

Joint Position Paper

18 February 2022

Re: EU Corporate Reporting – improving its Quality and Enforcement

Introduction

The EU Commission has issued a call for evidence and a public consultation related to corporate reporting. With regard to this, the Confederation of Swedish Enterprise, the Association for Generally Accepted Principles in the Securities Market, the Swedish Corporate Governance Board, FAR (the institute for the accountancy profession in Sweden) and the Council for Swedish Financial Reporting Supervision, wish to express our position related to issues identified by the Commission.

General Remarks

We agree with the Commission that it is very important that investors have trust in the market. However, we are not convinced that amendments of EU regulation are necessary to address the relatively few issues of corporate failures.

The ESMA-report referred to in the Consultation Paper indicates that there are many material departures from IFRS. Although seen as material in the report, only nine of the departures required reissuance of the financial reporting and seven of these relate to one country. On the contrary, most of the departures required only correction in future financial statements.

It is not easy to assess the situation in the whole EU without an in-depth analysis of the situation in each of the EU Member States. Therefore, it is important and of the essence to understand the root cause for problems related to corporate failures. This might not be a result of weak regulation. Other plausible explanations are that the applicable rules have not been followed, bad culture or other circumstances that are very difficult to address by amending rules. Isolated corporate failures due to criminal actions – even if involving a large amount of money lost – cannot be attributed to general deficiencies in regulation on EU level.

Whatever rules are in place, corporate failures will also happen in the future. Any amendments of EU legislation therefore must be carefully assessed and weighted against other measures. It is very important that any measures taken must be relevant to the problem identified and be proportionate. We are concerned that an EU intervention by adding more rules for corporate governance and audit, based on the Commission's description of problems in the call for the evidence, might just increase the administrative burden for listed companies without any real benefits for stakeholders or companies. Any proposed measures should consequently be assessed in a cost/benefit analysis. This should also be seen in the light of other measures affecting corporate reporting or corporate governance already adopted or in the pipeline by the EU, e.g. reporting according to the taxonomy, the CSRD initiative and the initiative on sustainable corporate governance.

The Swedish capital market is an important source of finance within the EU. More than 400 companies have shares admitted to trading on a regulated market in Sweden ("Listed Companies") with a total market cap of nearly 12 000 billion SEK (1 140 billion EURO). On that basis we would like to present our views of the regulatory framework for the Swedish capital market.

We believe that the quality and reliability of corporate reporting by Listed Companies in Sweden is high. There have been very few failures among Listed Companies in Sweden. We consider that this is a result of i.a. good corporate governance, high quality audits, transparent reporting and efficient supervision and enforcement. In our view, that implies that there is no factual need to amend EU regulation to make the Swedish capital market more efficient or more trusted by stakeholders.

Corporate Governance

Corporate governance in Listed Companies in Sweden is based on legal statutes and on self-regulation, manifested by the Swedish Corporate Governance Code (the Code), issued by the Swedish Corporate Governance Board.¹ It is according to the regulated markets' Rulebooks mandatory for Listed Companies to apply the Code on a comply or explain basis.

We consider that there are no question marks or deficiencies regarding the role or responsibility of the board of directors related to corporate reporting in Sweden. The basic principle is that the board members are individually responsible and accountable for their decisions.

According to Swedish company law the board is responsible for the organization and management of the company as well as the financial reporting of the company. The board shall continuously assess the economic situation of the company. Further, the board shall ensure that the book-keeping, asset management and the business of the company is organized so that it can be controlled in a reassuring way. In Listed Companies those responsibilities are further enhanced by complimentary rules regarding financial reporting and internal control in legislation and in the Code.

In Sweden, with the exception of the CEO being a board member in less than half of the Listed Companies, most board members in Listed Companies are non-executive directors. Listed Companies in Sweden are by law required to have an audit committee. In Sweden, the audit committee is either the full board of directors (with the exception of the CEO, if the CEO is also a board member), or a committee within the board. One board member/member of the audit committee must have accounting or audit competence. Members of the audit committee must not be employed by the company.

