SWEDISH
CORPORATE
GOVERNANCE BOARD

Annual report 2018

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A word from the Chair of the Board

In recent years, I have often had occasion to comment on and discuss the threats to the Swedish self-regulation model, threats that come both from forces in the world around us and domestic critics.

One example is that the European Union, especially the Commission, tries to involve itself in the detail of corporate governance issues, despite the fact that it has not been possible (and is unlikely to be possible) to harmonise underlying company law with regard to the structure of companies. In recent years, this problem has been reinforced by the fact that the European Parliament has spiced up the Commission's proposals with its own, often bizarre, additions, many times when the process had come to close to completion.

Another threat is a global capital market with investors who may seek conformity at the expense of individual countries' need for flexibility.

A third threat is what I would like to call inadvertently domestic "sniping" when someone does not receive support for their interpretation of an individual rule and hastily concludes that the entire Swedish model is wrong.

The Swedish – and Nordic – corporate governance model has proved successful for a very long time. In principle, we have more multinational companies per inhabitant than any other country in the world. The Stockholm stock exchange has been one of the world's highest yielding markets over long periods of time. The number of "scandals" really worth the name is comparatively low. And a contributing factor to this is the flexible framework created by self-regulation, which is essential for companies in one of the world's most export-dependent countries.

Self-regulation facilitates a speedy regulatory process, effective rules adapted to the market with few side effects and preliminary or retrospective rulings by the market's own "court of law", the Swedish Securities Council.

Given that we are convinced that this is a system worth fighting to preserve, what can we do? This has been a key question in the Swedish Corporate Governance Board's strategic work in recent years, which has resulted to the following strategic priorities:

- A cohesive Nordic approach is a feasible and important way to defend the Swedish and the fundamentally similar Nordic corporate governance models. Together, the Nordic countries would place 12th in the G20 group and we will be an even more powerful voice within Europe. Our plan therefore includes at its core the desire to seek to deepen cooperation with our Nordic colleagues. Within this cooperation, we can also be inspired by the successful Nordic cooperation in the field of auditing. With Nordic cohesion and coordination, we aim to become a major and significant player in international work.
- Through increased dialogue and dissemination of knowledge in the international capital market, the Board hopes to contribute to a better understanding of the benefits of the Swedish corporate governance model. Additionally, within the EU, globally and at

home, there is a need for more information and explanation about the Swedish model. We must describe the characteristics of Swedish corporate governance – regarding both company law and self-regulation.

- The threats to our system show that we constantly need to monitor developments involving factors and actors that can impact us in Sweden. One example of this is the South African King IV report, which has had a major impact in the international debate. The report is interesting reading, contains a great deal of thought-provoking analysis and is a source of inspiration, primarily with regard to the Anglo-Saxon corporate governance tradition. However, it focuses on many different stakeholder groups and can result in boards and management referring to differing, hard-to-measure objectives when it comes to their responsibility for the governance of a company vis-à-vis the shareholders. This is in stark contrast to the Swedish, more shareholder-oriented perspective, with a long-term profit interest at its core, which in itself incorporates various sustainability aspects.

We will of course also continue to strive for the continuous development of the Swedish Corporate Governance Code and good practices in the Swedish stock market. This is the basis for our activities and we wish to continue this work in close cooperation with all of our stakeholders. And it is my sincere hope that the broad consensus among the corporate sector, the investment community, politicians and legislators on the importance of defending the Swedish model will help us in this work as we move forward.

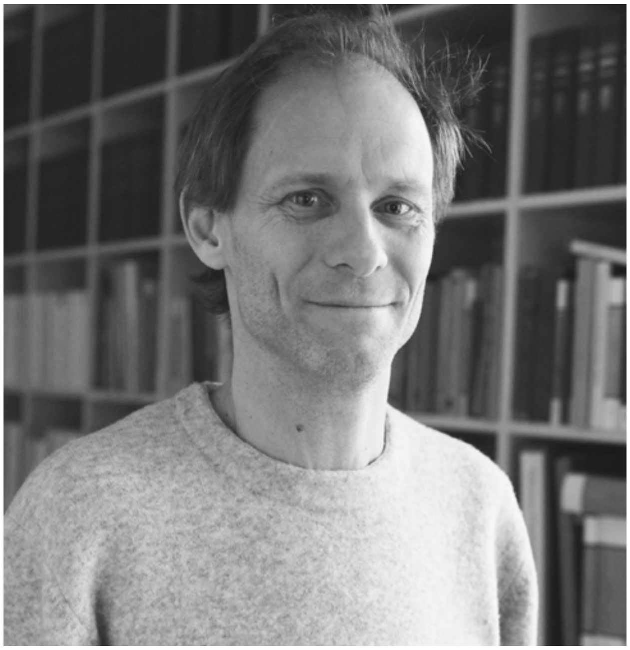
Nacka, June 2018

Arne Karlsson
Chair of the Board

A word from the Executive Director

The work of the Swedish Corporate Governance Board during the past “corporate governance year”, (our name for the period between the annual general meetings of listed companies), has been heavily influenced by the changes to the Shareholder Rights Directive. This includes issues related to “say on pay”, .i.e. the shareholders’ meeting’s influence over remuneration guidelines for the executive management and the new remuneration report; transactions between related parties, i.e. transactions between a company and its management or major shareholders; communication between companies and their shareholders; and a number of other issues . Unfortunately, much of the directive was hastily cobbled together, which made its implementation complicated and laborious. The Board has assisted the commission that is to propose how the directive should be implemented and which has also been asked to propose amendments to the “Leo rules” in the Swedish Companies Act. This has prompted several questions about the design of self-regulation in this area, the division of responsibility between the Board and the Swedish Securities Council, and the need to take a bigger step, not least with regards to the regulation of remuneration of executives and incentive programs. The concrete work on regulation will begin this year and we hope to at least be able to simplify and improve the self-regulation framework that is in place today – the Code and the rulings of the Swedish Securities Council – regarding remuneration issues.

The takeover rules have also been updated in two steps during the year, and our Swedish regulations in this area are of the highest international class. As with previous reviews, the secretariat that worked with the changes was assisted by a broad reference group with high competence and long experience of takeover bids. Without the contributions of the reference group, it would not have been possible to complete this work. The reference group participated in the process without any financial remuneration or other compensation, and I would like to take this opportunity to thank all those who contributed.



In addition to working with the Shareholder Rights Directive, the Board will be reviewing the Code during the coming year to see how it can be further improved. Similarly, we will be revisiting the rules issued by the Board in 2015 regarding private placement of shares. It is of utmost importance that we are in constant dialogue with the listed companies and their executive management teams, boards and shareholders so that they are kept up to date about our work and our initiatives and that we know what issues are foremost on the agendas of their stakeholders. We will begin with a series of round table dialogues and other activities in order to gather users’ views and experiences. We therefore welcome any comments you may have on the existing rules in the Corporate Governance Code’s (or on any provisions that may not currently be included), on the Board’s other regulatory frameworks and on the work of the Board in general.

Visby, June 2018

Björn Kristiansson
Executive Director

I. ACTIVITY REPORT

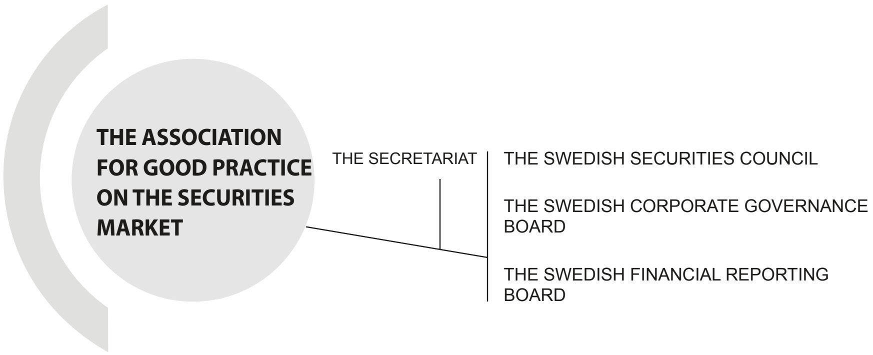
This part of the annual report describes the work of the Board during corporate governance year 2017–2018 and discusses current issues regarding the Swedish Corporate Governance Code and Swedish corporate governance in general.

The Mission of the Swedish Corporate Governance Board

The Board is one of three bodies that constitute the Association for Generally Accepted Principles in the Securities Market, an association set up in 2005 to oversee Swedish self-regulation within the securities market. The other two bodies in the association are the Swedish Securities Council and the Swedish Financial Reporting Board. The principals of the Association are nine organisations in the private corporate sector. See the illustration below and www.godsedpavpmarknaden.se for more details.

The original and still primary role of the Board is to promote the positive development of Swedish corporate governance, mainly by ensuring that Sweden constantly has a modern, relevant and effective code for corporate governance in stock exchange listed companies. The Board also works internationally to increase awareness of Swedish corporate governance and the Swedish securities market, and to safeguard and promote Swedish interests within these fields. In May 2010, the role of the Swedish Corporate Governance Board was widened to include responsibility for issues previously handled by Näringslivets Börskommitté, the Swedish Industry and Commerce Stock Exchange Committee, namely to promote generally accepted principles in the Swedish securities market by issuing rules regarding good practice, such as rules concerning takeovers. The work of the Board in these areas is described separately in this annual report

The role of the Board in promoting Swedish corporate governance is to determine norms for good governance



of listed companies. It does this by ensuring that the Swedish Corporate Governance Code remains appropriate and relevant, not only in the Swedish context, but also with regard to international developments.

The Board is also an active contributor to international forums, including the European Union, promoting Swedish interests in the field of corporate governance. Another area of continued importance for the Board in recent years has been as a referral body on corporate governance issues.

The Board has no supervisory or adjudicative role regarding individual companies' application of the Code. Ensuring that companies apply the Code in accordance with stock exchange regulations and the Annual Accounts Act is the responsibility of the company auditor and the respective exchanges. The responsibility for evaluating and judging companies concerning their compliance or non-compliance with individual rules in the Code, however, lies with the actors on the capital markets. It is the current and future shareholders and their advisers who ultimately decide whether a company's application of the Code inspires confidence or not, and how that affects their view of the company's shares as an investment.

Interpretation of the Code is not a matter for the Board either. This is the responsibility of the Swedish Securities Council, Aktiemarknadsnämnden, which issues interpretations on request. This is discussed in detail later in this report.

The Work of the Board during the Year

In 2017, the Board initially consisted of Arne Karlsson (Chair), Eva Hägg (Deputy Chair), Peter Clemedtson, Göran Espelund, Per Lekvall, Ulla Litzén, Annika Lundius, Marianne Nilsson, Olle Nordström, Lena Olving and Lars Thalén, as well as Executive Director Björn Kristiansson. At the parent organisation's annual meeting in March 2017, Ulla Litzén left the Board, and Ingrid Bonde was elected. Also, Andreas Gustafsson continued as a co-opted member of the Board.

The Board held four formal meetings during the year. Additionally, discussion and consultation took place by e-mail and telephone when required. A number of meetings for sub-committees and working groups also took place.

The Board's work during the year is summarised below.

Strategy 2017–2020

During 2016 and 2017, the Board implemented a major strategic project to discuss and develop the Board's activity plan and priorities for the coming years. The Board has not previously had a comprehensive strategy document. In May 2017, the Board adopted the Strategy 2017–2020. The next step was to operationalise this strategy document, and this operationalisation plan has now been integrated into the work of the Board. There are, however, still some strategic issues that require further work, primarily the role of the Board with regard to influencing the issuing of corporate governance norms by the EU and how the Board is to handle the matters previously handled by the Swedish Industry and Commerce Stock Exchange Committee, namely issuing rules on generally good practice in the Swedish stock market where required. This is discussed further below under Key issues for 2018.

Follow up of the Code and Swedish corporate governance

In order to monitor that the Code is working as intended and to ascertain whether any modifications to the Code should be considered, the Board regularly conducts a variety of surveys of how the rules of the Code are applied in practice. The most important of these is its examination of Code companies' corporate governance reports and the corporate governance information on companies' websites, which it has carried out every year since the original version of the Code was introduced in 2005. Since 2015, this annual survey has been conducted on the Board's behalf by SIS Ägarservice. The results of the latest survey are described in Section II of this report.

