DET KONGELIGE
BARNE- OG FAMILIEDEPARTEMENT
The Royal Ministry of Children and Family Affairs

EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels
BELGIUM

Your ref	Our ref	Date
	200504378-/HNOS	19.12.2005

Follow-up to the Package Meeting of 9 to 10 November 2005 regarding representation of both sexes on company boards

1. Introduction

Reference is made to the follow-up letter to the package meeting of 9 to 10 November 2005 by the EFTA Surveillance Authority (hereinafter the Authority) dated 25 November 2005, in which the Authority requests information from the Royal Ministry of Children and Family Affairs (hereinafter the Ministry) regarding different aspects of the Norwegian legislation on representation of both sexes on company boards.

2. Historical background

The Act of 19 December 2003 No. 120 on gender representation in company boards was passed with a broad majority in the Norwegian Parliament in December 2003. The Act is meant to secure men and women equal opportunities to be represented in company boards in accordance with the principle of equal treatment.

The implementation of the rules has been a long-lasting process.

In October 1999 the Bondevik I Cabinet sent a proposal for rules on gender representation on company boards on public hearing. In the hearing document, it is stressed that the low share of women in top management positions and at company boards, is disturbing. It is mentioned that less than 6 per cent of the members of the supervisory boards in companies listed on the stock exchange, is women. The Ministry underlined that the experience with gender representation rules in Section 21 of the Gender Equality Act of 9 June 1978 No. 45, is very positive. These rules demanded that each sex should be represented by at least 40 per cent in all public committees,

Postal address	Office address	Telephone	Department of Family Affairs and Gender Equality	Our officer
PO Box 8036 Dep 0030 Oslo	Akersgt. 59	+47 22 24 90 90 Vat no. 972 417 793	Telefax +47 22 24 27 18	Hege B.E. Nordstrand +47 22 24 25 38

councils, boards etc., appointed by a public body. Section 21 was included in the Gender Equality Act by amendments in 1981. The wording of Section 21 was changed by the Act of 19 December 2003 No. 120, and is now in accordance with the principle of Section 6-11 a of the Public Limited Companies Act of 13 June 1997 No. 45. Consequently, the wording establishes how many members of each sex a committee etc. must have to be in accordance with Section 21 of the Gender Equality Act. Due to this legislation, the share of women in publicly appointed members of committees etc., has increased considerably over the years. In 1980, only 20 per cent of the members of committees etc. appointed by a public body, were women, while the percentage in 1997 was approximately 40.

Based on the reactions in the public hearing, the Ministry of Children and Family Affairs in cooperation with the Ministry of Justice composed a new proposal for gender representation rules in the boards of companies. This proposal was sent on a public hearing by the Stoltenberg I Cabinet in July 2001.

In March 2002, the Bondevik II Cabinet decided to prepare a law proposal on this issue. The Minister of Trade and Industry at that time, Mr. Ansgar Gabrielsen, kept a close contact with business life and the main organisations in working life, to contribute actively to the process of achieving a better gender balance in company boards.

The reactions in the public hearing of 2001 were thoroughly considered by the Cabinet, and in June 2003 the Bondevik II Cabinet submitted a proposal on amendments to various company law acts, including the Public Limited Companies Act of 13 June 1997 No 45 to the Parliament (Ot.prp. nr. 97 (2002-2003)). As mentioned above, a broad majority of the Parliament passed the amendments in December 2003. In Ot.prp. nr. 97 (2002-2003) it is expressly stated on page 1 that the amendments to the Public Limited Company Act, the new Section 6-11 a there, shall not enter into force if the companies achieve the objective on gender representation voluntary by 1 July 2005. It appears from chapter 5.3 of Ot.prp. nr. 97 (2002-2003) that the relation between the proposed legislation and Directive 2002/73 has been evaluated, and that the Cabinet's conclusion was that the proposed legislation was in accordance with Directive 2002/73.

