



NFU response to:

The consultation on future priorities for the action plan on modernising company law and enhancing corporate governance in the European Union

Facts on 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, the NFU represents 160 000 employees on the Nordic financial market. Some 130 000 of these employees belong to the banking sector, while the remaining 30 000 belong to the insurance sector.

Approach

This response has been created in cooperation in-between policy officers from all NFU affiliates. The NFU Executive Committee has discussed a draft response and thereafter made a per-capsulam decision to adopt this response.

General remarks

As we have pointed out during previous consultations, it is necessary also to look at the involvement of other stakeholders such as i.a. the employees. Presenting a consultation that talks about modernizing company law and enhancing corporate governance also obliges one to take on board the interests of other stakeholders than company management and shareholders.

From our perspective the employee participation rules are, evidently, of great importance. When the SE-Directive was launched we were actually quite satisfied with the rules therein concerning participation. Therefore, we were disappointed with the 10th Company Law Directive, where a different solution had been chosen. We would prefer one regime of employee participation – preferably that of the SE-Directive – rather than the invention of a new solution with every new Directive.

Corporate Governance

One share, one vote

In our view, this issue should not be addressed at the EU level. We believe it is not a problem to have different voting rights, as long as the shareholders know what they are buying and get what they are paying for. Transparency is the key.

Nordisk organisation för bank, finans och försäkring

Danske Forsikringsfunktionærers Landsforening, Danmark
Finansförbundet, Danmark
Fackförbundet SUORA, Finland
Försäkringsmannaförbundet FMF rf, Finland

Samband Islenskra Bankamanna, Island
Finansförbundet, Norge
Finansförbundet, Sverige
FTF, Sverige

In fact, in e.g. the Nordic countries, where the notion of shares with differentiated voting rights is well known, the markets very effectively regulate and differentiate the prices of shares in the same company with different voting rights.

Also, in many cases, a reduced voting right (“B”-shares) is combined with a preferential dividend. Therefore, many potential share buyers actually prefer to acquire B-shares, rather than the (usually more expensive) A-shares with multiple voting rights, but reduced rights as far as dividend is concerned. It is also important to point out that an alteration of the existing balance of voting rights is, in fact, in the hands of the shareholders. Thus, it is e.g. possible to abolish differentiated voting rights at a General Meeting with qualified majority among those shareholders whose rights are affected negatively.

The existence of A- and B-shares in itself does not pose an obstacle to cross border consolidation; A-shares are as accessible to foreign investors as they are to domestic investors. It is all out in the open: It is an investor evaluation as to whether the market price reflects the advantages and the disadvantages of an A-share in the specific company.

A-shares may also be an extra incentive to e.g. an investor with a wish to have a long term investment in the company, whereas the investor with a short investment horizon may prefer a B-share. Thus, A- and B-shares can also be viewed as an expression of product diversity, which in fact, is one of the things often called for by the Commission.

The question on one share, one vote should, in our opinion also be viewed in connection with the question on groups and abusive pyramids. In fact, groups and pyramids could be a more relevant problem to scrutinize, since the lack of transparency in many of these structures may pose a tangible threat to shareholder democracy and the relation to all other stakeholders.

Rights of shareholders

We support measures on procedures for nomination and dismissal of directors, better communication, and the possibility for launching investigations into the conduct of company affairs.

It is important to consider putting investors under an obligation to disclose their voting policies for the benefit of not only existing shareholders, but also for potential shareholders and other stakeholders. Thus, that information must be open to the public.

Directors’ responsibilities/Enhanced transparency

We are positive towards looking closer at special investigation rights, rules on directors’ disqualification, and increased disclosure requirements. Further work needs to be done to analyze what the best content and form of such rules should be.

Company Law

14th Directive

We are not opposed to the announced proposal for the 14th Company Law Directive on the transfer of the registered office, provided that the employee participation rules are catered for in a satisfactory manner. Like with the 10th Company Law Directive our position is that the participation structure from the SE-Directive is preferable. We see many advantages in having very similar rules from one Directive to another. Basically, this is also the idea behind the re-

casting notion, which is used and suggested by the Commission in relation to several other aspects with relation to this line of legislation.

Monistic and dualistic board structures

An EU initiative on this subject appears to be increasingly less interesting, i.a. due to recent developments in EU law. Besides, seen from our point of view, the relatively small variations in board structures from one European country to another have not really posed any relevant problems.

Groups and Pyramids

Please, see our remarks under One share, one vote.

Legal forms of enterprises

SE companies

In our view, it is feasible to look at the possibility to create an SE company in some new ways, e.g. by formation of a new company, provided that the participation rules are not to be undermined.

EPC's

As far as the question on European Private Companies is concerned, it is getting harder to see the business case, especially after the adoption of the 10th Directive and, also, with a possible update of the SE Directive. If EPC's at some point in the future are to be a possibility we expect, of course, that satisfactory employee participation rules must be an integral part of the legislation. EPC's must never become loop holes in this respect.

European Foundations

It is, a priori, very difficult to see the feasibility of a Statute in relation to European Foundations. If it turns out that there is a significant problem in e.g. raising funds from foreign donors, it may be solved using a legally and practically less complicated approach.

Simplification and modernization of European company law

The explicit relation between the aims of the Action Plan concerning the competitiveness of European business and the Lisbon Strategy is very important. Therefore, it is very positive that these targets are being brought back to mind in section 3 of the consultation.

This should also encompass the inclusion of the European social partners in the work, which is also the case in relation to the general work on the Lisbon Strategy.

Also, *more jobs* is a clear and comprehensible objective of the Lisbon Strategy, but equally important is *better jobs*. To us 'better jobs' is evidently a corporate governance issue; quality jobs and good governance go together. The NFU calls for a strategy of how better jobs will be achieved – as seen in the context of better governance.

We are generally in favour of a responsible simplification of European company law, thereby making it more users friendly. The financial sector is one of the areas where coherence with

the company law and corporate governance area is important. Fortunately, it is our impression that the Commission services are aware of this important link.

Suggestions for new priorities

The NFU would like to take the opportunity to introduce some new issues that, in our view, should be included among future priorities.

Gender balance on company boards

In many European countries there is currently a discussion going on about how to achieve gender balance on company boards. In our view the principle of gender balance will contribute to better corporate governance. The time is ripe to tackle this issue at EU level, also in the context of corporate governance.

Employee participation

As we mentioned already in the introductory remarks, as well as in relation to the 14th Directive, employee participation is a top priority for the NFU. Good governance is also about developing the inclusion of employees in decision making and strategic discussions on the future of the company. The principle of employee participation should, as we see it, be an integral part of the corporate governance agenda. Employees are key stakeholders in the companies, and they also represent the link between the companies and their costumers.

As regards both gender balance and employee participation, it could be useful to launch a discussion at European level by looking at best practices and sharing company experiences.

Corporate Social Responsibility

Corporate social irresponsibility has proved to be one of the main reasons for recent financial scandals and the loss of large numbers of jobs. Corporate social responsibility should be regarded as a key to ensuring the medium and long-term success of companies and should thus be integrated into the corporate governance discussion. Corporate governance and social responsibility can best be achieved when the company and its employees work together.

Sales versus advice

In the financial sector, as well as in several other sectors, it is necessary to give visibility to the potential conflict between sales and advisory services. The discussion on pension funds is a good example of an area in which this dilemma must be tackled. The consumer should always know if he or she receives independent advice or not. The company's remuneration policy must seek to ease the underlying conflict between selling and giving advice, and not reinforce it. This should be made part of the good corporate governance in those sectors.