Monitoring Committee

CORPORATE GOVERNANCE CODE

Monitoring report on the 2013 financial year

UNOFFICIAL TRANSLATION

January 2015
Secretariat: PO Box 20401, 2500 EK
The Hague, the Netherlands

www.mccg.nl

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FOREWORD

In 2004, the Tabaksblat code (Corporate Governance Code) was implemented. This code was amended once in 2008. Since the introduction of the code, compliance with it has been monitored. Over the course of years, the level of compliance with the code has been satisfactory, which shows that self-regulation in the Netherlands works in the area of corporate governance. Points for improvement have been identified, of course, but the general picture given is that the code has become an important guideline for shareholders, management board members, supervisory board members and external accountants of Dutch listed companies.

However, even a code that is well complied with cannot prevent all problems in the field of corporate governance. Since the introduction of the Tabaksblat code, various companies have found themselves in crisis situations whose causes could be traced back to bad decisions and ineffective risk management. Several banks were in crisis situations. Insurers, too, found themselves surrounded by problems caused by unit-linked insurance policies that raised expectations that were not fulfilled in the end. There were accounting frauds and competition rules were violated. Bribery also took place. And a crisis of confidence developed around the accountancy profession.

In the opinion of the Monitoring Committee, these problems all point to the fact that improvements can be made in the areas of risk management and sound business practices. These improvements should be made by the management board members of companies under the supervision and with the support of their supervisory board members. The focus here should primarily be centred on the long term. It is important for shareholders to grant the necessary freedom for this and to actively participate in this discussion. Putting the corporate governance code into practice, such that use is made of the lessons learned in recent years, can contribute to making an improvement in corporate governance.

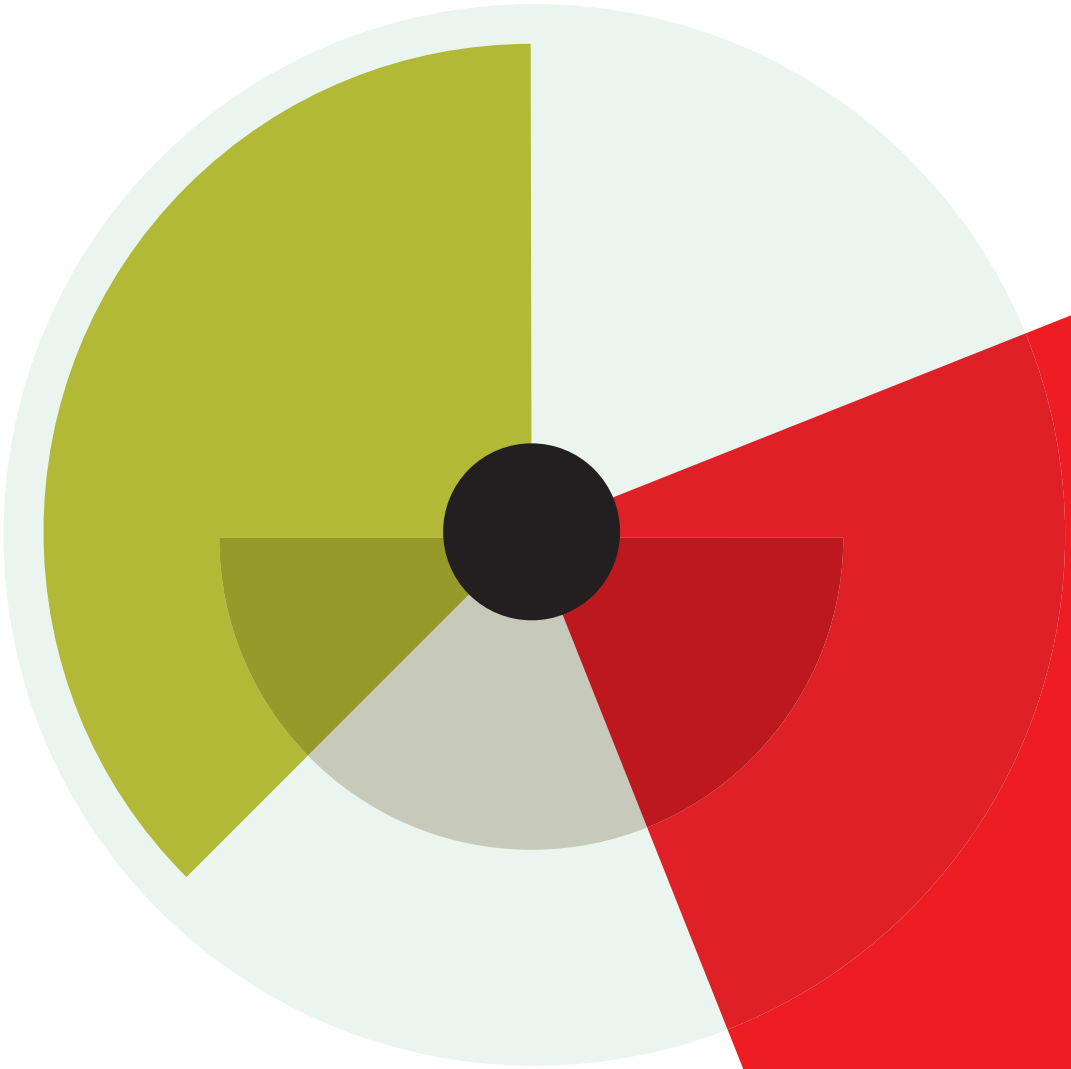
Legislators have not sat on their hands in recent years. Amongst other things, this has led to a situation in which the code and the law no longer seamlessly correspond with one another. There are also international developments underway within the EU and the OECD that make it desirable to update the code.

