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SCA

Consultation - Green Paper The EU corporate governance framework, COM(2011) 164

Comments by Svenska Cellulosa Aktiebolaget SCA (publ)

Svenska Cellulosa Aktiebolaget SCA (publ) ("SCA") is a global hygiene and paper company that develops, produces and markets personal care products, tissue, packaging solutions, publication papers and forest products. SCA has sales in more than 100 countries and the annual sales in 2010 amounted to SEK 109bn.

SCA wishes to make the following comments as regards the Green Paper.

Summary

SCA is critical of the approach in the Green Paper. If the ideas presented would be implemented, this would lead to a fundamental change in corporate governance structure, the well functioning Swedish or Nordic model of self-regulation in the stock market would deteriorate and unnecessary administrative burden would be added to companies. All that will have a negative effect on the flexibility and competitiveness of European listed companies.

The Swedish corporate governance model supports strong and active shareholders. The proposals in the Green Paper restrict the possibilities for owners to govern their companies, which could hamper the creativity, the entrepreneurship and the power of initiative that constitute the basis for the market economy and its ability to create growth and wealth.

If the owners are deprived of their right to appoint board members, the private ownership is watered-down and the accountability of the owners will be weakened. Such a development risks leading to no shareholders of listed companies being prepared to assume the role as real, long-term owners.

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In addition, there is a risk that increased reporting requirements lead to companies choosing to refrain from listing, which would reduce transparency in trade and industry.

SCA is of the opinion that there is no need for stricter rules or other measures for non-financial companies. Furthermore, no evidence of the need for such measures has been demonstrated in the Green Paper.

It is very important to separate the need for rules in the financial sector from rules that apply to other business areas. The financial sector has a specific significance due to its influence and effects on the economy of a country. Thus, rules implemented on financial companies as a consequence of the financial crisis should not spill-over on non-financial companies.

Hence, SCA rejects that the Commission take any corporate governance measures or initiate any EU rules based on the proposals in the Green Paper.

Fundamental remarks

SCA is of the opinion that one must look at the aggregate effect of all of the Green Papers and consultation documents on the subject of listed companies which the Commission has presented after the financial crisis. SCA's basic position is that new rules in the area of corporate governance should only be introduced if they benefit the economy of the country, i.e. if the new rules support the market economy and increase growth. Therefore, it is necessary that the proposals be based on adequate needs and consequence analyses, which is not the case here.

Openness, and the publication of accurate and complete information which is relevant and subject to comparison, are also important for functioning trade and industry. This is because transparency generates confidence both among the general public and among investors on the capital markets. Listed companies are already subject to this requirement.

This Green Paper, the Green Paper on audit policy (COM(2010) 561) and the Commission's consultations on disclosure of non-financial information by companies and on country-by-country reporting by multinational companies, show a clear trend by the Commission to seek to introduce new, far-reaching, and more detailed rules which are poorly suited to Swedish circumstances. SCA is very concerned over such a development, which risks reducing the flexibility and competitiveness of listed companies. The Swedish model of corporate governance is also in jeopardy.

If the proposals are implemented, European listed companies risk suffering an unnecessary, heavy administrative burden and being subject to requirements for information which are not in demand from an investment perspective. In addition, there is a risk that increased reporting requirements could lead to companies opting for being outside the listed market, which would reduce transparency in trade and industry.

In the prevailing global competition, European listed companies also compete with Asian companies, which are often significantly less encumbered by regulatory requirements than Swedish and other European listed companies. It is self-evident that the administrative burdens and costs will be greater for companies subject to rules such as

those discussed in the Green Papers and the consultation documents referred to above. These include rules which require detailed accounting and financial reporting, as well as rules which state in detail the requirements for the composition of boards of directors of listed companies and the way in which they are to organise their work, the way in which various functions within the company are to be organised, and how owners exercise their ownership role, and rules which require increased reporting on CSR issues.

