

Swedish Bankers' Association

Svenska Bankföreningen

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European Commission
Internal Market and Services DG
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Green Paper: Corporate Governance in financial institutions and remuneration policies

The Swedish Bankers' Association welcomes the opportunity to comment on the Commission's green paper on corporate governance and remuneration policies, COM (2010) 284/3.

In the consultation paper opinions are sought on: (1) composition, role and functioning of the board of directors, (2) risk management function, (3) the role of external auditors, (4) the role of supervisory authorities, (5) the shareholders control, (6) strengthening implementation of corporate governance principles, (7) remuneration for directors of listed companies and (8) conflicts of interests.

I. General remarks

Initially the Swedish Bankers' Association would like to highlight that there are significant differences in the legislative and regulatory frameworks across the countries regarding the governance structure.

In description of different corporate governance systems from an international perspective, a distinction is often made between the Anglo-American model/the one-tier model (the United States and the United Kingdom) and the Continental European Model/the two-tier model (the countries in continental Europe, particularly Germany).

One characteristic of *the one-tier model* is that there is only one governance body in the company. The company's highest decision-making body, the Shareholders meeting, appoints the board of directors, which is responsible for the company's governance. There is no separate executive board. Thus in practice, the board also has an executive function, the responsibility for which normally rests with the managing director, who is appointed by the board.

The two-tier governance model, divides the governance function between two governing bodies – a supervisory board and a management board. The shareholder's meeting is the company's highest decision making body. The meeting appoints the supervisory board which, in turn, appoints the management board. There is normally a strict division of functions between the supervisory board and the management board. The key governing body is usually the management board, which is responsible for looking after the administration of the

company. The Supervisory board supervises the work of the management board and may in general only intervene in the direct management of the company in a very limited way. In addition it is normally forbidden for the same person to sit on both boards.

The Swedish corporate governance model lies somewhere in between the Anglo-American and the continental models in several respects. In Sweden the Companies Act stipulates that companies must have three decision-making bodies in a hierarchical relationship to one another: the shareholders' meeting, the board of directors and the chief executive officer. There must also be a controlling body, the statutory auditor, which is appointed by the shareholders' meeting. According to the Swedish Corporate Governance Code the shareholders' meeting's decisions on election and remuneration of the board of directors are to be prepared in a structured, clearly stated process governed by the shareholders (through the nomination committee) that provides conditions for well-informed decision-making. The task of the nomination committee is among others to specify the duties and profile of directors, including the chairman, appropriate to the company's operations and in line with the articles of association of the company and the interest of all shareholders.

As an overarching principle we, in light of the complexity of different governance models, therefore believe that guidance regarding effective corporate governance should be principle-based, balanced and adequately flexible to reflect different national structures and business models.

We agree that weaknesses in the corporate governance were not the main cause of the financial crises. Furthermore, the financial crisis has been more or less severe in different countries, where Nordic banks overall have managed well. In the light of that we believe that the analysis, which lays the ground for the Green paper, could benefit from a broader perspective and an extended study base. Sweden, for instance, has a combination of statutory provisions concerning corporate governance and generally accepted practices. Among others the Swedish Corporate Governance Code is applicable to all Swedish companies whose shares are admitted to trading on a regulated market in Sweden. Those provisions and guiding principles have made a sufficient base for a good corporate governance structure in Sweden.

We would furthermore like to stress the importance of clarifying and considering the interaction between and different roles and responsibilities of the shareholders, the board of directors, the executive management and the supervisory authorities and the importance of such roles and responsibilities being separated. It must also be considered that many regulatory initiatives are on-going or in progress; the Green paper being only one part of such regulatory initiatives. Due to these facts co-ordination and harmonization between different regulations is of great importance.

II. Specific comments

General question 1: Interested parties are invited to express whether they are in favour of the proposed solutions concerning the composition, role and functioning of the board of directors, and to indicate any other measures they believe would be necessary.