The fact that self-regulation in the Netherlands works in the area of corporate governance is again verified by the activities whose findings can be read in this report. Recent abuses, as well as national and international developments have provided sufficient starting points for an update of the code. We advise the parties that feel responsible and have shown themselves to be responsible for the corporate governance code to launch a process to revise this code.

On behalf of the Committee, I would like to thank everyone that contributed to the creation of this report through their great efforts and expertise. Without wishing to be exhaustive, I would like to name all the people that took the time to talk with us, the researchers that created a high-quality report and the people at the listed companies that provided input for the survey that serves as the foundation of this report. All of these efforts were assisted by two expertly skilled and involved secretaries.

Finally, I would like to take this moment to remember someone who is no longer with the Committee. We lost our fellow member, Ieke van den Burg, in 2014. Up until a short time prior to her death and despite being seriously ill, she worked hard with us in the Committee. We miss Ieke in many respects.

Jaap van Manen
Chairman of the Corporate Governance Code Monitoring Committee



MAIN FEATURES

The Netherlands' Corporate Governance Code (hereinafter referred to as: the Code) contains generally accepted principles and best practice provisions for good corporate governance. It is the duty of the Corporate Governance Code Monitoring Committee (hereinafter referred to as: the Committee) to investigate annually whether Dutch companies listed on the stock exchange are complying with the Code.[1]

This year the Committee commissioned Nyenrode Business University (hereinafter referred to as: Nyenrode) to conduct the study into compliance with the Code in the 2013 financial year. Nyenrode conducted this study by means of a self-assessment. Whereas in previous years the manner in which companies complied with the code was monitored using desk research (consulting annual reports, information on websites, etc.), this year companies were asked to fill in an online questionnaire. The Committee made a conscious choice for having the compliance study conducted via a questionnaire. The methodology requires the companies to take an active attitude and, in the opinion of the Committee, it fits in well with the self-regulating character of the Code. Due to the revision of the methodology, it is not possible to compare the compliance figures and non-implementation figures for the 2013 financial year one-to-one with the figures for previous financial years. In instances in which comparisons could be made, they have been.

At the request of the Committee, Nyenrode gave special attention to three themes in the study into compliance with the Code, namely: corporate social responsibility (CSR), remuneration ratios and diversity. These specific themes were explored further because these topical themes are currently the subject of vexed debate.

The Committee also highlighted the national and international developments that touch upon the Code. In addition to these regular activities, the Committee is focusing on the evaluation of the Code. Through two rounds of talks with supportive parties, the Committee has been able to form a picture of the sticking points in the Code and any wishes to revise the Code.[2] The Committee also entered discussion with management board members about the operation and their perception of the Code.