Revision of the Code

As well as its annual examination of companies' corporate governance information, the Board continuously monitors and analyses how companies apply the Code through dialogue with its users and through structured surveys. It also monitors and analyses the general debate on the subject, changes in legislation and regulations concerning corporate governance, developments in other countries and academic research in the field. Based on this work and other relevant background information, the Board continuously considers the need for limited modifications to the Code or more general reviews of the entire Code.

The most recent major revision of the Code took place in 2015. This resulted in a number of Board Instructions being issued, and a new, revised version of the Code came into force on 1 December 2016. This version of the code is the one that currently applies.

The Corporate Governance Board is to commence a new review of the Code in 2018. This work is described below under Key issues for 2018.

Gender balance on the boards of stock exchange listed companies

Since its introduction, the Swedish Corporate Governance Code has stipulated that listed companies are to strive for equal gender distribution on their boards. In their explanations of their proposals and nominations, nomination committees are to consider the Code's rule on gender balance.

In 2014, the Swedish Corporate Governance Board issued an Instruction which contained several initiatives for achieving improved gender balance on the boards of listed companies, and this came into force on 1 January 2015. The Instruction was then implemented into the Code as part of the 2015 revision.

Additionally, the Board has stated that it would like to see owners increase the pace of change and move towards the total share of the least represented gender on boards of listed companies reaching around 40 per cent by 2020. It also stated that by 2017, major companies should already have reached an average of 35 per cent and smaller companies should be approaching 30 per cent.

The Corporate Governance Board initially conducted an assessment of gender balance on the boards of listed companies twice a year – at the beginning of January, ahead of the annual general meetings season, and in July, when the annual general meetings season is over. The Board has now decided to conduct this assessment once a year, in July. The information acquired from these assessments is available on the Board's website, www.bolagsstyrning.se. The statistics for 2017 refer to the figures as of 10 June that year. The statistics for June 2018 were not yet available at the time of this annual report's publication.

The Board's calculation methods are as follows:

The Corporate Governance Board

The basis of the Board's calculation model is that only Swedish, not foreign, companies whose shares are admitted to trading on a Swedish regulated market (Nasdaq Stockholm and NGM Equity) are to be included, as it is these companies that must comply with Swedish company law. A follow-up of the Board's level of ambition shows the following development between measurements in June 2016 and June 2017.

1. *An approximate proportion of at least 40 per cent for each gender following the AGM season in 2020.* This includes all members of company boards elected by shareholders' meetings, (meaning it includes CEOs who are elected to the board, but it does not include employee representatives), in all Swedish listed companies. On 10 June 2017, the proportion of female board members was 33.2 per cent, compared with 31.5 per cent on 10 June 2016, which is an increase of 1.7 percentage points.
2. *An approximate proportion of at least 35 per cent for each gender in large companies following the AGM season in 2017.* This includes all board members of Swedish Large Cap companies elected by shareholders' meetings. On 10 June 2017, the proportion of female board members was 39.0 per cent, compared with 36.2 per cent on 10 June 2016, which is an increase of 2.8 percentage points.
3. *An approximate proportion of at least 35 per cent for each gender in smaller companies following the AGM season in 2017.* This includes all board members of Swedish Mid and Small Cap companies and Swedish companies on the NGM Equity exchange elected by shareholders' meetings. On 10 June 2017, the proportion of female directors was 30.3 per cent, compared with 29.5 per cent on 10 June 2016, which is an increase of 0.9 percentage points.

The European Commission

The Board has previously also produced statistics using the European Commission's calculation model, meaning that SMEs (small and medium-sized enterprises) are excluded, board members who are also members of the executive management are excluded and employee representatives on boards are included. The Board has decided to discontinue the production of specific statistics using this calculation method. The proportion of women elected to the boards of Swedish listed Companies calculated according to the EU Commission's model would have been higher compared with the statistics produced by the Board.

Employee representatives

The employee organisations appoint the employee representatives. The proportion of women among employee representatives in all Swedish listed companies on 10 June 2017 was 31.0 per cent, compared with 30.1 per cent on 10 June 2016, i.e. an increase of 0.9 percentage points.

Rules on generally accepted principles in the Swedish securities market

In its role of promoting generally accepted principles in the Swedish securities market, a role it took over from Näringslivets Börskommitté, the Swedish Industry and Commerce Stock Exchange Committee, the Swedish Corporate Governance Board is to

- monitor the application of rules, including those concerning takeover bids
- monitor legislation and other regulation, as well as academic research into stock market issues in Sweden and internationally, in order to devise any rules or changes to existing rules that are deemed appropriate and ensure that these have the support and acceptance of the parties concerned.

Takeover rules

As outlined above, the Board is responsible for proposing changes to the rules governing takeovers on the Nasdaq OMX Stockholm and NGM markets. The Board itself issues equivalent rules for the First North, Nordic MTF and Spotlight Stock Market (formerly AktieTorget) trading platforms.

In February 2017, the Board set up a working group, under the leadership of Professor Rolf Skog, Executive Director of the Swedish Securities Council, assisted by Erik Sjöman, attorney at law, Björn Kristiansson, Executive Director of the Board, and the Board's legal associate, Tobias Hultén, to conduct a review of the existing takeover rules. As in previous work to formulate and revise takeover rules, the process took place in close consultation with a broad reference group.

New rules were presented in autumn 2017 and came into force on 1 November 2017. The main points of the new rules were as follows:

- Indirect acquisition – if the offeror acquires control of a holding company which, in turn, owns shares in the offeree company, the terms of the indirect acquisition need to be taken into account when fixing the minimum permitted bid price. The offeror is obliged to disclose how the purchase price has been allocated.
- Payment of the consideration – the prerequisites for submitting a public bid have been tightened. Any government authorisation required in order for the offeror to pay the consideration must have been acquired before the offer is announced.
- General updates – including a reminder that, if deemed necessary, the Swedish Securities Council may issue instructions on how the parties to a bidding war should act.
- Sanctions – the maximum penalty for violation of the rules has been raised to SEK 500 million.

Some matters, however, were not addressed in time for the launch of the new rules. The working group therefore continued its work together with the reference group at the end of 2017 and the beginning of 2018. A new revised version of the takeover rules then came into force on 1 April 2018. This is the version that currently applies. The new rules contain the following new features:

- New procedural rules regarding regulatory approvals – the offeror is to withdraw its offer as soon as possible or apply for a dispensation from the Swedish Securities Council if it becomes evident that the required regulatory approvals will not have been received within the maximum nine-month acceptance period.
- Right to return with a new offer – an offeror that has withdrawn an offer due to the rules governing the maximum acceptance period and that subsequently receives the required regulatory approvals is permitted to return with a renewed offer, without prejudice to the general rule that a new offer may not be submitted within 12 months of the previous offer.

Rules on private placements in listed companies

The Swedish Corporate Governance Board has issued a recommendation regarding private placements in listed companies. The recommendation is applicable to placements announced on or after January 2015.

The recommendation states that rights issues continue to be the preferred option for cash issues. On condition that it is permissible according to the company law, i.e. it is objectively regarded as in the shareholders' interest to deviate from preferential rights, it is also normally acceptable with regard to generally accepted principles in the stock market that a cash issue deviates from the shareholders' preferential rights. Special attention must be paid, however, to ensure that no unfair advantage to any shareholders occurs that is to the detriment of other shareholders. The recommendation also states that any issue price that is set in a competitive manner is acceptable from the perspective of generally accepted principles in the stock market.

The Board accepts that the recommendation is fairly general in nature. In most cases, however, there should be no doubt about whether a new share issue or private placement is compatible with the recommendation or not, but should any doubts exist, the Board assumes that the matter of whether the share issue contravenes the recommendation will be submitted to the Swedish Securities Council for a ruling. The Board and the Council will monitor developments in this area and the Board is prepared to clarify the recommendation further if necessary.

In its ruling AMN 2016:28, the Council declared that the Board's recommendation expresses what in some respects is good practice in the stock market for cash issues of shares, warrants and convertibles in limited companies whose shares are admitted to trading on a regulated market or traded on the First North, Nordic MTF or AktieTorget trading platforms. The scope of the recommendation coincides with the scope of AMN 2002:02. The Council's ruling AMN 2016:28 confirmed that ruling AMN 2002:02 can now be considered to have been replaced in its entirety by the Board's recommendation. A prerequisite for whether a private placement is to be considered compatible with good practice in the stock market is therefore that the instructions in the recommendation are observed.

Referrals etc.

A key role of the Swedish Corporate Governance Board is as a referral body for legislation and the work of committees of inquiry in the field of corporate governance, concerning both the development of rules in Sweden and various forms of regulatory initiative from the EU.

The referral work of the Board has increased each year, not least with regard to regulations from the EU. This is because the European Commission has been intensifying its work to expand and harmonise regulation of corporate governance within the European Union in the wake of the finance crisis. This has led to a series of recommendations, green papers, action plans and proposed directives on various aspects of corporate governance in different sectors in the past six years.

In 2017, the Board submitted written comments on the following:

- The Board gave its views on the European Commission's draft on non-binding guidelines for reporting non-financial information. The Board's general opinion was that the draft guidelines were far too detailed and in many respects prescriptive, which in practice would risk making companies regard the guidelines as instructions on how to apply them.
- The Board submitted a formal response to the Financial Supervisory Authority's memorandum entitled "A new system for accounting supervision", in which the Board supported the Authority's proposal to allow future accounting to fall within the self-regulation system. For those areas that are suitable for self-regulation, this form of regulation brings many advantages, not least through well-established and high quality regulation and its adaptability and capacity for rapid change. In the view of the Board, experience from the EU countries that have delegated continuous oversight of accounting to self-regulatory bodies shows that accounting supervision is an area that is well suited to such a system.

All of the Board's statements and formal comments can be found on the Board's website, www.bolagsstyrning.se.

Action plan on corporate governance in listed companies and company law

As early as January 2011, the Board wrote a position paper in an effort to influence the proposed regulations on corporate governance that Michel Barnier, Commissioner for Internal Market and Services, had announced in late 2010 would be contained in the Commission's green paper on corporate governance in listed companies. On 5 April 2011, the European Commission presented its green paper on a framework for corporate governance in the EU.

The Swedish Ministry of Justice then requested comments on the green paper, and the Board submitted a response to the Ministry on 20 April 2011. In short, the Board's position was that no further need for regulation of corporate governance for listed companies had been shown by the Commission and that the level of detail in the proposed rules, particularly those concerning boards of directors, where existing Swedish rules in principle already regulate the issues the green paper addresses, was far too great. The Board advocated a more principles based form of regulation instead of the detailed compromise proposals presented by the Commission, which are poorly suited to the circumstances of Sweden and many other European countries. It is the view of the Corporate Governance Board that there is no evidence in the green paper that further regulation is required, not least against the background of the financial costs of new rules for the companies concerned, as well as the reduced competitiveness in relation to companies from non-European countries and companies with other ownership models, such as private equity, that would result from further regulation. The Board therefore opposed the majority of the proposals in the green paper.

The Board then produced a separate formal response to the green paper, based on these opinions, to the European Commission in July 2011. This was followed by intensive lobbying in Brussels.

In light of the extensive criticism of the proposals in the green paper from many member states, the Commission decided not to present any concrete proposed regulation during the autumn of 2011 as it had planned. Instead, it launched an open web-based consultation on company law in the EU at the start of 2012, which the Board duly answered. When the responses to the consultation had been compiled, along with the formal comments received on the green paper, the Commission issued a coordinated report on how it intended to proceed with respect to both corporate governance and company law in general. This took the form of an action plan on corporate governance in listed companies and company law, which was presented by the European Commission in December 2012.

The action plan consists of three main areas:
1. Enhancing transparency;
2. Engaging shareholders; and
3. Improving the framework for cross-border operations of EU companies.

