

Comments on Green Paper on EU corporate governance framework

Danish Insurance Association (DIA) welcomes the Green Paper on EU corporate governance framework. The issues addressed are of particular interest to DIA – especially the issues on shareholders role in corporate governance from an institutional investor point of view.

Danish life insurers and pension companies are long-term investors. As such they do not match the picture described in the Green Paper – that shareholders are often passive and focused on short-term profits. It is in the interest of DIA members to have a legal framework that supports sustainable returns and long term performance.

Studies in the Danish market has shown that life insurers and pension funds have to a large extend taken on the role of active owners. This is first and foremost in relation to sustainability issues such as environmental and social issues. 85 % of the market has binding policies on active ownership in relation to environmental, social and governance issues. And this tendency is growing.

According to the Danish Financial Statements Act the largest listed companies and investors are required to inform the public on the companies work with Corporate Social Responsibility on a comply or explain basis. Such a comply or explain rule regarding the public disclosure of the companies CSR work seems to have had a positive effect ensuring even more information to be given to the markets on listed companies and investors strategies on CSR. Annual CSR reports have now become a common phenomenon among both listed companies and investors in Denmark.

But there is a danger that much more information is provided than the amount of information used by the intended receivers. Targets are widely missed if companies and investors provide markets with information that is not in demand or useful for decision making purposes.

An important question is therefore what exact purpose transparency of voting policies and disclosure of general information about their implementation – as suggested by the Commission - will serve. The purpose of transparency in specific areas should be carefully considered before designing specific comply or ex-

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plain requirements. Transparency should not be imposed for the sake of transparency itself. The effects of transparency should be equally carefully anticipated in order to reach the purposes and fulfil the targets of transparency more precisely. To burden life insurers and pension companies as investors with unnecessary costs will have a negative effect on administrative costs. These will to a large extent have to be born by pension savers in the long run.

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In general the Commission paper does not solve the problems of costs of engagement and of valuing the return of engagements and measuring the outcomes of engagements. These expenses will always exist when using active ownership to address issues in companies in order to influence investments in a positive way. Strategies to promote active ownership should therefore include innovative solutions to better share the right information - and the right amount of information - between companies and investors.

Transparency of voting policies - and general information on their implementation - is supposed to serve the purpose of promoting market discipline in the field of active ownership. Benchmarks and best practice will be shared among investors. But analysis on whether this measure is the best way to reach purposes mentioned by the Commission is missing. DIA suggests an impact assessment before introducing specific solutions promoting transparency.

Below the DIA have provided answers to questions in the green paper.

Question no. 1:

The Danish Insurance Association does not find a need for a special corporate governance regime taking into account the size of listed companies.

Question no. 2:

We do not find a need for corporate governance measures to be taken at EU level for unlisted companies.

Question no. 3:

It might be useful, if the EU provides the listed companies with more information about the division of functions and duties between the chairperson of the board of directors and the chief executive officer. It is though important to bear in mind, that there are both the single and dual management structures and the so called 1½-tier management system that we have in Scandinavia. Any future regulation on this topic has to be applicable to all these different management systems.

Question no. 4:

The board should have a composition appropriate for the company's operations, developments and other relevant circumstances. However we do not find a need for specific rules on recruitment policies. Listed companies are very different from each other, and finding the right profile for a new board member should be left for the nomination committee. It is an important part of their job.

Question no. 5:

There should not be an obligation to disclose a given diversity policy.

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Question no. 6:

The board's efficiency should be the first principle to rely on in respect of the composition of the board.

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Question no. 7:

DIA do not think, that there should be an upper limit for the number of boards on which a non-executive director may sit. Naturally, a director cannot undertake more tasks than there is time to perform satisfactorily. But it is very individual to determine, where this limit is, depending on the person and the directorship in question (e.g. size and complexity of the company).

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Question no. 8:

Regular evaluation should form the basis for assessment of the performance of the board of directors and the executive officer and for the continuous development of their work. The board of directors should evaluate its work regularly, with the aim of developing the board's working methods and efficiency.

The Danish Insurance Association cannot support the proposal that there should be a mandatory external evaluation of the work of the board of directors. If the board of directors wishes so, it can choose to have the process facilitated by an external evaluator.

The general conclusion of the evaluation of the functioning of the board of directors should be made available to shareholders and other stakeholders in the annual rapport.

Question no. 9:

Remuneration policy in the Danish financial sector is already intensely regulated in the Capital Requirement Directive III from 2010 and the later implementation in the Member States has in Denmark also included the insurance companies.

