

Nordic Financial Unions

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NFU Response to the Green Paper on the EU Corporate Governance Framework

Summary of main points

- Diversity on company boards through employee representation is a key issue for sound and long-term oriented corporate governance
- Employees should be involved in the governance of a company regardless of its size, and the same principle of course applies to the question of board diversity
- Recruitment policies should specify that employee perspectives must be taken into account. Continuous training for board members should be ensured.
- There should be full disclosure of executive remuneration policies and schemes, bearing in mind that no EU provisions regarding remuneration policies should apply to remuneration policies and provisions agreed in a collective agreement

General remarks

First of all, NFU welcomes the Commission's commitment to assess the effectiveness of the current European corporate governance framework. Not least in light of the recent crises, corporate governance is indeed a vital tool to curb harmful short-termism and excessive risk-taking.

The problem with weak corporate governance is at the heart of the financial crisis. It is also central for the functioning of the internal market and for long-term oriented businesses and economies. The time is well due for the Commission to address these issues forcefully.

Diversity on the board of directors is a key issue in sound and long-term oriented corporate governance. NFU fully agrees that high performing, effective boards are needed to challenge executive management, meaning that boards need non-executive members with diverse views, skills, and appropriate professional experience.

The value of employee input in this context cannot be overestimated. Employees have a crucial part to play in corporate governance, either as members of the board or as providers of information to the board. It is of utmost importance that any legislation in this area takes the employee dimension into account, not least from the perspective of systemic stability. Employees are an asset for any company, providing experience, knowledge and expertise to corporate governance. Creating structures for employee involvement in the management of a company is a win-win measure that benefits all stakeholders.

In our reply, we have focused on selected issues that are relevant for employees in the finance sector.

Specific remarks

Questions 1 and 2

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?

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 unlisted companies?

NFU maintains that all financial market companies should be subject to the same duties and controls. Separate rules for different market actors would create differences in corporate governance principles that could contribute to systemically unsound practices. NFU therefore supports one regulatory model that will cover any type of actor. This makes sense also with respect to the existing and ever-expanding interlinkage between different actors on the financial market. Even a very small company can take huge risks and handle great amounts of assets.

From a union perspective on corporate governance, one regulatory model that will cover any type of action and any type of company would be best. Employees should be involved in the governance of a company regardless of its size. The same principle of course applies to the question of diversity on company boards.

Question 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?

Yes. For the sake of openness and transparency it should not be possible to combine the functions of chairperson 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. This control function risks being weakened if the chairperson is also an executive.

Questions 4 and 5

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 best be achieved and at what level of governance, i.e. at national, EU, or international level?

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?

Yes, recruitment policies should be more specific. They should specify that employee perspectives must be taken into account, preferably via direct board representation for trade union representatives or indirect information and consultation practices and structures.

In order to accommodate different national practices, future EU regulation on this issue should oblige the Member States to ensure compliance with the diversity rules, i.e. a combination of the EU and national levels.

As regards specific solutions for employee involvement on boards, 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 on the "shop floor".

The employee board level representative should as a first choice be elected by employees' organizations or representatives, and as a second choice by the employees in general. This would ensure bigger versatility of independence in the board, which is a key factor for responsible corporate governance. This is something that the Commission itself has pointed out the value of in the staff working document accompanying the Green Paper on corporate governance in financial institutions.

In the same paper 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. Board-level representation needs to be strengthened across Europe, in order to

provide employees with an insight regarding the status of the company. Board members elected by the employees should also 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.

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 through recruitment policies. 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. It is very important that companies have a strong focus on developing and maintaining board members' competencies. In this context it is definitely worth considering recurring evaluations of the function of each board with a view to improving competency and board working methods.

The competent authority should step into the role of consultant to the boards and have possibility to assess the competencies of the board members. The board of directors should describe in the Annual Report both the competencies of the directors relative to the strategic challenges facing the company, and how the company works to raise the level of competency of the board members. The AGM must ensure that the board has the correct competencies in relation to the sectors, segments and markets in which the company is commercially involved.

Question 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?

Yes. It is important that board members have sufficient time to prepare for the task, in order to give the governance of each undertaking the attention it deserves. Therefore, the companies as well as the individual board member must be encouraged to focus on this problem. A suggestion could be to oblige the companies to describe the company policy in this area in the Annual Report..

Question 8

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

In the context of evaluation, the emphasis should lie on establishing true diversity on company boards including employee representatives. As pointed out in the answer to question 4, a bigger versatility of independence in the board is a key factor for responsible corporate governance.

If an evaluation is to be carried out one way of doing this could be to describe the competences of the board of directors on a revolving basis, e.g. in the annual reports of the institution. Thereby the AGM, the relevant authorities and other stakeholders can evaluate whether the board of directors has the suitable competences for the business plan of the company. This must not, however, lead to any impingements regarding employees' right to board level representation.

Question 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?

Yes. It is important that a full disclosure is achieved, including all kinds of executive remuneration including stock options and other executive incentive schemes. Openness and transparency is a vital factor for responsible executive remuneration practices.

That said, NFU would like to remind the Commission to deal with the remuneration issue carefully. In the past, EU rules on remuneration have posed a threat to the right of free collective bargaining. From a Nordic perspective this is unacceptable, and it must be made clear that any provisions regarding remuneration policies do not apply to remuneration policies and provisions agreed in a collective agreement.

Question 23

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

In general, employee share schemes are a very positive way to reward employees in a company. These systems should be designed in such a way as to ensure all employees an equal share of the company's profit. Employee share schemes should not be based on individual tasks or performance, and should contribute to sustainable risk models. The systems must not impinge on employees' regular wage or limit the possibility for wage increases.

However, the political system should not attempt to regulate these schemes, neither on national nor EU level. It is a matter between the concerned parties, i.e. management and employee's organizations.

Questions 24 and 25

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?

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?

Yes, companies should be required to provide detailed explanations when departing from the governance codes. It should also be considered whether to impose appropriate legal sanctions in cases of non-compliance. Sound corporate governance is crucial for long-term oriented and stable European economies as well as for the involvement of employees and trade unions in company matters. A framework for authorisation of the appropriate national monitoring bodies to check the quality of the corporate governance statements should be introduced, that takes full account of the differences in national practices.

In cases where corporate governance rules concern core working conditions and trade union issues, they should be implemented via collective agreements where applicable.

About NFU

Nordic Financial 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.

Yours faithfully,

NORDIC FINANCIAL UNIONS (NFU)

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