According to the company law the audit committee shall, without this affecting the responsibility and tasks of the board of directors in general:

- supervise the financial reporting of the company and make recommendations to ensure the reliability of the reports,
- supervise the effectiveness of internal control, internal audit and risk management related to financial reporting,
- be informed of the audit of the annual accounts/consolidated accounts and conclusions in the Swedish Inspectorate of Auditors' quality control of auditors,
- inform the board of directors about result of the audit and in what way the audit contributed to the reliability of the financial reports,
- supervise the independence of the auditors, especially regarding non-audit services, and
- assist in proposal to the shareholders' meeting regarding election of auditors.

The Code adds further requirements and limitations for Listed Companies. In general, the majority of board members elected by the shareholders' meeting shall be independent from the company and its executive management. At least two of the board members who are independent of the company and its executive management shall also be independent from the major shareholders of the company. If the company chooses to set up an audit committee within the board, the majority of the committee

¹ https://www.bolagsstyrning.se/the-code/current-code_3724

members shall be independent from the company and its executive management. At least one of those members shall also be independent from the company's major shareholders.

To conclude, we consider that the current situation in Sweden is satisfactory from a regulatory point of view. We believe that the acceptance and respect by stakeholders to the corporate governance principles as expressed in the Code is especially important.

The analysis by the Commission does not take into consideration the different corporate governance systems in place in the EU. It is important to ensure that corporate governance initiatives respect the differences in the legal systems in the Member States. In Sweden, the existing legal framework is already strict and reinforced by the national corporate governance code. It is primarily up to the member states to ensure that rules and codes for corporate governance are fit for purpose. If any change in regulation of corporate governance at EU level is suggested, we consider that such change must be based on a thorough cost/benefit analysis.

The EU Framework is, in certain aspects, not fully compatible with the Swedish corporate governance system, where the boards responsibility and accountability for corporate reporting is and has been a key part. The special true and fair statement has for example added nothing to the already existing Swedish rules. In systems like the Swedish one, where boards are non-executive and independent of the company and its management, the audit committee does not solve any board independence problems but is a solution for some companies to deal with the increased work burden of the board in relation to financial reporting and internal controls. Neither does EU legislation cater for the Swedish system of having auditors elected by and responsible directly to the shareholders, where the auditors also scrutinize the work of the board. The tendency in EU legislation to regard the audit committee as a separate body outside the board is also contrary to Swedish rules, where the full board is responsible for all questions that the board is to deal with. This is also relevant when the regulation requires certain board members to have certain expertise, knowledge or experience - these are questions that would be directed to and fulfilled by the board as a whole and not individual members. We therefore do not support implementing EU rules e.g. making the audit committee a separate corporate organ/body from the board of directors. This would create a significant deviation from Swedish corporate governance principles without any benefits for stakeholders.

Audit

According to Swedish law, the auditor is elected by the shareholders' meeting who also resolve on the auditor's remuneration, and the Code require that the shareholder-led nomination committee proposes auditors and auditor fees. The auditors shall audit the financial reports as well as the management of the company by the board of directors and the CEO. This means that the scope of statutory audit in Sweden is wider than in many other countries. The auditor shall express an audit opinion on the financial reports and on the management report. The auditor shall also express an opinion on if the board of directors and the CEO shall be given a leave of responsibility and include a note of criticism in the audit report if a board member or a CEO has taken an action that might lead to a liability to the company or in some other way has deviated from the Companies Act, applicable law for financial reporting or the articles of association.

Audits in Sweden are performed applying International Standards on Auditing (ISA), issued by the International Auditing and Assurance Standards Board (IAASB), complemented by standards issued by the professional organization FAR related to Swedish auditing matters (e.g. management audit).

As for the question of markets failures and audit, we do not agree that there is a need for enhanced regulation. We are of the opinion that audits shall continue to be performed by applying ISA. Instead of amending EU rules, we believe that a better way is to support developments at the global level. Any

forthcoming adjustments to existing standards and development of new standards, e.g. sustainability assurance standards, shall thus be done by the IAASB.

We note the EU in its call for evidence lists a number of issues, not only related to corporate failures but also brings about a review of the EU Commission audit package adopted in 2014. One learning point from 2014 is that it is important not mix up different issues. Our overall view is that the EU in 2014 tried to solve a number of issues, e.g. market concentration in the audit industry, audit quality, independence etc. without assessing the effects of policy objectives that are incompatible with each other.