The section on enhancing transparency includes a number of different proposals. The first of these is the introduction of a requirement to report on diversity within the board of directors and on how the company manages non-financial risks. The proposal is to be implemented through amendment of the EU Accounting Directive. The Board submitted a formal response to this proposal to the Swedish government in 2013, expressing support for the requirements concerning CSR reports. However, the Board did not believe that the proposal concerning disclosure of diversity policy should be implemented. The amendments to the Directive were implemented by the European Commission in 2014, and in spring 2015, the Swedish government announced a memorandum on companies’ reporting on sustainability and diversity policy (Ds 2014:45) with regard to the directive’s implementation in Sweden. In its response in March 2015, the Board expressed criticism that the implementation proposal covers a far greater number of companies than the directive requires and was also critical of some of the details in the information requirements. On the matter of the requirement to have a written diversity policy, the Board suggested that companies could use the Code’s stipulations regarding the composition of the company’s board, Code rule 4.1, as their diversity policy. The proposal was referred to the Council on Legislation on 20 May 2016. The changes to the law came into force on 1 December 2016 and were first applied for the financial year starting immediately after 31 December 2016. As a result, the Board issued Instruction 2016:1, which contained some changes to the Code, and these amendments have now been incorporated into the Revised Code that applies from 1 December 2016.

In early 2014, two further proposals from the Commission’s action plan were leaked. The first of these was a draft recommendation on corporate governance, aimed at improving companies’ corporate governance reporting, especially with regard to the quality of explanations provided by companies that depart from corporate governance codes. The Board duly submitted its views on the proposals to the Swedish Ministry of Justice.

On 9 April, the Commission presented its recommendation on the quality of corporate governance reporting, (“comply or explain”). It also issued a draft of amendments to the Shareholder Rights Directive. The latter was further negotiated within the European Union. The Executive Director of the Corporate Governance Board participated in the Swedish government’s consultation meetings regarding the government’s position in these negotiations.

In the spring of 2017, the Directive on Changes to the Shareholders' Rights Directive (European Parliament and Council Directive 2017/828 of 17 May 2017 amending Directive 2007/36/EC regarding encouragement of shareholders' long-term commitment) was finally presented. The Directive includes provisions for measures to facilitate listed companies to identify their shareholders, requirements for institutional owners' to publish their investment and engagement policies, transparency requirements for proxy advisers, as well as requirements for increased shareholder influence in matters relating to remuneration of company boards and management and with regard to transactions between related parties.

The directive is to be implemented no later than 10 June 2019. The Executive Director of the Board has been appointed as an expert in the commission that has been asked to propose how it can be implemented into Swedish law. The commission of inquiry is also to consider changes to Chapter 16 of the Companies Act, known as the Leo Rules. The investigation was due to have submitted its proposals as this annual report went to press. The implications of these proposals may have for the activities of the Board are discussed in more detail below under Key issues for 2018.

A further proposal contained in the main area Increased Transparency was adopted by the European Commission in April 2016. This proposal amends the Accounting Directive 2013/34/EU and obliges multinational companies to publish annual reports country-by-country on issues such as the company's profits and the taxes that the company pays. Country-by-country reporting was a major issue in the negotiations on the Shareholder Rights Directive.

In accordance with the Action Plan, on 3 December 2015 the Commission adopted a proposal to codify and combine a number of directives in the field of company law. The objective of this proposal is to make company law within the EU more reader-friendly and to reduce the risk of future inconsistency. The proposal does not involve any material changes to the directives.

These proposals should mean that the action plan initiated by Barnier will no longer generate any new legislative proposals from the Commission.

International and Nordic work

As in previous years, the Board was an active participant in international debate on corporate governance issues in 2017 and 2018, with the aim of promoting Swedish interests and increasing knowledge and understanding of Swedish corporate governance internationally. The Board took part in several consultation meetings with representatives of the European Commission through its membership of the European Corporate Governance Code Network, ECGCN, a network of national corporate governance committees of EU member states. The ECGCN, (www.ecgcn.org), is not a formal cooperation, but the European Commission has granted it the status of a special group to consult on corporate governance issues within the community.

The Board also contributes financially to the EU monitoring work of both StyrelseAkademien, The Swedish Academy of Board Directors, and ecoDa, the European Confederation of Directors Associations. In this way, the Board has access to information about ongoing developments in the EU.

The Board is also an active member of a Nordic collaboration between the code issuing bodies in Denmark, Sweden, Finland and Iceland. The intention is that the code issuing bodies will meet annually, with the venue rotating among the Nordic countries.

Key issues for 2018

Strategy 2017–2020

Although the Board has come a long way in establishing its strategy plan 2017–2020, there are a number of strategic issues that require further work. One such issue is the role and focus of the Board with regard to exerting influence within the EU, where there is a discussion about how the Board can best ensure that the EU's desire to set norms within the field of corporate governance does not damage the Nordic corporate governance model. Another question is how the Board should handle the matters previously dealt with by the Swedish Industry and Commerce Stock Exchange Committee, namely to issue rules regarding good practice in the stock market in the areas where such a need exists. The level of ambition obviously has a major impact on the Board's internal allocation of resources. Additionally, communication, demarcation between the roles of the Board and the Swedish Securities Council and how the work towards a possible coordination of Nordic codes can be organized are aspects of the Board's strategic considerations that will be in sharp focus. Not least, the Board needs to review its communication plan in the light of today's new communication channels. The Board's website will hopefully have look and feel that connects with that of the other self-regulation bodies within in the stock market, whose websites are currently being reviewed.

The revised Shareholder Rights Directive

As mentioned above, the European Commission's action plan on corporate governance, which began with Barnier's Green Paper in 2011, has now reached its final regulatory initiative, the Directive on Changes to the Shareholder Rights Directive (European Parliament and Council Directive 2017/828 of 17 May 2017 amending Directive 2007/36/EC regarding encouragement of long-term shareholder commitment). The committee set up by the Ministry of Justice to examine implementation of the directive will submit its proposal for implementation at the end of May 2018, together with proposals for amendments to the provisions in Chapter 16 of the Companies Act known as the Leo Rules. The Directive is to be implemented no later than 10 June 2019.

Implementation of the directive will impact both the Code and the Board's other regulations. The proposals in the part known as "say on pay", i.e. that the shareholders' meeting is to decide on remuneration guidelines for company executives and boards and to approve a remuneration report, will almost certainly lead to amendments to the Code. The same applies to any changes in the Leo Rules. One key issue related to this is whether the Board should focus more broadly on self-regulation issues regarding remuneration and incentive programmes, where the latter is currently mainly regulated by the Swedish Securities Council's rulings on good practice. One option that the Board will examine is whether to break out parts of the existing self-regulation framework in this area from the Code, the Securities Council's statements and possibly the exchanges' regulations and put them into a coherent recommendation issued by the Board.

Review of the Code

As a number of years have passed since the last major review of the Code, the Board plans to begin the work of investigating whether the Code is still relevant and up to date in the autumn of 2018. This work will begin with a number of round table dialogues with Swedish and foreign "Code users" in order to gather views on these questions. The Board also plans to conduct a user conference in early 2019 to continue discussing the Code's rules, as well as the role and tasks of the Board. The purpose of this work is to be able to present proposals for any required revisions in 2019.

Continued Nordic cooperation and exchange of ideas and knowledge with other European corporate governance code issuers

The Board will continue to cooperate with other European rule issuers through ECGCN, the network of European national corporate governance code issuers, not least as this provides direct access to the EU officials responsible for designing the Commission's proposals on corporate governance matters.

The Board also looks forward to continued cooperation and discussion within the Nordic region through regular meetings. A common Nordic platform when submitting comments on the European Commission's proposals can carry more weight and have a greater impact than the views of the individual countries.

II. APPLICATION OF THE CODE IN 2017

The Swedish Corporate Governance Board conducts regular surveys and analysis in order to monitor how the Code is applied and to evaluate its functionality and effects on Swedish corporate governance. As in previous years, the Board commissioned a study of each Code company's application of the Code based on information published in annual reports, in corporate governance reports and on company websites. The results are summarised below. Also in this section, there is a presentation of the Swedish Securities Council's and the stock exchange disciplinary committees' approaches to Code issues.

Companies' application of the Code

Executive summary

With the proviso regarding comparability because of the change of survey supplier in 2015, this year's survey shows that companies' reporting on corporate governance issues has improved in more or less all aspects. This means a continuation of the curve of steadily improving corporate governance reporting.

Companies have shown a high level of ambition when it comes to applying the Code. The shortcomings in the details of how companies report on their corporate governance in their corporate governance reports and on their websites continue to fall in number, but there is still room for improvement, as some companies still fail to provide all the information that is required by the Annual Accounts Act and the Code.

The number of deviations from the Code fell in 2017. This year's survey shows another decrease in the number of reported deviations at a smaller number of companies. Such a development can be interpreted both positively and negatively. The development is negative in the light of the Code's aim to make companies reflect and bring transparency to their corporate governance. The comply or explain principle on which the Code is based assumes that corporate governance is something fundamentally individual to each company, and even if the behaviour of companies means that they apply the majority of the rules in the Code, there should exist a large number of individual solutions that are more suitable for those particular companies than the standard methods prescribed in the Code. If companies feel that they must adapt their behaviour in order to comply with the Code, innovation and initiative may be stunted, to the detriment of the individual company and its shareholders. However, the development is positive in the sense that if the rules of the Code are respected, the standard of corporate governance within listed companies should be improved.

The survey continues to place particular emphasis on nomination committees' statements on proposed candidates to positions on the board of directors, not least with regard to the Code's requirement that listed companies strive to achieve gender balance on their boards. Regarding the latter, there is a continued positive trend, and the number of nomination committees that have explained their proposals clearly in relation to the Code requirement on gender balance continues to increase.

Regarding the requirement for companies to report on their diversity policy for its board, which was introduced last year through the EU Non-Financial Reporting Directive, it is notable that the majority of nomination committees chose to apply rule 4.1 of the Code as their diversity policy when preparing their proposals.

Aims and methods

The aims of analysing how companies apply the Code each year are to provide information in order to assess how well the Code works in practice and to see whether there are aspects of the Code that companies find irrelevant, difficult to apply or in some other way unsatisfactory. The results of the annual surveys provide a basis for the continued improvement of the Code.

Since 2011, the survey has also examined companies' application of the rules concerning the reporting of corporate governance and internal controls, as well as auditor review of these reports, which were introduced into the Companies Act and the Annual Accounts Act in 2010. The aim of this part of the survey is to build up a picture of how companies report their corporate governance.

The basis for the study is companies' own descriptions of how they have applied the Code in the corporate governance reports that are required by the Annual Accounts Act, in other parts of their annual reports and in the information on their websites. Since 2011, the survey has also examined whether the corporate governance information on companies' websites fulfils the requirements of the Code and whether corporate governance reports contain all the required formal details. No attempt is made to ensure that the information provided by the companies is complete and accurate.

As in previous years, the target group for the study was the companies whose shares or Swedish Depository Receipts, (SDRs), were available for trade on a regulated market and who were obliged to issue a corporate governance report as of 31 December 2017. Stock Exchange rules state that companies whose shares are traded on a regulated market run by the exchange are to adhere to generally accepted principles in the securities market, which includes applying the Swedish Corporate Governance Code.[1] Up to and including 2010, foreign companies were not obliged to apply the Code. Following an Instruction issued by the Swedish Corporate Governance Board, from 1 January 2011, foreign companies whose shares or SDRs are traded on a regulated market in Sweden are required to apply the Swedish Corporate Governance Code, the corporate governance code of the company's domicile country or the code of the country in which the company has its primary stock exchange listing.[2] If the company does not apply the Swedish Code, it is obliged to state which corporate governance code or corporate governance rules it applies and the reasons for so doing, as well as an explanation of in which significant ways the company's actions do not comply with the Swedish Code. This statement is to be included in or issued together with the company's governance report or, if no such report is issued, on the company's website.

On 31 December 2017, there were 321 companies whose shares or SDRs were available for trade on a regulated market in Sweden. Of these, 312 were listed on Nasdaq OMX Stockholm and nine on NGM Equity. Of those listed on Nasdaq OMX Stockholm, 23 were foreign companies, whereas none of the companies listed on NGM Equity were. Of the 23 foreign companies, eight have declared that they apply the Swedish Code, and these eight were therefore included in the survey. The remaining 15 foreign companies were excluded from the survey. This meant that the number of companies actually included in the survey was 306, of which 297 were listed on Nasdaq OMX Stockholm and nine on NGM Equity. See Table 1.

