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Comments regarding the European Commission's proposed Directive on disclosure of non-financial and diversity information

The Swedish Corporate Governance Board, ("the Board") was invited by the Swedish Ministry of Justice to comment on the European Commission's proposed Directive on disclosure of non-financial and diversity information, ("the proposed Directive").

The proposed Directive is made up of two distinct parts: rules on disclosure of certain aspects of CSR information and rules on disclosure of diversity policy with regard to company boards and management. The Board welcomes the initiative concerning CSR information but is critical of the proposal on disclosure of diversity policy.

Disclosure of non-financial information pertaining to CSR issues

The Board is in favour of increased scope and greater harmonisation of the rules concerning disclosure of non-financial information pertaining to CSR issues. Unless all of the shareholders agree otherwise, the purpose of the operations of a limited company is to generate long-term profits for the owners. All companies must follow the rules and norms applicable in the territories in which they operate. In order to be profitable, not least in the long term, companies must also be aware of and handle the impact they have on society.

In order to allow shareholders to assess a company's long term survival and profit-making capability, they need information on how the company deals with the environment in which it operates. Increased disclosure requirements also mean that companies can themselves see more clearly the opportunities and risks associated with their business. It is therefore in companies' own interests to inform shareholders and markets about these issues. However, as the European Commission rightly states, too few companies disclose non-financial information today, and those companies that do issue information do so in differing ways, making comparison difficult. There are therefore sound reasons to demand greater disclosure of CSR information and greater harmonisation of the information reported.

It must be borne in mind, however, that companies' impact on society is individual, depending on their type of operations, geographical spread, size and a range of other factors. Increased disclosure requirements must not result in companies being required to report in areas that are not relevant to them. There must therefore be a large degree of freedom for companies to choose in which areas to disclose CSR information. When the information is made available, it should, however, be in a form that as far as possible enables comparison with other companies and with information issued by the company previously.

In the view of the Board, the proposed Directive fulfils these criteria, but there is reason to revise one point in the proposal. Article 46 1 (b) of the proposed Directive states that the company's CSR report is to (i) describe the company's policy concerning the particular issue, (ii) the results of the policy and

(iii) the risks associated with the issue and how the company addresses these. The Board does not agree that companies should be required to describe the results of their policies, as stated in point (ii), but is of the opinion that companies should instead be required to describe how they have complied with the policy.

Disclosure of diversity policy

According to the European Commission, a homogeneous company board selected on the basis of a certain number of criteria creates conditions for collective thinking and makes the board potentially less receptive to new ideas, which the Commission in turn claims is a problem for European stock exchange listed companies. In the eyes of the Commission, this justifies a requirement that companies produce a diversity policy for boards. The most important criteria according to the proposal are age, gender, geographical spread, (which begs the question whether this means where the individual was born, grew up, has worked previously or is currently resident), educational and background and professional experience. According to the preamble of the proposed Directive, the purpose of requirement for companies to produce diversity policies is to apply pressure to companies to have more diversified boards.

There is no scientific evidence, either theoretical or empirical, that collective thinking and narrow-mindedness is more common in homogeneously composed boards using the criteria in the proposed Directive than in those that are not composed according to these criteria, which means that the fundamental basis of the proposed Directive is deficient. In this area, the European Commission reveals a remarkable lack of insight into the responsibilities and processes. Firstly, there is no generally optimal board composition that works for every company. As every company is unique, each board needs to have a composition that is suitable for the phase of development in which the company currently finds itself. It is therefore not possible to state much more than that the board in its entirety must be as competent as possible in order to meet the needs of the company and that it must have the confidence of the shareholders, as the board is appointed to manage the property of the owners.

The Commission further states that a homogeneous company board will not be able to challenge or monitor the executive management in the way that a diversified board could. In order to challenge and monitor a powerful executive management team in a listed company, board members need knowledge and integrity. The knowledge required is often acquired through active service in the executive management of companies of a similar size or strength. In many cases, people who have previously worked in executive management make the best board directors when it comes to challenging the Chief Executive Officer, whereas directors with other backgrounds may find it more difficult to see through the information they receive from the management. A completely diversified company board according to the criteria set by the European Commission would instead be at greater risk of being too reliant on the company management.

It must be the task of the shareholders in each individual case to appoint the board that they at that time regard as the most suitable to lead the company. It should be emphasised that the owners of a company have a strong interest in choosing board directors who will safeguard and promote the interests of the shareholders. During the selection and appointment process, shareholders must consider the different risks associated with different constellations, and the possible danger of collective thinking is just one of a range of risks and possibilities. This work must be conducted every

time a board is appointed, and it cannot be decided in advance. Mandatory requirements on shareholders to determine a diversity policy mean that previous shareholders will force a certain type of board composition on current shareholders.

Sufficiently strong rules requiring consideration of aspects of diversity when appointing board directors already exist, as well as information requirements concerning the composition of boards. Rule 4.1 of the Swedish Corporate Governance Code ("the Code") states:

The board is to have a composition appropriate to the company's operations, phase of development and other relevant circumstances. The board members elected by the shareholders' meeting are collectively to exhibit diversity and breadth of qualifications, experience and background. The company is to strive for equal gender distribution on the board.

Code rule 2.6 states that the nomination committee is to explain its proposals regarding the board of directors, especially with regard to the requirements contained in Code rule 4.1, on the company's website no later than the date of issue of the notice of the shareholders' meeting.

In addition to requirements to include information on board composition etc contained in the Annual Accounts Act, the Code requires publication of the following information on each member of the company's board both before board elections and in the annual corporate governance report (Code rules 2.6 and 10.2)

- *The candidate's age, principal education and work experience*
- *any work performed for the company and other significant professional commitments*

On the issue of diversity and collective thinking, it is therefore the considered opinion of the Swedish Corporate Governance Board that no requirement for companies to produce and disclose a diversity policy should be introduced.

THE SWEDISH CORPORATE GOVERNANCE BOARD

Hans Dalborg
Chair of the Board

Björn Kristiansson
Executive Director