

# EFB response

## to consultation on the EU Corporate Governance Framework



### **No code needed for unlisted companies**

By and large the European approach to Corporate Governance is very different to the one in USA. In Europe, owners appoint the auditors. In the USA, the bonus does. In Europe, the main requirement of the financial accounts is that they should be true and fair. In the USA the primary concern is compliance with GAAP (Generally Accepted Accounting Principles). Finally, in Europe the directors are predominantly nominated and elected by shareholders, while in the USA the directors nominate their own successors. It is essential to take into account that any European framework on Corporate Governance should reflect European traditions.

It is generally accepted that corporate governance measures or codes exist to better the functioning of a company by promoting accountability, transparency, fairness, disclosure and responsibility - core values that are relevant to the success of all businesses. Mostly corporate governance measures are based on the principle that management and owners are different individuals/constituencies with different interests. In other words, corporate governance pictures owners and managers as sitting on opposite sides of the table. The codes are there to protect the owners, especially when ownership is dispersed and when minority owners don't have a say. However, in a Family Business the owners are very often the managers as well, therefore, in a Family Business the owners exercise this control themselves.

**EFB is of the opinion that there is no need for compulsory codes or measures to regulate the governance of unlisted companies. Promoting the exchange of best practices is enough for unlisted companies - of which most are family businesses - to organize their governance as well as responsibilities to its stakeholders.**

Below, EFB outlines its opinions and suggestions regarding the first two questions that it deems to be most capable of answering, within its field of expertise.

## Question 1:

**Should EU corporate governance measures take into account the size of listed companies? How? Should a differentiated and proportionate regime for small and medium-sized listed companies be established? If so, are there any appropriate definitions or thresholds? If so, please suggest ways of adapting them for SMEs where appropriate when answering the questions below?**

The administrative burden that comes with applying governance principles could have adverse effects on a company especially for SMEs. As the Green Paper notes, small, medium and big companies have different requirements not only because of their size.

The Green Paper questions whether the EU should have a differentiated approach and how best to take account of the potential difficulty of applying some corporate governance practices across the range of types and sizes of companies (p.5 COM (2011) 164). European Family Businesses believes that a more fruitful exercise when proposing measures, such as the ones that are underlined in the green paper, is to look at the ownership structure of a company. Indeed, the Family Business community in Europe is of the belief that the ownership structure of a company will have a decisive impact for the governance structure. In sum, without understanding the legal form and ownership composition, it is difficult to build a good corporate governance structure in any unlisted company.

As mentioned above, generally speaking in the corporate governance domain, the owners and managers of a company are assumed to be in conflict because they have different interests. This basic assumption ignores the realities that are inherent within a Family Business. In a Family Business, an owner can often be the manager, and this is also the case for many SMEs. In a Family Business there is often a closer alignment of interests between the owners and the management. Therefore, good corporate governance is when the concept of accountability to the owners is at the heart of the formulation of a company's governance structure.

## Question 2:

**Should any corporate governance measures be taken at EU level for unlisted companies? Should the EU focus on promoting development and application of voluntary codes for non-listed companies?**

EFB believes that at the EU level, no corporate governance measures regarding unlisted companies should be taken. On a voluntary basis, based around the promotion of best practices and recommendations, unlisted companies can develop their own governance structure. This is not to say however that Family Business are opposed to corporate governance or that they would not benefit from guidelines or existing codes. On the contrary, EFB is in agreement that **'proper and efficient governance is valuable also for unlisted companies, especially taking into account the economic importance of certain very large unlisted companies'** (p.5 COM (2011) 164). But, importantly, a one size fits all model ignores the specificities and complexities within a Family Business, as the green paper underlines **'principles designed for listed companies cannot be simply transposed to unlisted companies, as the challenges they face are very different (p.5 COM (2011) 164).'**

Therefore, as previously mentioned, we insist on the promotion of best practices. Corporate Governance codes already exists for listed companies; therefore, these have already inspired many listed and unlisted Family Businesses to apply some of the sound concepts which can be found in many national codes. Also in recent years in various member states governance guidelines and codes for unlisted companies have been published and adopted on a voluntary basis (e.g. the Codex for Family Businesses in Germany, the Family Business Governance Report in the Netherlands, the code for Family Business in Spain, the code Buysse in Belgium, etc. See Annex I).

There is even a stronger argument not to establish any measure or code for unlisted companies. Without the existence of a corporate governance debate there are many family businesses who have developed effective governance structures for decades, not only including independent boards of directors but also bodies like family councils, owners councils, family assemblies and documents like a family constitution of family charter.



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THE FOLLOWING LIST CONTAINS THE CODES THAT EXIST IN THE EU'S 27 MEMBER STATES except for Croatia

Nation	Listed Companies	Private Companies	Family Businesses
Austria	The Austrian Code of Corporate Governance (2009)	Recommendation: The Austrian Code of Corporate Governance (2009).	Austrian codex based on German codex
Belgium	The Belgian Code on Corporate Governance (2009)	Recommendation: Code Buisse: Corporate governance for non-listed enterprises (2005)	Recommendation: Code Buisse: Corporate governance for non-listed enterprises (2005)
Bulgaria	Bulgarian National Code For Corporate Governance (2007)	(Not explicitly covered)	(Not explicitly covered)
Cyprus	Cyprus Corporate Governance Code (2006)	(Not explicitly covered)	(Not explicitly covered)
Czech Republic	Corporate Governance Code based on the OECD Principles (2004)	(Not explicitly covered)	(Not explicitly covered)
Denmark	Recommendations on Corporate Governance (2010)	Active ownership and transparency in private equity funds: Guidelines for responsible ownership and good corporate governance	(Not explicitly covered)
Estonia	Corporate Governance Recommendations (2006)	Recommendation: Corporate Governance Recommendations (2006)	(Not explicitly covered)