If listed companies are to be able to continue to create jobs and growth, they cannot be compelled to comply with unnecessarily detailed, formalistic regulatory systems at the risk of reducing their flexibility and competitiveness. Rules implemented on financial institutions and other financial companies as a consequence of the financial crisis cannot be allowed to spill-over on "ordinary" (non-financial) listed companies.

There is no need for new or stricter corporate governance rules

In the view of SCA, the aim for the EU corporate governance framework should be to create conditions for active ownership. By having active and responsible shareholders it can better be ensured that companies are run as efficiently as possible on behalf of their shareholders. The best way to promote this is through transparency on corporate governance issues, by providing correct and complete information for existing and potential shareholders to decide and act on.

Furthermore, when reviewing corporate governance rules it is important to make a distinction between owners of a company and the company. Corporate governance codes are not aimed at shareholders, but companies. Thus, more or stricter corporate governance codes rules will not necessarily lead to more active ownership since companies cannot do much to "force" shareholders to conduct active ownership. Instead imposing such rules will certainly add duties and administrative burdens on companies. Therefore, SCA believes that responsibilities that ought to be placed within the shareholders should not be addressed to the company.

This Green Paper, "The EU corporate governance framework", indicates a new aim for corporate governance: to build people's trust in the single market (page 2). SCA does not share this view. To build people's trust in the internal market should never be an aim for corporate governance. This is regardless of the fact that good corporate governance in European companies may indirectly contribute to increasing people's confidence and trust in the single market.

The Green Paper observes that "financial institutions are a special case" (page 3). SCA shares this assessment. The financial sector has a specific systemic significance due to its influence and effects on the economy of a country. Defective governance and incentive structures on the financial market led to unreasonable risk-taking by banks and other financial companies, which affected the entire economy. This became clear during the financial crisis. Accordingly, there are reasons to introduce stricter rules for financial companies.

SCA is of the opinion that those defectives in the financial sector cannot be found in non-financial listed companies, i.e. the companies which are the subject of this Green Paper. There are no reasons to believe that non-financial companies would have been less affected by the crisis had the rules discussed in the Green Paper been in place.

Neither has the Green Paper demonstrated this nor such defective corporate governance in non-financial listed companies which were hit by the financial crisis. Nevertheless, the financial crisis is the starting point for the Green Paper (see Commission MEMO/11/218 pages 1-2).

Accordingly, the Green Paper's use of the financial crisis as support for introducing new or modified rules for non-financial companies by virtue of some sort of guilt by association is wrong in principle. SCA believes that a distinction must be made between financial companies and non-financial companies ("ordinary" listed companies), and that there is no need for new or stricter rules for non-financial companies.

The approach in the Green Paper seems to be first to draw up more or less acceptable goals for corporate governance and then to point out an assortment of detailed questions without linking the goals to the problems or to the approach to the solution.

SCA believes that the lack of fundamental problem analysis and the lack of consequence analysis in the Green Paper are startling. Apparently, in the Green Paper the explicit and implicit basis is that non-financial companies also caused the financial crisis, that the general public has a deficit of trust in non-financial companies as well, and that the functionality of the economy of a country is thereby threatened. Nothing is presented to corroborate these facts. Accordingly, one interpretation is that the Green Paper lacks these central and fundamental quality requirements which must be imposed on legislative proposals.

Threat to the Swedish model

For Sweden's part, the proposals in the Green Paper entail not only an unnecessary administrative burden on companies but also, more seriously, a threat to the Swedish model of active and responsible shareholders. The proposals restrict the possibilities for Swedish shareholders to govern their companies. If the shareholders' right to govern their own property is too limited, it will hamper the creativity, the entrepreneurship and the power of initiative that constitute the basis for the market economy and its ability to create growth and wealth.

The Swedish corporate governance system, as is basically the case also for the Nordic region as a whole, is neither a mix of the two main systems (the British/American one-tier board system and the two-tier system predominantly used in Germany and some other European continental countries) nor falls into either of these categories. Rather, although used in only a few minor Member States, it should be viewed as a distinctly different corporate governance model. It may not be suitable for countries with different traditions and ownership structures but it can be concluded that it has worked well for Swedish listed companies and their shareholders. Thus, the Swedish corporate governance system is one example of good governance structure.

