as a member of the administrative board of BNP Paribas, and in July 2008 she became a member of the Government Commission German Corporate Governance Code.

Various publications on company law and corporate governance, M&A/takeovers and capital market laws, regulatory law, (re-)insurance law and on developments in the financial sector in English, German and French.

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