

Stockholm

September 1, 2010



Register ID Number: 4129929362-47

NFU Response to the Green Paper on Corporate Governance in Financial Institutions and Remuneration Policies

About NFU

The Confederation of the Nordic Bank, Finance and Insurance Unions (NFU) is an organisation for co-operation between trade unions that organise employees in the banking, finance and insurance sectors in the five Nordic countries. At present, eight trade unions are affiliated to the NFU; two in Denmark, two in Finland, two in Sweden, and one in each Iceland and Norway. Through these trade unions, NFU represents 160 000 employees in the Nordic financial market.

General remarks

First of all, NFU is delighted to see that employees and their representatives, i.e. trade unions, in the finance sector are considered to be stakeholders along side with, for example, shareholders and depositors. To us this is a natural view, but is still something we have felt obliged to request repeatedly, since it has not been obvious that this view is shared in the European context.

NFU generally agrees with the Commissions analysis of the weaknesses in corporate governance in financial institutions. The nature of the business and the external effects of bad corporate governance in the financial sector on the rest of society put extra high demands on the stakeholders involved.

The problem with weak corporate governance is at the heart of the financial crisis. It is also at the heart of the functioning of the internal market and democratic capitalism. The time is well due for the Commission to address these issues forcefully.

In our reply, we have focused on matters that will, from our perspective, have an impact on employees in the finance sector now and in the future.

Questions 1.1 and 1.2

Should the number of boards on which a director may sit be limited (for example, no more than three at once)? Should combining the functions of chairman of the board of directors and chief executive officer be prohibited in financial institutions?

Yes. It is important that board members have sufficient time to prepare for the task, in order to give the governance of each financial institution the attention it deserves. For the sake of openness and transparency it should also not be possible to combine the functions of chairman of the board of directors and chief executive officer, since one of the primary purposes of the board is to watch over the company, and to ensure that the operations of the company are legitimate.

Questions 1.3 and 1.4

Should recruitment policies specify the duties and profile of directors, including the chairman, ensure that directors have adequate skills, and ensure that the composition of the board of directors is suitably diverse? If so, how? Do you agree that including more women and individuals with different backgrounds in the board of directors could improve the functioning and efficiency of boards of directors?

Yes. It is pointed out in the Green Paper that "it seems necessary for members of the board of directors to be familiar with the structure of their financial institution and ensure that organisational complexity does not prevent effective control of the institution's activity in its entirety." NFU completely agrees with this statement, and would in this respect like to highlight the benefits of the one-tier system for employee board-level representation. The one-tier system, as used in the Nordic countries, provides the company with a valuable asset.

The company gets an insight on how different issues are perceived from the employee perspective, and the employees get an overview on what the company is doing and how. An employee board-level representative can provide very valuable insights from a supervision perspective. He/she is not only involved in the decision-making of the company, but also has access to direct information on the situation in the company from the employee perspective. Also, being elected for the board by a different group of people than the rest of the board members, employee representation ensures a bigger versatility of independence in the board. This has also been pointed out in the Commission staff working document accompanying the Green Paper, where it is acknowledged that employee representation broadens the debate within the boards.

In the same Commission staff working document it is stated that "the crisis has revealed that interests of shareholders and boards do not necessarily match with the long-term interests of the financial institution. Especially, the interests of stakeholders, such as depositors or, to a certain extent, employees, have not been sufficiently taken into account by shareholders and boards." NFU agrees with this view, and we have maintained that the primary purpose of

financial institutions should always be to provide responsible and sustainable financial services, not to make short term profit for shareholders. Europe must move away from the short-termism that has caused the crisis, and acknowledge that giving good advice and having excellent customer service is a precondition for the sustainable and long-term success of any financial institution.

NFU is therefore of the opinion that board-level representation needs to be strengthened across Europe, in order to provide employees with an insight regarding the status of the company. For instance, we believe that board members elected by the employees should be trade union members in order to ensure that the person is supported by an effective network and has links to all employees in all parts of the company.