Corporate governance in Swedish stock exchange listed companies is regulated by a combination of written rules and generally accepted practices. The Swedish Companies Act stipulates that companies must have three decision-making bodies in a hierarchical relationship to one another: the shareholders' meeting (the company's highest decision-making body), the board of directors and the chief executive officer. The CEO is fully subordinate to the board but with far-reaching authority within these limits to carry out

the day-to-day management of the company, including hiring and firing and determining employment conditions for senior management as well as other company staff. The board is up for re-election every year. There must also be a controlling body, the statutory auditor, which is appointed by the shareholders at the shareholders' meeting. The Companies Act specifies clearly the tasks of each body and the responsibilities of the people in each of these positions.

The Swedish Code of Corporate Governance complements the Companies Act by placing higher demands on companies on certain issues, while simultaneously allowing them to deviate from rules in individual cases if it is deemed that this will lead to better corporate governance ("comply or explain"). According to the Code the shareholders' meeting's decisions on election and remuneration of the board of directors and auditor 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 nomination committee is a separate body appointed by the shareholders at the shareholders' meeting and predominantly manned by shareholder representatives. 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 article of association of the company and the interest of all shareholders. Boards are composed entirely or predominantly of non-executive directors.

A number of the Green Paper's proposals are poorly adapted to Swedish circumstances. The far-reaching, detailed regulation threatens the Swedish or Nordic model of self-regulation. This model for self-regulation has proven to be a well-functioning system with broad acceptance. Compared with legislation, self-regulation enjoys advantages in the form of support in trade and industry, possibilities for imposing stricter requirements on companies, and the ability to develop and adapt to changes more quickly. SCA therefore believes that it is of the greatest importance that it be possible to retain and further develop the Swedish self-regulation in the stock market. Soft law in the form of self-regulation should always be considered before hard law is imposed in the stock market.

The World Economic Forum has recognised Sweden as having the best corporate governance in the world. The Forum also reviewed the quality of auditing and reporting standards and Sweden was ranked second internationally.[1] SCA believes that these facts provide additional arguments for opposing the proposals in the Green Paper. Why voluntarily impair a winning concept?

No to a code for unlisted companies

Question 1: Should EU corporate governance measures take into account the size of listed companies? How? Should a differentiated and proportionate regime for small and medium-sized listed companies be established? If so, are there any appropriate definitions or thresholds? If so, please suggest ways of adapting them for SMEs where appropriate when answering the questions below.

Question 2: Should any corporate governance measures be taken at EU level for unlisted companies? Should the EU focus on promoting development and application of voluntary codes for non-listed companies?

[1] The Global Competitiveness Report 2010-2011, World Economic Forum, page 311, 1st pillar, 1.18 and 1.19.

As discussed above, SCA believes that no measures should be taken on the EU level with respect to corporate governance for ordinary listed companies since no need to do so has been demonstrated.

The introduction of separate rules for smaller listed companies risks creating competitive disadvantages, either because the definition of what constitutes a "smaller listed company" differs among Member States or because a uniform EU definition would be applied differently in different Member States (e.g. when the delimitation is made as a certain percentage of existing listed companies in the country or is based on the size of the national market). Furthermore, the introduction of thresholds always has the disadvantage of the thresholds preventing companies from growing - passing the threshold is deemed to entail such disadvantages, i.a. in the form of increased reporting requirements that the company chooses to remain below the threshold. Moreover, there is no reason in principle to impose lower corporate governance requirements on smaller listed companies than on larger listed companies. Instead, smaller listed companies can use the "comply or explain" mechanism and deviate from a rule in the code for reasons related to the size, owner structure etc. of the company, providing they explain the reason for non-compliance and describe the solution they have adopted instead. SCA therefore objects to the EU proceeding with proposals having codes tailored to smaller listed companies.

The Swedish Corporate Governance Board considered the question of whether special corporate governance rules should be drawn for smaller listed companies, when reviewing the Swedish Code in 2008. The conclusion of the Corporate Governance Board was no.

