

Position Paper

UEAPME¹ position on the Green Paper “The EU corporate governance framework” COM (2011) 164

Introduction

UEAPME warmly welcomes the publication and the consultation of the Green Paper on the EU corporate governance framework.

The aim and objectives of the Green Paper and the consultation, however, are not very clear and sometimes quite confusing. As the title states, it is about the effectiveness of the existing framework, so exclusively targeted to listed companies. On the other hand, some questions cover both listed and non-listed companies, while other questions do not make the difference. SMEs are only mentioned a few times and are not really taken into account, while they represent 99 % of all European enterprises.

In addition, one of the reasons for the publication is *“that one of the lessons of the financial crisis is that corporate governance, until now usually based on self-regulation, was not as effective as it could have been”*². Once again, UEAPME has to stress that what went wrong in the financial sector cannot and should not simply be expanded to the whole business community. It is certainly not a reason to regulate corporate governance for non-listed companies. In our opinion, the Green Paper is then also a missed chance to have a broad discussion about the importance of corporate governance for all companies, especially unlisted ones.

The Green Paper rightly states that *“Some voluntary codes have already been drafted and initiatives taken by professional bodies at European or national level”*³.

Consequently, we do not see the need for EU-level regulation on the subject of corporate governance for non-listed companies. The principle of subsidiarity should be taken into account. Harmonisation at EU level would entail the risk that regional and local dimensions are not taken into account and would thus disregard the self regulatory character of national codes on corporate governance embedded in the legal tradition and framework of the different Member States. To our knowledge, the national regulatory framework is sufficient and self-regulation is also functioning well. In this way, the national characteristics of companies, company forms and business life in general can be taken into account. We find it absolutely necessary to rigorously assess the impacts of any possible new measure and take results into account when making decisions or proposals. Moreover, the “Think Small First” principle must be applied to the whole process.

¹ UEAPME subscribes to the European Commission’s Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

² Press Release, 5 April 2011, “Corporate governance framework for European Companies ; what needs to be improved ?”, IP/11/404

³ See footnote 17 in the Green Paper, mentioning the Belgian and Finish Codes.

UEAPME can only recommend raising awareness about existing "best practices" and voluntary codes in order to inspire European SMEs. UEAPME is willing to participate in such a campaign.

General comments

Many of the recommendations in the Green Paper are directed towards listed companies, where the Board of Directors and the effective implementation of the codes on corporate governance are more important. SME owner-managers, however, are more looking for pragmatic and understandable solutions to professionalise the functioning of their enterprise. In most of the small and medium sized companies one cannot speak about an "active Board of Directors", in which external directors are taking part in the governance.

Corporate governance for non-listed companies should include concrete and specific recommendations for family businesses. Indeed, many family companies are confronted with specific family governance problems (e.g. transfer of business, transfer of shares...). The creation of a family forum or a draft of a family charter can be part of the solution.

The aim of corporate governance and more specifically of codes on corporate governance is to provide help and support for running a company in an efficient way. It should offer owner-managers of small and medium sized companies a very practical manual that they can use to bring about profitable, sustainable growth. It has to provide some guidelines and suggestions for entrepreneurs, which they can develop further in their businesses to help them prevent major checks and even conflicts.

Corporate governance is important for all companies. Indeed, corporate governance gives a company not only a professional image in the eyes of all its stakeholders and then especially banks and financiers, but it can also bring an advantage in the recruitment market, where SMEs have quite a number of difficulties. It can also help to guarantee the continuity of a company, especially family enterprises, and more generally contribute to increasing the profitability of the company.

Non-listed SME companies are extremely diverse; therefore it is necessary to take the characteristics of each individual firm into account when developing its corporate governance. Particular attention should be paid to the nature, size and growth phase of the enterprise.

Indeed, corporate governance evolves as an enterprise grows. This evolution usually falls into different phases, from awareness raising amongst entrepreneurs about the added value corporate governance can bring for their company, to the creation of an Advisory Council, then an active Board of Directors until larger or faster-growing enterprises will need to continue to develop their corporate governance with special attention to committees.

One clear difference with corporate governance for listed enterprises is the ownership structure of non-listed enterprises. Within non-listed enterprises, ownership is usually concentrated in the hands of one or more shareholders, who often belong to the same family. In contrast to listed companies, which rely on the open capital market, non-listed enterprises can decide themselves the extent to which they follow these recommendations and how much transparency they provide.

Corporate governance should definitely not degenerate into a mass of formal rules. The spirit of recommendations for corporate governance should take priority over the form. Moreover, the best way to use these recommendations is to integrate them as far as possible into existing business procedures, in a spirit of proportionality and avoiding additional bureaucracy (and costs). Corporate governance recommendations should certainly not stifle the entrepreneurial dynamic and should therefore leave enough room for flexible interpretation.

Some specific remarks

Role of the chairman: Also in non-listed enterprises, the importance of a competent chairman cannot be underestimated. It is strongly recommended that the function of chairman of the Board of Directors should not be combined with that of the Managing Director. However, as already stated above, this aspect too depends on the type, size and growth phase of the enterprise.

UEAPME is against a measure at EU level limiting the number of mandates a non-executive director may hold. Indeed, one should not interfere with the rule of offer and demand. Limiting the number of mandates is not a solution.

Risk management policy: If an enterprise wants to be competitive, it will not be able to achieve profitability without taking certain risks. Since the continuity of an enterprise occupies a crucial place in governance, correct estimations of risk – from identifying a risk up to and including controlling it – are essential.

It is the task of the Board of Directors to determine an enterprise's risk management policy. As the basis for this the Board of Directors uses the identification and analysis of risk carried out by the management. Risk management is entrusted to the management. The Board of Directors will ensure that bodies and procedures for controlling risk are established. These bodies should report to the Board of Directors regularly.

The “comply or explain” principle means 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.

Checks: Concerning the question of whether monitoring bodies should be authorised to check the informative quality of the explanations in the corporate governance statements and to require companies to complete the explanations where necessary, UEAPME is of the opinion that control can be accepted on the “explain” part but this must not lead at all to more administrative burdens and red tape.

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For further information on this position paper, please contact:

Luc Hendrickx
 Director Enterprise Policy and External Relations
l.hendrickx@ueapme.com