A survey carried out by Statistics Norway, showed that by 1 July 2005 Norway had 519 public limited companies in the private sector. At that time 68 (13,1 per cent) of these companies fulfilled the requirements of the new Section 6-11 a of the Public Limited Companies Act. 15,5 per cent of the board members in the Public Limited Companies were women. If the deputy board members were taken in to account, 16,9 per cent of the board members were women. Consequently, the private sector had not achieved the objective on gender representation voluntarily, and 9 December 2005 the Stoltenberg II Cabinet decided to put the new Section 6-11 a into effect as from 1 January 2006.

3. Information requested by the Authority

3.1 Information regarding which kind of companies Act 120/2003 currently applies to

By Act of 19 December 2003 No. 120 amending the Public Limited Companies Act of 13 June 1997 No. 45, rules on gender representation in the board of directors are introduced to all public limited companies. The rules entering into force 1 January 2006, are found in Section 6-11a of the Public Limited Companies Act. Companies that have been registered prior to 1 January 2006, have a two year transitional period before they must comply with the new rules. New companies, however, must comply with the rules in order to be registered.

The wording of Section 6-11 a of the Act, regarding shareholder-elected board representatives, is as follows:

"Both sexes shall be represented on the company boards as follows:

If the board has two or three members, both sexes must be represented.
If the board has four or five members, each sex shall be represented by at least two representatives.
If the board has six to eight members, each sex shall be represented by at least three representatives.
If the board has nine members, each sex shall be represented by at least four representatives, and if the board has more than nine members, each sex must make up at least 40 per cent of the representatives."

These rules also apply to the election of alternates.

The rules are somewhat different when it comes to board members who are elected by and from the employees:

"Where two or more board members are elected from and among the employees, both sexes must be represented. This also applies to alternates. This rule will not be applicable in companies where one of the genders represents less than twenty per cent of the total number of employees on the date of the election."

The gender representation rules are to be applied separately to employee-elected and shareholder-elected representatives in order to ensure independent election processes.

The same rules on gender representation were also given for all state-owned private limited liability companies and state-owned public limited liability companies, as well as private limited liability companies and public limited companies which are wholly-owned subsidiaries of such companies (Section 20-6 of the Private Limited Companied Act of 13 June 1997 No. 44 and the Public Limited Companies Act). Furthermore, some special state-owned companies and enterprises incorporated by special legislation and inter-municipal companies have been made subject to the same kind of rules. For these publicly owned companies, the rules have been effective since 1 January 2004.

3.2 Information regarding whether the requirements apply to all public limited liability companies registered in the Norwegian company register, including subsidiaries of foreign companies

The rules in Section 6-11 a of the Public Limited Companies Act cover all public limited companies registered in Norway as a Norwegian company, including all such Norwegian companies that are owned wholly or partly by foreign companies or persons.

3.3 Information regarding plans to extend the scope of Act 120/2003 to cover companies currently not covered by it, including issues such as the type of companies planned to be covered and a provisional timetable for adopting such measures

No gender representation rules have been adopted for private limited liability companies with private (non-state) owners. The question has been raised as to whether similar rules should also be made applicable to the biggest private limited liability companies with private owners, but the Cabinet has decided that any such expansion shall not be explored any further now.

The Ministry of Justice is currently preparing new legislation concerning co-operative societies, in a new Co-Operative Societies Act, and rules on gender representation on the board of such societies will be considered there. Such rules however, will be somewhat different than Section 6-11 a in the Public Limited Companies Act, as the co-operative society is not organised in the same way.

3.4 The Ministry's view on whether the amendments introduced by Directive 2002/73 in particular the amended Article 3 (1) a have extended the material scope of the directive

The purpose of the Directive 1976/207 is dealt with in Article 1 (1), which states:

"The purpose of this Directive is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security. This principle is hereinafter referred to as "the principle of equal treatment".

The material scope is described in Article 3 (1), which states that:

"Application of the principle of equal treatment means that there shall be no discrimination whatsoever on the grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatsoever sector or branch of activity, and to all levels of the occupational hierarchy."

In Directive 2002/73, Article 1 (1) has not been amended, but a new paragraph 1 a has been inserted:

"Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas mentioned in paragraph 1."