Table 1. Number of surveyed companies

	2017		2016		2015		2014		2013		2012		2011	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Nasdaq Stockholm	312	97%	293	97%	278	97%	265	96%	253	96%	253	95%	249	94%
NGM Equity	9	3%	9	3%	10	3%	10	4%	10	4%	12	5%	15	6%
Total target group	321	100%	302	100%	288	100%	275	100%	263	100%	265	100%	264	100%
Excluded*)	15	5%	16	5%	16	6%	23	8%	16	6%	18	7%	16	6%
Total companies surveyed	306	95%	286	95%	272	94%	252	92%	247	94%	247	98%	248	94%

*) Companies excluded due to information not being available, delisting or primary listing being elsewhere.

1) See Point 5 of Nasdaq OMX Stockholm's Regulations for Issuers and Point 5 of NGM's Stock Exchange Regulations.
2) See the introduction to Section III of the Swedish Corporate Governance Code, Rules for Corporate Governance.

Companies' reports on corporate governance

The Annual Accounts Act states that all stock exchange listed companies are to produce a corporate governance report.[3] The content of the corporate governance report is governed by both the Annual Accounts Act and the Code.[4] According to the Code, any company that has chosen to deviate from any rules in the Code must report each deviation, along with a presentation of the solution the company has chosen instead and an explanation of the reasons for non-compliance.

As in previous years, all of the companies surveyed had submitted a formal corporate governance report, which is mandatory by law. Six companies chose to publish their corporate governance report on their websites only, which was the same number as the previous year.[5] Of the vast majority of companies which include their corporate governance report in the printed annual report, just under half include it in the directors' report, while the other half published their corporate governance report as a separate part of the annual report. See Table 2.

According the Annual Accounts Act, a corporate governance report is also to contain a description of the key elements of the company's internal controls and risk management concerning financial reporting.[6] As last year, one company failed to provide an internal controls report this year, compared with two companies last year, while it must be regarded as unclear whether a second company fulfilled the requirement. See Table 3. The Annual Accounts Act makes it a legal requirement for companies to report on their internal controls. The internal controls reports vary in their scope, from short summaries within the corporate governance report to separate reports.

The third paragraph of Code rule 7.3 states that a company which has not set up an internal audit is to explain the company board's position on this issue and its reasons why in the report on internal controls. A fifth of the surveyed companies conducted an internal audit, showing a small decrease on the 2016 figure of 22 per cent. Of the 80 per cent of companies that chose not to conduct internal audits, the boards of eight of these have not provided an explanation for this. See Table 4.

Since 2010, auditor review of corporate governance reports is mandatory according to the Companies Act and the Annual Accounts Act.[7] See Table 5. Three companies have not reported that their corporate governance reports were reviewed by their auditors, and for two companies it is not clear whether such a review took place.

Reported non-compliance

Companies that apply the Code are not obliged to comply with every rule. They are free to choose alternative solu-

Table 2. How is the corporate governance report presented?

	2017		2016		2015		2014	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
In the directors' report in the annual report	140	46%	133	47%	121	44%	113	45%
A separate report within the annual report	160	52%	147	51%	142	52%	133	53%
Only on the website	6	2%	6	2%	9	3%	6	2%
Unclear	0	0%	0	0%	0	0%	0	0%
Total	306	100%	286	100%	272	100%	252	100%

[3] See chapter 6, section 6 and chapter 7, section 31 of the Annual Accounts Act, (1995:1554).
[4] See chapter 6, section 6 and chapter 7, section 31 of the Annual Accounts Act, (1995:1554) and rule 10.1-2 of the Code.
[5] This does not contravene the Annual Accounts Act or the rules of the Code. The Annual Accounts Act states that companies whose shares are traded on a regulated market are to produce a corporate governance report, either as part of the directors' report or in a document that is not part of the annual report. In the case of the latter, a company may choose to release its report either by submitting it to the Swedish Companies Registration Office together with the annual report or by publishing it only on its website. (The report must in fact always be made available on the company's website.) If the corporate governance report is not contained in the directors' report, the company may choose whether to include it in the printed annual report – this is not regulated by law or by the Code.
[6] See chapter 6, section 6, paragraph 2, point 2 the Annual Accounts Act, (1995:1554) and the third paragraph of rule 7.3 and rule 7.4 of the Code.
[7] The requirement for auditor review of a corporate governance report if it is included in the director's report or of the information otherwise published in the company's or group of companies' director's report can be found in chapter 9, section 31 of the Companies Act (2005:551). The requirement for the auditor review of the corporate governance report to be published separately from the annual report can be found in chapter 6, section 9 of the Annual Accounts Act.

tions provided each case of non-compliance is clearly described and justified. It is not the aim of the Corporate Governance Board that as many companies as possible comply with every rule in the Code. On the contrary, the Board regards it as a key principle that the Code be applied with the flexibility afforded by the principle of comply or explain. Otherwise, the Code runs the risk of becoming mandatory regulation, thereby losing its role as a set of norms for good corporate governance at a higher level of ambition than the minimums stipulated by legislation. It is the Board's belief that better corporate governance can in certain cases be achieved through other solutions than those specified by the Code.

Diagram 1 shows the number of surveyed companies that have reported instances of non-compliance since 2011. The proportion of companies that reported more than one instance of non-compliance in 2017 was eight per cent, which is three percentage points lower than in the previous year. This means that the remaining 92 per cent of companies reported a maximum of one deviation from the Code rules. The proportion of companies that reported a single deviation from the Code increased slightly to approximately 22 per cent. Approximately 71 per cent, or 217 companies, reported no deviations at all in 2017, which is an increase of three percentage points compared with the previous year's figure of just over 68 per cent.

A total of 118 deviations from 23 different rules were reported in 2017, which gives an average of 1.33 deviations per company reporting at least one deviation. This is in line with last year's average figure of deviations per company.

Table 3. Is there a separate section on internal controls and risk management

	2017		2016		2015	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	304	99%	284	99%	269	99%
No	1	0%	1	0%	2	1%
Partly	1	0%	1	0%	1	0%
Total	306	100%	286	100%	272	100%

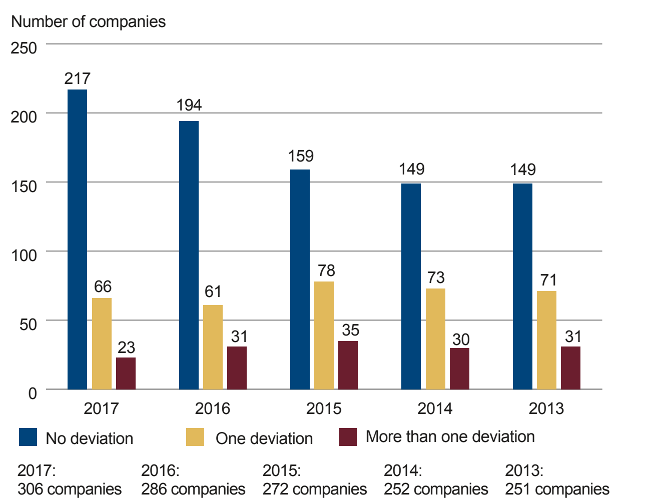
Table 4. If it is clear from the report on internal controls and risk management that no specific auditing function exists, are the board's reasons for this explained in the report?

	2017		2016		2015	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes, reasons presented	236	77%	215	75%	197	72%
No, no reasons presented	8	3%	8	3%	10	4%
Partial explanation	0	0%	0	0%	0	0%
Unclear	0	0%	0	0%	0	0%
Not applicable/ own internal auditor	63	20%	63	22%	65	24%
Total	286	100%	286	100%	272	100%

Table 5. Was the corporate governance report reviewed by the company auditor?

	2017		2016		2015	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	301	98%	280	98%	265	97%
No	3	1%	5	2%	6	2%
No information / unclear	2	1%	1	0%	1	0%
Total companies	306	100%	286	100%	272	100%

Diagram 1. Companies per number of instances of non-compliance



A detailed breakdown of reported non-compliance is shown in Table 6.

Which rules do companies not comply with?

Table 7 shows the number of deviations per rule from which deviation has been reported. The four rules for which the most companies report non-compliance, see Diagram 2, are commented on in brief below.

Diagram 2. Instances of non-compliance per Code rule

As in previous years, the rule with by far the most instances of non-compliance was Code rule 2.4. Almost 12 per cent of all Code companies report some kind of deviation from this rule, which is just over three percentage points lower than last year's figure. Rule 2.4 states that members of the company board may not constitute a majority on the nomination committee and that the chair of the board may not be the chair of the nomination committee. If more than one member of the board is a member of the nomination committee, only one member may have a dependent relationship to major shareholders in the company.

The most common form of non-compliance with this rule was that the chair of the board, or in some cases another member of the board, was appointed as chair of the nomination committee. The most common explanation for this was that the person concerned was a major shareholder and/or deemed to be the most competent and therefore considered best suited to lead the work of the committee. In some cases, more than one of several members of the board who were on the committee were not independent of major shareholders, and in a small number of companies, members of the board formed a majority on the nomination committee. Non-compliance with this rule is most common in companies with a strong concentration of ownership, often with the general explanation that it would otherwise be difficult or impossible for a private individual to combine the roles of major shareholder and active owner through participation on the board and on the nomination committee.

The rule with the next-highest frequency of non-compliance was rule 2.3, which concerns the size and composition of nomination committees, primarily with regard to committee members' independence. Seventeen companies, (just under six per cent of all companies), deviated from this rule. In the majority of cases, the non-compliance involves the CEO and/or other members of the company's executive management being members of the nomination committee. The explanation given for this is that they are also major shareholders in the company. In a small number of cases, the nomination committee consisted entirely of representatives of the largest shareholder in terms of voting rights, meaning that the company did not comply with the rule that states that at least one member of the committee is to be independent

Table 6. Reported non-compliance

	2017	2016	2015	2014
Number of companies reporting no deviations	217	194	159	149
Number of companies reporting deviations	89	92	113	103
Companies reporting one deviation	66	61	78	73
Companies reporting more than one deviation	23	31	35	30
Percentage of companies reporting deviations	29%	32%	42%	41%
Total number of companies	306	286	272	252
Number of reported deviations	118	133	163	142
Number of rules for which deviations reported	23	25	21	21
Average number of deviations per rule	5.13	5.32	7.76	6.76
Average number of deviations per company	1.33	1.45	1.44	1.38

in relation to the largest shareholder. Some nomination committees did not fulfil the Code requirement that they must comprise at least three members.

Fourteen companies, (just under five per cent of Code companies) also reported non-compliance with rule 9.7, which covers incentive programmes. The majority of these companies deviate from the provision that the vesting period is to be at least three years.

Eleven companies, (just under four per cent of all companies), chose not to comply with rule 2.1, which obliges companies to have a nomination committee. The most common explanation for this is that these are companies whose major shareholder or shareholders did not deem it necessary to have a nomination committee because of the size of their own holdings in the company, e.g. as the result of a takeover bid where, for one reason or another, delisting of the company has not taken place. There has been some debate about whether it is compatible with generally accepted principles in the securities market to deviate from such a fundamental Code requirement, but with the exception of Chapter 10, the Code does not present any obstacles to companies who wish to deviate from any Code rule they wish, as long as their non-compliance is reported and explained.

There were almost no “new” explanations in 2016, i.e. explanations of non-compliance with rules that have previously had no deviation reported.