Main findings and conclusions

Compliance study

- A total of 72 out of the 95 companies took part in the online questionnaire: a response rate of 76%. The highest response was achieved among the (larger) AEX companies (95%) and the lowest response was among the (smaller) companies (44%).
- Compliance with the Code is still at a high level. The average compliance percentages per stock exchange index are 100% for the AEX index, 99.41% for the AMX index, 99.88% for the AMS index and 98.40% for the local listed companies.
- There seems to be a tendency towards greater implementation of Code provisions and less explanation (if a Code provision is not strictly followed) amongst AEX and AMS listed companies. At the same time, companies that are listed on the AMX and on local indexes tend to explain more in the latter case.
- Greater use is being made of sources other than the annual report in order to provide information on

1 The meaning given in this report and in previous reports to the terms 'implement' and 'comply' corresponds with the meaning given to them in the Code. According to the Code, a code provision is 'implemented' when the provision is strictly followed. The term 'comply' encompasses both (1) the implementation of a provision, as well as (2) the choice not to implement a provision with an explanation as to why this choice has been made. The meaning given by the Monitoring Committee to the term 'compliance' is therefore broader than the meaning that is given to the term in the memorandum of explanation of Article 3 attached to the Decree of 23 December 2004 to establish further regulations concerning the contents of the annual report (Stb. 2004, 747). In this explanation, the term 'compliance' means a provision is strictly followed and the term 'implementation' means to strictly follow a certain best practice or to give an explanation in the event of a departure from such best practice.

2 The supportive parties are the *Vereniging van Effecten Bezitters [Association of Securities Holders], Eumedion, FNV and CNV, the Vereniging van Effecten Uitgevende Ondernemingen [Association of Securities Issuing Companies], VNO-NCW and Euronext.*

compliance with the provisions of the Code. In particular, the corporate governance statement and the website are being used for this purpose. In this report, explanations given in other sources are included in the compliance percentages. This is in line with the manner in which Nyenrode conducted the study. Strictly speaking, an explanation given in other sources does not constitute compliance with the Code (provision I.1).

- The non-compliance percentages for the provision "launch evaluation of internal audit function" and the provision "overview of protection measures" are relatively high.
- This year, too, the Committee gave extra attention to its own regulations and temporary departures from the Code. These are subjects on which the Streppel Committee has provided guidance. In the 2013 financial year, companies referred a total of 46 times to their own regulations. In 31 of the 46 cases (67%), this explanation did not qualify as compliance. Furthermore, a total of 12 times in the study companies indicated that a departure involved a temporary departure from the Code. In nine of these 12 cases (75%), the departures should be classified as non-compliance. If the guidance of the Streppel Committee for the explanation was taken into account in the average compliance percentages, this would lead to an increase in the average percentage for non-compliance. The quality of the explanation, therefore, remains a point of focus.
- The manner in which the guidance of the Streppel Committee concerning CSR is being followed by companies is a point of focus. Only a small number of companies have actually integrated CSR into their strategy and report about it. These companies set concrete goals for themselves and report on the achievement or non-achievement of these goals. There are also differences in the way in which companies interpret CSR.
- The manner in which the guidance of the Streppel Committee is followed with respect to taking remuneration ratios into consideration is a point of focus. Few companies mention the consideration of remuneration ratios in the annual report and companies often provide no insight into the way in which this occurs.
- The manner in which companies follow the guidance of the Streppel Committee with respect to the diversity policy also leaves much to be desired. The explanation given by companies about why they achieve or fail to achieve the objectives is limited. Only a few companies demonstrate that they are taking an active approach to the achievement of the diversity objectives.

National and international developments

- The current Code dates from 2008. Since then, legislation has taken effect that touches on different subjects concerning the Code. The overlap between the Code and legislation can cause a lack of clarity. It is preferable to bring the Code into line with the legislation.
- In other countries, it is common practice for the corporate governance code to be revised at regular intervals. The current relevance and operation of the Code can benefit from establishing a periodic revision.

Evaluation of the Code

The Committee has identified various gaps and inclarities in the Code.