Introducing corporate governance codes for unlisted companies means that requirements are imposed on these companies and they incur costs. This is the case even if the application of the code is voluntary, since resources are required simply to understand the code's regulations and take a position on whether the company is to apply it or not; this work can be particularly onerous for a smaller company.

The Commission as well as the Member States have identified increased bureaucracy and a growing regulatory burden as a major problem for European competitiveness. It is therefore particularly surprising that the Green Paper, without well-supported reasoning, raises proposals which will apparently lead to a significantly increased regulatory burden, inconvenience, and costs not only for listed companies but also, if the proposals are implemented, for non-listed companies as well.

SCA believes that introducing corporate governance codes for unlisted companies is not consistent with the Commission's and Member States' goals of deregulating and reducing the administrative burdens for companies, particularly SMEs.

As regards unlisted companies the subsidiarity principle seems to be a hinder for EU action.

Boards of directors

Question 3: Should the EU seek to ensure that the functions and duties of the chairperson of the board of directors and the chief executive officer are clearly divided?

In a public company, the Swedish Companies Act prohibits to combine the positions of chairperson and CEO. Thus, from a Swedish point of view there is no need for EU to take further action in this respect. In the two-tier board system, such a rule would appear to have no effect, while in the one-tier board system it could possibly be useful.

SCA concludes that this is an example of an issue where a principle-based regime seems most appropriate, e.g. a rule stipulating that the same person should not have the responsibility for both the supervising function and the executive function in a listed company. Thus, general principles are laid down rather than any specific corporate governance rules. Such a principle-based EU corporate governance framework would improve corporate governance in the Member States as it leaves room for an application and interpretation that works in the different corporate governance systems used in the Member States.

Board composition

Question 4: Should recruitment policies be more specific about the profile of directors, including the chairman, to ensure that they have the right skills and that the board is suitably diverse? If so, how could that be best achieved and at what level of governance, i.e. at national, EU or international level?

Question 5: Should listed companies be required to disclose whether they have a diversity policy and, if so, describe its objectives and main content and regularly report on progress?

No. SCA believes that board composition is an issue which is best addressed in corporate governance codes, on which the principle "comply or explain" should be applied. SCA sees no need for additional EU rules with the aim to harmonize existing national rules or corporate governance codes.

SCA is of the opinion that the issue of size and composition of the board should exclusively be an issue for the owners of the company. There are two main reasons. Firstly, no other party than the owners can be expected to take a strong responsibility for the company, and the appointment of the board is the prime measure available to the owners to fulfil this responsibility.

Secondly, it is an integral part of the ownership rights to choose the people who are to manage the owners' collectively owned asset. Thus, it is fundamental that the decision on who should be board members should rest with the shareholders of the company in question. It must be up to each company's shareholders to decide themselves on the composition of the board of directors, in order to have a board with the qualifications and skills that the shareholders deem best to enable profitability and prosperity of the company. In case that in certain Member States shareholders do not have sufficient power and influence over board composition to do so, then such deficiencies should be addressed rather than detailed rules on board composition.

The most appropriate composition of the board varies from company to company. A company's needs in terms of the profile of the directors also vary over time depending i.a. on the company's size, owner structure, operations and phase of development. It is therefore neither possible nor desirable, by means of legislation or other rules, to state for each board of directors an appropriate composition which enables the board to manage the company's affairs in the most efficient and optimal manner. It would deprive the company's owners of the obvious right to appoint their own directors.

If the owners are deprived of their right to appoint board members, the private ownership is watered-down and the owners' responsibilities for their companies will be weakened. Such a development risks leading to no shareholders of listed companies being prepared to assume the role as real, long-term owners.

In order to ensure that the shareholders obtain correct information on which to base their decisions, information regarding candidates nominated for election or re-election to the board should be made available to them prior to the general meeting. Appropriately, this is regulated in corporate governance codes only.

