Monitoring Committee

CORPORATE GOVERNANCE CODE Final document

UNOFFICIAL TRANSLATION

December 2017
secretariat: PO Box 20401, 2500 EK The Hague

www.mccg.nl

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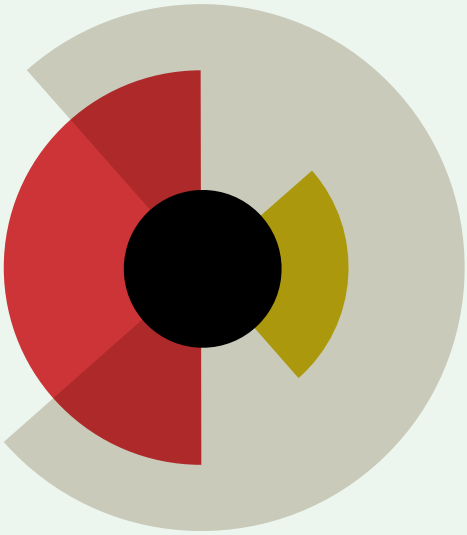
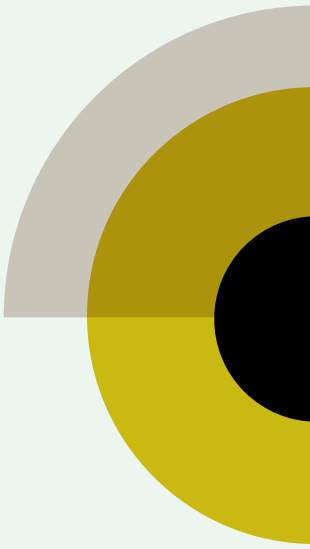
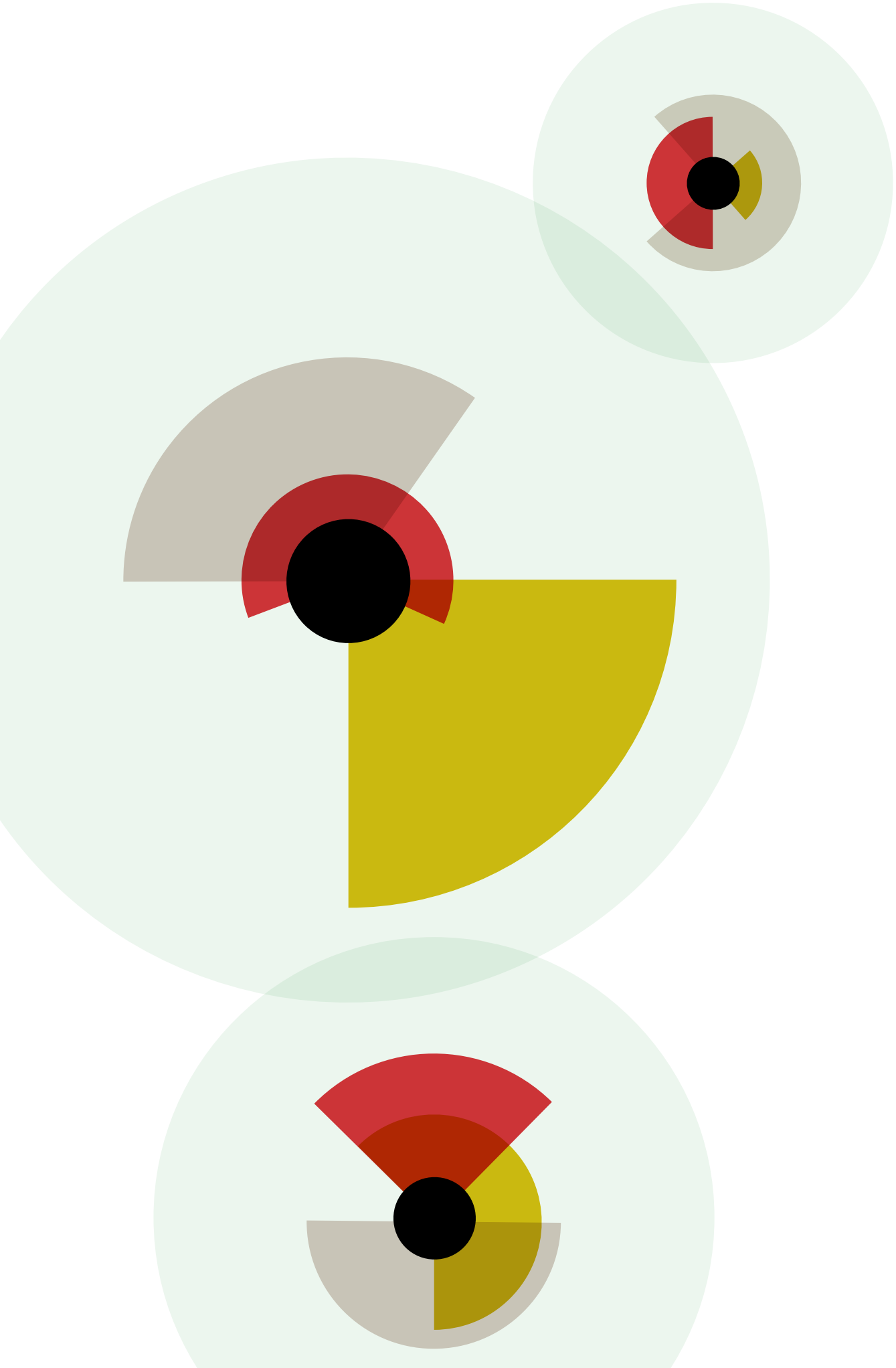




CONTENTS



FOREWORD

This is the last report of the third Corporate Governance Code Monitoring Committee, which was established four years ago. It is to be expected that the government will appoint a new Corporate Governance Code Monitoring Committee in the near future. The new Committee will monitor compliance with the revised Dutch Corporate Governance Code (the 2016 Code). Also with the revised Code we can expect proper compliance: management board members and supervisory board members of Dutch companies have a tradition to uphold in this regard. In recent years, in debates and in practical governance they have shown that they take the Code seriously.

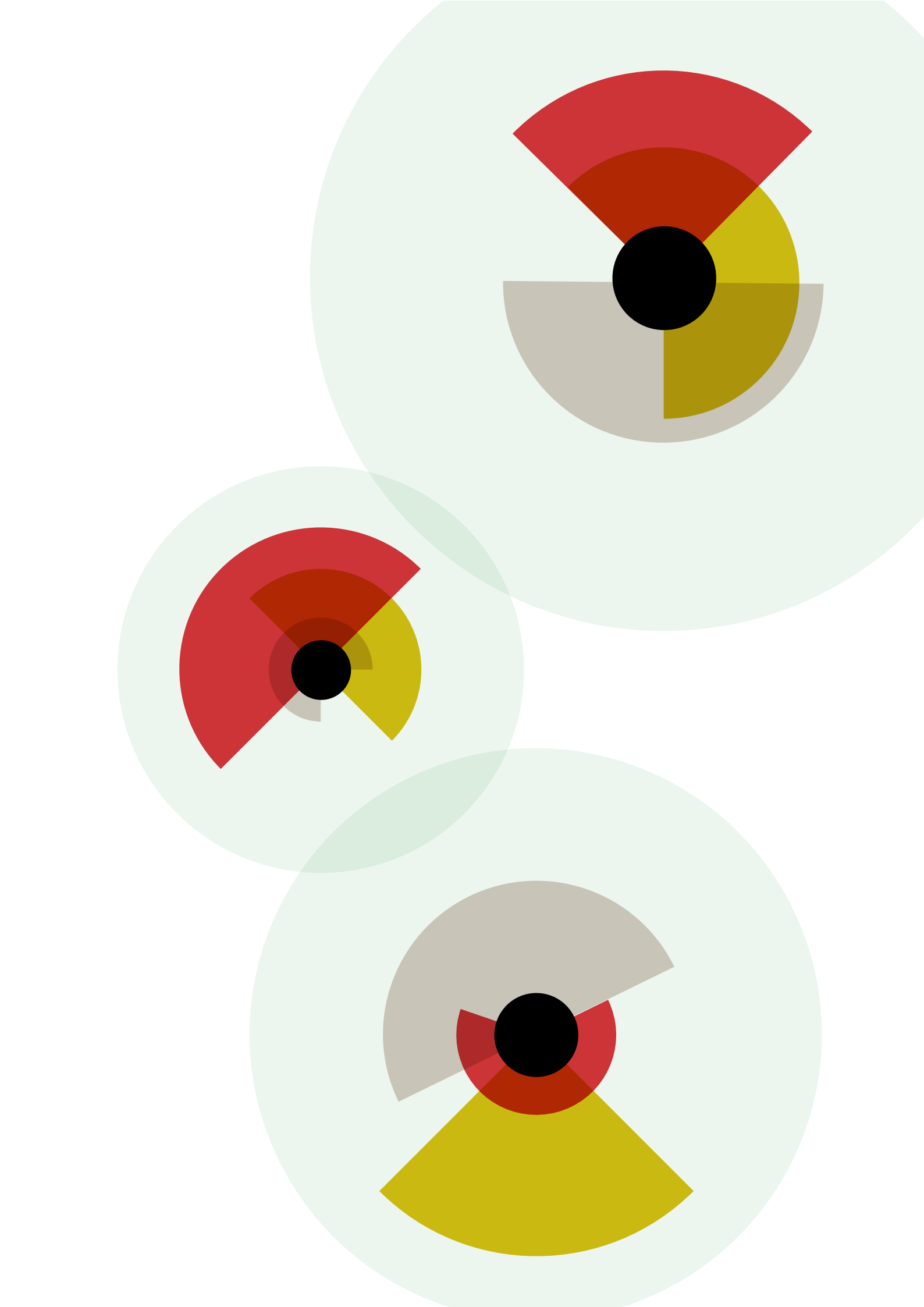
I am curious to see the topics the debate will cover in the years ahead. The new Code contains important focal points, such as long-term value creation, the corporate culture and risk management. Judging by the news and debates of the past months and years, I expect the standards for the conduct of shareholders, which have not been adjusted when the Code was revised, to receive greater attention. There is some dissatisfaction and concern as regards shareholders. On the one hand, long-term value creation is embraced by shareholders' representatives, but on the other we see that institutional investors and asset managers feel compelled to realise short-term investment results. This has become a serious problem that needs tackling as a matter of urgency.

In particular, the phenomenon of hostile takeovers and the role of different types of shareholders calls for attention. We are seeing situations characterised by limited dialogue and an absence of due care (such as the complete or partial dispensing with due diligence activities). This is often accompanied by certain shareholders pursuing short-term profit without paying sufficient attention to consequences which will only become apparent in the longer term. The possibility of a takeover which is not welcomed by the management board and the supervisory board can, however, have a positive influence on the quality of governance. But the long-term consequences should also be taken into account in the case of a hostile takeover. Nor should the importance of constructive dialogue, in this case between the management board and shareholders, be overlooked.

I hope and expect that the new Corporate Governance Code Monitoring Committee will pay attention in particular to the role of the shareholder.

On behalf of the present Committee I should like to thank all of the Committee's stakeholders, in particular the supportive parties Eumedion, Euronext, the Federation of Dutch Trade Unions (FNV) and the National Federation of Christian Trade Unions in the Netherlands (CNV), the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW), for their contributions to the discussions and for the scope they gave us to allow us to carry out our fascinating work. I am grateful to the researchers engaged by the Committee, the Committee secretaries and the members of the Committee for their extensive support. Cooperating with them was an extremely pleasant experience.

Jaap van Manen
Chairman of the Corporate Governance Code Monitoring Committee



1. BROAD OUTLINE

Now that its four-year term has ended, the Corporate Governance Code Monitoring Committee (hereinafter called the Committee) has prepared a fourth and final report. In this final document the Committee reviews the activities it has carried out and deals with current corporate governance issues which will require closer attention in the future. The final document also contains a report on the monitoring of compliance with the Dutch Corporate Governance Code (hereinafter called the Code) in the 2016 financial year and on the outcome of a survey conducted among listed companies which gives an initial picture of the arrangements companies have made in anticipation of the revised Code (the 2016 Code). The main features of this report are reproduced in this chapter.

Review of the activities

Since it was established by the Ministry of Economic Affairs on 11 December 2013, the Committee has worked on promoting the current relevance and practical utility of the Code and monitoring compliance with it by Dutch listed companies. Every year, the Committee commissioned compliance studies and reported on them. The studies concerning the financial years 2013 to 2016 inclusive were aimed at analysing compliance with all best practice provisions in the Code and resulted in a full overview of compliance. In line with the previous Monitoring Committee chaired by Mr Streppel, the Committee paid particular attention to the quality of the reasoned explanations. The ease with which information can be found was also examined in the compliance studies of the last two years. The talks with supportive parties,[1] supervisory bodies and the ministries involved, the meetings with management board members, supervisory board members and external accountants, and the meetings within European networks, such as the European Corporate Governance Codes Network (ECGCN) and the Five Chairmen Group, were important elements in the Committee's approach.