1.1. Should the number of boards on which a director may sit be limited (for example, no more than three at once)?

Due to differences between countries and companies we do not believe that such measures would improve corporate governance, see general remarks above. It must be assessed in each individual case, by the shareholders/nomination committee, how many boards on which a director may sit to be able to devote the necessary time and care to effectively protect and promote the interest of the company and its owners.

1.2. Should combining the functions of chairman of the board of directors and chief executive officer be prohibited in financial institutions?

According to the Swedish Banking and Financing Business Act (chapter 10 section 6) the chief executive officer may not be the chairman of the board. The same rule is applicable for public limited companies according to the Swedish Companies Act (chapter 8 section 49).

1.3. 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?

See general remarks above.

1.4. 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?

We believe that different backgrounds, experiences and skills should be considered when composing the boards; however this should be the task of the shareholders' through the nomination committee, see general remarks above. The company should have as an ambition to strive for equal gender distribution on the board.

1.5. 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?

We believe that the responsibility for the evaluation of the functioning of the board of directors should rest with the chairman of the board. Such evaluation should form part of the decision making process when nominating board members. The evaluations should be mannered in a structured way and in proportion to the company's size and activities. The results of the evaluation should not be made available to supervisory authorities and shareholders in order not to risk an open and responsible self assessment dialog.

1.6. 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?

According to the Swedish law the board is responsible for ensuring that the requirement for solvency, liquidity, risk management, transparency and soundness are met. The responsibility to arrange the risk management should rest with the board however with the possibility to set up a separate risk committee.

1.7. Should it be compulsory for one or more members of the audit committee to be part of the risk committee and vice versa?

See 1.6. This should not be mandatory.

1.8. Should the chairman of the risk committee report to the general meeting?

In line with the Swedish company structure with three decision-making bodies in a hierarchical relationship to one another the board of directors should be the addressee for such reports.

1.9. What should be the role of the board of directors in a financial institution's risk profile and strategy?

See general comments above and 1.8.

1.10. Should a risk control declaration be put in place and published?

The general requirements for disclosure of risk control in the Swedish Annual Accounts Act together with the specific reporting requirements according to pillar three should be sufficient.

1.11. Should an approval procedure be established for the board of directors to approve new financial products?

No, this is part of the management of the company and should be the task of the executive management (chief executive officer). The role for the board should be to establish policies and instructions for such approvals.

1.12. Should an obligation be established for the board of directors to inform the supervisory authorities of any material risks they are aware of?

An open dialogue between the company and the supervisory authority is vital. The supervisory authority must however be prepared to open up for such dialogue and be willing to give guidance to the company.

1.13. Should a specific duty be established for the board of directors to take into account the interests of depositors and other stakeholders during the decision-making procedure ('duty of care')?

No. Boards should have the overall responsibility. No specific duty of care needs to be established for separate stakeholders.

Risk management function

General question 2: Interested parties are invited to express whether they are in favour of the proposed solutions regarding the risk management function, and to indicate any other measures they believe would be necessary.

2.1 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?

The status of the chief risk officer and the chief financial officer should be equivalent.

2.2 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?

See general remarks above and 1.8-1.9.

2.3. Should the chief risk officer be able to report directly to the board of directors, including the risk committee?

See 2.2

2.4. 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?

This is an important issue. There should be clear and stringent reporting and escalation lines which allow for quick decision-making; however there is no need for further regulations within said area.

2.5. Should executives be required to approve a report on the adequacy of internal control systems?

No, the signing does not change the board's overall responsibility.

The role of external auditors

General question 3: Interested parties are invited to express whether they are in favour of the proposed solutions concerning the role of external auditors, and to indicate any other measures they believe would be necessary.

3.1. Should cooperation between external auditors and supervisory authorities be deepened? If so, how?

No. We believe it is important to keep the hierarchical relationship between the bodies within the company and furthermore, it is important to distinguish the role between the supervisory authority and the company.

3.2. 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?

No. According to Swedish law the external auditor has an obligation to report to the board and, in certain matters, to the supervisory authority. We do not believe that the obligation should be extended.