In the amended Article 3, the previous paragraph (1) is now paragraph (1) a:

"1. Application of the principle of equal treatment means that there shall be no direct or indirect discrimination on the grounds of sex in the public or private sectors, including public bodies, in relation to:
a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion"

We understand that the question that the Authority would like us to comment on, is whether the new wording of Article 3 (1) a "employment, self-employment or to occupation", widens the material scope of the directive from the previous wording of paragraph (1) "access to all jobs or posts", to extend the principle of equal treatment to apply to membership in the board of directors in companies.

The new wording by itself does in the Ministry's view not signify such a widening of the material scope of the directive. Neither does the Introduction to Directive 2002/73 indicate that such an important widening of the material scope of the directive was envisaged. The new wording in subsection a) of paragraph (1) is the same as in subsection a) of Article 3 (1) in Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment or occupation. Item 6 in the Introduction to Directive 2002/73 states that it was appropriate to insert definitions consistent with those directives. We therefore assume that the amendment of the wording in Article 3 (1) subsection a) was made in order to align the text with these other non-discrimination directives, but without envisaging any significant widening of the scope. The fact that Article 1 (1) concerning the purpose of the directive has not been amended, may further indicate that such a widening of the material scope was not envisaged.

As for the preparatory works to Directive 2000/73, we have studied the document COM (2000) 334 final, (Proposal for a Directive of the European Parliament and the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.) In item 1 of the Introduction, this document refers only to the labour market. It is not indicated in the document that it was envisaged to expand the material scope of the directive. However, the proposal in that document does not include the relevant amendment of Article 3 (1), so the relevance of it in this connection may be somewhat limited. We have not been able to find other relevant preparatory works.

Later documents referring to the amendments made by Directive 2000/73 EC to Directive 1976/207/EEC do not seem to indicate that a widening of the material scope has taken place. In SEC (2004) 482 , (Proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and

occupation), the various analyses of the issues makes no mention of the very low representation of women in the boards of companies. The significance of Directive 2000/73 is described on page 4-5 of SEC (2004) 482, without any mentioning of matters relating to any widening of the scope:

"In 2002 the equal treatment in employment Directive was substantially amended by Directive 2002/73.16 As new elements the Directive defines indirect discrimination in a broader way than Dir. 97/80, but in line with the two Directives based on Art. 13 EC, Dir. 2000/43 (race Directive) and Dir. 2000/78 (framework Directive). Furthermore harassment and sexual harassment are defined. The scope of the principle of non- discrimination is substantially enlarged by including harassment and sexual harassment as well as instruction to discriminate. Less favourable treatment of a woman related to pregnancy or maternity leave are defined as discrimination. Protection against victimisation (Art. 7), the right for associations, organisations or other legal entities to engage on behalf or in support of complainants with their approval in any judicial or administrative procedure is defined in Art.6. Bodies for the promotion, analysis, monitoring and support of equal treatment and their tasks are defined in Art. 8a. Art. 8b sec.1 describes an obligation for Member States to promote social dialogue with a view to fostering equal treatment. Provisions dealing with equality plans and the encouragement of social partners to promote equality between men and women are mere recommendations. The provisions on legal remedy in Art. 6 para 1 and the obligation to Member States to ensure the effective application of equal treatment provisions by compensation (as one possible kind of sanctions) without a prior upper limit (Art. 8 para 2) as well as the obligation for Member States to set up a sanctions regime (Art. 8d) in general is the result of Court's judicature.17 Other provisions like art. 2 (6) simply codify the Court's decisions in Brown, C-394/97, Gillespie, C-342/93, Johnston, C-222/84, Kreil, C-285/98, Sirdar, C-273/97. The Directive will have to be transposed until 5 October 2005. It may have a major impact from the innovative provisions described."