At the request of the supportive parties, the Committee revised the 2008 Code. Both in terms of content and structure the Code has been updated, tightened up and supplemented. The revised Code was published on 8 December 2016. This version of the Code is the result of a broad public consultation process and intensive contact with the supportive parties. The government and parliament have also welcomed the revised Code: the designation decision for it was published on 7 September 2016 and the Code will therefore be enshrined in law as at 1 January 2018. This means that Dutch listed companies will be required to report on compliance with the 2016 Code in their management reports for the 2017 financial year. The next Monitoring Committee will be the first to gather information about compliance with the 2016 Code.

1 The supportive parties of the Code are Eumedion, Euronext, FNV and CNV, VEB, VEUO and VNO-NCW.

Based in part on the responses of the supportive parties, the Committee notes that it may be appropriate to stipulate that the next Monitoring Committee should evaluate the Code regularly in order to identify any gaps and ambiguities. This may result in the supportive parties requesting that the Code be updated. The Committee also notes that forming a permanent monitoring committee comprising members with a fixed term of appointment (and the possibility of re-appointment) who will join and leave the committee at different times could result in greater continuity in the monitoring of the Code.

Anticipating the entry into force of the 2016 Code

The Committee notes that companies are, in the main, well on their way with arrangements in anticipation of the entry into force of the 2016 Code and are already taking account of many of the new elements in the Code. This is reflected in the results of a survey which was carried out simultaneously with the compliance study commissioned by the Committee and carried out by SEO Amsterdam Economics (SEO). Listed companies were asked about the extent to which they are already applying the new elements in the 2016 Code, or whether they intend to take further steps in 2017 and/or are experiencing difficulties. The survey focused on topics such as long-term value creation, culture, risk management, diversity, responsible remuneration and the executive committee.

The survey also reveals that not all listed companies intend to take further action in areas where it seems appropriate that they should. The Committee infers from the results that it is locally listed companies in particular which have fewer plans to start taking steps in respect of the topics long-term value creation and culture, diversity and setting up an internal audit function (or to take alternative measures). Listed companies have indicated that, with the exception of diversity, they are experiencing little to no difficulty in respect of the new elements of the 2016 Code. Monitoring compliance with the 2016 Code will provide an insight into the extent to which companies have succeeded in getting to grips with the new elements.

Shareholders

When revising the Code the part pertaining to the general meeting of shareholders as a body has remained more or less unchanged, in the absence of conclusive results on national and international developments in this regard. For this reason the Committee decided to pay particular attention to the topic of shareholders in 2017.

One of the developments pertaining to shareholders whose outcome has not yet been established was the amendment to the European Shareholders' Rights Directive. Published on 17 May 2017, the directive contains, among other things, a number of obligations for institutional investors and asset managers aimed at increasing transparency. Partly in response to the amendments, Eumedion drew up a draft stewardship code and presented it for consultation. The Committee commissioned a study in 2017 into the long-term involvement of shareholders of Dutch listed companies to obtain a clearer idea of the potential role of shareholders in long-term value creation. On the instructions of the Committee, researchers from Erasmus University Rotterdam (EUR) analysed the role of major shareholders within Dutch corporate governance. The study reveals a number of barriers to the pursuit of long-term value creation, such as the length of the investment chain and the monthly benchmarking.

Prompted by the results of the study, the Committee is drawing attention to the importance of active involvement of shareholders in the company in which they invest. This could be achieved through active participation in the general meeting of shareholders and by entering into dialogue with the company, and will require an active approach on the part of the shareholder on the one hand, and an open attitude on the part of the company, on the other. The Committee would also like to emphasise the importance of reconciling the engagement policy shaped by corporate governance specialists with the actual implementation of that policy by asset managers. Furthermore, greater scope needs to be created to allow departures from the benchmarks used by investors.

As for the development of rules and codes of conduct aimed at shareholders, the Committee wishes to emphasise that they will have genuine added value only if non-Dutch shareholders can be addressed. Within Dutch society, the Code's provisions are generally accepted standards, meaning that they apply to all shareholders in a Dutch listed company, including international investors. It is therefore recommended that room be made in the Code for standards of conduct for shareholders.

Takeovers and anti-takeover measures

In 2017, a series of controversial attempts to take over Dutch listed companies sparked a debate featuring a variety of opinions and perspectives on hostile takeovers and anti-takeover measures. In the coalition agreement presented on 10 October 2017 the new government announced a statutory reflection period of up to 250 days, which could be used by a listed company faced with proposals for a fundamental change of strategy at the general meeting of shareholders. At the time of writing, it is still unclear how the government will develop this further.

The Committee welcomes this debate. That said, proper account should be taken in this debate of long-term value creation and the need to balance the interests of the various stakeholders. The Committee also welcomes the fact that the dialogue on finding additional or alternative measures to protect Dutch listed companies is taking place in consultation with all stakeholders involved in the process. Before considering additional measures, however, the Committee believes it is important to analyse whether the current anti-takeover measures under the articles of association are effective.
In addition, the Committee wishes to stress that dialogue also has a role to play in takeover situations. The Committee considers it undesirable for a takeover bid to be announced or launched without there having been a two-way dialogue between the bidder and the target company. This will require effort on the part of the bidder to enter into talks about a possible form of cooperation and on the part of the management board and supervisory board of the target company to be open to such tentative talks. Shareholders are also invited to assess the way in which a bid was effected and the conduct of the bidder and the target company in the process.

Other corporate governance issues

The 2016 Code requires companies to take account of the pay ratios within the enterprise in their remuneration policy and to account for them in the management report; companies are free to determine the manner of reporting. For the Committee, what is important is not so much the publication of a particular ratio, but causing companies to reflect on and be aware of pay ratios. The Committee considers it desirable for companies to be aware of the consequences of their remuneration policy for the overall pay structure. Shareholders must be able to understand which elements played a part in the choices made and why those choices are relevant to the company. Transparency fosters dialogue concerning the remuneration policy.

The Committee also believes that management board members and supervisory board members could be more alert to the impact of technological developments and the opportunities and risks associated with them. That responsibility rests with the management of the company and should be part of its vision and strategy. The question management board members must ask themselves is whether the company will be in a position to anticipate developments in new technologies and changes in business models. The impact of technological developments should also be taken into account in the internal risk management and control systems, and companies should make sure to recruit the required expertise both at the top and at other levels.

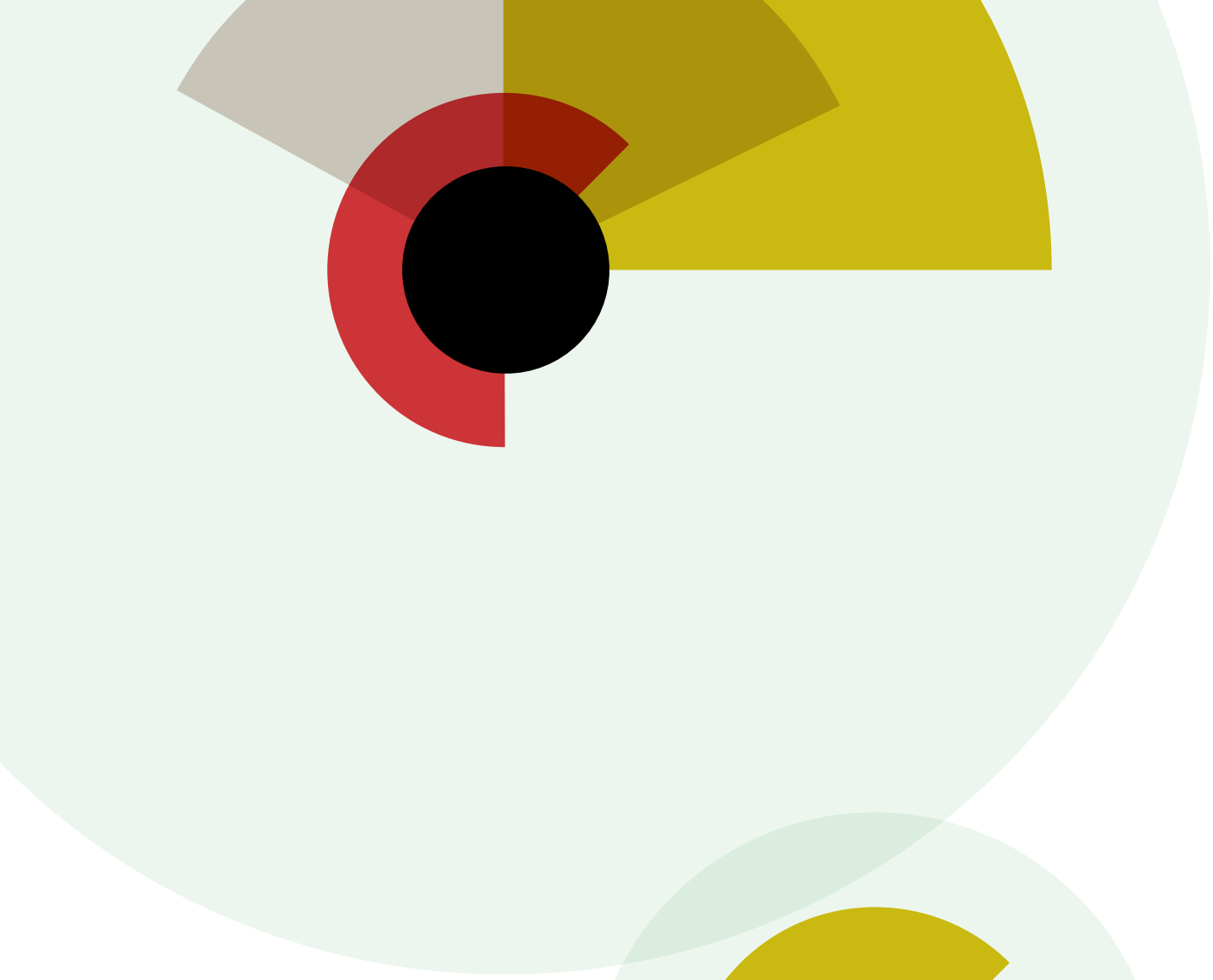
The 2016 Code will bring about a slight change in the role of the external auditor from 1 January 2018. Previously, the external auditor had to find out whether the information which must be stated in the corporate governance statement as regards compliance with the Code was in fact included in it. Soon, the external auditor will also have to establish whether the management report (including the corporate governance statement) has been drawn up in accordance with the statutory requirements and is compatible with the financial

statements, and whether there are any material misstatements. This is known as the compatibility check. According to the Committee, this widening of the external auditor's role is consistent with the principle that the external auditor should report what he sees. The Committee therefore expects external auditors to approach this test in a practical manner; expanding the procedures of the external auditor is not the obvious route.

The Code is aimed at listed companies. Although the Committee is conscious of the broader impact of the Code, it wishes to emphasise that it targets the contacts and relationships between the management, the supervisory board and the (general meeting of) shareholders within a listed company. Codes for non-listed companies are on the rise. The Committee does not see any role for itself here because it has been given the specific task of monitoring compliance with the Code for *listed* companies.

Monitoring compliance in the 2016 financial year

In 2017, the Committee commissioned SEO to carry out a study into compliance with the 2008 Code by listed companies in the 2016 financial year. The average compliance rate for the 2016 financial year is nearly 99%, which is slightly higher than in the 2015 financial year, when the average compliance rate was nearly 97%. This difference can be explained by a higher level of application (96.7% in 2016 compared with 94.9% in 2015). Of the 88 companies reviewed for compliance, 31 complied fully with the Code in 2016. The compliance rate for six companies was below 95%. Nearly half (0.5%) of the non-compliance noted (1.1%) concerned cases where no or an insufficient explanation was given as to why and how the company had departed from a particular provision. At a non-compliance level of nearly 16%, provision IV.1.13 'Policy on bilateral contacts with shareholders' was the least complied-with provision in 2016. Just as in the 2015 financial year (27.8%), provision II.1.1 'Maximum term of appointment for management board members' was the one most frequently departed from with a reasoned explanation given (at 21.6%).



2. REVIEW

On 11 December 2013, the third Corporate Governance Code Monitoring Committee (hereinafter called the Committee) was established by the Minister of Economic Affairs in agreement with the Minister of Security and Justice and the Minister of Finance. The Committee was tasked with promoting the current relevance and practical utility of the Dutch Corporate Governance Code (hereinafter called the Code). It performed that task by identifying and recording compliance by listed companies with the Code, keeping up to date with international developments in the area of corporate governance and by identifying gaps or ambiguities in the Code.

During its term the Committee published three monitoring reports on compliance with the Code (as established in 2008) by listed companies. The present document is the Committee's fourth and final report. The approach taken in this report is broader than that of the previous reports. In addition to setting out the compliance monitoring results for the 2016 financial year in this report, the Committee also reviews the activities it has carried out over the last four years and deals with current corporate governance issues which will require further attention in the future, and concludes the report with several recommendations. This chapter contains a review of the broader work pertaining to monitoring and the revision of the 2008 Code, as well as the first insights into the activities of companies in implementation of the provisions of the Code laid down by the Committee in 2016.

2.1 Review of monitoring and revision work

Monitoring

It is common practice for the Committee to commission a research agency or university to examine compliance with the Code. The present Committee deliberately chose a different methodology from the one used by previous monitoring committees, namely a survey among Dutch listed companies instead of desk research based on publicly available sources such as management reports. The Committee believes that this methodology is in keeping with the Code's self-regulating nature, which requires an active approach on the part of listed companies. The burden placed on the companies in this way should, however, be taken into account. This is why the Committee later, for the 2015 and 2016 financial years, opted for a combination of a survey and desk research, where the desk research findings were presented to the listed companies for verification.