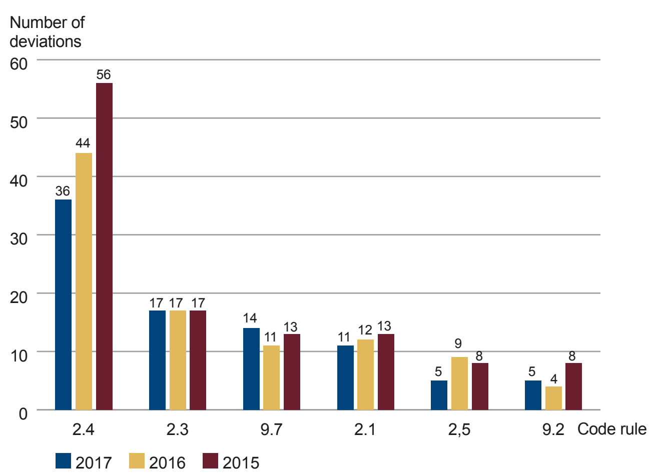
Table 7. Number of deviations from individual Code rules reported in corporate governance reports

Rule	2017	2016	2015
2.4	36	44	56
2.3	17	17	17
9.7	14	11	13
2.1	11	12	13
2.5	5	9	8
9.2	5	4	8
7.6	4	6	8
1.4	3	1	
4.2	3	3	5
9.1	3	1	2
1.2	2	5	
1.5	2	1	2
4.3	2	2	2
4.4	2	2	4
4.1	1	1	1
4.5	1	2	
6.1	1		
8.1	1	1	
8.2	1	1	2
9.5	1		
9.6	1		
9.8	1		
10.3	1	1	
1.1		3	2
2.6		2	3
7.3		2	17
9.4		1	
10.2		1	

Explanations of non-compliance

The standard of explanations of non-compliance is crucial to the success of a corporate governance code based on the principle of comply or explain. The definition of what constitutes good quality in such explanations is for the reports’ target groups to assess, primarily the companies’ owners and other capital market actors. However, in order to be useful as a basis for such evaluation, the explanations must be sufficiently substantive, informative and founded as much as possible in the specific circumstances of the company concerned. Vague arguments and general statements without any real connec-

Diagram 2. Instances of non-compliance per Code rule



tion to the company's situation have little information value for the market.

Up until 2014, the information value of the explanations was patchy, with a high proportion of explanations containing poor information. This seems to be an international problem for this kind of corporate governance code. The primary aim of the European Commission's recommendation on corporate governance is to improve these explanations, not least by introducing the solution that has been in existence in the Swedish Code in 2008, namely that each instance of non-compliance is not only to be explained, but a description of the chosen solution also provided.

Swedish companies' reporting of non-compliance in 2017 continued the positive trend of previous years, and the companies' explanations of non-compliance are generally of a high standard. As last year, all of the surveyed companies explained their reasons for any non-compliance.

As in previous years, an attempt has also been made to assess the quality of explanations offered. This necessarily involves a large element of subjectivity. The Corporate Governance Board's analysis has therefore limited itself to identifying companies which provided insufficient explanation of their non-compliance in the view of the survey institute. The change of survey method means that comparisons with previous years' surveys are of limited value.

This year's survey showed a decline compared with last year. In 2017, four companies provided explanations of insufficient quality, compared with two companies last year. The hope is that next year we will no longer see any poor explanations, i.e. explanations without any information value.

The content of corporate governance reports

For the seventh consecutive year, the content of companies' corporate governance reports has been examined against the background of the requirements stipulated in the Annual Accounts Act and the Code. The Annual Accounts Act requires, for example, that companies report which corporate governance code they apply. All

Table 8. The detailed content of corporate governance reports

	Yes	No	Partly
Does the report contain information on the nomination committee?			
Composition	292	14	0
Representation	273	30	3
Does the report contain information on board members?			
Age	304	2	0
Educational background	275	10	21
Professional experience	263	29	14
Work performed for the company	306	0	0
Other professional commitments	289	1	16
Shareholding in the company	305	1	0
Independence	303	2	1
Year of election	303	2	1

	Yes	No	Partly
Does the report contain information on the board?			
Allocation of tasks	305	1	0
Number of meetings	306	0	0
Attendance	306	0	0

	Yes	No	Partly	Not applicable
Does the report contain information on board committees?				
Tasks and decision-making authority	263	3	0	40
Number of meetings	236	7	2	61
Attendance	221	23	1	61

	Yes	No
Does the report contain information on the CEO?		
Age	303	3
Educational background	285	21
Professional experience	260	46
Professional commitments outside the company	220	86
Shareholding in the company	304	2
Shareholding in adjacent companies	19	287

of the companies surveyed this year stated that they applied the Swedish Corporate Governance Code. A general review of the reports also showed that companies seemed to fulfil all the requirements set out in the Act.

Compliance with the detailed requirements of the Code concerning information[8)] still has room for improvement. See Table 8 for details. As in previous years, almost 30 companies did not provide information on the professional experience of their board members, thirty companies did not state who had appointed members of their nomination committees, and almost 50 companies did not list the previous professional experience of their chief executive officers. Breaches regarding these requirements were pointed out in previous years. The percentage of companies not reporting the previous experience of the members of the board has improved slightly, falling to nine per cent, while the number of companies failing to report the previous experience of the chief executive officer has fallen slightly from 16 per cent to 15 per cent. The proportion of companies who report whom members of the nomination committee represent has risen by two percentage points compared with last year.

Another Code requirement is that companies who have been found by the Stock Exchange Disciplinary Committee or the Swedish Securities Council to have committed breaches against the rules of the stock exchange or generally accepted principles in the securities market during the financial year are to report this in their corporate governance reports. Three of the four companies to which this rule applied in 2017 provided information about the breach, which marks a return to the long term trend following last year's significant decline.

Corporate governance information on company websites

For the eighth year, an analysis of corporate governance information on company websites has been carried out.

Rule 10.3 of the Code requires companies to devote a separate section of their websites to corporate governance information. We are happy to report that this requirement was fulfilled by all of the companies surveyed. One company had no such section on its website at the time of the survey.

One of the questions in the survey concerns how easy it is to find corporate governance information on company websites. This assessment is subjective, but the hope is that an annual follow-up of this issue based on the same criteria will at least allow an examination of trends. The results of this year's survey of this area can be found in Table 9, which shows that 97 per cent of the

Table 9. Is corporate governance information easy to find on the company's website?

	2017		2016	
	Number	Percentage	Number	Percentage
Yes	298	97%	277	97%
Acceptable	6	2%	8	3%
No	2	1%	0	0%
Total	286	100%	286	100%

Table 10. Detailed information on company websites

2017	Yes	No	Partly	Total	Percentage Yes
Current board members	306	0	0	306	100%
Current CEO	306	0	0	306	100%
Current auditor	300	6	0	306	98%

2016	Yes	No	Partly	Total	Percentage Yes
Current board members	286	0	0	286	100%
Current CEO	286	0	0	286	100%
Current auditor	277	9	0	286	97%

8) Code rule 10.2.

companies surveyed have easily accessible corporate governance information, which is the same as last year's figure. Two companies failed entirely to fulfil the accessibility criteria, while the standard for the remaining two per cent was acceptable, which is also in line with figures of the past two years.

Code rule 10.3 also contains a list of information required on the corporate governance sections of websites. As well as the company's ten most recent corporate governance reports and the auditor's written statements on the corporate governance reports, the company's articles of association are also to be posted. At the time of the survey, one company did not fulfil the latter requirement, while the articles of association of the remaining 305 companies were accessible on the company website, which in absolute terms is the same as last year. Additionally, the Code requires companies to post information regarding the current board of directors, the CEO and the auditor. This requirement regarding the auditor was not fulfilled by all companies. See Table 10 for more detailed information.

Nomination committees are also required to fulfil certain information requirements. The Code requires the nomination committee to present information on its candidates to the board on the company website when notice of a shareholders' meeting is issued.[9] Even if companies fulfil this requirement, their information on candidates is not complete – see Diagram 3. At the same time as it issues the notice of meeting, the nomination committee is also to issue a statement, which is also to be available on the website, with regard to the requirement in rule 4.1, that the proposed composition of the board is appropriate according to the criteria set out in the Code and that the company is to strive for gender balance. As in 2016, eight per cent of the companies surveyed failed completely or partly to issue such a statement. It is remarkable that almost one company in ten did not fulfil the requirements of a Code rule that has been in force since 2008.

In 2013, 58 per cent of companies' nomination committees failed to make any comment on gender balance, while in 2014 24 per cent of the nomination committees did not comment on gender balance. The corresponding figure for 2015 was 18 per cent, and it was 13 per cent in 2016. The positive development continued this year, when the proportion of nomination committees that did not comment on gender balance was 11 per cent. Against the background of the debate on the composition of boards, especially the issue of gender balance and the question of whether quotas should be introduced, it is

Diagram 3. Content of the nomination committee's proposal regarding individual candidates to the board

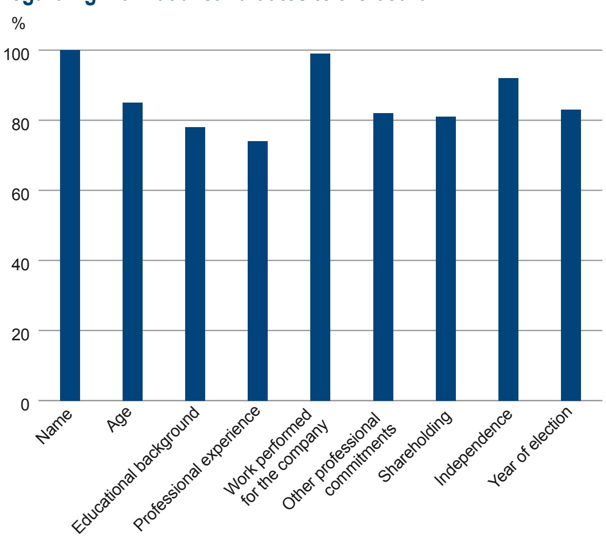


Table 11. Nomination committee statements: Does the statement provide any explanation regarding gender balance on the board

	2017		2016	
	Number	Percentage	Number	Percentage
Partly	0	0%	0	0%
Yes	273	89%	248	87%
No	33	11%	38	13%
Total	306	100%	286	100%

9) See Code rule 2.6, paragraph 2.

not particularly surprising that the number of nomination committees that neglected to comment on gender has fallen in recent years – see Table 11. One of the aims of the introduction of the relevant Code rule was to avoid the introduction of quotas and instead allow nomination committees to explain how they had handled the issue of increasing the ratio of women on boards and bring the issue into focus. The Corporate Governance Board will continue to monitor gender balance on the boards of listed companies committees.

Rule 10.3, paragraph 2 of the Code requires companies to declare all share and share price related incentive programmes for employees, (not just the management), and board members. Just over half of the companies surveyed still publish no information regarding such programmes on their websites. Many companies do not have such programmes, but that as many as half of the companies surveyed would have no current share or share price related incentive programmes for executives or employees seems a very high proportion.

Since 2010, rule 10.3 also requires companies to publish on their website a description of any ongoing variable remuneration programmes for the board of directors and the executive management, (though there is no requirement to issue information on variable remuneration programmes for other employees). This year, 85 per cent of the companies surveyed published such information on their websites, which is an increase on last year's figure of 81 per cent.

Finally, company websites are to provide information on the board's evaluation of remuneration within the company no later than three weeks before the annual general meeting.[10] This evaluation is to cover ongoing variable remuneration programmes for executives and directors and those programmes that have ended during the year; how the company's executive remuneration guidelines have been applied; and the current remuneration structures and remuneration levels within the company. This requirement was introduced in 2010 and the information was included in the survey for the first time in 2011. Table 12 shows that there has been some improvement in all three areas since last year and that over 80 per cent of the companies surveyed fulfilled this requirement, which is a slight improvement on last year. It must, however, be regarded as unacceptable that almost 20 per cent of the companies surveyed do not publish any evaluation or neglect to leave the evaluation in place on their website after the annual general meeting.

Table 12. Information on company websites regarding the board's evaluation of remuneration matters

2017	Yes	No	Partly	Total
Variable remuneration programmes	246	59	1	306
Remuneration policy	249	56	1	306
Remuneration structures and levels	247	58	1	306

2016	Yes	No	Partly	Total
Variable remuneration programmes	220	65	1	286
Remuneration policy	225	59	2	286
Remuneration structures and levels	223	62	1	286

10) See Code rule 10.3, paragraph 3. Code rule 9.1 states that the remuneration committee, (or the board in its entirety if no such committee has been appointed), is to perform this evaluation.

Interpreting the Code

The Swedish Corporate Governance Board is the body that sets norms for self-regulation in the corporate governance of Swedish listed companies, but it does not have a supervisory or adjudicative role when it comes to individual companies' application of the Code. The Board occasionally receives questions on how the Code is to be interpreted. Although it tries as much as possible to help companies understand what the rules mean, it is not the Board's responsibility to interpret how the Code is to be applied in practice. This is the responsibility of the market, after which the Board assesses how the Code has actually been applied and considers any revisions that may be required as a result.