The Bulletin Legal Issues in Gender Equality, No. 1 of 2005 specifically addresses the transposition of Directive 1976/207/EEC as amended by Directive 2002/73/EC, and is therefore of some interest here. There is no reference there to any widening of the material scope of the directive, neither the Introduction to the Bulletin nor in the national reports it contains. From The Ministry's reading of the various national reports in the Bulletin, it seems that most of the national legislations on equal treatment that are reviewed in the national reports, would probably not cover board memberships in public limited companies. If the equality principle of the directive was to be applied to board memberships in companies, many member states would probably have to amend their company legislation concerning company boards accordingly, introducing the equality principle in company law, in order to fulfil the obligation to actively take into account the objective of equality of men and women when formulating and implementing laws on the boards of directors of companies. This would also include providing for rules on sanctions applicable to infringements of the equality principle in the boards, including the rules in Article 6 paragraph 3 concerning the right of entities with legitimate interests to file judicial complaints etc. However, in reading the Bulletin we have the general impression that the member states have not considered company boards in this respect.

In COM (2005) 44 final, Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the

Regions, women's participation in managerial positions and in daily executive bodies are reported. The Ministry refers to page 11 under "Decision making", which refers to the graph on page 16 concerning "Members of the daily executive bodies in top 50 publicly quoted companies - sex distribution 2004", with the following remarks:

"The percentage of women in managerial positions in the EU has increased by 1 percentage point since 2002, to reach 31 % in 2003. Very few women (all MS except 4 do not reach 15 % women) are members of the daily executive boards in top 50 companies".

Women's participation in the supervisory board of companies is not mentioned in the report, however.

3.5 The Ministry's view on whether a position as a board member could be considered to fall within the scope of the term "employment", "self-employment", and in particular "occupation" in Article 3 (1) a of Directive 76/207/EEC as amended, and the legal arguments supporting that view

The board members are not employees, and they are not covered by worker's protection legislation, such as the new Act of 17 June 2005 No. 62 on Work Environment, Working Hours and Employment Protection or the Act of 16 June 1989 No. 65 on Employment Insurance Schemes. However, a board member who performs work in the company beyond the functions that follows from the position as a member of the board, may be seen as an employee in relation to such other work. The Act of 4 February 1977 No. 4 on Workers Protection and the Working Environment, states in Section 3 that "employee" means "anyone who performs work in the service of another". The preparatory works of the Act, Ot.prp. nr. 3 (1975-1976) page 102, comments on the board of directors in this context, as follows:

"The employer will be the highest authority of the company. This will for example be the board of directors in a limited company, in other cases it may be the owner of the enterprise."

On 1 of January 2006, the act of 1977 will be replaced by a new Act of 17 June 2005 No. 62 on Work Environment, Working Hours and Employment Protection. Section 1- 8 there, like in the present act, defines "employee" as "anyone who performs work in the service of another".

The board is obliged to ensure that the company, as employer, fulfils its obligations under the non-discrimination directives mentioned above with regard to the persons who have employment or occupation in the company.

Regarding the term "self-employment", we assume this to have basically the same meaning as in Article 2 (a) in Directive 1986/613 EEC on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self employed women during pregnancy and motherhood, where it is defined as: "all persons pursuing a

gainful activity for their own account. (...). ". Being a member of the board of directors of a company is not an activity that is pursued on that board member's own account.

Regarding "occupation", we understand the ordinary sense of the word to mean the kind of work activities that a person does to make a living, or activities that a person has trained for or trains for to make a living. The term covers activities in the workplace in general and to employment in the broader term, to the wide variety of different forms of livelihood that the citizens make through their daily work. It covers activities in the workplace where the person is not an "employee", for example freelancers, independent experts and consultants etc. Positions that can be seen as the direct or indirect execution of the ownership functions in companies, by or on behalf of the owners, will however in our view fall outside the scope of the term "occupation".