Compliance with the Code entails implementing its provisions or, where a provision is departed from, explaining why the provision was not put into practice unconditionally. The effectiveness of the 'comply or explain' principle depends on the quality of the explanation provided by the companies. In line with the previous Monitoring Committee chaired by Mr Streppel, the Committee paid particular attention to the quality of the reasoned explanations given. It did so by, among other things, asking researchers engaged in the compliance studies for the 2015 and 2016 financial years to record explanations of insufficient quality as non-compliance and count them as such for the purpose of calculating compliance rates. This more accurately reflects reality.

The compliance studies conducted in the abovementioned years also examined where particular information could be found. This is because a number of provisions of the Code prescribe a specific location, such as the supervisory board's report or the company's website. Since one of the starting points of the Code is that information should be easy to find, more rigorous checks were made during the compliance studies to establish whether the information concerned could in fact be found in the source indicated.

The monitoring reports show that compliance with the Code is generally high. For instance, the average compliance rates in the 2015 and 2016 financial years were 97% and 99% respectively. Consultation with companies as part of the compliance study shows that companies generally consider it important to know exactly how compliance is assessed to help them aim for as high a level of compliance as possible. This can be achieved by either applying the provisions or departing from them stating proper reasons for doing so. There are also companies whose compliance with the Code is sub-standard. The Committee has contacted each of those companies individually. Those contacts revealed that there is a desire also within this group of companies to improve their compliance, and have in fact already resulted in higher compliance scores for many of the companies concerned. The Committee also tackled companies which had failed for several years in a row to complete the survey. Various reasons were put forward to account for this, such as the fact that the company is a shell company or that there were special circumstances; in some cases the company had no particular interest in the study. Experience shows that it is more challenging to get a hold of this latter group of companies.

The compliance studies concerning the financial years 2013 to 2016 inclusive were aimed at analysing compliance with all best practice provisions in the Code. This is in contrast with previous financial years, when the study centred on examining compliance with provisions for which the rate of application was less than 90% and the new provisions included in the Code in 2008. The examination of all the provisions has created a full overview of compliance with the Code. However, this has the disadvantage that the results contain unweighted counts from which appreciably interesting conclusions could not always be drawn. This is why carrying out more in-depth research into current topics could be an appropriate approach within the compliance study. The generally high compliance figures could also be reason to target the study primarily at those provisions where compliance is poor. At any rate, since the revision of the Code has resulted in many provisions being amended or supplemented and new ones added, conducting a broad compliance study next year would seem an obvious course of action.

In addition, the Committee has commissioned an in-depth study into a variety of current topics over the last two years. For instance, the developments pertaining to anti-takeover measures were examined; this was a study which generated valuable background information bearing in mind the current debate on takeovers and anti-takeover measures (about which more will be said in chapter 3). Another study involved an assessment of the Code's international context. The Committee used the results of that study when revising the Code (see the following paragraph). Last year an in-depth study into the long-term engagement of shareholders was conducted (see chapter 3).

In addition to the compliance studies and the in-depth studies, the Committee has in recent years obtained valuable insights from consultations with management board members, supervisory board members and external auditors. Those consultations provided scope for a more in-depth analysis of specific topics and allowed the Committee to assess its ideas. The Committee has also played an active role within European networks. Through informal meetings of the European Corporate Governance Codes Network (ECGCN) and the Five Chairmen Group the Committee has been able to obtain further information about relevant developments and exchange experiences. This is essential if it is to perform its role well.

Support for the Committee's activities from the supportive parties of the Code, namely VNO-NCW, VEUO, the VEB, Eumedion, FNV, CNV and Euronext, is vital for their proper implementation. The Committee sets great store by the contacts with supportive parties. Several constructive meetings concerning the monitoring of compliance, the revision and current developments have been held on an annual basis. The contributions of the supportive parties are undoubtedly beneficial to the functioning of the corporate governance system in place in the Netherlands. The Committee has also maintained contact with supervisory bodies, namely De Nederlandsche Bank (DNB) and the Netherlands Authority for the Financial Markets (AFM), and with the Netherlands Institute of Chartered Accountants (NBA). Discussions were also held with other stakeholders, in particular within the context of the revision. A subsequent monitoring committee will be able to consider whether these occasional consultations should become more structural in nature. Finally, the Committee has had regular meetings with the Ministries which established the Committee, namely the Ministry of Economic Affairs, Ministry of Security & Justice and Ministry of Finance, as well as with the Ministry of Education, Culture and Science.[2] Those contacts have enabled the Committee to carry out its activities to the best possible effect.

Revision

As well as monitoring compliance with the Code established in 2008, the Committee has also revised the Code, at the request of the supportive parties. The revised Code was published on 8 December 2016: it is the result of broad public consultation and intensive contact with the supportive parties. The valuable responses to the revision proposals presented for consultation received by the Committee are evidence that the Code is a live issue. The result is a Code which has been updated, tightened up and supplemented in terms of both content and structure. The concept of long-term value creation is a central theme throughout the 2016 Code and corporate culture is also receiving more attention.

The revision of the Code has had very little impact on the theme of shareholders, this being in light of the developments taking place at European and national level with regard to the position and rights of shareholders, the results of which have not yet been established. The current lively debate on this subject confirms that the Committee was rightly circumspect when revising the theme of shareholders. Bearing in mind the new developments, the Committee opted in its last year to pay particular attention to this subject and commission in-depth research into it (see chapter 3).

A great deal of attention was focused on the 2016 Code. A wide variety of parties such as law firms, accoun-

2 When the new cabinet took office, the Ministry of Economic Affairs was changed into the Ministry of Economic Affairs and Climate and the Ministry of Security and Justice was changed into the Ministry of Justice and Security.

ting firms, consultants and civil society organisations have published articles on the new version of the Code. Various newspapers and professional journals have also published articles in which specific parts of the Code are reviewed, critically or otherwise, and which deal with its practical implications. The attention paid by this wide range of parties reflects the considerable awareness of the Code and that it is considered relevant. Companies have indicated that they are fully engaged in making arrangements in anticipation of the entry into force of the 2016 Code (see paragraph 2.2). The Committee regards this as a sign that the 2016 Code, just like the 2008 version, has support and that companies regard it as a relevant standard.

The 2016 Code has also attracted politicians' attention. In a letter to the House of Representatives dated 24 March 2017, the former cabinet indicated its positive appreciation of the revised Code[3], after which the first step towards enshrining it in law was taken when the Minister of Security and Justice submitted a draft designation decision to Parliament.[4] On 7 September 2017, the designation decision for the revised Code was published in the Bulletin of Acts and Decrees (*Staatsblad*) and it will therefore be legally enshrined as at 1 January 2018. This means that Dutch listed companies will be required to report on compliance with the revised Code in the management report for the 2017 financial year. The Committee is very happy that the (former) cabinet and Parliament have welcomed the revised Code and that it will soon be enshrined in law.

The Code has not gone unnoticed at international level either. The emphasis on long-term value creation with account taken of stakeholders' interests is attracting attention from across the border. This is in line with the development of a new paradigm where the emphasis is on the company as a long-term alliance between its shareholders and other parties involved.[5] It follows that companies should focus on long-term value and growth, have a sound sustainability strategy and be transparent and committed in respect of their shareholders and other parties involved. The Committee is delighted that the Code is attracting international interest.

The formation and role of the Committee

Identifying gaps and ambiguities is an important task performed by the Committee. The Committee presented its findings on the evaluation of the Code in the Monitoring Report on the 2013 Financial Year: certain subjects were missing from the Code, there was an overlap between the Code and legislation and some provisions should be revised because it was insufficiently clear what was required of companies. In the monitoring report the Committee therefore advised the supportive parties to revise the Code. In response to that recommendation, the supportive parties went on to request amendment of the Code.

The Code forms the basis of Dutch corporate governance for listed companies. A self-regulation product, the Code is enshrined in law and is monitored by a committee appointed by the government. The structure of this system has proved its worth and practice shows that it is functioning satisfactorily. It is important that the Code is kept up-to-date, though. When consulting on the proposals for a revised Code, the Committee also used the consultation process as an opportunity to submit the following to the stakeholders for consultation:

- the introduction of periodic revisions: the need for a revision could be reviewed every three years. This could also lead to adjustments to compliance monitoring and the focus of the studies.
- more continuity in monitoring could be achieved by appointing a permanent Committee comprising members with a fixed term of appointment on a rotating basis.

Based in part on the responses of the supportive parties, the Committee notes that it may be appropriate to stipulate that the next monitoring committee should evaluate the Code regularly. This may result in the

3 Parliamentary letter on the government's response to the revised Corporate Governance Code, Parliamentary paper 2016/2017 31083, No. 52.

4 Draft decree amending the Decree of 23 December 2004 establishing additional regulations concerning the contents of the annual report (Bulletin of Acts and Decrees 747), Parliamentary paper 2016/2017 31083, No. 53.

5 Wachtell Lipton, 'The Dutch Corporate Governance Code and The New Paradigm', 14 December 2016.

supportive parties requesting that it be updated. This sits well with the current corporate governance system where a distinction is made between the monitoring task assigned to a government-appointed committee and the creation and amendment of the Code as an instrument of self-regulation by the market. The Committee therefore wishes to encourage its successor to take up the proposal to introduce a periodic evaluation which might lead to a revision. The Committee also notes that forming a permanent monitoring committee comprising members with a fixed period of appointment (and the possibility of re-appointment) who will leave and join the committee at different times could result in greater continuity in the monitoring of the Code.

2.2 Anticipating the entry into force of the 2016 Code

The 2016 Code will enter into effect as from 1 January 2018. Companies will then have to start reporting on compliance with the revised Code, starting with the 2017 financial year. Not all companies will succeed in applying the 2016 Code in the best possible way in the 2017 financial year. It is clear that in the years to come, the next monitoring committee will have to examine more closely how companies are keeping up with the new Code.

Bearing in mind the entry into force of the 2016 Code, when it set out the terms of the compliance study the Committee asked SEO Amsterdam Economics (SEO) to provide an initial picture of future compliance with the 2016 Code alongside its analysis of compliance in the 2016 financial year.[6] This was because the Committee was keen to know the extent of arrangements made by companies in anticipation of the 2016 Code and any difficulties companies might be experiencing in this regard. Ahead of the 2016 Code's entry into force, companies were asked in a survey to state the extent to which they are already complying with the new elements in the 2016 Code, or whether they intend to take further steps in 2017 and/or are experiencing difficulties.

The general picture produced by SEO's study is that companies have already to a large extent taken account of the new elements in the 2016 Code. The Committee is delighted that companies are continuing to work on improving, adjusting and developing their corporate governance, whether or not in light of the 2016 Code. The results leave the Committee supremely confident that the themes in the 2016 Code enjoy widespread support.

Regardless of the theme in the Code concerned, not all companies intend to take further action in 2017 in areas where it would seem appropriate for them to do so. This applies to all stock exchange indices. Locally listed companies appear to have fewer plans to start taking steps as regards culture, diversity and setting up an internal audit function. Through this document, the Committee wishes to encourage those companies to take (further) measures in this regard. After all, good governance is important both to individual entities and to the reputation of Dutch listed companies collectively.

Future monitoring of compliance with the 2016 Code will show the extent to which all this has affected the application of the Code by companies. The insight obtained will therefore be useful for the next monitoring committee and aid it in its monitoring task. The companies themselves, too, will benefit from studies. The insights obtained could inspire companies when putting the revised Code into practice.

Using the themes in the 2016 Code, the Committee has set out below its observations regarding the results of the survey into the extent to which companies have put in place arrangements in anticipation of the entry into force of the 2016 Code. The survey is based on the situation at the time it was conducted (June/mid-July) and also contains a look ahead at the remainder of 2017. In total, 68 of the 94 companies approached

6 Corporate Governance Code Compliance Study for the 2016 financial year, SEO Amsterdam Economics (which can be consulted on the Committee's website: www.mccg.nl).

completed the survey. Of those 68 companies, 15 are listed on the AEX, 16 on the AMX, 20 on the AScX and 17 on a local exchange. The response rate is lower than in previous years. It is perfectly possible that fewer companies participated because the survey was not so much about compliance with the 2008 Code, but rather a look ahead at the 2016 Code.

The relative proportions of the stock exchange indices in the sample of companies in the survey are largely consistent with those of the population. The AScX companies are slightly over-represented and the local listed companies slightly under-represented. The Committee has no reason to assume that this could result in a skewed picture of the extent to which companies are anticipating the implementation of the 2016 Code. Please see the full study published on the Committee's website for further information on the survey and the results.

Long-term value creation

The Committee is interested in the extent to which long-term value creation as defined in the revised Code applies to companies in 2017. That is why companies were asked about the extent to which they apply the elements in the 2016 Code, such as focusing on long-term value creation, putting the long-term sustainability of the strategy centre stage, acting in a sustainable manner, taking account of new technologies and changes in business models, taking stakeholders into consideration and assuming responsibility for the environment in which the company operates.

