

Swedish Ministry of Justice
Division for Real Estate and Company Law

Comments on the European Commission's draft non-binding guidelines on methodology for reporting non-financial information

The Swedish Corporate Governance Board ("SCGB") hereby submits its comments in on the European Commissions draft issue fiches for the non-binding guidelines on non-financial reporting pursuant to the Directive 2014/95/EU of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (the "Directive").

The wording of the guidelines

The SCGB has previously emphasized that there must be a high degree of flexibility for companies to identify the areas of non-financial information that are relevant for the company in question as the social impact of the companies is individual and varies depending on what the business activities are, the geographical footprint, the size of the company and various other factors. In the opinion of the SCGB, increased disclosure requirements in relation to non-financial information may never imply that a company is required to disclose information in areas that are not relevant to the company in question. The need for flexibility in the implementation of the Directive was also specifically highlighted by the European Parliament in the preparatory phase (preamble 3 of the Directive).

In the SCGB' opinion, the draft guidelines are too detailed and prescriptive. This implies a risk that the guidelines will in practice set a strong precedent for how companies apply the rules of the underlying Directive, despite the intention that the guidelines should be non-binding. This counteracts flexibility and adaptation of the reporting to circumstances that are of importance to the individual company and thereby ultimately reduce the value of the information disclosed. To fulfil the desired purpose of facilitating relevant, useful and comparable disclosure of non-financial information, the guidelines should be general and provide flexibility for each company to decide what is relevant.

Diversity Policy

The draft guidelines include a requirement for companies to disclose a description of the diversity policy applied by the company and the objectives of that policy. In the Swedish corporate governance model, the directors of the board of a listed company are nominated and

appointed by the shareholders through a shareholder-governed nomination committee procedure. A Swedish listed company cannot influence or account for the underlying considerations of the diversity policy that the shareholders, directly or through the nomination committee, choose to apply. In this respect, the draft guidelines would not be applicable in practice.

Stockholm, 23 February 2017

THE SWEDISH CORPORATE GOVERNANCE BOARD

Björn Kristiansson
Executive Director

Directorate-General for Financial Stability, Financial Services and Capital Markets Union
European Commission

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The Swedish Corporate Governance Board ("SCGB") hereby submits its comments on the European Commission's draft issue fiches for the non-binding guidelines on non-financial reporting pursuant to the Directive 2014/95/EU of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (the "Directive").

The non-binding status of the guidelines

In the opinion of the SCGB, there must be a high degree of flexibility for each company to identify the areas of non-financial information that are relevant for the company in question. The social impact of the companies is individual and varies depending on what the business activities are, the geographical footprint, the size of the company and various other factors. Further, the increased disclosure requirements in relation to non-financial information should never imply that a company is required to disclose information in areas that are not relevant to the company in question. The need for flexibility in the implementation of the Directive was also specifically highlighted by the European Parliament in the preparatory phase (preamble 3 of the Directive).

In the SCGB' opinion, the draft guidelines are too detailed and prescriptive. This implies a risk that the guidelines will in practice set a strong precedent for how companies apply the rules of the underlying Directive, despite the intention that the guidelines should be non-binding. Strict guidelines may thereby counteract the sought-for flexibility that is required to take account of the multidimensional nature of corporate social responsibility and thereby ultimately reduce the value of the information disclosed by the companies. To fulfil the desired purpose of facilitating relevant, useful and comparable disclosure of non-financial information, the guidelines should be general and provide as much flexibility as possible for each company to decide what information is relevant and should be disclosed.

Diversity Policy

The draft guidelines include a requirement for companies to disclose a description of the diversity policy applied by the company and the objectives of that policy. In the Swedish corporate governance model, in accordance to the Swedish Companies Act and the Swedish Corporate Governance Code, the directors of the board of a listed company are nominated and appointed by the shareholders through a shareholder-governed nomination committee procedure. A Swedish listed company cannot influence or account for the underlying considerations of the diversity policy that the shareholders, through the nomination committee, choose to apply. In this respect, the draft guidelines would not be applicable in practice.

Stockholm, 24 February 2017

THE SWEDISH CORPORATE GOVERNANCE BOARD

Björn Kristiansson
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