

NUES

Norsk utvalg for eierstyring
og selskapsledelse
Norwegian Corporate Governance Board

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Consultation on the EU Corporate Governance Framework

The Norwegian Corporate Governance Board

The Norwegian Corporate Governance Board (NUES) has since 2004 issued six versions of the Norwegian Code of Practice for Corporate Governance (the Code) (attached), the latest issued in 2010. NUES is backed by nine organisations in the Norwegian stock market, representing issuers, investors, financial analysts, auditors and the Oslo Stock Exchange, each with one representative at the board. The Oslo Stock Exchange has required the listed companies to issue an annual report on corporate governance in accordance with the Code. As from the financial year 2011, the companies are required by law to report on CG according to directive 78/660/EC article 46a.

The Norwegian Code of Practice for Corporate Governance

The Code contains 15 chapters on regular corporate governance issues. Some special features pertaining to the Norwegian Code are: Recommendations on nomination committees to be elected directly by the annual general meeting, on take-overs and on the auditor's role. We are not aware of any other codes having the concept of the AGM's direct election of members to the nomination committee, and such committee's independence from the Board of Directors. About 80 per cent of the Norwegian listed companies have implemented such committee.

The Norwegian Stock Market

The Oslo Stock Exchange operates two regulated markets for shares: Oslo Børs for mature companies (appr 200) and Oslo Axxess for younger and smaller companies (appr 35). The listed companies raised appr € 8 bn of new equity in the stock market during 2010.

The Norwegian Framework for Corporate Governance

In our opinion, the system for corporate governance functions well in Norway, taken into account the company law and accounting legislation, the Code, the Norwegian traditions and corporate culture and the transparency. As an EEA-state, Norway implements all directives of EEA-relevance, including e.g. the take-over directive, the shareholders' rights directive and MiFID. The two recommendations on corporate governance have also been implemented, partly in law and partly in the Code.

The questions in the Green Paper

In general, we strongly support the comply- or explain-principle. A lot of differences exist between the stock markets throughout Europe, with different company legislations and national traditions as to how listed companies are governed. Furthermore, more detailed legislation and reporting obligations on various CG matters would not only increase the costs on already listed companies, but also, and more important, be an obstacle for companies to list their shares.

We would like to respond to questions 24 and 25 of the green paper specifically. Generally, the comply- or explain-principle has been very well implemented in the Norwegian stock market since it was introduced in 2004. Even if the Code is considered to be extensive by some issuers, all companies apply the Code. The mandatory CG report shall be dealt with by the AGM, however, no formal approval or voting is required, simply because the report is not fitted for voting.

Question 24

The Study referred to in the Green Paper was made before the requirements in article 46a in directive 78/660/EC applied to the annual reports of all listed companies in Europe, even if the directive was implemented by the member states (e.g. in Norway the legal requirements apply to the 2011 annual reports, to be published in 2012).

We believe that the new requirements will improve the CG reporting as it has become a formal document to be approved by the Board of Directors. This will secure the boards' involvement in CG issues in a far more thoroughly manner than before, including any departures from the national recommendations, as they are required to explain, cf. article 46a.

Thus, as we have not yet seen the full import of the new reporting regime, no further legal requirements should be imposed on the companies.

Question 25

As the CG report is publicly available to everyone and made directly accessible to the shareholders, we believe the transparency of the report is fully taken care of. As explained above, in Norway the CG report is also an issue at the AGM.

Most of the issues dealt with by the national CG codes are primarily in the current and potential shareholders' interest. In our view, it is up to those interests to monitor the issuers' application of and reporting on the CG code, supported by other stakeholders, such as financial analysts, media, the company's employees, the regulated market and NGOs. Such stakeholders are also much more suited for monitoring the CG matters of particular relevance for the issuer in question, than separate national monitoring bodies will ever be.

To a large extent, the national Codes are principle based, i.e. the recommendations are less detailed and rigorous than company legislation. This is one of the core elements of the comply- or explain-principle: The recommendations can be applied – either by compliance or explanation – by all companies, regardless their size, shareholder base and governance structure. Even if the recommendations may be seen as best practise in a stock market, for some companies departing from specific recommendations, under specific circumstances, can well constitute suitable CG.

However, we are not sure whether a monitoring body's assessment of *the quality* of explanations would really serve the purpose. As the reporting on CG is primarily in the interest of the shareholders, monitoring by a third party would not be able to take into consideration the explanations of particular interest to the shareholders. I.e. a lot of resources will be spent ineffectively by reviewing explanations that the shareholders are really not that interested in.

An aspect of authorised monitoring is of course the costs involved. In our opinion, an increase of resources, if any, to be spent on monitoring of issuers, should focus on their financial reporting.

Yours sincerely
Norwegian Corporate Governance Board

A handwritten signature in blue ink, appearing to read 'Harto', is placed over a light blue rectangular background.

Ingebjørg Harto
Chair