

Comments on the consultative document
“EFFECTIVE CORPORATE GOVERNANCE”

by

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Analysing CP 10/3 we would like to pay your attention to our remarks and propositions, as they might help you solve some problems in corporate governance. We have analysed next problems and questions: Q1, Q5, Q6, the point 3.7 and Annex 3, Q8, the point 3.14 and 3.19, the point 4.14, Q11, the point 5.1, Q12, the point 5.3. One of the most actual problems is problem which concern workload and accounting NED's time commitment, in other words confirming workload parameters and transforming it in a hours to use it in a remuneration system in future (“bonus / malus principle»).

Q1: Do you agree with our proposal to separately identify certain key roles that are performed within the CF1 (director) CF2 (NED) or CF 28 (systems and controls) controlled functions?

Analysing CP 10/3 within the framework of questions of the new controlled functions we don't agree with the following recommendations:

New nine Significant Influence Functions (SIF) were offered at the point 2.7. It consist of six new governing functions and three new systems and controls functions. But there is no governing function which should be performed by a committee on nomination. In our view it is omission, because executive and non-executive directors

will not be able to work effective enough and nobody will be responsible for not objective appointment. At the same time it's not in option to transfer SIF of committee on nomination on FSA, as FSA's activity has recommendation nature and the final decision about the appointment should remain of organization.

In line with this approach we propose supplement and improve offered governing functions (table below).

Significant Influence Function	Current function	New/ changed/ unchanged	Proposed new function	
Governing functions		New	CF00 (Parent entity SIF)	
	CF1 (Director)	Changed	Decreased scope	
	CF2 (NED)	Changed	Decreased scope	
			New	CF2a (Chairman)
				CF2b (Senior independent director)
				CF2c (Chairman of risk committee)
				CF2d (Chairman of audit committee)
				CF2e (Chairman of remuneration committee)
				CF2f (Chairman of nomination committee)
	CF3 (Chief executive)	Unchanged	n/a	
	CF4 (Partner)			
CF5 (Director of unincorporated association)				
CF6 (Small friendly society)				

We completely agree with your suggestions concerning the question of automatically grant the new controlled functions to individuals already performing the

relevant role within their existing approvals, as it is the real method to turn to a new system of SIF for executive and non-executive directors.

Q5: Do you agree that a phased approach of between three and 12 months is sufficient for the notification process, and that the Remuneration Code provides an appropriate basis for this phasing?

There are a lot of controversial moments in the point 2.22. Firstly, the criterion of authentication of large and small firms is not indicated. Secondly, it is not enough clear why temporal scopes are fixed as 3 and 12 months to submit notifications telling FSA which of their current approved persons are performing any of the new roles, and how they are related to Remuneration Code.

On our mind fixed terms for firms should be more toughen, in other words large organizations should submit notifications to FSA in two months after final publication of Corporate Governance Code. What about small organizations they should submit these notifications to FSA in 6 months. We consider, that these terms are most optimum in temporal scopes, and it is enough for making decision and sending notifications to FSA.

Q6: Do you agree that we should extend the proposed CF00 (parent entity SIF) to apply irrespective of the corporate status of the UK subsidiary?

Analysing the point 3.7 and Annex 3, we consider that new suggestions concerning corporate governance will not have practical application and that is why some of them should be eliminated. It would better don't propose to use CF1 and CF2 for «other partnerships/non-corporates», because the scales of their activity does not need SIF.

Q8: Do you agree that these transitional periods are sufficient?

Proposing in the point 3.13 transitional period of three months from the date the rules are published for firms to identify existing approved persons in a parent who will require approval to perform a significant influence controlled function in a subsidiary will be too long. Also, in the point 3.14 and 3.19 transitional period six months from the date the rules are published for firms to identify individuals in their authorised parent who are not currently approved in a governing function will be more than enough to arrange for them to be approved. Therefore we propose to reduce these terms to 2 and 4 months respectively.

We totally disagree with proposal in the point 3.14 and 3.19, that the transitional period will extend until the application has been finally decided. This transitional period should be restricted to 4 months. Otherwise this system will be ineffective.

Our key message remains that activity of executive and non-executive directors in organization begins from hiring then and it is very important step for shareholder of group on a FTSE 100-listed bank in representing their interests. For this reason, we would like to pay your attention on next problems:

In the point 4.14 you have mentioned the list of criterion, namely:

- Honesty, integrity and reputation;
- Competence and capability;
- Financial soundness.

For making interview it is necessary not only to form the list of criteria which will be used for shortlist candidates for definite job position in this organization, but also to create a system of criteria for different job positions. We are tent to think that list of criteria is formed in a bit general phrases and using this approach organization might lose potential worker.

In CP 10/3 you make group on a FTSE 100-listed bank use your service. Also you fixed terms and requirements to sending applications. But you don't mention FSA's responsibility for company's losses, which company might get after making wrong decision.