The results show that more than 90% of the companies indicated that they apply those elements in full or for the most part. That said, two-thirds of the companies indicated that they see scope for further improvement, development and anchoring within the organisation as regards placing long-term value creation centre stage. The Committee believes that the further improvement, development or anchoring of long-term value creation within an organisation is a continuous process, and welcomes the fact that companies are aware of this. According to the Committee, the fact that companies, with very few exceptions, are neither experiencing nor foreseeing any difficulties, is a sign that they are willing to put long-term value creation centre stage. Needless to say, clear communication with stakeholders on the progress made in respect of long-term value creation is essential.

Culture & Behaviour

Although culture is a new theme introduced in the 2016 Code, companies have long recognised the important role culture and behaviour have in respect of how they function. With a few exceptions, all companies have a code of conduct as laid down in the 2008 Code. The Committee welcomes the fact that the vast majority of companies, i.e. more than 80% of the survey respondents, contribute with their codes of conduct to a culture aimed at long-term value creation, in accordance with the revised Code. Of the 13 respondents to state that they did *not* have a code of conduct aimed at long-term value creation, eight are locally listed companies.

Between 80% and 90% of the companies state that they have already wholly or partially embedded corporate culture in the work process in the manner as provided for by the 2016 Code. Companies say they have laid down values which contribute to long-term value creation and consult regularly on the topic of culture. However, nearly two-thirds of the companies which took part in the survey note that culture requires constant or even more attention and plan to take steps to that end. Among the locally listed companies, there appears to be little willingness to further optimise their corporate culture, despite the fact that these companies indicate more than others that they are not, or not yet, paying a sufficient degree of attention to culture in accordance with the 2016 Code. The size of the companies might have something to do with this.

The Committee is calling on companies not only to maintain but to step up their efforts to develop and optimise a culture aimed at long-term value creation within the company. This applies, in particular, to locally listed companies. The Committee expects them to start taking actual steps.

In light of the foregoing, the Committee wishes to emphasise that long-term value creation is inextricably linked with the culture within the company and its affiliated enterprise. Culture is intended to serve, among other things, the attainment of long-term value creation. Stakeholders must be able to rely on careful consideration being given to their interests. The culture within an organisation should also provide scope for that. Culture is a feature of the dialogue with stakeholders.

Risk management

Entrepreneurship is realising opportunities by consciously taking risks. Having an adequate risk control system in place is essential for this. The Committee notes with satisfaction that companies have indicated that their risk management systems fully, or for the most part, meet the conditions set in the 2016 Code in respect of risk assessment and internal risk management. Companies also indicate that they are able to anticipate the risks relevant to their continuity.

The Committee also welcomes the fact that more than 60% of companies appreciate the continuing importance of improving, reinforcing and/or developing their risk management systems further. Other than in one case, no companies reported, foresee or are currently aware of any problems. However, management boards and supervisory boards should also enter into dialogue with the stakeholders involved with regard to the company's risk management. There is no such thing as absolute certainty, and such dialogues can help to obtain a fuller picture.

The Committee also infers from the survey results that more than 30% of the surveyed companies have no, or no full-fledged internal audit function which meets the requirements of the 2016 Code. Apart from one, they are all AScX- and local listed companies.[7] Only seven companies intend to start setting up or developing that function in 2017, or to start hiring external expertise. The Committee regards an internal audit function as essential for the effective assessment and monitoring of a company's risk management system. The Committee notes, however, that the number of companies with no internal audit function has fallen. In the 2014 financial year, the Committee noted that a sizeable number (41%) of the 75 companies which took part in the survey conducted still had no internal audit function.[8]

The Committee understands that setting up an internal audit function is a lot to ask of smaller companies, but would encourage them to take the necessary alternative measures if they have no internal auditor.

Diversity

According to the Committee, the importance of diversity within a company is self-evident. A diverse composition of management boards and supervisory boards contributes to better decision-making. The Committee would like to encourage companies to pursue an effective and transparent diversity policy for their management and supervisory boards.

The Committee commissioned a survey in order to establish the extent to which companies already use diversity targets for management board members, in accordance with the 2016 Code. The survey reveals that this is the case for roughly two-thirds of companies. Gender, skills and professional experience are the

7 In chapter 4 the Committee reports on compliance with provision V.3.3 of the 2008 Code. This provision requires companies, if the internal audit function is lacking, to evaluate each year whether there is a need for an internal audit function and to include a recommendation in this regard in the annual report.

8 Corporate governance in the Netherlands: Study into compliance with the Dutch Corporate Governance Code in the 2014 financial year, Nyenrode Business Universiteit.

chief determining factors. It is noteworthy that of the companies which indicated that they do not currently use diversity targets for the composition of their management boards, only one-quarter (all listed on the AEX or AMX) indicate that they plan to set such targets in 2017. The quarter of the companies which indicated that they do not intend to take any steps in 2017 are all locally listed companies.

Of the executive committees (n=24) roughly 40% do not currently use diversity targets. This picture is not dependent on the stock exchange index. Another 40% (roughly) of companies indicate that the diversity targets are considered together with the management board, and nearly 20% use diversity targets separately from those of the management board.

Whilst companies are experiencing little to no difficulty with the themes referred to earlier, the picture as far as diversity is concerned is quite different. Nearly 20% of companies indicate that they are experiencing difficulties in this regard. This fact, coupled with the finding that only one-quarter intends to introduce specific diversity targets for the management board, suggests that it is not always easy for companies to deliver an effective diversity policy. We recommend that the next monitoring committee bears in mind that for small listed companies, in particular, there may be barriers precluding the operation and implementation of an effective diversity policy. Recruiting talented women with the requisite expertise is the biggest problem encountered by half of the companies which indicated that they were experiencing difficulties.

Nyenrode also addressed diversity in its compliance study for the 2014 financial year.[9] Whilst the present study shows that the male-to-female ratio, alongside competency and expertise, is one of the targets of the diversity policy most frequently applied, the picture was slightly different as regards the 2014 financial year. Companies then saw expertise, previous experience and independence as the most important aspects of their diversity policy. Evidently, the importance of a good gender ratio for *checks and balances* is being increasingly recognised.

Responsible remuneration

Whether or not this was in preparation for the 2016 Code, nearly three-quarters of the companies stated, when questioned, that when considering the latest remuneration proposal for management board members, the remuneration committee took note of the opinions of the individual management board members. The Committee is delighted to hear this, as it regards management board members taking individual responsibility as essential to the implementation of a measured remuneration policy.

To an even greater extent than previous Codes, the 2016 Code ensures that the aspects which play a part in determining and awarding pay are included in the remuneration policy. SEO asked companies to state the extent to which those aspects are being taken into account in their current remuneration policies. Between 75% and 90% of companies state that it is important or very important for these aspects to be in line with the intended long-term value creation, scenario analyses carried out in advance, an appropriate ratio between the remuneration of management board members and employees, and between fixed and variable remuneration. The development of share prices receives less attention in current remuneration policies. The majority of companies in the study view long-term value creation as an important element in their remuneration policies. A small minority also consider an appropriate ratio between variable and fixed remuneration to be essential for a responsible remuneration policy.

9 Corporate Governance in the Netherlands: Study into compliance with the Dutch Corporate Governance Code in the 2014 financial year, Nyenrode Business Universiteit.

Of the companies surveyed, 63% do not intend to take any further steps in respect of responsible remuneration in 2017. These are mainly companies listed on the AMX, AScX and locally listed companies. This is fairly understandable since, in the main, companies already appear to be taking account of responsible remuneration policy aspects and the 2016 Code represents a simplification in some areas (such as the detailed transparency requirements for the remuneration report) compared with the 2008 Code. Nevertheless, the Committee would urge companies to continue developing their remuneration policies. The 2016 Code contains a number of provisions which introduce new elements into the remuneration policy, including in respect of internal pay ratios. This new element requires careful attention on the part of the companies (see also chapter 3). Furthermore, the results of the SEO survey certainly are reason to assume that there remain areas requiring improvement as far as responsible remuneration is concerned. For instance, in addition to the development of share prices mentioned earlier, in 25% of cases companies stated that scenario analyses carried out in advance and an appropriate ratio between the remuneration of management board members and employees are not taken into consideration, or receive only scant consideration, in their current remuneration policies. The next monitoring committee will be able to examine how the remuneration policy approach and compliance with it will develop after the revised Code enters into force.

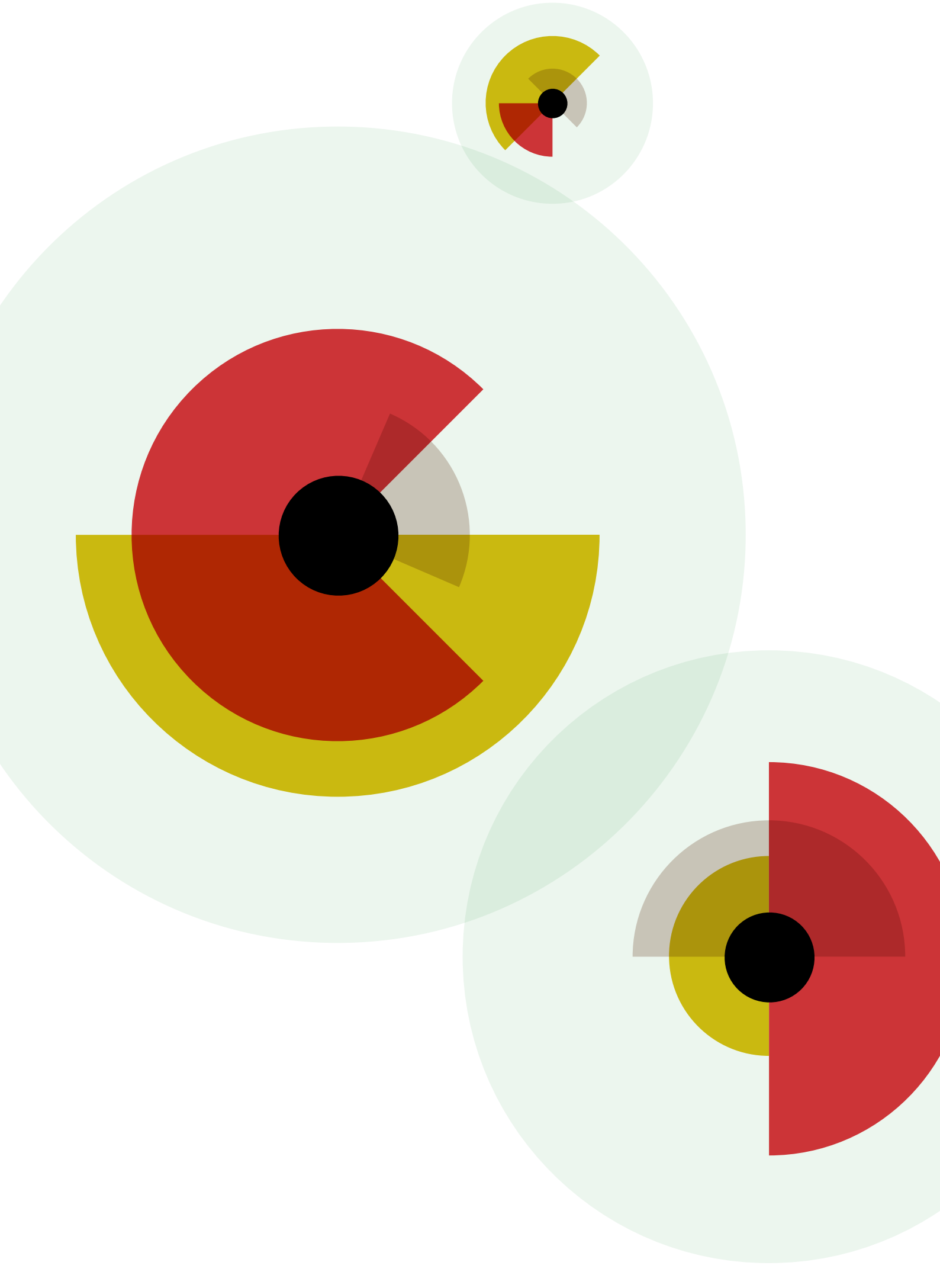
Executive Committee

Of the 68 companies surveyed, 24 state they have an executive committee. The Committee observes that in companies with an executive committee the distance between the supervisory board and the management layer where the company's preparations for decision-making (or the actual decision-making) take place can be too great to allow effective supervision of the actual management of the company.

The Committee asked SEO to identify, by means of the survey, how supervisory boards supervise the executive committee. When questioned, half of the companies replied that this is achieved by ensuring that the executive committee takes part in the supervisory board's meetings, which are held once or several times a year. Instead of meetings, one-to-one meetings are also held between a member of the supervisory board and a member of the executive committee to discuss their portfolios. At some companies supervision takes place through the executive board or indirectly through the management board. The Committee concludes from the above that although companies take account of the need to arrange supervision of the executive committee, it does not have a clear picture of the extent to which that supervision is ensured.

The Committee believes that the expertise of the management board and the provision of information to the supervisory board must be guaranteed, and has included provisions pertaining to this in the 2016 Code. In addition to and/or following on from this, the Committee asks companies to make adequate and specific agreements in this regard, in line with the way in which they have organised their executive committee.

In total, just six of the twenty-four companies plan to take further steps in 2017 regarding the relationship between the supervisory board and the executive committee. For this reason the Committee is calling on companies to consider carefully whether it might in fact be advisable to take some steps in this regard.