According to our view stricter rules on audit firm rotation (including cooling off rules) combined with tightened rules on provision of non-audit services (NAS) might have led to an even higher degree of market concentration for audit services for Public Interest Entities (PIEs).

Non-audit services are not a homogenous group of services. Today, non-audit services include not only advisory services but also all other assurance services than statutory audit such as limited review of interim reports and assurance on sustainability reports. Such services are often closely linked to financial statements audit and third parties take comfort from auditor's involvement. Assurance services do not compromise auditor's independence and thus should be excluded from cap calculations as per Article 4 of the Audit Regulation.

Audit Supervision

Auditors in Sweden are required to perform an audit in accordance with ISA and good auditing practice (god revisionssed). The Swedish Inspectorate of Auditors (RI), which is a government agency, is responsible for the oversight over auditors and audit firms. The professional organization for auditors in Sweden, FAR, is responsible for issuing guidance in the form of recommendations and pronouncements for good auditing practice. RI has the mandate to interpret and evaluate the recommendations and pronouncements issued by FAR and thus determine good auditing practice. RI exercises this authority mainly by issuing decisions in individual disciplinary cases. Ultimate responsibility for determining good auditing practice lies with the courts of law.

To conclude, we consider that the Swedish audit supervisory system is robust, transparent and fulfils its role in a very efficient way. We therefore do not see a need to amend EU rules to improve the quality of audit supervision in Sweden. We do not support the creation of a European audit supervisory agency with a direct oversight or supervisory mandate over (some) auditors or audit firms. However, we can see the benefits of an enhanced coordination of supervision within the Member States.

Corporate Reporting Supervision

Since 2019, the Council for Swedish Financial Reporting Supervision (the Council) reviews the annual and semi-annual reports of companies that have Sweden as a home Member State and financial instruments listed on a regulated market, primarily companies with securities listed on Nasdaq Stockholm and Nordic Growth Market (NGM Equity and Nordic Derivatives Exchange XNDX).

The review is carried out by delegation from the Swedish Financial Supervisory Authority (Finansinspektionen, FI), which has ultimate responsibility for the supervision and is authorized to enforce sanctions in the event of violation. The Council is an independent non-governmental body and part of the Swedish Association for Generally Accepted Principles in the Securities Market and as such part of the self-regulation of the Swedish financial market.

This organization of review replaced the previous regime, where each of the stock exchanges were responsible for the oversight of the financial reports of Swedish companies listed there. By setting up

the Council, the resources for oversight increased significantly. The Council is governed by applicable Swedish laws, FI regulations and the ESMA guidelines for supervision of financial information. Further, the Council shall adhere to other ESMA guidelines that pertain to the Council's activities as applicable. Due to the delegation from FI and of the nature of the work to be carried out, the Council is bound by specific sections of Swedish administrative law, e.g., regarding confidentiality and conflict of interest. According to applicable FI regulations governing the Council, quarterly meetings are held between the Council and the FI in order to exchange information. In addition, the parties shall meet in order to exchange information upon request of any of them. As with the Swedish Corporate Governance Board issuing the Code for corporate governance, we consider that the acceptance and respect from stakeholders is a very important aspect enhancing the credibility of the Council.

The Council actively participates in the work of ESMA within the framework of the European Enforcers Coordination Sessions (EECS). The Council is also currently participating in two underlying working groups: the group for non-financial reporting (Narrative Reporting Working Group) and the group for financial institutions (Financial Institution Task Force). The Council consults with the FI in order to reach a common position on issues arising from coordination within the EU.

Our understanding is that the FI is satisfied with the organization and independence of the Council. Whatever concerns that might have been raised regarding the organization of corporate reporting oversight in Germany in the aftermath of the Wirecard case has not been present in Sweden. Our conclusion is therefore that there is no need to amend EU regulations or ESMA Guidelines in order to improve corporate reporting supervision in Sweden. We do not support a uniform model within the EU for corporate reporting supervision. We are also not in favor of giving ESMA direct oversight powers over companies.