The Swedish Securities Council, whose role is to promote good practice in the Swedish stock market, is however able to advise on how to interpret individual Code rules. This occurs when companies who would like advice on interpretation request that the Council issue a ruling.

The disciplinary committees of the Nasdaq OMX Stockholm AB and Nordic Growth Market NGM AB stock markets can also issue interpretations of the Code.

The Swedish Securities Council issued did not issue any rulings on the Code in 2017, but it issued a ruling on good practice with regard to nomination committees, (AMN 2018:19), in May 2018 – see below. Over the years, the Council has issued seven rulings in total concerning interpretation of Code rules:

- AMN 2006:31 concerned whether two shareholders were able to pool their shareholdings in order to be eligible for a seat on the nomination committee.
- AMN 2008:48 and 2010:40 dealt with the amount of leeway allowed to a board of directors when setting the conditions of an incentive programme.
- AMN 2010:43 interpreted one of the independence criteria in the Code, which covers board members' independence with regard to clients, suppliers or partners who have significant financial dealings with the listed company.
- AMN 2011:03 examined whether a proposed salary increase for executives conditional on a sustained shareholding in the company needed to be referred to the shareholders' meeting.
- AMN 2015:24 examined whether a variable cash bonus arrangement for an executive of a listed company conditional on a sustained shareholding in the company needed to be referred to the shareholders' meeting.
- AMN 2018:19 examined whether members of a nomination committee may participate in the preparation of proposals to the board pertaining to themselves, as well as proposed for director remuneration to themselves.

The disciplinary committees of the Nasdaq OMX Stockholm and Nordic Growth Market NGM stock markets did not issue any interpretations of the Code in 2017, and these two bodies have no tradition of issuing statements regarding interpretation of the Code.

The Corporate Governance Board has also issued takeover rules for the First North, Nordic MTF and AktieTorget trading platforms, and the Swedish Securities Council has issued several rulings on these rules. These rulings, however, correspond to the Council's established position regarding the takeover legislation and the rules issued by the regulated markets, and are therefore not discussed here.

There is not yet any established practice regarding the recommendation issued by the Swedish Corporate Governance Board on 1 January 2015 regarding private placement of shares. The Swedish Securities Council took up a number of issues regarding private placements in rulings AMN 2015:18 and AMN 2016:9, but did not touch on the Board's recommendation. The Disciplinary Committee of Nasdaq Stockholm's decisions 2015:5 and 2016:9 also referred to private placements of shares, but no interpretation of the Board's recommendation was made in either decision. As explained above under The Work of the Board during the Year, the Swedish Securities Council ruling AMN 2016:28 states that the Corporate Governance Board's recommendation expresses what in some respects constitutes good practice in the stock market regarding cash issues of shares, warrants and convertibles in limited companies whose shares are admitted to trading on a regulated market or traded on the First North, Nordic MTF or AktieTorget trading platforms.

III. PERSPECTIVES

The Swedish Corporate Governance Board's ambition is that its Annual Report not only describes the work of the Board and how the Code has been applied during the past year, but also provides a forum for discussion and debate on current corporate governance issues, both in Sweden and internationally. The Board therefore invites external contributors to publish articles and opinions within the field of corporate governance that are deemed of general interest. The content of these articles is the responsibility of the respective author, and any opinions or positions expressed are not necessarily shared by the Board.

This year's report contains three contributions.

- The first article was written by Prof. Dr. Lutgart Van den Berghe, Professor of Corporate Governance Issues at the University of Gent and Executive Director of GUBERNA, the Belgian Governance Insitute. The article describes the emergence, development and importance of corporate governance codes for the European business community, as well as the results of a recent ecoDa survey on which issues that European company boards regard as most central in the pursuit of better corporate governance.
- The second article was written by Maija Laurila, Head of the Corporate Law Unit at the European Commission's Directorate-General for Justice and Consumer Affairs. This article describes the Commission's working methods and the focus areas for the measures taken by the Commission in the field of corporate governance.
- The third article is a paper produced by the Swedish Corporate Governance Board with the aim of informing primarily foreign investors about the main features of the Swedish corporate governance model in listed companies. The article provides a general overview of the Swedish corporate governance model and its special characteristics. The article will also be made available through the Board's website and the Board hopes that the document can be developed continuously by providing users with the opportunity to submit comments and suggestions regarding new issues to cover.

Corporate governance in Europe: the role of governance codes and the comply-or-explain principle

Prof. dr. Lutgart Van den Berghe is Executive Director of GUBERNA (Belgian Governance Institute) and Extra-Ordinary Professor in Corporate Governance at the University of Ghent.

Prof. dr. Lutgart Van den Berghe

Some introductory remarks

In the beginning of the 90-ties, the UK developed a ground-breaking approach towards corporate governance recommendations by launching its 'Cadbury Report'[1)], relying on basic assumptions such as self-regulation, flexibility within the boundaries of the so-called 'comply or explain' principle, as well as market monitoring of corporate governance practices. Since the High Level Group of Company Law Experts promoted the same approach in their recommendations[2)] to the European Commission, most European countries followed the UK example, in one way or another.

After 25 years, it is good to reflect on the merits of this approach, highlighting the most important observations, the progress made as well the domains for further improvement.

The kick-off

Although many countries followed the UK example voluntarily, the EU gave the development of corporate governance codes an extra stimulus through its Recommendation on the role of non-executive directors and on the committees of the board[3)]. In this 2005 Recommendation, the European Commission promoted the development of national codes on corporate governance for listed companies. The basic assumptions as laid down in the Cadbury Report, were retained, promoting also the 'comply or explain' principle as a best practice for European Member States. However, given the huge differences in institutional, legal and governance context per Member State, quite different routes were followed, not only in terms of structure and content of the codes but also in terms of procedures for implementing, monitoring and enforcing the codes.

This raised a lot of questions as to a level playing field regarding corporate governance throughout Europe. Therefore, the European Commission decided to launch a review on the implementation of its 2005 Recommendation. The study was commissioned in 2008 to RiskMetrics Group (today ISS), in close collaboration with ecoDa and other expert organisations. This 2009 Study[4)] confirmed that there was widespread support for a flexible approach, combined with the 'comply or explain' principle, as it was foreseen in many national codes. But at the same time, the 2009 Study revealed that the quality of the explanations given, deserved much more attention as well as the monitoring of compliance with the different national codes. In its 2011 Green Paper on the Corporate Governance Framework[5)], the European Commission, repeated its support for the 'comply or explain' principle, by stating that *"The Comply or Explain principle allows companies to adapt their corporate governance practices to their specific situation (taking into consideration their size, shareholding structure, and sectoral specificities). It is also thought to make companies more responsible by encouraging them to consider whether their corporate governance practices are appropriate and by giving them a target to meet"*. However, this 2011 Green Paper also observed that the quality of the explanations continued to offer substantial room for improvement. Although this engendered some proposals for abandoning this flexible approach (and the 'comply or explain' principle) all together, ecoDa continued to stress the importance of self-regulation, while making its support conditional upon a high(er) degree of accountability from the side of the listed companies.

Concrete steps to further improve European corporate governance

Although we could observe a gradual improvement of corporate governance practices over the years, more should be done to increase the effectiveness of corporate governance codes. Based on the outcome of a European conference on 'comply or explain', ecoDa published in 2012 a road map for further improving the quality of corporate governance in Europe, and more specifically the quality of the explanations given[6]. In this publication ecoDa referred to the EU's preference for the Swedish approach, where it is not only necessary to indicate the deviations and the possible explanations, but also to describe the alternatives adopted. Moreover, ecoDa made a plea for a substance over form approach, rather than giving boiler plate explanations (or excuses). On top of that, it was pointed out that good governance is only feasible if a culture of accountability is installed.

But at the same time, it must be clear to all market parties that flexibility is there to be used when needed, or put differently, a good explanation might be far better suited to a specific company than a mere copy paste compliance, that doesn't fit the company's challenges. Another cornerstone for upgrading the quality of explanations is to be found in more efficient monitoring. Attention is often focused on the controlling role of shareholders. But in all countries, whatever the shareholding model might be, this monitoring role poses important challenges. Where shareholding is rather dispersed, an active role in governance monitoring might be a real challenge. But also a model with controlling shareholders does pose additional challenges at the level of an independent monitoring exercise.

In April 2014 the European Commission issued a recommendation on the quality of corporate governance reporting[7], mainly focusing on improving the quality of the explanations in case of non-compliance with one or more provisions of the relevant code. ecoDa followed up closely on these developments with an investigation in 2015 in all Member States of the state of play as to corporate governance codes, their implementation and monitoring. This study[8] revealed the wide diversity between Member States as to the importance of equity markets (with at the one extreme the UK, where market capitalisation represented 241% of GDP and the lowest level in some Central European countries with % between 9–12). Secondly, ecoDa observed a wide variety as to the ownership structures of listed companies. Again, the UK is at the one extreme with a predominantly dispersed shareholding, Central European countries are at the other end, with a high degree of shareholder concentration and Western European countries are somewhat in the middle. But also within European countries itself shareholding structures are quite different from one company to another. Thirdly, it was observed that countries may rely on control-enhancing mechanisms to a quite different degree, allowing some countries and companies to further increase the power of the major shareholder, with significant voting concentration, sometimes far beyond the share ownership.

As far as the Code set-up is concerned, the vast majority of Member States have one national code, the notable exceptions being France and Portugal. Besides the above mentioned inspiration of the UK approach for many Western European countries, the OECD Guidelines and to a less extent the more recent EU regulations have played a leverage role in fostering the development of national governance codes in the rest of Europe. There are significant differences between codes in terms of origin (only private, only public or a public-private initiative), scope (different listing categories may have different sets of principles to apply), principles-based versus a rules-based approach, degrees of freedom (embedded into law or not, with one reference code, optional international reference or even a totally individual approach) and requirements of disclosure (entire code's application is subject to disclosure or disclosure is only required for certain parts of the code). On top of that, also the monitoring of the application of the codes widely differs as far as the monitoring parties and scope are concerned as well as the follow-up of the monitoring analysis.

1) Cadbury, A. (1992). Report of the Committee on the Financial Aspects of Corporate Governance.
2) Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe of 4 November 2002 ('High Level Group Report II').
3) Commission Recommendation 2005/162/EC of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board ('2005 Recommendation').
4) Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States, 23 September 2009 ('2009 Study').
5) Green Paper of the European Commission of 5 April 2011 on The EU corporate governance framework COM(2011)164 ('2011 Green Paper').
6) Comply or Explain, preserving governance flexibility with quality explanations, Report of the ecoDa Annual Conference 2012.
7) Recommendation of the European Commission of 9 April 2014 on the quality of corporate governance reporting ('comply or explain') (2014/208/EU).
8) Corporate Governance Compliance and Monitoring Systems across the EU, ecoDa and Mazars, 2015 ('2015 Study').

Focusing on the role of the board in the corporate governance debate

The outcome of the 2015 Study stimulated ecoDa to further investigate the specific role of the board of directors. To this end all member organisations of ecoDa were approached to explore in their country which roles boards have in developing, implementing and monitoring the governance structures, procedures and practices within listed companies. It is clear from this 2018 Study[9] that board members, investors and regulators all have their part to play in fostering an ecosystem that promotes long-term sustainable success for the benefit of all shareholders, stakeholders and society at large. The 2018 Study revealed that directors are convinced that 'outsider' shareholders (such as institutional investors and their asset managers) should develop a better understanding of the governance of the companies they invest in and devote more attention to the board's involvement in fostering the corporate objectives. But companies with controlling shareholders also deserve special attention because codes should not assume that all listed companies have an important free float, with institutional shareholders, acting as the main governance monitors. The companies with controlling blocks of shareholders may pose specific challenges as to the critical monitoring of the governance practices.

A special point of attention raised by many directors is the role of proxy advisors. The main problem is that proxy advisors are tending to expect companies to comply rather than to explain, regardless of the circumstances. This raises new challenges for the flexibility approach that was promoted already for such a long time. Due to the concentration in the market for proxy advice, they may indirectly gain at least a blocking minority of votes which will hinder the necessary tailoring of governance practices to a company's specific circumstances. Targeting full compliance will not of itself raise the bar higher for effective corporate governance and is by no means a guarantee of sustainable corporate success. Even on the contrary, focusing on mere compliance gives too much weight to structures and procedures, undervaluing the crucial role boards have to play in stimulating entrepreneurship, innovation and value creation. More attention should be given to the corporate governance practices rather than just relying on disclosure of governance structures. Building an engaged board with high levels of both support and challenge for the executive team requires constant attention and effort but is crucial if the boards are to achieve their full potential.

