

EC Report on The EU Corporate Governance Framework

Green Paper Response

Opening Remarks

JRBH supports the initiative of the European Commission to improve corporate governance across the EU.

However, we are concerned that the topic of board information has been almost entirely neglected, with not a single question requesting responses on the quality, content, objectivity and purpose of the information provided for the board.

Boards are there to supervise and steward, but their effectiveness depends on the scope and quality of the information they receive. Without access to the right information, non-executives' ability to steward and supervise is compromised. The skills and experience of the board are no remedy for poor information.

JRBH believes that improving the quality of information available to boards is one of the most powerful ways of improving board effectiveness. Well informed directors are better placed to add value and high quality board papers can help overcome the inherent information asymmetry that exists in the board room. JRBH would like best practice in this area incorporated within the EU Corporate Governance Code and enforced on a 'comply or explain' basis.

In addition to our points above, we would also like to share our thoughts on the following questions:

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?
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?
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?
8. Should listed companies be encouraged to conduct an external evaluation regularly (e.g. every three years)? If so, how could this be done?
17. What would be the best way for the EU to facilitate shareholder cooperation?
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?
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?

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?**

JRBH recommends:

We agree that the roles of CEO and Chairman should be kept separate. The separation of roles is crucial to the principle of effective supervision of the executive team and stewardship of the firm.

Separation provides further benefits: the company is protected against the potential dominance of a dysfunctional or overly powerful CEO (as the Cadbury Review of 1992 intended) and independent NEDs are supported in their role of supervision or stewardship.

JRBH would therefore recommend that the EU subscribe to the principle of separation, and that clear mandates are assigned to each role to facilitate the full effectiveness of the board.

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?**

JRBH recommends:

JRBH believes that well-functioning boards are diverse boards, bringing a wide range of perspectives, skills and experience to the table.

We recommend that a board mandate should set out the role of the board at a given point in time and should provide a description of the skills and experience required of the board. This should be a reference point for the board recruitment policy. Fully understanding the mandate would enable the board to map the appropriate mix of skills and experiences that the board requires as a whole, and then consider how each individual appointment furthers that aim.

In addition to a clear articulation of the skills and experience required, JRBH recommends that each new addition to the board should be provided with a bespoke induction, taking into consideration their background and the strengths and limitations of their expertise, in order to bring them up to speed quickly and fill any knowledge gaps. In our experience, it takes between 12-24 months for a NED to get up to speed with a new board - any process that can shorten this lead time can only improve the effectiveness of individual non-executives and the board.

Since a clear board mandate and accompanying recruitment policy (including induction processes) are key drivers of a board's effectiveness, JRBH recommends these should be mandated.

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?**

JRBH recommends:

JRBH does not believe that arbitrarily limiting the number of mandates a non-executive director may hold is the correct approach.

However, companies should be encouraged to do more to support their NEDs, helping them make more efficient, and therefore effective, use of their time through improved systems, processes and better inductions.

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

JRBH recommends:

JRBH believes that board evaluations are an important aspect of corporate governance. Performance evaluations are already common practice for most executive teams and, as such, should also be common practice for board members. However, the findings of a board evaluation can too easily be ignored.

In order to communicate board performance to shareholders and stakeholders without divulging commercially sensitive material, JRBH would recommend that companies should have to report on the following aspects of their board evaluation:

- The board composition (including an evaluation of the mix of skills and experience, the diversity of the board background, and the number of directors appointed)
 - The quality of board information (including board packs, inductions, timeliness of the process, access to external expert advice and efforts to reduce information asymmetry)
 - The effectiveness of board meetings (including the balance between supervision and stewardship and the management of risk)
 - Stakeholder engagement
 - Committee performance
 - Executive interaction
 - Individual contribution and overall dynamic
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17. What would be the best way for the EU to facilitate shareholder cooperation?

JRBH recommends:

Interaction is currently limited to the AGM or meetings throughout the year that occur in line with results announcements and 'road show' meetings. We believe there is scope for improving cooperation and for increasing representation of shareholder views in board meetings, by encouraging boards to send out a request for shareholders to outline any questions that they would like the board to consider. This could be done on an annual, bi-annual or quarterly basis.

It is our belief that opening up a regular path for communication would foster closer ties between the board and shareholders and give boards a better understanding of what is on the minds of their shareholders.

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?

JRBH recommends:

JRBH believes that the 'comply or explain' provision included in the UK Corporate Governance Codes is an effective and appropriate way of encouraging corporate governance standards across all listed companies, whilst allowing for variation in scope and compliance given unique business circumstances. Deviations from the code should be acceptable so long as a detailed and sensible explanation is provided.

In our experience, the 'comply or explain' provision is most effective where companies are open and transparent in their communications. Consequently, JRBH would advocate that companies provide more meaningful disclosure, even where they have complied with regulatory measures.

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- 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?**

JRBH recommends:

Assuming transparency and appropriate disclosure of deviations from the code, JRBH believes that market forces should ensure the explanations and level of compliance are satisfactory. However, market forces are not always enough. We therefore think a monitoring body may be necessary to ensure that bad practice does not slip through the net.