ANSWERS TO THE COMMISSION CONSULTATION ON THE FUTURE OF EUROPEAN COMPANY LAW – MAY 2012

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XII. ADDITIONAL COMMENTS

21.- Do you wish to upload a document with additional comments ?

- Yes.

Our additional comments are the following:

1.- Appraisal right of shareholders in cross-border mergers.

In our opinion in national legislations (at least in Spain) there is an obstacle which impedes the execution of cross-border mergers which is the right of appraisal or separation of the shareholders.

It can be true that decades ago, a change in the company which consisted in changing its seat to anther EU country was a relevant matter where the company changes its profile to such extent that the shareholders should have its most aggressive right: to terminate its relationship with the company and be reimbursed.

Nevertheless, today this is not the case. It is very usual that companies carry out their activities in different EU countries, all of them with sufficient relevance and the fact of changing the seat should not provide an individual right of separation.

As an example we could take a situation where two companies each with seat in one EU country want to merge and they manage to obtain their required shareholders´general meetings approvals (by majority vote). The resulting entity shall have its seat in or the other country –its almost irrelevant which of them, because it will operate in both-. According to most of EU national legislation, the shareholders of the country which finally is not the seat of the new entity will have the right to exercise its appraisal right.

The consequence is that a theoretically non relevant fact –which of the countries it elects as formal seat- has a tremendous consequence: an individual right of half of the shareholders to separate, which has similar economic consequences as the obligation to launch a public tender offer. Thus, in the end, in cross border mergers, the ordinary system of majority approvals by the shareholders meetings is effectively replaced by a public tender offer system. This is not reasonable and it is disproportionate and, in our opinion, it is the main impediment for cross border mergers.

One solution would be substituting in this case the individual right of separation by a double requirement –majority approval by the shareholders plus authorization by a judge-, similar to the "arrangement scheme" that already exists under UK law (Iberdrola- Scottish Power and Iberia- British Airways have used it recently).

2.- A need for enchacing transparency:

We agree with the Commission proposal on the interconnection of business registers as it will increase cross-border transparency. In Spain the information about national companies is stored in the national register (*Registro Mercantil*) and is public information. Therefore, we consider that the possibility of retrieving information from all national business registers of other Member States would be very useful and such possibility would only be possible through the interconnection of business registers.

In our opinion, it would be sufficient with the interconnection of business registers as the creation of a European Central Register would entail costs that probably could be saved with a well-designed and efficient interconnection of business registers.

3.- Transparency of groups´structures and relations.

We think that it would be a good idea to extend to unlisted companies a European mandatory system similar to that imposed by the Trasparency Directive as this would promote an equal level playing field for both listed an not-listed groups an it would foster transparency of both kinds of companies.

In our opinion it would be advisable to issue a European rule requiring an annual report, corporate governance statement or company website to describe the company´s group structure as well as its functioning and management in a clear and investor-friendly manner (as the notes to the accounts give a full picture of the financial status of the group).