3. CURRENT CORPORATE GOVERNANCE ISSUES

3.1 Shareholders

The part of the Code pertaining to the general meeting of shareholders as a body has remained more or less unchanged. This being in light of the developments taking place at European and national level with regard to the position and rights of shareholders, the results of which have not yet been established. It therefore did not seem the right time to introduce innovations or changes of a different kind to the principles and best practices' provisions. In its last year the Committee opted to pay particular attention to the role of shareholders, with the following question in the back of its mind: how can the Code help to ensure that shareholders are inspired to encourage and support the management board to focus on the creation of long-term value?

To obtain a better view of the role shareholders could play in respect of long-term value creation by the company, the Committee commissioned a study into the long-term engagement of shareholders of Dutch listed companies.. On the instructions of the Committee, researchers from Erasmus University Rotterdam (EUR) identified the role of major shareholders within Dutch corporate governance.[10]

The following text first addresses two current developments: the adoption of the European Directive as regards the encouragement of long-term shareholder engagement[11] and Eumedion's initiative aimed at drafting a *stewardship* code.[12] Furthermore, below there is an outline of the results of the EUR survey, followed, in conclusion, by a number of the Committee's observations in respect of the theme of shareholders.

10 'Large Shareholders in Corporate Governance', Erasmus University Rotterdam (which can be consulted on the Committee's website: www.mccg.nl).

11 Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

12 Eumedion Dutch Stewardship Code: Consultation Document, which can be consulted on Eumedion's website: https://www.eumedion.nl/nl/public/kennisbank/best-practices/2017-09-consultatiedocument-stewardship-code.pdf.

Current developments

One of the developments pertaining to shareholders whose outcome had not yet been established was the amendment of the European Shareholders' Rights Directive (2007/36/EU). In April 2014 the European Commission proposed an amendment aimed at achieving greater transparency and greater shareholder engagement.[13] On 17 May 2017, following negotiations with the European Parliament and the European Council, the Directive amending the Shareholders' Rights Directive as regards the encouragement of long-term shareholder engagement (hereinafter called the Directive) was published in the Official Journal of the European Union.[14] Member States have until 10 June 2019 to transpose the Directive into national law.

The Directive introduces, among other things, new rights for shareholders and new obligations for listed companies in respect of remuneration policies and their implementation. A number of those new elements have already been provided for in law or the Code in the Netherlands. The Directive also contains a number of obligations for institutional investors and asset managers with a view to increasing transparency. On the basis of the 'comply or explain' principle, those investors are required to develop and publish a policy in respect of shareholder engagement. They must also have a transparent investment strategy in place. One element of this strategy involves disclosing how it contributes to the medium-term to long-term performance of the institutional investor's or asset manager's portfolio. The Directive also contains a provision requiring proxy advisers to disclose - again on the basis of the 'comply or explain' principle - every year whether they comply with a code of conduct for proxy advisers. They are also required to publish certain information in relation to the preparation of their research and voting recommendations.

In part prompted by the amendment of this European Directive, Eumedion drew up a draft stewardship code for its members and published it for broad consultation on 18 September 2017.[15] This is a new version of the best practices laid down in 2011 by Eumedion for shareholder engagement and is aimed at asset owners and asset managers. These developments give rise to the question of how the Code relates to them. Although the Code mainly contains provisions aimed at the bodies of a company - namely the management board, the supervisory board and the general meeting of shareholders - it also includes some provisions aimed at individual shareholders and institutional investors. This concerns the best practice provision 4.3.1 'Voting as deemed fit', provision 4.3.5 'Publication of institutional investors' voting policy' and provision 4.3.6 'Report on the implementation of institutional voting policy'.[16] Since 1 January 2007, Dutch institutional investors have been required under Section 5:86 of the Financial Supervision Act (Wft) to make a statement in their annual reports or on their websites about compliance with the principles or best practice provisions of the Code that pertain to them. The transposition of the Directive into Dutch legislation could result in an overlap between that legislation and the abovementioned provisions of the Code. At the time of writing it was still unclear how the new requirements will be implemented and what that will mean for the Code.

Major share ownership in Dutch companies

The EUR study is based on the assumption that major shareholders are generally long-term shareholders who are committed to their roles as stakeholders with strategic interests in the company. A major shareholder is defined as a shareholder with an interest of 5% or more. [17] The study focuses on the presence and dynamics of large shareholders in the shareholder base of Dutch listed companies and their motives and activities. To

13 COM 2014/213.

14 Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

15 Eumedion Dutch Stewardship Code: Consultation Document, which can be consulted on Eumedion's website: https://www.eumedion.nl/nl/public/kennisbank/best-practices/2017-09-consultatiedocument-stewardship-code.pdf.

16 In the 2008 Code this concerned provision IV.4.5, provision IV.4.1. and provisions IV.4.2 and IV.4.3.

17 Although the AFM register includes shareholders with an interest of 3% or more, the researchers opted for a threshold value of 5% because this is in line with international practice and allows a comparison to be made with older data (the threshold was adjusted from 5% to 3% on 1 July 2015).

research this, the EUR carried out a quantitative study based on the AFM register of substantial holdings and a survey of and interviews with shareholders. The EUR also planned to research voting behaviour at companies' annual shareholder meetings, but the lack of data caused them to refrain from that. Although major Dutch institutional investors are transparent with regard to their voting behaviour, other types of large shareholders are not. Please see the EUR report, which can be consulted on the Committee's website, for more information about the research methodology and a detailed overview of the results.

The study has given the Committee a better understanding of the long-term engagement of large shareholders in Dutch listed companies. However, a number of caveats should be made with regard to the results of the research. Although at 22.4% (26 of the 116 investors approached) the survey response rate can be described as acceptable, the results are less relevant when compared with similar studies. The reason for this is that most of the participants were Dutch investors, whereas approximately 80% of all investors in Dutch listed companies are not established in the Netherlands. Even though few foreign investors took part in the survey, they are the investors who generally do have a substantial interest in Dutch companies. The results were further biased because event driven hedge funds, which on the whole are geared towards the short term, did not take part in the survey and the interviews. The final caveat is that respondents may have given strategic and/or expedient answers and perhaps behave differently in practice. The key results of the study are addressed below.

Key results

The researchers analysed the distribution of the shareholder base of the 125 companies listed on Euronext in 2016 according to the different types of shareholder.[18] That analysis reveals that an average of 24.1% of the shares in companies are held by large shareholders and the free float amounts to 75.9%.[19]

The relationship between the concentration of block holdings and anti-takeover measures was also examined. The study shows that companies with a smaller number of large shareholders will, on average, more often be able to deploy priority shares or preference shares as an anti-takeover measure. This suggests that the number of large shareholders a company has will have a bearing on whether the company has an anti-takeover measure at its disposal and, if so, what kind; in other words, there is reliance on the protective effect produced by having a large shareholder. The picture is less clear as regards the issuing of depositary receipts for shares; this may have to do with the fact that few companies are still using this measure.

The survey and interviews dealt in detail with long-term value creation. In general, the respondents indicate that they consider long-term value creation important. The definition of 'long-term' (the length of the period) varies: respondents indicate that it depends on the business model, the investment strategy and the mandate of the asset owners and customers. The survey also shows that reasons for pursuing long-term value creation include: the fact that it is the wish of the beneficiaries (i.e., the asset owners or clients) and the belief that long-term value creation will have a positive impact on returns. It also follows from the study that it is easier to pursue long-term value creation for a concentrated portfolio than for a spread one.

The study reveals various obstacles to the pursuit of long-term value creation:

- a long investment chain;
- the market's monthly benchmarks. The investor's mandate usually requires a benchmark to be followed for investment choices. This means that the investment choice does not depend on the question of whether or not it is likely that the company concerned will add long term value. The mandates of pension funds for asset managers also usually require a benchmark to be pursued with the aim of minimising the tracking error;

18 No account was taken of market capitalisation.

19 Please see the EUR study for details of how this percentage was broken down into different types of shareholder.

- the traditional education of portfolio managers and the broader belief in the market-driven approach where supervisory bodies, policy-makers, asset managers etc. make certain choices which foster a short-term focus. A shift in mindset is required here;
- prudential supervision ensures that major institutional investors have to adhere to a certain risk profile and standards, and must spread risks. As a result, there is little scope for deviations from benchmarks.

Shareholder engagement was also considered during the survey and interviews. The majority of respondents indicate that continuous dialogue with the companies in which they are investing is very important for active engagement with the company. Investors prefer to engage in such dialogue in a manner which is not publicly visible. The survey also reveals that in the case of most large investment funds it is the corporate governance experts who decide on the investor's engagement policy, whilst the asset managers are responsible for actual engagement in practice. This can result in asset managers acting out of line with the engagement policy mapped out. The survey further shows that 69% of the respondents use external proxy advisory firms and use the advice received to determine their own positions. Much of this advice comes from well-known proxy advisory firms ISS and Glass-Lewis.

The Committee's conclusions

One of the conclusions drawn from the EUR study into the long-term engagement of large shareholders to which the Committee wishes to draw particular attention is the importance of having shareholders who are actively engaged with the company in which they are investing. This could be achieved through active participation in the general meeting of shareholders and by entering into dialogue with the company, and will require an active approach on the part of the shareholder on the one hand, and an open attitude on the part of the company, on the other. Companies will have to listen in an action-oriented way, recognise the importance of dialogue and be receptive to signs. With regard to the dialogue with shareholders, companies should be as transparent as possible about the way in which long-term value creation contributes to the creation of economic value. After all, combined with due consideration of the stakeholders' interests this is an essential part of striving for long-term value creation. Shareholders, for their part, will have to enter into dialogue with the company in a proactive manner. The obligations arising under the amended Directive on shareholder rights could make a contribution as far as the role of institutional investors is concerned.

Another point raised by the EUR study the Committee wishes to highlight is the importance of consistency between the engagement policy shaped by corporate governance specialists and the actual implementation of the policy by asset managers. It should not be the case that when the policy is aimed at facilitating long-term value creation, the main focus is on short-term returns when the actual investment decisions are made. Furthermore, greater scope needs to be created to allow deviations from the benchmarks used by investors.

As for the development of rules and codes of conduct aimed at shareholders, the Committee wishes to emphasise that these will have genuine added value only if non-Dutch shareholders can be addressed, since the shareholder base of Dutch companies is so international in nature that this group has the greatest impact. We therefore recommend that room be made in the Code for such standards of conduct. Within Dutch society, the Code's provisions are generally accepted standards accepted and for that reason apply to all shareholders in Dutch listed companies, including international investors.

3.2 Takeovers and anti-takeover measures

A series of controversial attempts to take over Dutch listed companies, including Unilever and AkzoNobel, has sparked a debate in the Netherlands on hostile takeovers and anti-takeover measures of listed companies. Companies are calling for statutory measures which could offer companies support when faced with an unwelcome bid. The predominant view among shareholders is that additional measures are unnecessary because the existing protection measures companies can take are sufficient. International investors, in particular, have said they are concerned about the impact statutory measures would have on the Dutch investment climate. Numerous articles on this subject highlighting a variety of perspectives and opinions have recently been published in the media and professional journals.

The takeover climate in the Netherlands appears to be being influenced by sharply fluctuating exchange rates, and low interest rates combined with much available money. Added to that is the fact that, comparatively speaking, Dutch companies are conventionally financed. Whilst a higher level of equity capital is required if a company wishes to aim for long-term value creation, it does make Dutch companies more vulnerable to takeover bids. Relative under-performance can also make a company an interesting takeover candidate.

On 20 May 2017, the cabinet at that time announced that it intended to take measures which would offer a company's management board more scope and time to assess the impact on stakeholders of a hostile takeover, or a fundamental change in strategy proposed by (activist) shareholders, specifying a statutory reflection period of a maximum of one year as one possible measure.[20] The debate in the House of Representatives that followed the letter to Parliament revealed broad political support for the introduction of statutory measures. In the Coalition Agreement presented on 10 October 2017, the new cabinet announced a statutory reflection period of a maximum of 250 days which could be used by a listed company faced with proposals for a fundamental change of strategy at the general meeting of shareholders. At the time of writing, it remains unclear how the cabinet will develop this further.

The Committee notes that the subject of takeovers and anti-takeover measures has important aspects in common with the operation of the Code and corporate governance in a broad sense, and has followed the discussion with great attention. In a statement published earlier on its website, the Committee cited various aspects which should be taken into account in the discussion.[21] The Committee is taking this opportunity to highlight the aspects mentioned in that statement again.

20 Parliamentary letter on Company Takeovers, Parliamentary paper 2016/2017 29826, No. 70 , and Parliamentary letter on Elaboration of reflection period for hostile takeovers and shareholder activism, Parliamentary paper 2016/2017 29826, No. 83.

21 Statement of 26 April 2017, See: mccg.nl/nieuws/5695/Recente-ontwikkelingen-en-het-publieke-debat-omtrent-overnames.

Long-term value creation

The Committee thinks that the common ground of companies and shareholders lays in the creation of long-term value for the company, and that this should also apply in a takeover situation. Creating long-term value requires commitment on the part of the management board, the supervisory board and the shareholders. The company should deliver a good performance in the long term without losing sight of the short term in the process. Naturally, it is vital that companies obtain support for that strategy, keep it up to date and adjust it where necessary. To that end, companies must communicate openly and transparently on the long-term strategy. Effective dialogue between the company and its shareholders is also indispensable. The corrective effect of shareholders in the checks and balances system plays an important part. Dialogue requires effort on the part of the company and also of the shareholders.

