

**COMMISSION CONSULTATION ON BOARD RESPONSIBILITIES AND IMPROVING FINANCIAL AND  
CORPORATE GOVERNANCE INFORMATION**

**UNICE RESPONSE**

**PRELIMINARY REMARKS**

Although UNICE appreciates in principle that consultation takes place on these issues, we would like to voice concerns regarding the outcome of the consultation due to the methodology used: online questionnaire, vague questions allowing for only a “yes”, “no” or “don’t know” answer, non-weighting of the representativeness of respondents, deadline for response too short. We ask the European Commission to reconsider such methods and question the need for such haste on issues which require due consideration.

In addition, we deeply regret that, contrary to what was originally foreseen in the Commission Company Law and Corporate Governance Action Plan, the Commission decided to deal with these three important issues in a single consultation.

Furthermore, UNICE is of the strong opinion that all items concerning IFRS should not be considered in this consultation (see section 3) since they are already dealt with by other EU initiatives. The consultation proposes changes in the 4<sup>th</sup> and 7<sup>th</sup> Directives to regulate a number of governance-related financial accounting and disclosure issues. For these matters International Financial Reporting Standards (IFRS) are dealt with in accordance with EU Regulation No. 1606/2002. Therefore required changes in the area of financial reporting and disclosure should no longer be dealt with through changes in the 4<sup>th</sup> and 7<sup>th</sup> directive but through changes in the relevant IFRS. Consistency is key for European business and must be ensured in these areas. There should not be conflicting requirements between the afore-mentioned Directives and Regulation otherwise it will create European accounting standards that deviate from IFRS, detrimental to transparency, comparability and global recognition of financial reporting by European Companies prepared under these standards.

**1. BACKGROUND INFORMATION**

(...)

**2. CLARIFICATION OF RESPONSIBILITY FOR BOARD MEMBERS FOR FINANCIAL AND KEY NON-FINANCIAL INFORMATION**

**2.0 Should the term “responsibility” be defined at Community level?**

UNICE believes that there is no need to define responsibility for board members at EU level. As long as member states have their own company law, the definition of responsibility for board members and management ought to remain on the member state level.

**2.1 Should the responsibility be differentiated between management board members and supervisory board members?**

Different member state systems and traditions adopt different approaches to this question. Similarly and in line with UNICE's response to question 2.0, these differences underline the necessity to leave such questions to national law and codes.

**2.2 Should the responsibility be differentiated between executive and non-executive board members?**

NO. This would undermine the collegial administration of the company (without prejudice to answer 2.0)

**2.3 Should board members be allowed to limit their responsibility by disclosing their disagreement with the documents prepared under their responsibility?**

NO. See response to 2.1

**2.4 What kind of non-financial information should board members' responsibility also cover?**

UNICE considers that there is no need for the EU to intervene in this issue.

**2.5 Should board members be responsible towards ...**

- **the company only**
- **groups of shareholders holding a certain percentage of the company**
- **all shareholders**
- **all stakeholders (ie. employees, creditors, ...)**

UNICE is of the opinion that this question should be dealt with at national level. The responsibility of board members ought to be first and foremost towards the company and when applicable at national level, towards the shareholders.

**2.6 Should there be common sanctions at Community level for board members who do not comply with their responsibilities regarding financial statements and key non-financial information?**

NO. Sanctions are to be dealt with at national level. The subsidiarity principle applies in this area.

**2.7 Should board members be responsible for providing all relevant information to the auditors?**

YES but this should not be dealt with at EU level.

### **3. TRANSPARENCY IN INTRA GROUP RELATIONS AND TRANSACTIONS WITH RELATED PARTIES**

UNICE considers that these issues are covered by IFRS and it is therefore inappropriate to propose changes to the 4<sup>th</sup> and 7<sup>th</sup> Company Law Directives on these issues. In this context, “yes” or “no” answers on the substance of the questions are inappropriate.

#### **3.0 Should disclosure of transactions with related parties in the financial statements take place only at group level?**

This matter is appropriately addressed in IFRS and requires no further rule-making.

#### **3.1 Should Community law provide for common definitions for :**

- **Related party**
- **Material transactions**
- **Special Purpose Vehicles**
- **Other concepts referred to in this section**
- **Don't know**

UNICE considers that these terms are already defined by IFRS and member state's national laws.

#### **3.2 Should equivalent requirements apply for listed and unlisted parent companies?**

NO. Listed companies have to fulfil different requirements because of the public nature of their shareholders. Thus, UNICE considers that private companies have to comply with different requirements. Especially non-listed companies would be confronted with excessive burdens if they had to comply with the same requirements as large listed groups.