According to the Swedish Code, the shareholders' meeting's decision on election and remuneration of the board of directors are to be prepared in a structured, clearly stated process governed by the shareholders that provides conditions for well-informed decision-making. The board is to have a size and composition that enables it to manage the company's affairs efficiently with integrity. The board members elected by the shareholders' meeting are collectively to exhibit diversity and breadth of qualifications, experience and background. SCA is of the opinion that the Swedish Code is a good way to solve the issue and that more specified rules are not needed.

The Swedish Annual Accounts Act requires a company - in accordance with the Fourth Company Law Directive on annual accounts - to annually report the division between men and women among the board members and senior executives. SCA believes that this requirement is sufficient.

Question 6: Should listed companies be required to ensure a better gender balance on boards? If so, how?

No, see above, questions 4-5. SCA believes that legislating quotas for the boards of directors of companies is an unacceptable intervention in ownership rights.

According to the Swedish Code, the company is to strive for equal gender distribution on the board. SCA believes that this requirement is sufficient.

Availability and time commitment

Question 7: Do you believe there should be a measure at EU level limiting the number of mandates a non-executive director may hold? If so, how should it be formulated?

No, see above, questions 4-5. SCA believes that there is no need for rules on limiting the number of mandates for a board member. Such a limit is against the shareholders' right to elect the board members they find best. Furthermore, it seems not possible to formulate a detailed rule limiting the number of mandates a non-executive director may hold.

According to the Swedish Code, directors are to devote the necessary time and care, and to ensure they have the competence required, to efficiently protect and promote the interests of the company and its owners.

Board evaluation

Question 8: Should listed companies be encouraged to conduct an external evaluation regularly (e.g. every three years)? If so, how could this be done?

SCA believes that it is important that listed companies regularly evaluate the work of the board of directors. However, there is no need for more rules than the existing Commission Recommendation (2005/162/EG), which has been implemented in the Swedish Code as a rule stating that the board of directors is to evaluate its work annually, using a systematic and structured process, with the aim of developing the board's working methods and efficiency. According to the Code, the results of the evaluation are to be made available to the nomination committee where relevant.

The purpose of a board evaluation should be to ensure the well-functioning of the board. Therefore, it seems appropriate that the chairman of the board, as the person with the best knowledge of how the board's work has functioned, has a central role in the evaluation. However, the result of the evaluation should not be disclosed (to anyone other than the nomination committee) due to the fact that it may contain trade secrets or sensitive information about the evaluated individuals. If this is to be regulated, it is appropriately regulated only in corporate governance codes.

Director's remuneration

Question 9: Should disclosure of remuneration policy, the annual remuneration report (a report on how the remuneration policy was implemented in the past year) and individual remuneration of executive and non-executive directors be mandatory?

Question 10: Should it be mandatory to put the remuneration policy and the remuneration report to a vote by shareholders?

SCA's basic position is that remuneration of the managing director and other company executives is primarily a question for the shareholders through the board members elected by them. The board of directors must always have the discretion, and responsibility, to employ as CEO, an individual who, on the conditions required by the situation, are considered to be the best to perform the duties deemed necessary by the board and the shareholders.

SCA is of the opinion that remuneration issues are best handled within the frame of a self-regulation that aims at companies having transparent remuneration systems, both in terms of the principles of the content of the remuneration system, towards the shareholders, and generally regarding remuneration paid, and that the companies have structured and organised processes for preparation and decisions with respect to remuneration issues. The self-regulation must be formulated taking into consideration the allocation of roles and responsibilities among the company bodies and should not contain detailed rules regarding the content of remuneration systems.

The Swedish Annual Accounts Act already includes mandatory rules concerning disclosure of information about remunerations paid. According to the Swedish Companies Act, the annual general meeting (the ordinary shareholders' meeting where the annual accounts are to be presented) is to establish guidelines for remuneration to the managing director and other company executives ("say on pay") as well as to decide individual remuneration to the board members. As a consequence of the Commission Recommendations on remuneration, the Swedish Code contains rules on monitoring and evaluating the application of these guidelines for remuneration by the remuneration committee.

Accordingly, SCA sees no need for more, or stricter, rules on an EU level in respect of remuneration.