The functions and the role of the board of directors in limited companies, as well as how they are appointed and by whom, may vary in different European countries. Board membership in Norwegian company law is an ownership function, in the sense that the board is supervising the company's operations on behalf of the ownership interests. Board members are either themselves the actual owners of the company, or persons who are hand-picked for election by the owners, often as the result of the work of a nomination committee set up by the company, taking into consideration the interests of different shareholder groups etc. In some companies, depending on the number of employees, a certain number of employee-representatives must also be on the board, and these are elected by the employees. The owners' election of the board in Norwegian private limited companies and public limited companies is made at the general assembly by a majority vote, unless the articles of association of the company have assigned the election to another body, Section 6-3 of the Norwegian Private Limited Companies Act of 13 June 1997 No. 44 and the Norwegian Public Limited Companies Act of 13 June 1997 No. 45. The owners also instruct the board, through the general assembly. If the owners are not satisfied with the way the board functions, they will elect a new board. Without the necessity of an election at the general assembly, a board member can be removed at any time, with no previous notice and no reason being given, by the owner (or owners) who has elected that board member, (Section 6-7 (2) of the Private Limited Companies act and the Public Limited Companies Act). Unlike in some other European countries, in Norway the executive management of the company or the general manager are usually not members of the board. There are some exceptions to this however. In smaller companies, the owner or small group of owners is often the board themselves, as well as being the general manager and being employed by the company, performing the company's daily activities. In some banks the general manager must be member of the board according to Section 9 in the Act of 24 May 1962 No. 2 on Business Banks.

Board members do not receive a salary in the ordinary sense of the word. Where the owners themselves are board members, no remuneration is awarded to them usually. Where the owners elect other persons to represent them in the board, the board

members usually receive a yearly remuneration. The remuneration is fixed by the owners by a majority vote at the general assembly, and varies from a rather small sum for board memberships in smaller companies, to larger amounts in the largest public limited companies. In the average company, the remuneration usually varies between NOK 10 000 - 50 000 for members of the board, a bit more for the chairmanship. In the largest companies however, the remuneration may be much higher, around NOK 200 000 and up to around NOK 3-400 000 for the chairman of the board.

3.6 Information on the role and function of a board of directors

The role and function of the board of directors in limited companies is regulated in Chapter 6 in the Private Limited Company Act of 13 June 1997 No. 44 and the Public Limited Company Act of 13 June 1997 No. 45. The board shall keep itself informed of the company's financial position and shall ensure that the company's activities, accounts and asset management are subject to adequate control (Section 6-12 (2)). It shall supervise the management of the company and the company's activities in general, and it may lay down instructions for the day-today management (Section 6-13). The day-to-day management of the company is the responsibility of the general manager, who must follow the guidelines and orders issued by the board in this respect, according to Section 6-14.

All matters of an extraordinary nature or of major importance to the company, falls outside the competence of the daily management of the company, but is the responsibility of the board to decide (Section 6-14 (2)). Usually, the board members do not follow the day-to-day management of the company, unless the board members are also the owners as well as being employed by the company, but the board supervises the activities of the company based on reports to the board from the general manager. At least every month the general manager must make a statement of the company's activities, positions and profit/loss development to the board at a meeting or in writing (Section 6-15 (1)). The board may at any time demand that the general director reports to it on specific matters (Section 6-15 (2)).

It is the responsibility of the board to draw up plans and budgets for the company's activities, and it may issue guidelines for the activities of the company (Section 6-12 (2)). If the company does not have a corporate assembly, the board shall also adopt resolutions concerning (Section 6-12 (5) :

- investments of substantial size in relation to the resources of the company
- rationalisation or restructuring of the operations which will result in a major change in or reorganisation of the workforce.

In addition, the rules concerning increase or reductions in share capital, mergers and demergers and certain other operations places certain core tasks with the board, such as preparing merger plans etc. We will not deal with these matters in detail here.

The board shall discuss the matters and make its decisions at board meetings, unless the chairman of the board finds that the matter can be dealt with in some other adequate manner (Section 6-19). In consultation with the chairman, the general manager shall prepare matters which are to be discussed by the board (Section 6-21). The members of the board and the general manager may demand that the board shall discuss specific matters (Section 6-20 (2)). In companies where the employees are represented on the board, the board must adopt rules of procedure which lay down rules on the work and administrative procedures of the board (Section 6-23).

Sections 6-24 to 6-29 deals with matters relating to the decision making process of the board, such as quorum, majority rules, disqualifications and minutes.