Question no. 10:

Due to the Capital Requirement Directive III from 2010, the remuneration policy is already on vote by shareholders on the general meeting. DIA does not see a need to bring the remuneration report on the vote for shareholders, as this preferably must be a role for the board.

Question no. 11:

We agree that the board should approve and take responsibility for the company's risk policy. It is also naturally that the board gives the shareholders general information. However this information should be concentrated upon financial risk. Information about the environment, health, safety, human rights etc. belongs in a corporate social responsibility initiative and not in a corporate governance regime.

Question no. 12:

Yes, we do agree that the board should ensure that the company's risk management arrangements are effective and commensurate with the company's risk profile.

Question no. 13

The Commission refers to numbers implying that average holding period for major equity is eight months. This tendency is not desirable and should not be en-

couraged by future regulation. An example is the question of procyclical effects (meaning rules that could contribute negatively to the magnifying of economic fluctuations) of solvency rules. This question is widely discussed in connection with Solvency II. Efforts should be made to secure markets against procyclical effects and short-termism as a reaction to legal requirements.

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Question no. 14

Danish Insurance Association supports disclosure of the incentive structures for asset managers. Long term investors already request the needed transparency on this matter - and on other matters related to conflicts of interest - when entering into business with external asset managers. Therefore regulation doesn't seem necessary.

Question no. 15

If asset managers become more transparent on their incentive structures investors would be in a better position to spot possible bias opposing long-term decision making. Under these circumstances also information on asset managers strategies, costs, trading and the extent of active engagement with investee companies could be beneficial in annual reports or on websites.

Question no. 16

No opinion

Question no. 17

Obstacles to shareholder cooperation doesn't seem insuperable since active ownership is widely spread in the Danish Market with regard to socially responsible investment issues. Voluntary networks such as the UN PRI acts as cooperation promoters when issues related to poor ESG-factors actualises. But also local network groups such as Dansif (www.dansif.dk) includes the vast majority of the Danish institutional investors and supports the sharing of knowledge and cooperation between investors based in Denmark. Furthermore the Danish Government has completed a guide to responsible investors in close cooperation with the investor community: <http://www.samfundsansvar.dk/sw49288.asp>

On areas such as investment funds lack of transparency with regard to the underlying assets can be an obstacle to corporation between investors in general.

Question no. 19

As a minimum proxy advisors should inform customers if they provide consulting services to investor companies as well to investors in case of specific conflicts of interest. Legislative measures don't seem to be the way forward.

Question no. 20

The public will in the future have access to an owner register, where any shareholder holding more than 5 % of the shares in Danish listed companies will be registered. Apart from this the dialogue between listed companies and their shareholders will have to be initiated on the initiative of the shareholder, since the companies might have limited knowledge on the identity of all the shareholders.

Many Danish institutional investors choose to disclose lists of the companies they have invested in previous quarters. Present investment portfolios are not disclosed in order not to reveal investment strategies for portfolios composition

to competing investors. If a general mechanism for issuers - to identify their shareholders - are developed this should not result in disclosures that reveal the current portfolio composition of investment to their competitors.

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Question no. 21

It is observed that many investors cooperate when addressing issues of ESG in companies. This cooperation often takes place through proxy voting agencies who collect votes from investors with both larger and smaller holdings and approach company management on the issue at hand. The active ownership can be equally successful for investors with small holdings also in the presence of controlling shareholders. Success also depends on for example the nature of the dialogue, who from management the dialogue are held with, the nature of the subject and the risk associated with the matter at hand.

In this light DIA doesn't see the need for additional rights for minority shareholders to pursue their interests as active owners in companies with controlling or dominant shareholders. When this said there might though be other reasons outside the scope of this paper for strengthening minority shareholders rights due to subjects outside the scope of this green paper.

Question no. 22

No further regulation on related parties transactions seem to be needed.

Question no. 23

No opinion

Question no. 24

DIA agree that companies departing from the corporate governance codes should explain themselves appropriately in a meaningful way. This should be ensured in the national codes though and not by central European law. In Denmark the compliance with the national code of corporate governance is monitored by the stock exchange NASDAQ OMX. According to the latest revision of the corporate governance recommendations companies are required to respond to each single recommendation based on a comply or explain principle.

Question no. 25

DIA does not agree that an additional EU monitoring body should monitor the informative quality of the information given under the national codes.

DIA will be pleased to enter into a dialogue on the issues related to the role of institutional investors on corporate governance issues. We will be pleased to answer any questions or provide further information on the matter at hand.

Yours sincerely,

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