Promoting good corporate governance within financial institutions is, indeed, an area that deserves further attention. An important area could be to describe the competences of the board of directors in relation to the strategic challenges faced by the financial institution. This should be done on a revolving basis, e.g. in the annual reports of the institution, thus enabling the AGM, relevant authorities and other stakeholders to evaluate whether the board of directors has the suitable competences for the business plan of the financial institution. This must not, however, lead to any impingements regarding employees' right to board level representation. When it comes to ensuring that directors and board members have suitable skills and qualifications, it is not only a question of a selection process. It is also a matter of training. The board members, including employee board representatives, competencies must be continuously updated to fulfil any requirements that have been deemed appropriate or necessary for the task.

Question 1.5, 4.1 and 4.2

Should a compulsory evaluation of the functioning of the board of directors, carried out by an external evaluator, be put in place? Should the result of this evaluation be made available to supervisory authorities and shareholders? Should the role of supervisory authorities in the internal governance of financial institutions be redefined and strengthened? Should supervisory authorities be given the power and duty to check the correct functioning of the board of directors and the risk management function? How can this be put into practice?

NFU would in this context like to stress the importance of looking beyond governmental supervision as the only viable way to go.

From the employee perspective, ensuring sound and efficient "whistle-blowing systems" would be one measure that would be appropriate. Whistle-blowing is, indeed, about ensuring that early warnings from the bottom and up will reach the competent supervisory authority which should have the power, the mandate and resources to follow-up on the warnings and, where

necessary, investigate the entire company. NFU is of the firm belief that employees are the first to recognize a systemic failure or a risky business, since it is part of their day-to-day-operations.

Whistle-blowing would not only ensure a fast and efficient “point of entry” for national supervisors, but also providing employees with a measure where their concerns are taken seriously. This could be done in a way where the national supervisor consults with employee representatives in a suitable fashion, be it through anonymous “hot-lines” or scheduled, consultative meetings with trade unions. It is important to stress that for employees to be able to provide this information in an orderly fashion, the national supervisors must be able to create reliable systems for this, which are not filtered by a strong director or board of directors.

Another measure that should be considered is the direct representation of a public representative in company boards. The public representative could for instance be appointed by the national supervisory authority. The public representative could monitor the self-evaluation of the company board and establish a method to ensure that the right competencies are in place in the combined board. This representative should also monitor the risk assessment of the company and establish a method to ensure that the company’s risk-taking is conducted on a sound and reasonable basis. The representative would report back not only to the supervisory authority but also to the AGM, to ensure that all stakeholders are aware of the situation in the company on a continuous basis.

Question 1.6 and 2.1 – 2.5

Should it be compulsory to set up a risk committee within the board of directors and establish rules regarding the composition and functioning of this committee? How can the status of the chief risk officer be enhanced? Should the status of the chief risk officer be at least equivalent to that of the chief financial officer? How can the communication system between the risk management function and the board of directors be improved? Should a procedure for referring conflicts/problems to the hierarchy for resolution be set up? Should the chief risk officer be able to report directly to the board of directors, including the risk committee? Should IT tools be upgraded in order to improve the quality and speed at which information concerning significant risks is transmitted to the board of directors? Should executives be required to approve a report on the adequacy of internal control systems?

The answer to the above mentioned questions, where applicable, is yes. It should be compulsory to set up a risk committee within the board of directors and establish rules regarding the composition and functioning of this committee. The previously stated position regarding independence of board members is of course also valid regarding the issue of establishing risk committees or similar structures in financial companies. According to the

Green Paper, it is necessary to strengthen the independence and authority of the risk management function in a company. NFU is of the opinion that employee representation ensures a bigger versatility of independence in the board, as well as in other decision-making or advisory bodies. Employees should therefore have a clear role in the risk management system of a company.

Question 3.1, 3.2 and 3.3

Should cooperation between external auditors and supervisory authorities be deepened? If so, how? Should their duty of information towards the board of directors and/or supervisory authorities on possible serious matters discovered in the performance of their duties be increased? Should external auditors' control be extended to risk-related financial information?

The answer to the above mentioned questions, where applicable, is yes. NFU agrees that it seems necessary to examine ways of extending the reporting scheme by which external auditors alert the board of directors and supervisory authorities of any substantial risks they discover in the performance of their duties. To strengthen the cooperation between external auditors and supervisory authorities in order to benefit from auditors' knowledge of the financial sector would be beneficial to all stakeholders.