Long-term value creation requires patient capital; shareholders have their own responsibility in this. However, companies should take account of the fact that the interests of their shareholders may at times be at odds with the company's interests. This applies to investors with a long-term focus as well as to investors who mainly pursue short-term returns.

Anti-takeover measures

In a takeover situation companies and shareholders will benefit from a sound and orderly process. Companies also need time and space to be able to consider the broad interests of stakeholders. Anti-takeover measures create time to allow a careful consideration by companies of alternatives and the interests of stakeholders to take place.

However, it is also the case that companies take anti-takeover measures against their own shareholders, which in essence means eliminating the influence of shareholders and limiting their role in actively calling the management board to account. In extreme cases this means that management board members and supervisory board members can decide to largely ignore their shareholders. The great dilemma here is that whilst there may be good reasons for protecting a company, that protection can also be misused by management board members and supervisory board members, meaning that insufficient account is taken of the company's interests and those of its stakeholders, including the shareholders. Management board members and supervisory board members can also be ineffective, and in such cases shareholders must be able to take action.

The consensus in this country is that companies must be able to protect themselves against hostile takeovers, but also that such protection should not be absolute nor of unlimited duration. Many consider anti-takeover measures acceptable if they make it possible to find solutions which are in line with the interests of the existing company and those of its shareholders.

View of the Committee

The Committee welcomes the debate concerning the options available to listed companies in the Netherlands to enable them to protect themselves against hostile takeovers or undesirable action on the part of shareholders. The Committee considers it important that proper account is taken in this debate of long-term value creation and the balance between the interests of the various stakeholders involved. In addition to that, it recommends that the level playing field with other countries be taken into account. The Committee also welcomes the fact that the dialogue on finding additional or alternative measures to protect Dutch listed companies takes place in consultation with all stakeholders involved in the process. In conclusion, the Committee finds it important to analyse whether the current anti-takeover measures under the articles of association are effective, before considering additional ones.

As for takeover situations, the Committee would emphasise that dialogue between parties plays an important part. The Committee considers it undesirable for a takeover bid to be announced or launched without there having been a *two-way* dialogue between the bidder and the target company. This will require the bidder to

make efforts to enter into talks about a possible form of cooperation, while also requiring the management board and the supervisory board of the target company to be open to those tentative talks, with due regard for the rules applicable to the public offer process. Such talks with the bidder are decisive for the level of care with which the management board and the supervisory board determine their position. The Committee would invite shareholders to assess the way in which a bid was effected and the conduct of the bidder and the target company in the process.

3.3 Other issues

Internal pay ratios

Once the 2016 Code enters into force, companies will have to start rendering account with regard to their internal pay ratios. The 2016 Code requires companies to take account of the pay ratios within the company in their remuneration policy. Companies must then render account in the remuneration report in a transparent manner; companies are free to determine the manner of reporting. The Committee deliberately provided little guidance on this in the 2016 Code because it wishes to encourage management board members and supervisory board members to take their own responsibility.

The Committee acknowledges that identifying ratios is not a simple exercise. Companies have the scope to apply a variety of criteria. As a result, the published ratios will be of limited use in making comparisons between companies. For the Committee, what is important it is not so much the publication of a particular ratio, but encouraging companies to reflect on and be aware of pay ratios. The Committee considers it desirable for companies to be aware of the consequences of their remuneration policy for the overall pay structure. It is important to make a choice, to show which elements played a part and to make it clear why that choice is relevant to the company. This transparency requirement will provide shareholders with an insight which will assist them in dialogues with the company. The monitoring of compliance with the 2016 Code will provide further insight next year.

Technological development and corporate governance

Technological development and innovation are nothing new, but developments are moving at an ever faster pace. Consumers who yesterday were queuing for a particular product or service are now queuing for a product or service they had never heard of yesterday.

Based on signals from within its environment, the Committee notes that management board members and supervisory board members could be more alert to the impact of technological developments and the opportunities and risks they bring with them. The question management board members must ask themselves is whether the company will be in a position to anticipate developments in new technologies and changes in business models. Management boards will have to put not only their own business models under the microscope but also their organisational structures, business functions and risk management systems.

For the company it is important that it responds quickly and effectively to the opportunities and risks that technological innovations offer and that attention is paid to the development of new business models. The primary responsibility for this rests with the company's management board and it is one element of the company's vision and strategy. A good strategy cannot be translated into long-term value creation if the management board ignores this aspect and does not include it in its scenario analyses. A strategy aimed at long-term value creation requires continuous attention and may require short-term amendments in response to market dynamics. Supervisory board members also play an important part by raising questions concerning disruptive developments. Some companies will not be future-proof and will have to examine ways of scaling down activities in an orderly fashion.

The 2016 Code sets out what is expected of companies in the area of risk management. The Committee believes it is self-evident that management boards should design internal risk management and control systems in a way such that the impact of technological developments and the opportunities and risks associated with them are taken into account.

The Committee notes that expertise in the area of technological innovation and new business models, therefore, is often of substantial importance to a company, and that companies will have to recruit the right people in all levels and departments. However, the Committee does see that it can be difficult for companies to find management board members and supervisory board members with such expertise. It might be worth considering including this subject explicitly in the monitoring of the Code next financial year..

The role of the external auditor in respect of compliance with the Code

During the process of enshrining the 2016 Code in law, the scope of the external auditor's assessment of the corporate governance statement, which is an element of compliance with the Code, was changed from a presence check (for most elements) to a compatibility check for all elements of the statement. [22] The presence check entails the external auditor establishing whether that which should be stated in the statement has in fact been included in it. The compatibility check means that the external auditor establishes whether the management report (including the corporate governance statement) has been drawn up in accordance with the legal requirements and is compatible with the annual accounts, and also requires the external auditor to examine whether, in light of the knowledge and understanding acquired regarding the legal entity and its environment whilst auditing the financial statements, any material misstatements have been included.

One supportive party indicated that the expansion of the check is undesirable because, among other things, it could mean extra work for the external auditor while producing little useful information for the company.[23] The Committee understands these concerns, and agrees that a compatibility check should not directly lead to a widening of the external auditor's procedures. This will depend on the way in which the check is effected in practice. External auditors will have to give substance to the assessment in a practical manner. The compatibility check is just a small step beyond the presence check, is consistent with established practice and also with the principle that the auditor reports what he sees. The Committee has brought this to the attention of the NBA, which intends to give further instructions regarding the auditor's role in respect of this statement in a guide. On 26 October 2017, the draft revised 'Accountant en corporate governance informatie' (Information on the Auditor and Corporate Governance) 1109 Guide was published for consultation.[24] When monitoring compliance with the 2016 Code, it is advisable to pay particular attention to the way the compatibility check is carried out in practice.

22 Decree of 29 August 2017 amending the Decree of 23 December 2004 establishing more detailed provisions concerning the content of the annual report (Bulletin of Acts and Decrees 747.

23 VEUO letter concerning 'Widening the scope of audits relating to the statement on corporate governance is not desirable', which can be consulted on the Committee's website www.mccg.nl.

24 Revised NBA Guide 1109 'Accountant en corporate governance informatie' (Information on Auditors and Corporate Governance), which can be consulted the NBA website: https://www.nba.nl/nieuws-en-agenda/nieuwsarchief/2017/oktober/consultatie-herziene-handreiking-1109/.

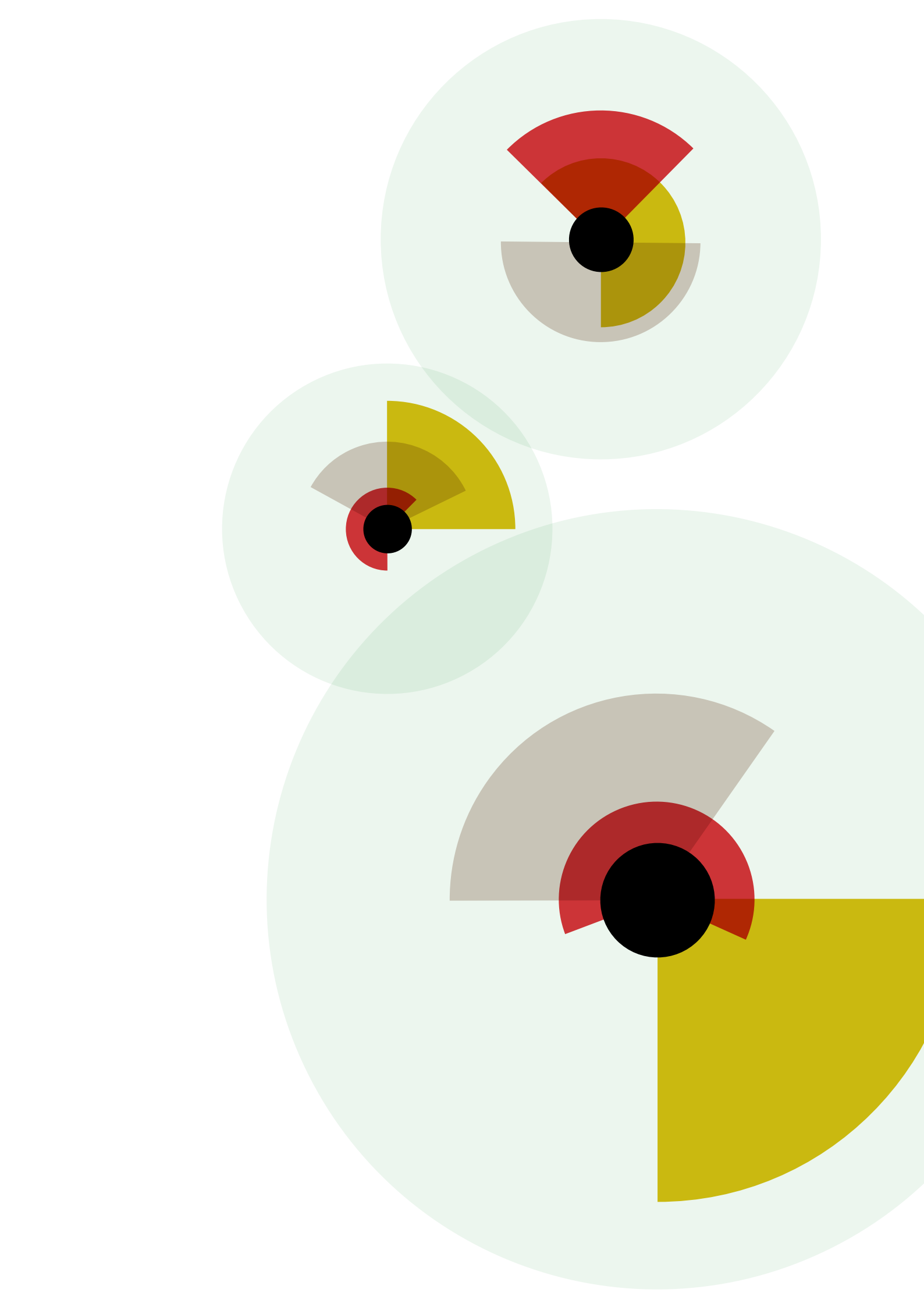
Impact of the Code on other sectors

The Code is a code of conduct for listed companies. The parties targeted by the Code are management board members, supervisory board members and shareholders of Dutch listed companies. Where the law gives them such leeway, they themselves determine the values and standards of good corporate governance. These parties are represented by the supportive parties of the Code. The Code is regularly cited in publications and in the media as the touchstone for good corporate governance. The Netherlands Enterprise Court at the Amsterdam Court of Appeal (Ondernemingskamer) shows in some of its rulings that it applies the Code as the standard that has been set. All things considered, the Code enjoys broad-based support among its stakeholders, as well as in society at large and among politicians. The Committee can see that the Code has a fairly far-reaching impact.

The question arises whether the Code should also apply to non-listed companies. Although the Committee is aware of the wider impact of the Code and welcomes the fact that non-listed companies are also considering whether the code could contribute towards sound corporate governance, it was specifically written for listed companies and not for all companies. The framework for sound corporate governance offered by the Code is tailored to listed companies. It is explicitly not immediately applicable to companies with different business dynamics. After all, listed companies have specific dynamics of their own because capital and governance are separated. The Committee also foresees that compliance with the Code in such cases could result in impeding compliance issues, something which might not be of benefit to those non-list companies.

The Committees notes that codes for non-listed companies are on the rise. For some time now, a number of sectors have had codes of conduct, whether or not drawn up on the basis of the Code. They usually concern self-regulation. According to the Committee, it is a good sign that other sectors are reflecting on the ideas behind the Code. The first signs of a code being developed for non-listed companies can also be seen abroad; Italy, for instance, is working on one such code and the UK government has recently indicated that it would like to see one drawn up.[25] The Committee does not see a role for itself in respect of the development and monitoring of a code for non-listed companies, because the government tasked it specifically with monitoring compliance with the Code for listed companies.

25 Green paper on corporate governance reform, published on November 29, 2016. Department for Business, Energy & Industrial Strategy, United Kingdom.