#### **3.3 Should companies drawing up individual accounts disclose their material transactions with related parties such as special purpose vehicles and companies incorporated offshore, including their precise economic purpose?**

Disclosure of Special Purpose Entities is already regulated by IFRS.

#### **3.4 Should material transactions with related parties that are directly or indirectly controlled by the parent company of a group be disclosed?**

The EU should clarify these requirements in such a way that they are aligned with IAS/IFRS.

#### **3.5 Should material transactions with related parties that are significantly influenced by board members of the parent company or any other company of the group be disclosed?**

Such disclosure is already regulated by IFRS.

#### **3.6 Should the key financial figures of the most important group companies be disclosed?**

UNICE believes that segment reporting of IAS/IFRS already provides sufficient information.

- 3.7 Should the parent company of a group disclose relations with related parties such as special purpose vehicles or companies incorporated offshore, including their precise economic purpose, regardless of a duty to include these in the scope of the consolidation?**

Such disclosure is already regulated by IFRS.

- 3.8 Should any company of a group disclose relations with related parties such as special purpose vehicles, companies incorporated offshore, including their precise economic purpose?**

Such disclosure is already regulated by IFRS.

- 3.9 Should any company of a group disclose significant sales of assets to another company within the group or to a third party which are directly or indirectly influenced by the group or board members?**

Such disclosure is already catered for in IFRS.

- 3.10 Should the nature and extent of cash management agreements (e.g. cash pooling) be disclosed?**

Application of IFRS (especially IAS 32) gives sufficient transparency on treasury operations.

- 3.11 Should the disclosure of the above described intra group relations and transactions with related parties be done in the notes to the accounts?**

NO

- 3.12 If not disclosed in the notes to the accounts, should the disclosure of the above be done in the annual report?**

NO

- 3.13 What other specific transactions, if any, do you think should be disclosed? Please specify.**

UNICE is of the opinion that there is no need to disclose additional information.

#### **4. DISCLOSURE ABOUT CORPORATE GOVERNANCE PRACTICES BY LISTED COMPANIES**

It is our considered opinion that corporate governance systems develop and progress in a natural way under pressure from the financial markets. This is already happening and national rules or guidelines are constantly adapting to a global regulatory environment. Adding yet another layer of EU rules in this area would therefore be perceived as over-regulation and cannot be supported by European business.

All responses below must be viewed and understood in the context of this remark.

##### **4.1 Do you agree that the corporate governance statement should ...**

- **require listed companies to disclose whether they apply a code on corporate governance or not and, if they do apply one, in what aspects they deviate from the provisions of the corporate governance code**

YES but the content of what is disclosed should be dictated by national codes and not at EU level.

- **describe key elements of corporate governance, like the independence and specialized knowledge of the board members and the members of committees and the existence and functioning of an internal control system**

UNICE members consider that such detailed information should not be required at EU level.

##### **4.2 Do you agree that, with respect to other elements of corporate governance than mentioned in question 4.1, like for instance the operation of the board, the committees and the shareholders' meeting and the channels of information, the corporate governance statement should...**

- **contain, for cases in which the corporate governance elements derive from binding national provisions, a statement which confirms the correspondence with these binding national rules**
- **inform about those corporate governance elements which differ from or go beyond national laws and provisions**

UNICE considers that above requirements should not be prescribed at EU level but rather dictated by national codes.

##### **4.3 Do you agree that the corporate governance statement should inform about shareholder rights in the case of cross-border investments?**

See response to 4.2

##### **4.4 Do you agree that the corporate governance statement should contain information on controlling shareholders?**

If the information is disclosed in the financial report it does not need to be disclosed the corporate governance statement again.

**4.5 Should the Statement contain the names of the controlling shareholders and a description of their voting rights and special control rights?**

NO. We consider that the disclosure of the participation would be sufficient.

**4.6 Should the Statement contain an overview of significant transactions between the controlling shareholders and the company in case they are not disclosed in the annual accounts or group accounts?**

NO. UNICE does not support any disclosure that goes beyond what is required under International Financial Reporting Standards.

**4.7 Should any other element than the above mentioned be included in the corporate governance statement?**

NO.

**4.8 Should the corporate governance statement be disclosed...**

**- in the annual report**

UNICE supports the disclosure of corporate governance structures concerning listed companies, through an annual corporate governance statement included in the annual financial statement provided that no audit obligation applies. It is sufficient for auditors to determine whether or not the statement has been prepared, as part of their general audit. The content of what is disclosed should be dictated by national codes and not at EU level (see response to 4.1)

**- in the notes to the annual accounts**

NO.

**4.9 Should the corporate governance statement also be published on the company's website?**

It is UNICE's opinion that this should be left to the discretion of the company

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