SCA has fundamental reservations on prescribing certain issues that normally are within the decision competence of the board to be subject to resolutions by the shareholders at the shareholders' meeting (e.g. "say on pay"). Such a "delegation upwards" from the board to the shareholders' meeting may be contradictory to good corporate governance since the issues in question will be subject to normal shareholder majority ruling at the shareholders' meeting, thus involving the risk of abuse of majority powers or that shareholders let self-interest decide how they cast their votes, whereas a Swedish board is strictly bound by law to take the interests of all shareholders duly into account in all decision-making. It can also be more difficult to hold someone responsible for damages caused by such a decision.

Risk management

Question 11: Do you agree that the board should approve and take responsibility for the company's 'risk appetite' and report it meaningfully to shareholders? Should these disclosure arrangements also include relevant key societal risks?

Question 12: Do you agree that the board should ensure that the company's risk management arrangements are effective and commensurate with the company's risk profile?

SCA does not believe that there is a need for additional reporting to the shareholders in respect of risk management. The board of directors is obviously responsible for the company's risk management and for ensuring that it is efficient. The way in which the board meets this responsibility should be decided exclusively by the board of directors in question.

The provisions in the Green Paper regarding disclosure of the company's "risk appetite" appear to be based on risk management within the financial sector, where risk management is in an entirely different focus and primarily pertains to credit risks. For non-financial companies, other risks are more relevant, such as customer risks, business risks, and market risks. SCA doubts that it is possible to report such risks in a meaningful manner without revealing trade secrets. As regards non-financial companies, SCA therefore opposes additional rules in the area of risk management.

Shareholders

Question 13: Please point to any existing EU legal rules which, in your view, may contribute to inappropriate short-termism among investors and suggest how these rules could be changed to prevent such behaviour.

Question 14: Are there measures to be taken, and if so, which ones, as regards the incentive structures for and performance evaluation of asset managers managing long-term institutional investors' portfolios?

Question 15: Should EU law promote more effective monitoring of asset managers by institutional investors with regard to strategies, costs, trading and the extent to which asset managers engage with the investee companies? If so, how?

Question 16: Should EU rules require a certain independence of the asset managers' governing body, for example from its parent company, or are other (legislative) measures needed to enhance disclosure and management of conflicts of interest?

Question 17: What would be the best way for the EU to facilitate shareholder cooperation?

Questions 13-17 do not relate to corporate governance in listed companies but, rather, to the internal governance of institutional investors. SCA refrains from answering these questions.

Proxy advisors

Question 18: Should EU law require proxy advisors to be more transparent, e.g. about their analytical methods, conflicts of interest and their policy for managing them and/or whether they apply a code of conduct? If so, how can this best be achieved?

Question 19: Do you believe that other (legislative) measures are necessary, e.g. restrictions on the ability of proxy advisors to provide consulting services to investee companies?

A number of Swedish listed companies recognise the problems of proxy advisors, described in the Green Paper. SCA therefore encourages better transparency and uniform rules in this respect. However, since this is not an issue of corporate governance in listed companies, it should be dealt with separately, i.e. not in the context of this Green Paper.

Shareholder identification

Question 20: Do you see a need for a technical and/or legal European mechanism to help issuers identify their shareholders in order to facilitate dialogue on corporate governance issues? If so, do you believe this would also benefit cooperation between investors? Please provide details (e.g. objective(s) pursued, preferred instrument, frequency, level of detail and cost allocation).

Many Swedish listed companies have practical problems to get in contact with or identify major shareholders outside the EEA. Therefore, SCA welcomes initiatives that would facilitate for them to engage in a dialogue with their shareholders. Since this is not a genuine corporate governance issue, it should be dealt with separately, i.e. not in the context of this Green Paper.

Minority shareholder protection

Question 21: Do you think that minority shareholders need additional rights to represent their interests effectively in companies with controlling or dominant shareholders?

Question 22: Do you think that minority shareholders need more protection against related party transactions? If so, what measures could be taken?