The way forward

ecoDa is convinced that the approach of self-regulation combined with the flexibility offered by the 'comply or explain' principle, should remain the basis for European corporate governance. Such an approach can set the bar higher than in a mandatory regulatory context, allowing companies to develop a tailored governance approach (all the more since one size does not fit all). Moreover, this fosters a dynamic approach, adapting the governance principles and practices to the evolutive business environment and the development phase of the companies and their (growing) governance maturity. On top of that, the self-regulatory approach allows a swift update of the codes, triggering continuous improvement by making optimal use of newly developed best practices and lessons learned.

However, this is only a sustainable solution in as far as the flexibility offered is used in a mature and professional way. This necessitates a robust outside, market monitoring. Such monitoring will focus on the governance structures, procedures and input elements. On top of that, the market monitoring should be complemented by a regular and thorough (independent/objective) internal governance assessment. This not only holds for scrutinizing the implementation of the governance structures and procedures but certainly also the governance attitude, with the aim to improve the value-added corporate governance (and the board of directors) can and should deliver. Companies (also the non-listed ones) should apply the requirement of a periodic governance evaluation in order to install a culture of critical reflection and continuous improvement. We are more than convinced that such an exercise will foster that corporate governance is not an end in itself but a means to an end, i.e. facilitating, accommodating and promoting the realization of the corporate objectives and the sustainable long-term success of the company.

9) The board's role in designing an effective framework of corporate governance, ecoDa and Mazars, 2018 ('2018 Study').

European Union actions in Corporate Governance

Maija Laurila is the head of the Company Law Unit at the European Commission's Directorate-General for Justice and Consumers.

Maija Laurila

1. EU policies and actions in company law and corporate governance over last 15 years

The European Commission ('Commission') published action plans on European company law and corporate governance in 2003[1] and 2012[2]. Consistent with those plans, and following contemporary political priorities, the Commission initiatives have resulted in several company law and capital markets directives, amendments to previous directives, and several recommendations[3].

The Commission's objective in developing a common European Union ('EU') framework in company law and corporate governance, focusing on companies listed on regulated markets, has been over the last 15 years to:

- retain public confidence and enhance transparency,
- increase shareholder engagement,
- foster a competitive and efficient business environment and support economic growth,
- promote sustainable business and sustainable investment,
- integrate European capital markets, and
- create a digital single market.

The Commission monitors and analyses the functioning of the framework, accompanies the transposition of directives into national laws by the Member States and identifies possible further issues thanks to feedback from stakeholders.

2. EU policy-making is participative

In preparing its policy initiatives and actions, the Commission interacts with the co-legislators and is committed to transparency and interaction with stakeholders. The actions discussed below are no exception. The Commission collects views from various interested parties in expert groups through public consultations, more targeted or informal consultations, meetings with experts and even direct contacts with stakeholders and stakeholder groups.

To illustrate our argument, we use the example of the High-level Expert Group on Sustainable Finance ('HLEG') appointed by the Commission in 2016. The HLEG members were appointed in a transparent process following a public call for applications[4]. The 20 senior experts came from civil society, the finance sector and academia. There were observers from European and international institutions. HLEG was mandated to provide advice to the Commission on how to:

- steer the flow of public and private capital towards sustainable investments
- identify the steps that financial institutions and supervisors should take to protect the stability of the financial system from risks related to the environment, and
- deploy these policies on a pan-European scale.

[1] Modernising Company Law and Enhancing Corporate Governance in the EU" (2003).
[2] European company law and corporate governance – a modern legal framework for more engaged shareholders" (2012).
[3] 1) Commission Recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005); 2) Commission Recommendation complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies (2009); 3) Commission Recommendation on the quality of corporate governance reporting ('comply or explain') (2014).
[4] http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3485.

In the work of HLEG, corporate governance was identified very early to be relevant. HLEG held several meetings and published an interim report in July 2017. It also organised a public hearing and an online public consultation to gather views. The HLEG final report, published in January 2018[5], logically then highlights corporate governance and corporate accountability among issues that need to be tackled in the reform.

Taking stock of the recommendations of the HLEG, the Commission adopted in March 2018 the Action plan on financing sustainable growth[6]. Next steps include the preparation and rollout of the policy actions[7] again involving stakeholders: at the time of writing the Commission is about to appoint – after the public call for applications – a technical expert group on sustainable finance.

In addition, the other EU legislative institutions have their role in gathering and channelling expressions of interest, and expectations of those concerned, who wish to take part in the political discussions and decision-making. In our example of HLEG, also the European Parliament has had reflections on the subject and prepared an own-initiative report by the ECON Committee[8]. Whilst that report is still not finalised at the time of writing, it is clear that corporate governance issues are going to be raised.

As already mentioned, the Commission arranges public hearings and conferences to encourage transparent discussion and to hear out various stakeholders. One example is the public stakeholder event organised by the Commission in June 2017 on the theme "EU Corporate Governance in the XXI century: Shareholder Rights Directive II and Beyond". It was an occasion to take stock of recent legislative changes, prepare for their implementation and hear of future expectations in corporate governance[9].

Conferences are also organised by stakeholder groups; the Commission strives to observe and contribute to such occasions, if possible. One example is the corporate governance conference habitually organised with the patronage of the rotating EU Presidency – it is the 22nd edition is taking place in spring 2018. Such occasions are helpful to inform the Commission of interested stakeholders' exchanges of views, new themes and also national specificities.

Another example of the role of an expert group is the work to prepare implementing acts under the revised Shareholder Rights Directive (EU) 2017/828. In August 2017, the Commission set up an expert group on Technical aspects of corporate governance processes[10]. Expertise was collected and brought together from the members representing various interest groups to prepare the Commission Implementing Regulation. As a result, there is at the time of writing, a public consultation ongoing, in line with the better regulation principles. The Regulation lays down minimum requirements for the transmission of information between the company and its shareholders to facilitate the exercise of shareholders rights and regarding the process of identification of shareholders. After the consultation, a new draft will be published. Before the adoption, the Commission will also request the opinion of the European Securities Committee, representing the Member States, and also the European Parliament has a right of scrutiny.

All in all, the opportunities available through public consultation and stakeholder interaction are worth to be widely advertised, not only by the Commission, but also by stakeholders and organisations, whose members have an interest in the given policy area. Feedback to the Commission is essential in order to produce workable and widely accepted solutions to common problems and to ensure a well-functioning internal market.

To conclude on this, we maintain that the EU policy-making is participatory and allows for different views to be expressed and multiple stakeholders to influence the outcomes.

[5] https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en.
[6] https://ec.europa.eu/info/publications/180308-action-plan-sustainable-growth_en.
[7] https://ec.europa.eu/info/sites/info/files/180308-action-plan-sustainable-growth-factsheet_en.pdf.
[8] http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2018/2007(INI).
[9] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=58322.
[10] http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3545.

3. The Commission's preferred actions are not always legislative nor full harmonisation

When the Commission carries out the impact assessment of any planned actions, it considers multiple options. The preferred option may be non-legislative. In the area of corporate governance, the legislative actions have set out minimum requirements. Many of the national models are recognised and function well. Some are rooted in national (divergent) company laws, some are linked to the local ownership or market structures or cultural habits.

The Shareholder Rights Directive encourages and facilitates the engagement of shareholders with the listed company, enhances transparency regarding remuneration paid to its directors, introduces more transparency and certain minimum requirements for the processes as regards transactions with related parties. Although it establishes certain common minimum requirements, there is plenty of flexibility for Member States to transpose the Directive in the manner that fits to the national market and company law framework.

4. The future – evolving field of corporate governance

Actions in many of the Commission's priority areas imply a demand for good corporate governance in listed companies and other public interest entities. The Commission's action plan on building a Capital Markets Union [11] inevitably calls for a more level playing field. For investors and investments from third countries and those from Europe, who operate across the Union, competitiveness means that there is a level playing field and certainty on a consistent application of the key rules in company law and corporate governance. It is important to have transparency rules, communication processes and the exercise of shareholders rights that run efficiently and as uniformly as possible across the Union. This also benefits companies who have international investors, given a high corporate governance standard.

Today, the context of good corporate governance is undergoing a change: since threats against the stability of the financial system during the financial crisis of 2008 and investor short-termism, Europe has faced challenges of economic stagnation or slow economic growth. Now, it is even more important to encourage a long-term investment horizon. The current Commission places an important emphasis on the prevention of climate change and plans various actions in this area. The Commission has committed to promoting corporate governance that is more conducive to sustainable investments.

The shift towards sustainable business practices requires new governance arrangements: Investors and asset managers are to integrate sustainability into their investment strategies and decisions. Investment advisors need to consult their investor clients about their investment preferences regarding sustainability.

For companies it means that they should give due consideration to environmental and social sustainability challenges, and also opportunities. In order to be sustainable, they should effectively respond to unprecedented social, environmental and technological risks, challenges and opportunities, which can affect the company's business in the short term as well as in the longer term. The company's board needs to gain an understanding of this and take the necessary steps to reform the company's strategy, for instance develop new technologies or revisit the business model. To conclude, companies need also to be more transparent about their chosen sustainability strategy and be more accountable to their stakeholders about it.

It is very positive that many companies in Europe recognise the need for such a sustainability strategy. However, we also hear from companies that they are subjected to short-term capital market pressures by investors, which makes it difficult to disregard short-term impacts in the corporate decision-making. This increases significantly the companies' exposure to sustainability risks. Business leaders have long been complaining about such short-term market pressure, and the Commission has heard this. Now it is time to find solutions, together. The Commission will engage with all relevant stakeholders to analyse this issue more closely.

Let's keep working together!

[11] https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union_en.

Frequently asked questions on the subject of the Swedish corporate governance model

This summary has been prepared by the Board with the aim of providing information about the main features of the Swedish corporate governance model in listed companies. This summary will also be made available through the Board's website and it is the hope of the Board that the document can be developed continuously by inviting users to submit comments and provide suggestions for new matters to be included. The answers provided in this document are intended to provide a general introduction to the issues listed below and do not constitute advice. Other laws and regulations, as well as the circumstances in a particular case, may be of consequence to the legal situation, and users of this document are therefore encouraged to consult advisers before any conclusions are drawn regarding the application of the rules in an individual case.

1. What is the role of the Board of Swedish Corporate Governance?

The Swedish Corporate Governance Board is an independent self-regulatory body with the overall task of promoting good corporate governance in Swedish listed companies, primarily by managing the Swedish Corporate Governance Code ("the Code"). The Code is a collection of guidelines for good corporate governance that all listed companies are obliged to apply. The Board also promotes good practice in the Swedish stock market by issuing rules and recommendations in certain areas, including the Takeover Code. The Board is one of three bodies that make up the Association for Generally Accepted Principles in the Securities Market, which was formed by a number of business organizations in order to create a single structure for corporate self-regulation in this field.

2. How is corporate governance regulated in Swedish listed companies?

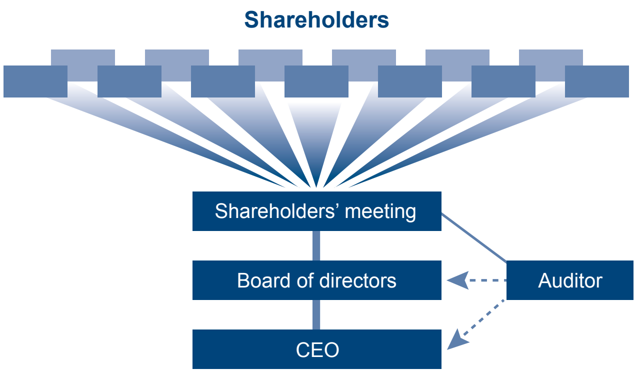
Corporate governance in Swedish listed companies is regulated by a combination of written rules and generally accepted principles. The regulatory framework primarily includes the Companies Act and the Annual Accounts Act, but it also features the Code and the rules that apply to the regulated market on which a company's shares are admitted to trading. In this context, mention should also be made of recommendations and statements issued by the Swedish Financial Reporting Board and the Swedish Securities Council's rulings on good practice in the Swedish stock market. The Companies Act contains basic rules regarding a company's organisation. The Act stipulates which bodies are to be found in a company and the tasks and responsibilities of each body. The Code complements the law by setting higher requirements in some areas, while allowing companies to deviate from these if it is believed that this would to lead to better corporate governance in the individual case, ("comply or explain").