A board member is elected for a period of two years or for a shorter or longer period, if this is fixed in the articles of association, but not longer than four years (Section 6-6). Board members are entitled to retire before the end of the period of office that the person has been elected for, only if there are special reasons for doing so (Section 6-7 (1)). Some boards meet relatively seldom, maybe once or twice a year, or more often depending on the circumstances, whereas others meet much more often at a regular basis.

There is no contract of employment or assignment between the company/owners and the board members, but the general assembly may issue instructions to the board. It is the company law legislation (the Private Limited Company Act or the Public Limited Company Act) that establishes the obligations and duties of a board member in a limited company.

3.7 Information on the consequences of failing to comply with the requirements laid down in Act 120/2003

The Act of 19 December 2003 No. 120, which amends the Public Limited Companies Act and some other company law acts by introducing new rules on more equal gender representation in company boards, has no provisions on the consequences of failing to comply with the new requirements. The sanctions for breach of the provisions of the Public Limited Company Act, including the new Section 6-11 a, is regulated in chapter 16 and chapter 19 of the Public Limited Companies Act.

Section 16-15 (1) deals with the dissolution of the company where the company does not fulfil the requirements of the law regarding the board of directors, the general manager, the auditor and the company accounts. It states that:

"Section 16-15 Dissolution following an order by the court
(1) If the general meeting does not adopt a resolution on dissolution, the court shall decide by order that the company is to be dissolved in the following cases:
1. if the company is to be dissolved as a result of statutory provisions or provisions in the articles of association;

2. if the company has not notified the Register on Business Enterprises of a board of directors that meets the requirements set out in statutory provisions or pursuant thereto;
3. if the company has not notified the Register on Business Enterprises of a general manager who meets the statutory requirements;
4. if the company has not notified the Register on Business Enterprises of an auditor who meets the statutory requirements;
5. if the annual accounts, the directors' report and the auditors' report which the company must submit to the Register of Company Accounts pursuant to section 8-2 of the Accounting Act have not been submitted within six months of the deadline for submission, or if, upon the expiry of the deadline, the Register of Company Accounts can not approve material submitted as the annual accounts, the directors' report and the auditor's report."

Failure to comply with the rules on gender representation for boards in the new Section 6-11 a, will fall under Section 16-5 (1) subsection 2, referring to the requirements set out in statutory provisions regarding the board.

The administrative procedures for such dissolution cases are regulated by Sections 16-16 to 16-18:

"Section 16-16 Administrative procedures to dissolution cases pursuant to Section 16-15
(1) When the conditions stated in Section 16-15 subsection 1 nos. I to 4, have been met, the Register of Business Enterprises must notify the company thereof. In cases as mentioned in Section 16-15 subsection 1 no. 5, the notice will be given by the Register of Company Accounts. The company must be given a period of one month in which to rectify the matter and must be informed of the consequences of any failure to meet the deadline.
(2) If the company has not rectified the matter upon expiry of the deadline, the Register of Business Enterprises or the Register of Company Accounts must repeat the warning by the insertion of a notice in the Electronic Announcement Publication of the Register of Business Enterprises and in abbreviated form in a newspaper which is widely read in the area in which the registered office of the company is located. The notice must state that the terms and conditions for a dissolution of the company have been met, and that the company has a deadline of four weeks from the electronic announcement, in which to rectify the matter. The consequences of any failure to meet the deadline must also be stated.
(3) If it is considered expedient, public notice in accordance with the present provision may instead be given by the court.

Section 16-17 The order of the court
(1) If the company has failed to meet the deadline in accordance with Section 16-16 subsection 2, the Register of Business Enterprises or the Register of Company Accounts must notify the court thereof.
(2) Without further notice, the court must order that the company is to be dissolved pursuant to Section 16-15, unless a resolution on dissolution has already been adopted by the general meeting. The order shall have the same effect as an order for the institution of liquidation proceedings pursuant to chapter VIII of the Bankruptcy Act.

