Federation of Finnish Financial Services 31 August 2010

European Commission

Directorate Internal Market and Services
Rue de la Loi 200
1049 Brussels
markt-cg-fin-inst@ec.europa.eu

GREEN PAPER ON CORPORATE GOVERNANCE IN FINANCIAL INSTITUTIONS AND REMUNERATION POLICIES

Dear Sir/Madam,

Please find below the response of the Federation of Finnish Financial Services to the European Commission's consultation on corporate governance.

If you have any questions on our comments below, feel free to contact Mr. Tuomas Majuri (e-mail: tuomas.majuri@fkl.fi).

Yours sincerely,

Helena Laine
Director

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General comments

The Federation of Finnish Financial Services (FFFS, Interest Representative ID 7328496842-09) welcomes the opportunity to respond to the Commission consultation on the topic mentioned above. The FFFS generally supports views expressed in responses drafted by the European Banking Federation (EBF) and Insurers of Europe (CEA). Furthermore we would like separately point out following items.

According to the FFFS view the starting point for all corporate governance frameworks should be that financial sector companies may decide on their governance structure taking into account different ownership models, the size of the company, nature of activities and traditions. Corporate governance arrangements often reflect local and very special arrangements and normally combine elements of corporate law, self- and co-regulation between private and public actors. Therefore EU-level corporate governance rules should remain principles-based, balanced and adequately flexible.

The Finnish corporate governance regime for financial sector firms is based on high level principles often derived from EU-directives. The standards of the Finnish Financial Supervisory Authority (FSA) also implement international best practices such as Basel committee guidance and OECD principles. For listed companies there are self-regulatory corporate governance standards drafted by the Securities Markets Association. These standards are based on comply or explain principle and are regularly monitored.

The Finnish market for financial services is competitive and heterogeneous and consists of different corporate and ownership models. During the financial crisis there were not reported failures in the field of corporate governance and according to the Finnish FSA report dated 1st of June the sector continues on stable footing even in the difficult global circumstances. According to the FFFS view the heterogeneous financial sector consisting of strong global and local players is more resilient in the times of crisis. Therefore the EU corporate governance guidance should on the other hand promote efficient, sound, transparent and well-functioning internal market and on the other hand promote the principle of subsidiarity and proportionality that is important for local financial sector.

Due to variety of different corporate forms only high level corporate governance principles could be harmonized on EU-level. On a level of detail needs of companies and their stakeholders are sometimes different. We note that the questionnaire focuses primarily on large financial institutions and according to the Commission these standards should be adapted vis-à-vis smaller institutions. We support this approach and find it important that any proposals are proportionate to the size, complexity, structure, economic significance and risk profile of financial institution as the principle is outlined in international standards.

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General question 1: Interested parties are invited to express whether they are in favour of the proposed solutions concerning the composition, role and functioning of the board of directors, and to indicate any other measures they believe would be necessary.

As indicated above, in Finland there are many different governance and ownership structures. Members of the FFFS consist of internationally active commercial banks, local co-operative and savings banks, investment firms, insurance companies, mutual insurance undertakings and local insurance associations. The general company law serves basis for commercial banks and insurance companies, but for example co-operative banks are on based general law concerning co-operatives and for savings-banks are based on sui-generis provisions. Our member institutions can be shareholder-owner, member-owned or customer-owned.

Furthermore the Finnish company law is based on continental type two-tier model where governance is divided between (optional) higher degree supervisory board and (mandatory) lower degree management board. However, the company law provides flexibility and currently the supervisory board is not widely used among normal Finnish listed companies. On the other hand the two-tier model is widely used among co-operative banks and mutual insurance companies and specific local features should be maintained. As a summary, horizontal and detailed EU-level corporate governance principles covering wide range of financial institutions would be difficult to achieve in practice.

On question 1.5 we do not support external evaluator and this model would be anomaly in the Finnish legal system. If there would be need for additional supervision, the supervisory board could perform this function but this should be left to national discretion.

On question 1.6 we think that the board should remain responsible for risk management as a single entity. Separate statutory committees would blur the board responsibility but we acknowledge that especially in bigger institutions voluntary risk committees and other relevant committees can be beneficial and it is already industry practice in many respects. In cross-border groups these committees can be organized on a group level in order to get right overview. In smaller companies there is limited number of board members and therefore requirements for specific statutory committees might increase red tape without truly increasing of risk management. Again, there is need for proportionality. The same applies to questions 1.7 and 1.8.

As a more general point we feel that questions in this section are too specific. Risk management is one of the most important tasks of financial sector firms but best results are achieved via functional regulation that takes into account different corporate models. Detailed lists and requirements to set up various committees may lead into “box ticking” –type of compliance. Furthermore and before entering into new legislative initiatives it should be questioned whether there was failure in compliance of existing regulation or failure of existing regulation *per se*. In our view recently reviewed risk management

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provisions in the Capital Requirements Directive (CRD) and the Solvency II provide adequate basis for solid risk management. It is more question of proper implementation rather that real need for new and more detailed “black letter” -rules. The new EU –level supervisory architecture is strongly supported by the FFFS and we find that new European supervisory authorities are in the best position to harmonise diverging views between national supervisory authorities and ensure proper implementation of existing EU corporate governance provisions.

General question 7: Interested parties are invited to express their views on how to enhance the consistency and effectiveness of EU action on remuneration for directors of listed companies.

For listed financial sector companies high level principles should aim at promotion of solid and profitable business models and discourage excessive risk taking. However, equal application of remuneration principles to listed and non-listed companies would be challenging. Proportion of remuneration in cash and in dividends is different in non-listed companies where directors often are major holders of shares as well.

Remuneration based on shares or stock options are established market practices and do no *per se* increase excessive risk taking. Problems related to remuneration schemes can be more efficiently tackled for example with longer period of estimation of performance or realized risks.

Severance packages are often misunderstood and they tend to have negative connotation in the public debate. However, this discussion fails to see the whole picture. Corporate leaders (in Finland members of board, the CEO and where applicable members of the supervisory board) are not employees as stipulated in labour law but organs of the company stipulated in the company law. Corporate leaders can be dismissed any time without protection provided by labour law. Therefore there is need for proportionate safeguard arrangements. It is an established practice that no remuneration is paid in case of fraud or other managerial misbehaviour. Other senior managers (such as CFO or CRO) are covered in labour law but it is common to enter into leadership agreement which contains more detailed provisions for cancellation of agreement. Normally these agreements contain period for maximum one year salary in order to ensure smooth functioning of market for corporate professionals.

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