3. What significance has the presence of active owners had for Swedish corporate governance?

The ownership structure on the Swedish stock market differs significantly from that in countries such as the United Kingdom and the United States. While most listed companies in these countries show a strongly divided ownership, ownership in Swedish listed companies, (as in several continental European countries), is usually dominated by one or a small number of major shareholders, who in the case of about half of listed companies further strengthen their control through the holding of shares with greater voting rights. These shareholders often take an active ownership role and take particular responsibility for the company, for example by engagement in the board. The Swedish corporate governance model encourages major shareholders to take particular responsibility for companies by participating actively in the stewardship of them as members of the company board. At the same time, strong ownership must not be misused to the detriment of the company or other shareholders. The Companies Act therefore contains several provisions for the protection of minority shareholders, including requirements for a qualified majority for a number of types of resolution at the shareholders' meeting.

4. What are the main features of the Swedish corporate governance model?

Swedish listed companies must have three decision-making bodies – the shareholders' meeting, the board of directors and the chief executive officer – which are in a hierarchical relationship. There is also to be a control body, the auditor, appointed by the shareholders' meeting.



The shareholders' meeting

The shareholders' meeting may decide on any question in the company that does not explicitly fall under the exclusive competence of another corporate body. In other words, the company's board and the chief executive officer are subordinate to the shareholders' meeting. Shareholders who cannot personally attend the shareholders' meeting may exercise their rights through a proxy. The decisions at a shareholders' meeting are usually taken by simple majority of the votes cast. In line with the general perception in Sweden that the shareholders' meeting should be not only a decision-making forum but also a forum for discussion, the possibility to offer postal votes ahead of a shareholders' meeting has not yet been implemented by any Swedish listed company.

In order to balance the shareholder majority's right to effectively control the company's decision-making and operations, the Swedish corporate governance model contains several rules for the protection of minority shareholders, including the following:

- all shares confer equal rights in the company (unless otherwise stipulated in the articles of association, for example with regard to differences in voting rights);
- corporate bodies may not make decisions which are intended to give undue advantage to a shareholder or to any other party to the detriment of the company or any other shareholder;
- each shareholder has the right to participate in and exercise voting rights for his shares at the shareholders' meeting, as well as the right to ask questions at the meeting and to have them answered by the company's board or the chief executive officer if answers can be given without damaging the company;
- each shareholder has the right, irrespective of the size of their shareholding, to have a matter dealt with at the shareholders' meeting if a request to do so has been submitted to the company board in sufficient time for the matter to be included in the formal invitation to the shareholders' meeting;
- some decisions, e.g. regarding changes to the company's articles of association or certain decisions that may be detrimental to minority shareholders, require a qualified majority;
- certain transactions between a company and its related parties, (including board directors, senior executives and shareholders holding at least ten percent of the shares or votes in the company) must be disclosed if the transaction is not of minor importance for the parties involved, and they must be submitted to the shareholders' meeting for approval of the transaction is not of minor importance to the company.

The board of directors

Subordinate to the shareholders' meeting is a board, consisting entirely or largely of members who are not employed by the company, i.e. non-executive directors. The board is responsible for the organization and stewardship of the company's affairs. The very wide discretionary powers conferred on the board by law are limited in relation to the shareholders' meeting, primarily by the provisions in the legislation which giving the shareholders' meeting exclusive decision-making powers in certain matters, such as amendments to the articles of association, election of the board of directors and auditors and the approval of the balance sheet and income statement. However, the board is obliged to comply with any specific instructions that may have been announced by the shareholders' meeting, provided that the instructions in question do not contravene the Companies Act or the company's articles of association. The shareholders' meeting may appoint or remove members of the board at any time if it deems it appropriate to do so.

The chief executive officer

Subordinate to the board of directors is an executive management function in the form of a chief executive officer, (CEO), who is responsible for the day-to-day management of the company. Actions which by virtue of their scope and the nature of the company's business are unusual or of great significance are not part of the day-to-day management. The CEO is obliged to prepare and make recommendations to the board regarding any matters that lie outside the scope of day-to-day management. The board is to give written instructions on when and how such information as is required for this assessment is to be collected and presented to the board. The CEO is subordinate to the board of directors, which means that the board instruct the CEO how to act or decide on ongoing management issues. The CEO is obliged to follow such instructions within the framework of the Companies Act and the company's articles of association. The board of directors can also make decisions on matters that are within the scope of day-to-day management. The board can dismiss the CEO and appoint a new one at any time if it deems it appropriate to do so.

The auditor

The company's auditor is appointed by the shareholders' meeting to review the company's annual report and accounts, as well as the work of the board of directors and the CEO. An auditor in a Swedish company receives its assignment from and reports to the shareholders' meeting and may not allow itself to be guided by the work of the board or company management. The auditors' reporting to the shareholders takes place at the annual general meeting through the audit report. The audit report is to contain a statement on whether the annual report has been prepared in accordance with the applicable legislation. This statement is to mention specifically whether the annual report gives a true and fair picture of the company's results and position and whether the director's report is consistent with the other parts of the annual report. If the annual report has not provided information that is required by the applicable legislation, the auditor is to state this and, if possible, provide the required information in the audit report. Another task of the auditor is to recommend whether the annual general meeting should approve the balance sheet and income statement and whether the disposition of the company's profit or loss should be conducted in accordance with the proposal in the director's report. The auditor is also to report if any member of the board or the CEO has taken any action or been guilty of any negligence that may lead to liability for compensation. The same applies if the auditor's review has found that any board member or the CEO in any other way has acted in breach of the Companies Act, the applicable legislation on annual accounts or the company's articles of association

5. What distinguishes the Swedish corporate governance model from that of other countries?

From a structural perspective, the Nordic corporate governance model differs clearly from both the one-tier model used in countries with an Anglo-Saxon legal tradition and two-tier model used in Germany and other continental European countries. The main differences compared with both of these other models are:

- The shareholders' meeting has a clearly stated superior position in relation to the company's board and CEO;
- The board of directors, which consists predominantly of members who are not employed by the company, has extensive authority to decide on how the company is to be run. However, the board can be dismissed by the shareholders' meeting at any time and is thus subordinate to shareholder majority;
- The model clearly differentiates between the company's board and its CEO. The CEO is appointed and may be dismissed by the board at any time.

With regard to the independence of company directors, the Code stipulates that the majority of the members elected to the board by the shareholders' meeting are to be independent in relation to the company and its executive management and that no more than one member of the board of directors may be a member of the company's management or the management of one of the company's subsidiaries. The boards of Swedish listed companies thus consist entirely or almost entirely of directors who are not employed by the company. With such a high degree of independence, the establishment of committees within the board is primarily a matter of organising the work of the board efficiently, unlike the situation in other countries, where committees are in many cases appointed to ensure the integrity of the board in matters where there may be conflicting interests. Although the Companies Act stipulates that the board of a listed companies is to have an audit committee and the Code stipulates that the board is to have a remuneration committee, the board of directors may decide under certain circumstances that the tasks normally performed to these committees will instead be carried out by the full board.

With regard to independence in relation to the company's owners, the Code stipulates that at least two of the board members who are independent in relation to the company and the company management are also to be independent in relation to the company's major shareholders. This means that it is possible for major shareholders in Swedish listed companies to appoint a board with a majority of members closely linked to these owners. This is in line with the positive view of an active and responsible ownership role and the expectations from society and other shareholders that major shareholders will take long-term responsibility for companies and participate actively in their stewardship.

Another distinctive feature of Swedish corporate governance is shareholder engagement in the nomination process for the board of directors and the auditor, which occurs through participation in the companies' nomination committees. Unlike the situation in most other countries, the nomination committee of a Swedish listed company is not a committee within the board, but a preparatory body for the shareholders' meeting. It consists of members appointed by the company's shareholders in through a separate procedure decided upon by the shareholders' meeting. This particular structure derives from the belief that a board should not nominate its own members; this task is considered to be better performed by a body representing the company's owners.

6. Why is it not mandatory for a listed company's nomination committee to present its nomination of members of the board as a number of individual proposals, one for each proposed board member, with the voting at the shareholders' meeting then occurring individually for each proposed candidate?

The Swedish nomination process and the election of board members are unique in many respects. The most important difference compared with other countries is that it is the owners – not the board – who are responsible for the nomination process. The instructions to the nomination committee are determined by the shareholders at the shareholders' meeting, and nomination committees are dominated by representatives of the largest shareholders who wish to participate. The work of nomination committees is usually conducted in such a way that the committee, with the mandate of the shareholders' meeting, submits a well-balanced proposal for a board that can work together as a well-functioning team, as well as meeting various criteria on competence, experience, gender balance, etc. which are contained in both the Corporate Governance Code and the Companies Act. Comments and criticisms regarding individual board members can be channeled via the nomination committee – either by participating in the committee or by submitting comments to it – or expressed at the shareholders' meeting in conjunction with the election of the board.

The normal procedure for board elections is that the shareholders' meeting first decides, within the limits set by the articles of association, on the size of the board. If there is only a single proposal corresponding to the number of board members decided upon by the shareholders' meeting, there is no need from a company law perspective to divide the voting into individual elections per person. If there are further nominations to the board, so that the number of candidates is greater than the number of positions on the board, individual voting is always to be conducted. In this way, the election of a board does not automatically take place through a single vote. The procedure whereby election of the board of directors of listed companies often takes place through a single vote at shareholders' meetings, not per candidate, is linked to the unique Swedish way of preparing these elections in a shareholder-elected nomination committee. If no other proposal of candidates to the board has been submitted to the shareholders' meeting and no request is made for another procedure is made, a vote on the nomination committee's proposal is a natural consequence.

The Code does not stipulate whether the nomination committee's proposal is to be formulated as a single proposal or as a number of individual proposals. It is up to each company and its shareholders to decide how elections to the board are to be conducted at each shareholders' meeting. If a request for individual voting has been presented as a specific proposal to the shareholders' meeting and therefore included in the notice of meeting or if such a proposal is presented at the meeting, the chair may ask the meeting whether an individual vote is to be conducted or not. Decisions on this procedural matter are made by simple majority at the meeting.

7. What does the board being granted discharge from liability by the shareholders' meeting mean?

A feature of the Swedish corporate governance model is the obligation at the annual general meeting each year for shareholders to decide on the matter of discharge from liability for the members of the board and CEO. Discharge from liability is granted unless the meeting's majority or a minority of owners comprising at least one tenth of all shares in the company votes against a proposal for discharge. The shareholders' meeting's decision to grant discharge means that the company can no longer take legal action against the members of the board of directors or the CEO for financial damages to the company related to the accounting period covered by the discharge decision.

The shareholders' meeting's decision on the matter of discharge from liability often follows the auditor's recommendation on whether board members and the CEO should be granted discharge from liability towards the company. In its audit of the company's accounts, the auditor of a Swedish limited company is obliged to review how the company's board and CEO have fulfilled their obligations. The audit report must therefore contain a statement on whether the directors and the CEO should be granted discharge from liability. Additionally, if any member of the board or the CEO has taken any action or been guilty of any negligence that may lead to liability for compensation, this is to be noted in the report.

The effect of the shareholders' meeting's decision to grant discharge is limited in so far as:

- It only affects the company's ability to bring legal action for damages; the decision does not affect the possibility of anyone other than the company to bring such action, (meaning that, for example, an individual shareholder is free to bring legal action against the board or the CEO regardless of whether the meeting has decided to grant discharge from liability)
- An action for damages on behalf of the Company may nevertheless be pursued if substantially incorrect or incomplete information has been provided to the shareholders' meeting in the annual report, in the audit report or elsewhere regarding the decision or action on which the legal action is based
- decisions on discharge of liability do not cover liability related to any consultancy assignments that a board member or the CEO has in addition to their assignment as board member/CEO in the company
- claims for damages based on criminal acts can be pursued at any time, regardless of whether discharge form liability has been granted.

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