No. The Swedish Companies Act already contains a number of provisions which offer protection to minority shareholders, such as requiring that certain types of decisions must be approved by the shareholders at tha shareholders' meeting and that approval requires a certain qualified majority.

The Swedish Code contains rules on independent board members. According to the Code, the majority of the directors elected by the shareholders' meeting are to be independent of the company and its executive management. At least two of the members of the board who are independent of the company and its executive management are also to be independent in relation to the company's major shareholders.

The Green Paper states that a general lack of shareholder engagement and increased short-termism has contributed to poor management accountability even in non-financial listed companies (page 11). According to the Green Paper, the Commission's solution seems to be to encourage long-term investments. SCA finds the Green Paper inconsistent as it encourages long-term investments and at the same time is doubtful as regards controlling shareholders. The Green Paper questions whether the "comply or explain" mechanism is viable in companies with controlling shareholders and states that the mechanism may be much less effective in companies with a controlling shareholder and minority shareholders (page 17). SCA does not agree and opposes the "comply or explain" mechanism being replaced or other measures introduced on the grounds mentioned in the Green Paper. A controlling shareholder is often a long-term investor and usually engages actively in the company.

Minority shareholder protection is different in different countries depending on the formation of the national company law and surrounding rules and the structure of the society. In some federal states in the US the protection of minority shareholders is secured through the possibility of receiving a judgement after suing the company's managing director or the board. In other countries minority shareholder protection rules can be found in rules stipulating that decisions has to be taken at a shareholders' meeting with a qualified majority. Against this background SCA believes that new or additional minority shareholder rights should not be introduced unless a thorough analysis has demonstrated misuse that needs to be settled. Such evidence has not been demonstrated. Thus, SCA is of the opinion that additional EU rules or measures are not required in this area.

Employee share ownership

Question 23: Are there measures to be taken, and is so, which ones, to promote at EU level employee share ownership?

The Green Paper indicates that the EU would regulate the ownership composition of listed companies. This would entail a compulsory watering down of the private ownership. SCA strongly opposes that any such measures are taken. The European Convention for the Protection of Human Rights and Fundamental Freedoms contains rules on the protection of property.

The question of whether the company should have new owners, and if so on what conditions, should be for the existing shareholders only to decide.

Monitoring and implementing corporate governance codes

Question 24: Do you agree that companies departing from the recommendations of corporate governance codes should be required to provide detailed explanations for such departures and describe the alternative solutions adopted?

Question 25: Do you agree that monitoring bodies should be authorised to check the informative quality of the explanations in the corporate governance statements and require companies to complete the explanations where necessary? If yes, what exactly should be their role?

The Green Paper highlights as a good example the Swedish Code of Corporate Governance, with its requirements for reporting on non-compliance (deviations from the Code).

The Green Paper notes both that the principle of "comply or explain" (which applies to most, if not all, corporate governance codes) is "widely supported by regulators, companies and investors" (page 18), and that in respect of the explanations given in corporate governance statements "a slow but gradual improvement in this field can already be observed" (page 19). Against this background, SCA believes that more EU rules, with requirements for detailed reporting and monitoring, are not necessary. Self-regulation in the form of codes has, in fact, broad support and the development is moving in the right direction.

The task of ensuring that companies apply the Swedish Code adequately falls to the stock exchanges on which their shares are traded, while judgements on companies' decisions to comply with or deviate from the rules of the Code are made by the actors in the capital markets. Those actors have to determine to what extent a company's compliance or non-compliance of code rules is satisfactory from an investor perspective. Thus, the Swedish Corporate Governance Board does not have a supervisory or judicatory role regarding how individual companies apply the Code. The Swedish Securities Council, whose role is to promote good practise on the securities market, may on request issue statements on how the Code should be interpreted. SCA strongly supports this system of self-regulation and opposes that national authorities should be empowered to monitor companies' explanations. It would risk destroying the "comply or explain" mechanism that is proven to function well in Sweden. Instead, it should be left to the company's stakeholder and the market to decide whether a company's explanation is sufficient.

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