Question 5.1, 5.2 and 5.3

Should disclosure of institutional investors' voting practices and policies be compulsory? How often? Should institutional investors be obliged to adhere to a code of best practice (national or international) such as, for example, the code of the International Corporate Governance Network (ICGN)? Should the identification of shareholders be facilitated in order to encourage dialogue between companies and their shareholders and reduce the risk of abuse connected to 'empty voting'?

The answer to the above mentioned questions, where applicable, is yes. NFU has previously maintained that openness and transparency regarding controlling shareholders is beneficial to all stakeholders.

Question 7.1, 7.2 and 7.4

What could be the content and form, binding or non-binding, of possible additional measures at EU level on remuneration for directors of listed companies? Do you consider that problems related to directors' stock options should be addressed? If so, how? Is it necessary to regulate at Community level, or even prohibit the granting of stock options? Do you think that the role of shareholders, and also that of employees

and their representatives, should be strengthened in establishing remuneration policy?

In case of future legislation in this field calling for the establishment of remuneration committees or similar groups, the role of employee representation in such a group should be clear. As mentioned above, NFU is of the opinion that a long term perspective should prevail in any financial institution, and employee representation in remuneration committees will be a mean to reach that goal.

NFU also agrees that problems related to directors' stock options should be addressed. The leverage factor in stock options can lead to short-termism, which is counterproductive to a sound financial market.

That said, NFU believes that the issue of remuneration should be dealt with very carefully. In 2009, the Commission proposed some amendments to the Capital Requirements Directive, one of them dealing with the issue of remuneration. According to the proposal, the new CRD should enable supervisory authorities to impose capital 'sanctions' on financial institutions where remuneration policies are found to generate unacceptable risk. Prudential oversight in the course of the supervisory review would focus on whether the remuneration policies and practices are consistent with sound risk management given the nature of the firm's business.

The issue of the Commission regulating remuneration is of particular interest to the Nordic countries, since this regulation may impose restrictions on the right to free collective bargaining.

NFU is of the opinion that the matter of remuneration policies should be left to the social partners to decide upon, since pay is, according to art. 153.5 in the TFEU, not for the Commission to deal with. Regardless of how the future work on this issue is being conducted, it must be made clear that any provisions regarding remuneration policies in financial institutions does not apply to remuneration policies and provisions agreed in a collective agreement.

NFU therefore calls upon the Commission to await the finalization of the legislative procedure regarding the revised CRD, and evaluate how this system will fit into the ideas regarding remuneration as part of the corporate governance discussion.

Question 7.6

Do you think that the variable component of remuneration in financial institutions which have received public funding should be reduced or suspended?

NFU has previously maintained that it is of crucial importance in terms of restoring confidence in the industry that any tax-financed compensation measure, regardless of its nature, is not used for executive remuneration in any form. The "greed factor" undermines the general trust



in companies and financial companies in particular, and further mistrust will only follow if state aid measures would be linked to these bonus or incentive programs.

Question 8.2

Do you agree with the view that, while taking into account the different existing legal and economic models, it is necessary to harmonise the content and detail of Community rules on conflicts of interest to ensure that the various financial institutions are subject to similar rules, in accordance with which they must apply the provisions of MiFID, the CRD, the UCITS Directive or Solvency 2?

NFU has maintained the importance of all financial market players being subject to the same duties and controls. NFU supports one regulatory model that will cover any type of actor. Separate rules for different market actors increases market opacity and make it harder for investors to survey and evaluate different investment choices, as well as for employees to convey proper advice and information. This makes especially sense with respect to the existing and ever-expanding interlinkage between different actors on the financial market.

We, therefore, want one regulatory model that will cover any type of action and any type of company; to have separate rules in separate pieces of legislation for different types of companies makes the task harder and less foreseeable for every part involved. NFU also urges the Commission to take note of the fact that any change in requirements for finance institutions also means changes in requirements for finance sector employees.

Yours faithfully,

NORDISKA FINANSANSTÄLLDAS UNION (NFU)

The Confederation of Nordic Bank, Finance and Insurance trade unions

Jorunn Berland

President

Christina J. Colclough

General Secretary