Section 16-18 Winding up of the company
(1) If the court has decided that the company is to be dissolved, the company must be wound up pursuant to the rules in the Bankruptcy Act and in the Creditors Security Act.
(2) The assets in liquidation may only be returned to the company pursuant to Section 136 of the Bankruptcy Act if the grounds for dissolution no longer exists."

Before the Registry of Business Enterprises gives notice to the company pursuant to Section 16-16 (1) and the process described above is initiated, the company will be

given "a reasonable time", by the registry to correct the matter, pursuant to Section 5-2 in the Act 21 June 1985 No 78 on the Registration of Companies, which states that:

"Section 5-2 Refusal of registration
Where the registry finds that a notification is not in accordance with law or the articles of association , registration shall be refused. Registration shall also be refused if the conditions for registration are not complied with or if the information is not sufficiently clear and it is not possible to assess how it is to be understood.
If the error is of a nature so that it may be corrected, the registry shall give the notifier a reasonable time to correct the error. The registry shall at the same time give the notifier notice that the notification will be rejected if the error is not corrected."

To sum up, the consequence of not complying with the rules of the Public Limited Company Act concerning the composition of the board, including the new Section 6-11 a, is that the company registry - after giving the company some time to correct the matter - refuses to register the board. Thereafter, the company is given two more notices, each of one-month length, to correct the error. If this is not corrected, the company is dissolved by order of the court.

The general rules of chapter 16 may be subject to some adjustments next year, but it is too early to say what such adjustments could be.

There are also penal consequences of not complying with the rules of the Public Limited Companies Act. Any promoter, member of the board of directors or the general assembly, general manager, person with authority to bind the company, independent expert or auditor who with intent or negligence violates any provision set out in or pursuant to the act, may be punished by fines, or in aggravating circumstances, by imprisonment up to one year. Aiding and abetting is punishable in the same way. (Section 19-1).

3.8 Information on whether the remuneration paid to board members is considered as taxable income under Norwegian tax legislation and to specify the relevant provisions of the General Tax Act

The remuneration paid to board members is considered as taxable income according to the General Tax Act of 26 March 1999 No. 14 Section 5-10 subsection b. Subsection b explicitly deals with remuneration paid to board members, committee members, counsel members and suchlike, while character a covers wages, salaries and other remuneration gained from labour.

According to the General Tax Act Section 5-10, various contributions are put on a par with income earned from labour, amongst others, remuneration paid to board members. Other contributions are put on a par with income earned as self-employed, but consequently not remuneration paid to board members.

3.9 Information on whether the remuneration paid to board members is subject to social security contributions and/or occupational pension fund contributions.

Section 23-2 of The Social Security Act of 28 February 1997 No. 19 states that employer's national insurance contributions is to be paid on the basis of remuneration as mentioned in Section 5-10 subsections a and b of the General Tax Act. As mentioned above, remuneration paid to board members are included in Section 5-10 subsection b of the General Tax Act.

Section 23-3 of The Social Security Act, states that social security contributions are to be paid on gross employment income as mentioned in section 12-2 of the General Tax act. According to Section 12-2 subsection b, earnings as stated in the General Tax Act Section 5-10, are viewed as gross employment income, and thus object to social security contributions.

When it comes to occupational pension fund contributions, one has to distinguish between schemes that are regulated by law (tax benefit schemes) and schemes that are not.

According to the Norwegian Public Service Pension Fund Act of 28 July 1949 No. 26 remuneration paid to board members is not subject to contributions to this scheme.

Similarly, according to the Defined Benefit Act of 24 March 2000 No. 16 Section 1-2 and the Defined Contributions Act of 24 November 2000 No. 81 Section 1-2 remuneration paid to board members will not be not subject to contributions to these schemes.

However, there may be schemes that do not include a tax benefit (schemes that are not regulated by law) where board members have arrangements stating that the remuneration should be subject to occupational pension fund contributions. The Ministry is not aware of whether this would be a common arrangement or not.

4. Conclusion

The Ministry hopes the information given above will be satisfactory. If the Authority is in need of any further information, please do not hesitate to contact the Ministry.

Yours sincerely,

Arni Hole

Hege B.E. Nordstrand