Q11: Do you agree with our proposed guidance on the time commitment required for chairmen and NEDs?

In CP 10/3 was mention that a minimum expected time commitment of 30 to 36 days in a major bank board should be clearly indicated for several NEDs, but you do not propose criteria, which indicate these terms. We particularly agree with your time commitment, but we offer to divide CFs into two parts. CF2a and CF2b will be in the first part. CF2c, CF2d, CF2e, CF2f will be in the second part. We thing that Chairman and Senior independent director need longer time commitment, because both of them are a member of the committees from the second part. As result 30 to 36 days will be not enough to discharge duties.

We offer indicate time commitment:

Proposed new function	Time commitment, days
CF2a (Chairman)	> 36 ¹
CF2b (Senior independent director)	
CF2c (Chairman of risk committee)	30-36 ²
CF2d (Chairman of audit committee)	
CF2f (Chairman of nomination committee)	
CF2e (Chairman of remuneration committee)	

1 – Assuming the time commitment to committee membership.

2 – Chairman of risk committee has high time commitment (36 days), Chairman of remuneration committee has low time commitment (36 days).

In this way we propose to fix minimal time interval, which should be spent to perform SIF.

In fact we do not agree with the approach to indication time commitment for NEDs, because of:

1. This approach is not enough exact.
2. This approach is not reasonable to use for NEDs, as they don't work in staff list.
3. Counting performs in a day prevents from clear identification contribution to perform of Board of Directors. As a result, it might be a problem to form a base for future "*bonus / malus principle*".

It would be better to count a time commitment in hours. That is why we propose to form a structure of minimum workload for NEDs in hours. It will be figured out by next formula:

$$\text{Workload} = x_1 + x_2 + x_3 + \alpha + x_5 + x_6 + \beta,$$

Fix rectangular components:

x_1 – the formal participation in the meeting of board of directors. As usual, the meeting of board of directors holds four times in a year. In this case, NED should spend minimum 10 hours.

x_2 – the formal participation in the committee`s meeting. If there are 10 NEDs in the company, each of them would be a member of minimum two committee. For this reason the minimum time commitment should be 20 hours.

Variable rectangular components:

x_3 – participation in creating agenda (Agenda includes initiative propositions). If NED works through 12 initiative propositions, minimum time commitment would be 30 hours.

α – participation in informal meeting. Let`s suggest that structure of such expenditure of time might include next perform types:

- work on year report;
- work on quarter reports;
- work on press releases.

Counting expenditure of time for working through such information content NED should spend nearly 100 hours in a year.

x_5 – expenditure of time for organization meetings (for chairman of committee). It takes nearly 70 hours in a year.

x_6 – participation in different international meeting to represent organization interest(e.g. association of banks). Let`s suggest that every NED will participate in the meeting of association of banks minimum one time in a year. In this case NED will have next expenditure of time:

- work at a meeting;
- time costs for movement ;
- time for preparation speech.

Counting all types of expenditure of time which were mention NED should work 14 hours.

β – other expenditures of time. It might be transaction expenses of time, which NED spends on realization of formal procedures. For example: arrival to destination and place of residence. For minimization expenses of the NEDs time, they should arrive for 8 meeting (4 times for meeting the first committee, 4 times for meeting board of directors and meeting the second committee, which will be hold at the same time). Therefore, minimum time commitment will be 64 hours.

Thus, we get next results:

	Time commitment, hours	Time commitment, days	Time commitment, which is proposed by Walker, days
Chairman of committee	308	38,5	30-36
NED	238	29,75	30-36

In the point 5.1 you propose to increase number of NEDs as a group on a FTSE 100-listed bank. In fact we agree with this proposition, but on our mind it would be better to create a system, which will be used to allocate NEDs between the committees. As a result, committees will shape from NEDs, that could provide effective perform of board of directors.

For example, there are ten NEDs in the structure of board of director. Then we propose next structure of committees:

Committees	NEDs									
	1	2	3	4	5	6	7	8	9	10
CF2a (Chairman)	×									
CF2b (Senior independent director)		×								
CF2c (risk committee)	×		×	×	×	×				×
CF2d (audit committee)		×		×				×		
CF2e (remuneration committee)					×		×			
CF2f (nomination committee)						×			×	

Therefore, we help to distribute SIF in company for which it will be difficult and size does not matter, would it be large or small company.

Q12: Do you agree that we should delete the guidance in SYSC 2 and 4 on NED's responsibilities.

In the point 5.3 you propose to delete the guidance in SYSC 2.1.2 and 4.4.4 on NED's responsibilities «non-executive director would not be held disciplinarily liable either for the failings of the firm or for those of individuals within the firm.»

We particularly agree with your recommendations. We think that non-executive director would not be held disciplinarily liable, but chairman should be held. In other way company will reduplicate Anron's experience.

We completely agree with your recommendations in sixth part, as they touch on painful problems. Adoption these recommendations can help solve a lot of conflict situation in the company.