4. MONITORING COMPLIANCE IN THE 2016 FINANCIAL YEAR

One of the Committee's tasks is to promote the current relevance and practical utility of the Code and to monitor whether Dutch listed companies are complying with the Code. The Committee performs this task by examining annually the way in which and the degree to which the Code is being complied with. Just like in 2016, the Committee commissioned SEO to carry out a study into compliance with the 2008 Code by listed companies, this time for the 2016 financial year. This year, the compliance study comprises two parts. One part concerns the compliance study itself, carried out by means of desk-based research. The second part relates to the degree to which companies are looking ahead in 2017 to the 2016 Code which will be applicable as from 2018, and the degree to which they are already applying new elements from the 2016 Code. This part of the study was performed by means of a survey. The Committee reports briefly on the compliance study. The fact that this is the last year in which the 2008 Code will be in force, coupled with the imminent end of its term of office, has prompted the Committee to focus more on providing a review and preview in this final document.

The Committee's findings concerning the compliance study are set out in this chapter. Please see SEO's study report, which can be consulted on the Committee's website, for a more detailed overview of the results.[26] The results of the survey into the degree to which companies are looking ahead in 2017 to the 2016 Code and the Committee's findings in this regard are discussed in chapter 2.

4.1 Study justification

The purpose of the compliance study is to analyse compliance with the Code in the 2016 financial year. This involved the study of management reports and other public documents. On the basis of the documents studied, SEO analysed compliance for each best practice provision for each company. Those provisional findings were presented separately to each company for review and supplements. Following that validation, SEO shared its final findings, including explanatory notes, with the companies. The final findings from the desk-based research were incorporated into the study report. SEO's report contains a comprehensive explanation of the methodology and validation of the study.[27]

26 SEO Amsterdam Economics Study (2017), Study on Compliance with the Corporate Governance Code in the 2016 financial year.

27 Idem, pp. 33-46.

The desk-based research involved 96 listed companies which had their registered offices in the Netherlands and were listed on the Dutch stock exchange in the 2016 financial year. Of these, 88 companies were actually tested for compliance in the compliance study.[28] Of those 88 companies, 21 are listed on the AEX, 22 on the AMX, 21 on the AScX and 24 are listed locally.

4.2 Compliance

Compliance with the Code has been at a high level for years. SEO even established an average compliance rate of nearly 99% for the 2016 financial year. Compliance with the Code entails unconditional application of its provisions or, in the case of departure from a provision, providing an explanation as to why that provision was departed from. This is known as the 'comply or explain' principle. Compliance (comply or explain) is slightly higher than in the 2015 financial year, when the average compliance rate was nearly 97%. This difference is explained by a higher application (comply): 96.7% in 2016 compared with 94.9% in 2015. Of the 88 companies reviewed for compliance, 31 complied fully with the Code in 2016. The compliance rate for six companies was below 95% (the low performers). By way of comparison, SEO established a compliance rate of below 95% for 22 companies in the 2015 financial year.

The increase in the level of application established is due in part to an actual improvement in the rate of application of the Code by companies, as noted by SEO in the documents it consulted. The Committee's communications with poor performers referred to in paragraph 2.1 has undoubtedly contributed to that improvement. The adjusted methodology for the compliance study is also partly responsible for the higher application noted. The requirement pertaining to the information being reported in the correct location has been relaxed slightly for the provisions regarded as a reporting provision.[29] In addition, there were more cases this year than last year of companies supplying information in the validation phase which resulted in adjustment to a provisional compliance assessment. Clearer study-related information provided by SEO and the Committee encouraged companies to check the provisional findings for accuracy and to address any differences of opinion with the research agency by referring to public sources.

Table 4.1 contains the average compliance percentages for each stock exchange index in the 2016 financial year, broken down into various categories. The compliance rates for the 2015 financial year have also been included for comparison purposes.

28 Companies were disregarded if they had not carried out any significant activities in 2016 and/or if they did not publish their annual report in time (by 23 June 2017). Of the 96 listed companies, four were inactive in 2016 and three did not publish an annual report on 2016 in time. As for companies with split financial years, the annual reports for 2016 were taken into account unless they related to fewer than six months of 2016 and/or had already been included in the compliance study for the 2015 financial year. One company was eliminated as a result.

29 Reporting provisions require reporting on a specific subject in a specific, public location (for example: III.2.3 'approving the retirement schedule of supervisory board members and publishing the schedule on the website'). In the compliance study for this financial year, the provision was also noted as having been applied if companies refer at that specific, required location to another location (and application is established at that other place).

Index*	Compliance in 2016		Non-compliance in 2016	Compliance in 2016	Compliance in 2015
	Applied	Explained			
AEX	97.5%	1.7%	0.8%	99.2%	98.7%
AMX	98.4%	1.3%	0.3%	99.7%	97.7%
AScX	97.2%	2.0%	0.7%	99.2%	97.0%
Local	94.1%	3.3%	2.6%	97.4%	94.4%
Total	96.7%	2.1%	1.1%	98.9%	96.9%

Table 4.1 Average compliance rates for each index for the 2016 financial year (N=88)

* Due to rounding differences the percentages will not always add up to 100%.

Provisions most often not complied with

In the 2016 financial year, the lowest compliance rate was noted for provision IV.3.13 'Policy on bilateral contacts with shareholders', whereas in the 2015 financial year provision II.2.13 'Overview of remuneration policy' had the poorest compliance rate.

The provisions most often not complied with in the 2016 financial year are reproduced in Table 4.2. These are all provisions for which non-compliance amounts to at least 5%. The table also provides an insight into the compliance rates for the provisions concerned in the 2015 financial year.

Provision	Non-compliance rate for companies in 2016	Non-compliance rate for companies in 2015
IV.3.13 Policy on bilateral contacts with shareholders (R)	15.9%	26.7%
II.2.13 Overview of remuneration policy (R) *	10.6%	28.0%
V.3.3 Recommendation of the supervisory board if there is no internal audit function	9.1%	5.1%
III.1.1 Posting supervisory board regulations on the website	9.1%	6.7%
IV.3.11 Overview of protective measures (R) *	8%	7.8%
II.2.8 Severance payments for management board members	6.8%	7.8%
II.2.12 Report on implementation of remuneration policy (R)	5.7%	15.6%
III.3.6 Retirement schedule of supervisory board members (R)	5.7%	21.6%

Table 4.2 Provisions most often not complied with in the 2016 financial year (N=88)

* (R) = reporting provision.

A number of matters stand out with regard to the provisions that were most often not complied with. The least complied-with provision (with a non-compliance level of nearly 16%) in 2016 is provision IV.3.13, which requires every company to formulate a general policy on bilateral contacts with shareholders and to post it on the website. It was also in the top three of least complied-with provisions in the 2015 financial year. That said, compliance rose from 73.7% in 2015 to 84.1% in 2016. Although it is local companies which fail to a considerable degree (37.5%) to comply with this provision, it is also these companies, in particular, which are responsible for the substantial rise in compliance. In the 2015 financial year, 56.5% of local companies failed to comply with this provision.

The higher application - and thus compliance - noted in the compliance study concerns the reporting provisions above all. Provisions which scored poorly in previous years have a higher application score this year, such as provisions II.2.13 'Overview of remuneration policy', II.2.13 'Report on implementation of remuneration policy' and III.3.6 'Retirement schedule of supervisory board members'. For this reason, some other provisions no longer appear in the overview.[30]

Two provisions have joined the list of provisions most often not complied with for the first time, namely provision V.3.3 'Recommendation of the supervisory board if there is no internal audit function' and provision III.1.1 'Posting supervisory board regulations on the website'. Provision V.3.3 requires companies, if the internal audit function is lacking, to evaluate each year whether there is a need for an internal audit function and to include a recommendation in this regard in the annual report. As far as this provision is concerned, it is noteworthy that in the 2016 financial year, only locally listed companies (one-third of the total) failed to comply with this provision. Of the locally listed companies, more than 16% do not apply the provision, but provide a reasoned explanation. The Committee notes that the results in the 2016 financial year differ from those of the 2015 financial year. In 2015, SEO noted non-compliance in a small number of locally listed companies and also found that more than 26% did not apply the provision but did provide a reasoned explanation. The way in which the compliance study was conducted enabled SEO to obtain a clearer picture and explains the difference in compliance by locally listed companies.[31]

The second newcomer is provision III.1.1. It is striking that nearly one in ten companies omit to post the regulations of their supervisory board on their website, and that there has even been a rise in the number of companies omitting to do this.

Most frequently explained provisions

According to the 'comply or explain' principle, the Code is complied with when a provision is either implemented or a reasoned explanation is given if a provision is not put into practice unconditionally. The effectiveness of the 'comply or explain' principle depends on the quality of the explanation provided by the companies.

As was the case in the compliance study for the 2015 financial year, an explanation of insufficient quality is recorded as non-compliance and counted for the purpose of calculating compliance rates. In line with previously issued guidance by the Streppel Committee, SEO examined the quality of the explanations given by companies.[32] Nearly half (0.5%) of the non-compliance noted (1.1%) concerned cases where no explanation or an insufficient explanation was given as to why and, if applicable, in what way the company had departed from the provision applicable. Relative to the 2015 financial year, the total percentage of reasoned departures from the provisions of the Code remained the same at 1.1%.

30 These are III.3.1 'Profile of the supervisory board', III.3.6 'Retirement schedule of supervisory board members' and III.5.1 'Regulations on supervisory board committees'.

31 SEO included the survey results in the compliance study. Companies were asked explicitly to state whether or not they had an internal audit function. See also chapter 2.

32 The basis for assessing the quality of reasons for non-compliance is the guidance provided by the Streppel Committee in the Monitoring Report for the 2011 financial year, p. 8. In the compliance study, departure from (or non-application of) a provision qualifies as a reasoned departure (and, therefore, as compliance) if three conditions are met at the same time: 1) the departure is reported, 2) the company states how the provision was departed from, i.e. what it is doing instead of that which is provided for in the Code, and 3) the reason for the departure is stated. In answering the 'why' element of the departure (point 3) the company must at least discuss why the departure is necessary or how the departure meshes with the Code's principle. The SEO did not make a substantive assessment of the validity of explanations.

Just as in the 2015 financial year, provision II.1.1 'Maximum term of the management board members' was departed from, with reasons given, most often. It is mainly locally listed companies (more than one-third of the total) which do not adhere to the maximum term for management board members. In about 29% of cases, those companies give a reasoned explanation for not doing so. The AScX companies follow closely behind with nearly the same rate. Provision IV.1.1 (Cancelling the binding nature of a nomination for the appointment of a management board member) and provision II.2.8 (Maximum severance pay) are mainly departed from, with reasons given, rather than applied, by companies listed on the AEX index, the rates being 28.6% and 23.8% respectively.

4.3 View of the Committee

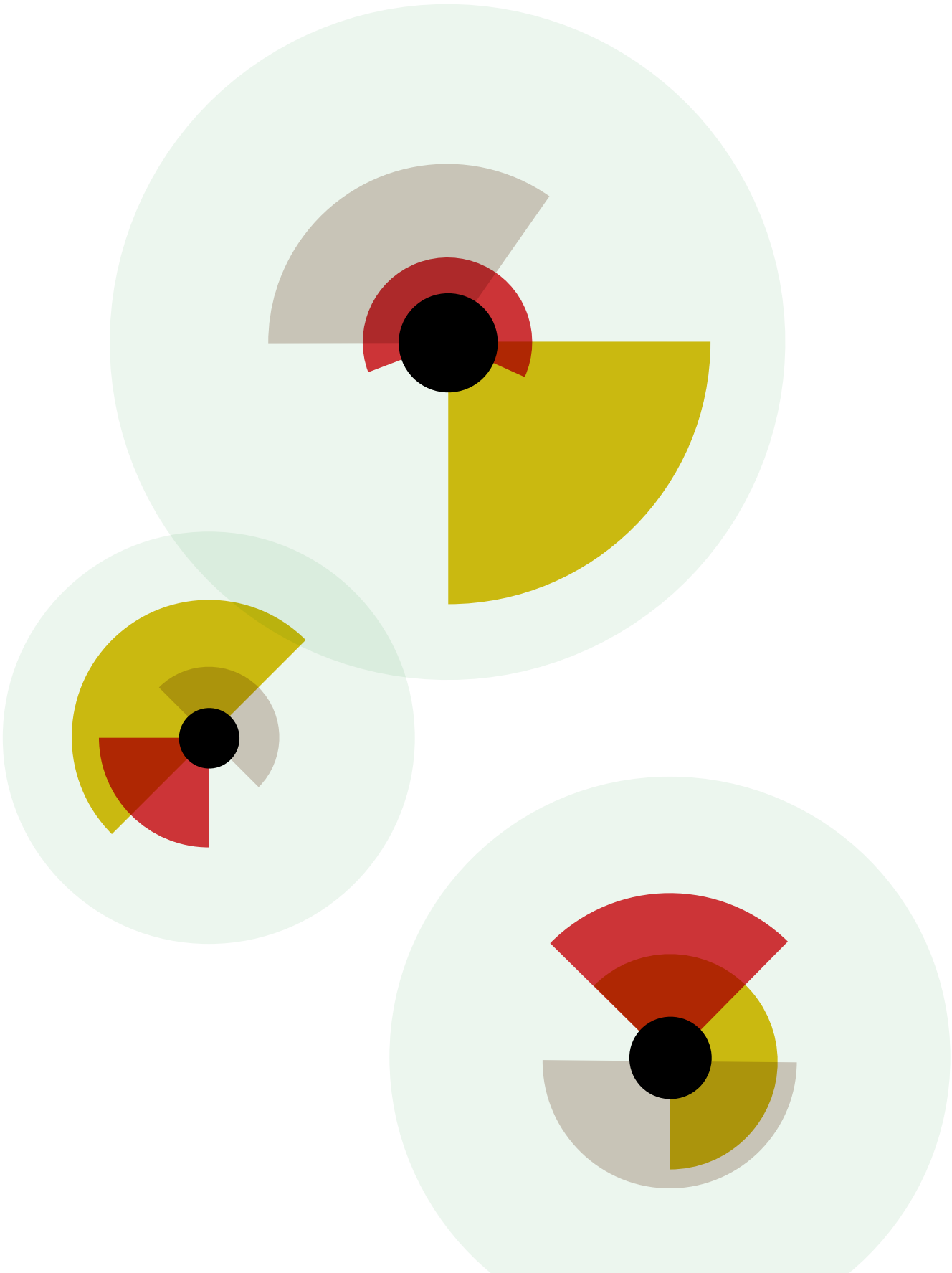
The Committee is delighted that the level of compliance with the Code, already high for years, has increased further this year. In the contacts with the Committee, nearly all companies state that they take compliance with the Code very seriously. The committee does not hesitate to tackle companies in cases where improvement in compliance is to be expected. This is in line with the Committee's pursuit of as a high as possible a level of compliance.