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Nation	Listed Companies	Private Companies	Family Businesses
Finland	Finnish Corporate Governance Code (2010)	Recommendation: Improving Corporate Governance of Unlisted Companies (2006)	Good Corporate Governance in Family Business – Governance of Ownership, Business and Family (2008)
France	AFG: Recommendations on corporate governance (2011) Le code MiddleNext: 'Code de gouvernement d'entreprise pour les valeurs moyennes et petites' (2009) AFEP: Corporate governance code of listed corporation (2008)	Recommendation: Le code MiddleNext: 'Code de gouvernement d'entreprise pour les valeurs moyennes et petites' (2009)	Recommendation: Le code MiddleNext: 'Code de gouvernement d'entreprise pour les valeurs moyennes et petites' (2009)
Germany	German Corporate Governance Code (2010) Corporate Governance Code for Asset Management Companies (2005)	Recommendation: German Corporate Governance Code (2010)	DIE FAMILIENUNTERNEHMER - ASU (Association of Family-run Companies) have jointly with INTES developed a family-run company codex which should be considered recommendations for owner families and can be seen as a counterpoint to legal regulations
Greece	SEV Corporate Governance Code For Listed Companies (2010)	Recommendation: SEV Corporate Governance Code For Listed Companies (2010)	(Not explicitly covered)
Hungary	Corporate Governance Recommendations (2008)	(Not explicitly covered)	(Not explicitly covered)
Ireland	UK Corporate Governance Code (formerly the Combined Code 2010)	(Not explicitly covered)	(Not explicitly covered)

Nation	Listed Companies	Private Companies	Family Businesses
Italy	<p>'Codice di Autodisciplina' (with revised Article 7 on remuneration of directors) (2006)</p> <p>Handbook on Corporate Governance Reports (2004)</p>	(Not explicitly covered)	(Not explicitly covered)
Latvia	Principles of Corporate Governance and Recommendations on their Implementation (2010)	Recommendation: Principles of Corporate Governance and Recommendations on their Implementation (2010)	(Not explicitly covered)
Lithuania	Corporate Governance Code for the Companies listed on the National Stock Exchange of Lithuania (2003)	Recommendation: Corporate Governance Code for the Companies listed on the National Stock Exchange of Lithuania (2003)	(Not explicitly covered)
Luxembourg	<p>The Ten Principles of Corporate Governance of the Luxembourg Stock Exchange (2009)</p> <p>ALFI Code of Conduct for Luxembourg Investment Funds (2009)</p>	<p>Recommendation: The Ten Principles of Corporate Governance of the Luxembourg Stock Exchange (2009)</p> <p>Recommendation: ALFI Code of Conduct for Luxembourg Investment Funds (2009)</p>	(Not explicitly covered)
Malta	<p>Principles of Good Corporate Governance: Revised Code for Issuers of Listed Securities (2005)</p> <p>Principles of Good Corporate Governance for Public Interest Companies (2005)</p>	Recommendation: Principles of Good Corporate Governance for Public Interest Companies (2005)	(Not explicitly covered)



Nation	Listed Companies	Private Companies	Family Businesses
Netherlands	Dutch corporate governance code (2008)	(Not explicitly covered)	FBNet: Good governance guidelines for family businesses (2003)
Poland	Code of Best Practice for WSE Listed Companies (2010)	(Not explicitly covered)	(Not explicitly covered)
Portugal	CMVM Corporate Governance Code 2010 (Recommendations) CMVM Corporate Governance Code (2007)	Recommendation: CMVM Corporate Governance Code (2007)	(Not explicitly covered)
Romania	Bucharest Stock Exchange Corporate Governance Code (2009) Corporate Governance Code in Romania (2000)	(Not explicitly covered)	(Not explicitly covered)
Slovakia	Corporate Governance Code for Slovakia January 2008 Corporate Governance Code (Based on the OECD Principles) September 2002	Recommendation: Corporate Governance Code for Slovakia (2008) Recommendation: Corporate Governance Code (Based on the OECD Principles, 2002)	(Not explicitly covered)



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Nation	Listed Companies	Private Companies	Family Businesses
Slovenia	Corporate Governance Code ( 2009)	(Not explicitly covered)	(Not explicitly covered)
	Unified Good Governance Code (2006)		IC-A: Principles of Good Corporate Governance for Unlisted Companies (2005)
Spain	IC-A: Code of Ethics for Companies ( 2006)	IC-A: Principles of Good Corporate Governance for Unlisted Companies (2005)	The Instituto de la Empresa Familiar published in 2005 The Corporate Governance for Family Business Guide in collaboration with the IESE Business School and the Fundación de Estudios Financieros.
	IC-A: Principles of Good Corporate Governance (2004)		
Sweden	The Swedish Code of Corporate Governance (2010)	(Not explicitly covered)	(Not explicitly covered)
United Kingdom	UK Corporate Governance Code (formerly the Combined Code 2010)	Corporate Governance Guidance and Principles for Unlisted Companies in the UK (2010)	Corporate Governance Guidance and Principles for Unlisted Companies in the UK (2010)

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European Family Businesses is a federation of 11 national family businesses associations. Our aim is to make political decision makers aware of the contribution of family businesses to society at large and to promote policies that are conducive to long term entrepreneurship. Our members represent turnover in excess of one trillion Euro, 9% of European GDP.