3.3. Should external auditors' control be extended to risk-related financial information?

No regulation is needed. This is already part of the external auditor's obligation according to Swedish law.

The role of the supervisory authority

General question 4: Interested parties are invited to express whether they are in favour of the proposed solutions concerning the role of supervisory authorities, and to indicate any other measures they believe would be necessary.

4.1 Should the role of supervisory authorities in the internal governance of financial institutions be redefined and strengthened?

No, the supervisory authorities should have a supervisory role only.

4.2. 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?

No. According to applicable law the supervisory authority shall, when granting a license, conduct a thorough assessment of the business and its organization and structure.

4.3. Should the eligibility criteria ('fit and proper test') be extended to cover the technical and professional skills, as well as the individual qualities, of future directors? How can this be achieved in practice?

No. The responsibility should rest with the shareholder's meeting, through the nomination committee. The supervisory authority should, with regard to the prudential assessment, assess whether any doubts exist about the integrity and professional competence of the board members.

The shareholders control

General question 5: Interested parties are invited to express their view on whether they consider that shareholder control of financial institutions is still realistic. If so, how in their opinion would it be possible to improve shareholder engagement in practice?

5.1. Should disclosure of institutional investors' voting practices and policies be compulsory? How often?

The disclosure of institutional investors' voting may have an impact on other legislative areas and should therefore be handled in a broader perspective. However, a disclosure should not be compulsory.

5.2. 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)? This code requires signatories to develop and publish their investment and voting policies, to take measures to avoid conflicts of interest and to use their voting rights in a responsible way.

We support a code of best practice for institutional investors but we do not believe in a mandatory obligation.

5.3. 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'?

This question should be handled in conjunction with the consultation on modernization of the directive 2004/109/EC, transparency requirements for listed companies.

5.4. Which other measures could encourage shareholders to engage in financial institutions' corporate governance?

We have no examples of other measures which could encourage shareholders to engage in financial institution's corporate governance.

Strengthening implementation of corporate governance principles

General question 6: Interested parties are invited to express their opinion on which methods would be effective in strengthening implementation of corporate governance principles?

6.1. Is it necessary to increase the accountability of members of the board of directors?

No. We believe the Swedish system is sufficient.

6.2 Should the civil and criminal liability of directors be reinforced, bearing in mind that the rules governing criminal proceedings are not harmonised at European level?

No. We believe it is questionable if the imposition of civil and criminal liability has any preventive effect according to experience from the past.

Remuneration for directors of listed companies

General question 7: Interested parties are invited to express their views on how to enhance the consistency and effectiveness of EU action on remuneration for directors of listed companies.

General comments

Since the beginning of 2009 different organisations, i.e. EU-commission, FSB and CEBS, has issued recommendations and guidelines concerning remunerations in listed companies and/or for the financial sector. We believe that companies should be given enough time to implement

and act in accordance with these regulations. After sufficient implementing time and after an assessment have been made the need for further regulation can be examined.

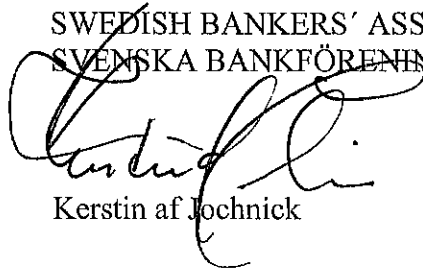
Conflicts of interest

General question 8: Interested parties are invited to express whether they agree with the Commission's observation that, in spite of current requirements for transparency with regard to conflicts of interest, surveillance of conflicts of interest by the markets alone is not always possible or effective.

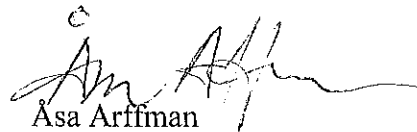
Separated roles and responsibilities are important to prevent conflicts of interests, see general remarks above. No further regulations are needed.

Yours Sincerely

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