During the present compliance study, companies made greater use of the opportunity to verify SEO's findings and, where necessary, to respond to them. This underlines the fact that companies also have their own responsibility as regards compliance with, and the monitoring of, the Code. The validation requests made by the research agency of companies are useful not only for the purposes of monitoring the Code, but are also a good way for companies to assess the quality of their reporting on compliance with the Code.

The Committee notes the importance of correct compliance with provision IV.3.13 (Policy on bilateral contacts with shareholders). It is aware that smaller companies, in particular, are unlikely to formulate a policy on bilateral contact with shareholders and/or post it on their websites. The Committee would also encourage those companies to comply with the provision because it believes that application is evidence of good stewardship of companies in dealings with providers of capital. The Committee emphasises the importance of open dialogue with shareholders, adding that a transparent policy is essential.

Three out of four companies apply the provision (II.1.1) which pertains to the term of appointment for management board members. The main reason for companies not applying this provision is the indispensable role of the management board member concerned in ensuring the continuity of the company. Longer-running contracts could explain why one in five companies do not adhere to the severance pay of a maximum of one year's salary for management board members (provision II.2.8). The Committee notes that, although an increase can be seen, an above-average number of companies still fail to apply these two provisions.

In the 2016 financial year, too, provision III.2.1 'Independent supervisory board members' is one of the most explained provisions. In the 2016 financial year, the number of companies having more than one independent supervisory board member was higher than in the 2015 financial year. That rise is entirely attributable to the AMX and AScX companies. The Committee thinks it is entirely possible that companies are already anticipating the limited expansion in the number of non-independent supervisory board members permitted which was introduced in the 2016 Code.



5. ABOUT THE CODE AND THE COMMITTEE

5.1 The Dutch Corporate Governance Code

The Code, which entered into effect on 1 January 2014, contains principles and best practice provisions aimed at sound corporate governance. The Code regulates the relationships between the management board, the supervisory board and (the annual general meeting of) shareholders. According to the 'comply or explain' principle, a company is compliant either by implementing the relevant provision unconditionally or by explaining why it is departing from the provision in the Code. A company's management board and supervisory board render account for the chosen corporate governance structure and for compliance with the Code to their shareholders. The Code was revised in 2016; the revised Code was published on 8 December 2016. The decision which will enshrine the revised Code in law was published in the Bulletin of Acts and Decrees on 7 September 2017. As a result, in 2018, Dutch listed companies will be expected to report on compliance with the revised Code with regard to financial year 2017.

The Code applies to all companies that have a registered office in the Netherlands and for which shares or depositary receipts for shares are permitted to be traded on a regulated market or multilateral trading facility within the European Union, or a comparable market or trading facility outside the European Union. Dutch listed companies whose securities are traded on a multilateral trading facility and whose balance sheet total is less than €500 million are excluded from the operation of the Code. Companies that do not fall within its scope can choose to implement the Code voluntarily, which a fair number of them do.

Compliance with the Code has a legal basis. By a General Order in Council, the Code has been designated as a code to which Dutch listed companies must refer in their annual report by virtue of Section 391(5) of Book 2 of the Dutch Civil Code.[33] Dutch institutional investors have been required since 1 January 2007 to make a statement in their annual report about compliance with the principles and best practice provisions of the Code that pertain to them.[34] The parties that the Code is aimed at are represented by Eumedion, Euronext, the Federation of Dutch Trade Unions (FNV), the National Federation of Christian Trade Unions in the Netherlands (CNV), the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW). Together they are referred to as the supportive parties of the Code.

33 Section 2 of the Decree of 23 December 2004 establishing additional regulations concerning the contents of the annual report, Bulletin of Acts and Decrees 2004, 747.

34 Section 5:86 of the Financial Supervision Act (*Wet op het financieel toezicht*).

5.2 Task of the Corporate Governance Code Monitoring Committee

The task of the Committee is to promote the current relevance and practical utility of the Code. It performs its task, among other ways, by:

- identifying gaps or ambiguities in the Code;
- keeping up to date on national and international developments and practices in the area of corporate governance with a view to the convergence of national codes;
- taking stock at least once a year of the way in which and the degree to which the regulations of the Code are being complied with.

Pursuant to the decision establishing the Committee, the Committee is required to report to the Minister of Economic Affairs, the Minister of Security and Justice and the Minister of Finance at least once a year about its findings. In this report, the Committee can also give guidelines for complying with one or more regulations (also referred to as 'guidance'). The current Committee consists of the chairman and six members who all have experience and expertise in the area of corporate governance. An overview of the composition of the Committee can be found on page 63. The Committee was established by Minister of Economic Affairs Kamp on 11 December 2013. The Committee has been appointed for a period of four years.

COMPOSITION

MONITORING COMMITTEE CORPORATE GOVERNANCE CODE

Chairman

prof. dr. J.A. van Manen

Partner at Strategic Management Centre

Vice Chairman of the supervisory board at De Nederlandsche Bank NV

Member of the supervisory board at Bornet Groep Rotterdam BV

Secretariat

K. van Kalleveen, MA

Ministry of Economic Affairs and Climate Policy, Directorate of Entrepreneurship

mr. C.M. Molkenboer

Ministry of Economic Affairs and Climate Policy, Directorate of Entrepreneurship

Advisors

L.D.V.M. Kompier, LLM and W.J. Brants, LLM

Directorate of Legislation, Ministry of Justice and Security

M. Rookhuizen, LLM

Directorate of Financial Markets, Ministry of Finance

Members

B.E. Baarsma

Director of Knowledge Development at Rabobank

Professor of market mechanisms and competitive economy at the University of Amsterdam

Crown-appointed member of the Social and Economic Council of the Netherlands (SER)

E.F. Bos

Chief Executive Officer at PGGM

Member of the supervisory board at Nederlandse Opera & Ballet

Non-executive Director at Sustainalytics Holding BV

P.J. Gortzak, LLM

Head of Policy Group Strategie en Beleid APG

Member of the supervisory board at CFK

Member of the Evaluatie Politiewet committee

Member of the supervisory board at Nationaal Register

S. Hepkema, LLM

Chairman of the supervisory board at Wavin NV

Member of the supervisory board at SBM Offshore NV

Member of the supervisory board at Koninklijke VolkerWessels NV

Member of the management board of VEUO

R.J. van de Kraats, RA

CFO & Vice Chairman at Executive Board Randstad Holding NV

Non-executive Director at OCI NV

Member of the supervisory board at Schiphol Group

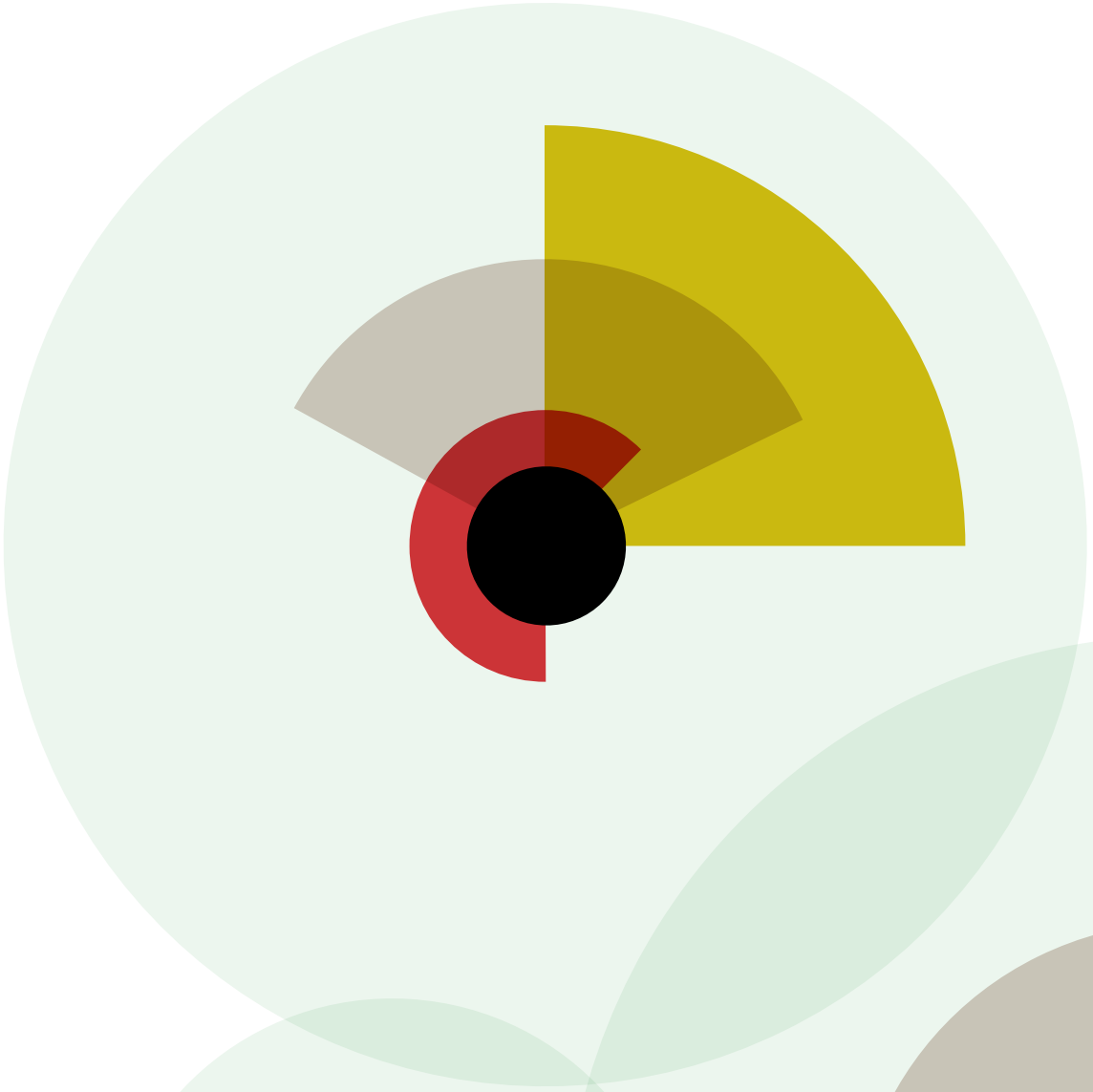
prof. H.M. Vletter-van Dort, LLM

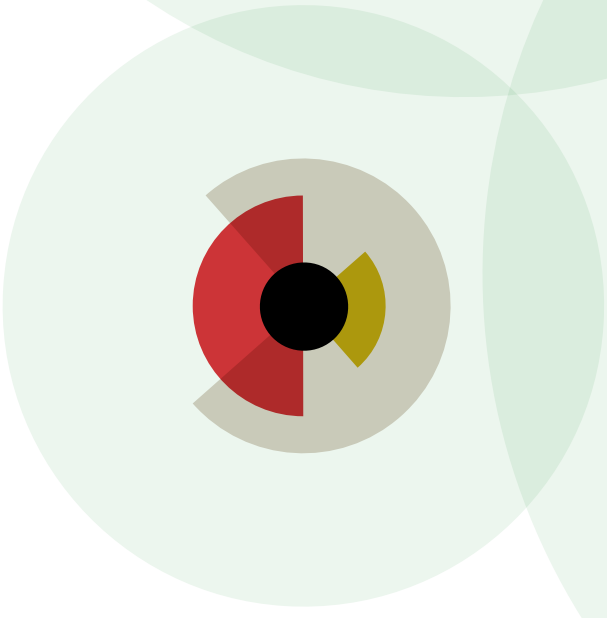
Professor of financial law and governance at Erasmus School of Law

Chairman of the supervisory board at Intertrust NV

Member of the supervisory board at NN Group NV

Non-executive board member at Barclays International





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