- The Code gives little attention to the sustainability of a company's strategy in the long term and to the implementation and effectiveness of internal risk and assessment systems. In light of the recent crises and abuses, the Code could give greater attention to these subjects.
- The Code also gives little attention to behaviour and culture. In the revision of the Code in 2008, greater emphasis was placed on influencing behaviour. Behaviour is often a projection of culture. The Code could indicate how and where culture can be discussed within the triad of management board, supervisory board and shareholders.
- The quality of the compliance with the provisions of the Code with respect to CSR should be improved. The Committee will focus on the question of what role the Code plays with respect to CSR and how compliance with the provisions can be improved.
- Payments continue to be a point of focus. There has been hardly any improvement in the transparency of companies with regard to payments. Provision II.2.8 "maximum severance pay" continues to be the provision that is provided with the most explanations. Few companies also report about taking remunera-

tion ratios into consideration, in accordance with earlier guidance given. The Code could promote clarity and completeness and could encourage companies to give an account of the relationship between the payments actually paid out and the current policy.

- Companies often see diversity as the ratio of men to women. The Committee wants to emphasise the importance of (continually) widening the discussion on diversity.
- In the Code, there are several provisions under principle III.8 that pertain to the guarantee of a proper and independent supervision in a one-tier board. The Streppel Committee has given guidance to the effect that provisions that pertain to supervisory board members also apply to non-management board members in a one-tier board. The extent to which other provisions of the Code apply to this governance structure could be clarified.
- Increasing numbers of companies are reducing the size of the management board and establishing an executive committee. This development can have consequences for the governance of a company. The role of the executive committee can be assessed in light of the Code in order to see what the consequences are for the board and supervision.
- Increasingly, explanations are given in sources other than the annual report. The Committee thinks it is important that an account of compliance with the Code can be consulted and is accessible in one place. In consultation with lawmakers, the Committee will study whether there are alternatives to the annual report that achieve the same purpose.
- The guidance of earlier committees has been sporadically included in past monitoring reports. The Committee will improve the accessibility of this guidance by publishing a document with an overview of all guidance provided.

Looking ahead

- The current Code dates from 2008. Much has changed since then, both within companies and in national and international contexts. Emphases have shifted, legislation has been developed and new issues have arisen. Consequently, the Committee is advising the supportive parties to set up a process for reviewing the Code.
- The Committee will also focus again in 2015 on taking stock of the manner and extent of compliance with the Code by companies in the 2014 financial year, on following national and international developments and on identifying gaps and things that are unclear in the Code.
- Furthermore, the Committee plans to give special attention to four subjects:
  - compliance with the Code by shareholders and institutional investors;
  - the role of the external accountant;
  - risk management;
  - protection measures.

1. Introduction

1.1 The Netherlands' Corporate Governance Code

The Netherlands' Corporate Governance Code (hereinafter referred to as: the Code) contains principles and best practice provisions focused on sound corporate governance. It took effect on 1 January 2004. The Code regulates the relationships between the management board, the supervisory board and the (general meeting of) shareholders (GMS). According to the "apply or explain" principle, the Code is complied with by implementing the provision concerned either unconditionally or by explaining why the Code provisions are being departed from. The management board and the supervisory board of a company justify the chosen corporate governance structure and the compliance with the Code to their shareholders. In December 2008, the Code was updated by the Frijns Committee. The updated Code took effect on 1 January 2009.

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 is something that occurs regularly.

The parties on which the Code is focused are represented by the *Vereniging van Effecten Bezitters* [Association of Securities Holders], *Eumedion, Euronext, FNV* and *CNV, the Vereniging van Effecten Uitgevende Ondernemingen* [Association of Securities Issuing Companies], and *VNO-NCW.* Together, they are called the supporters of the Code.

Compliance with the Code has a legal basis. By an 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 Article 2:391, fifth paragraph, of the Civil Code.3 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.[4]

3 Article 2 of the Decree of 23 December 2004 for the establishment of additional regulations concerning the contents of the annual report, Stb 2004, 747.

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

1.2 Task of the Corporate Governance Code Monitoring Committee

The task of the Corporate Governance Code Monitoring Committee (hereinafter referred to as: the Committee) is to promote the current relevance and usefulness of the Code. It carries out its task, amongst other ways, by:

- identifying gaps or inclarities in the Code;
- keeping up to date on national and international developments and customs 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.

The Committee reports 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. These guidelines are also referred to as "guidance".
In December 2013, the current Committee was established under the Chairmanship of Jaap van Manen for a period of four years and thus succeeded the previous Committee under the Chairmanship of Jos Streppel.[5]
The current Committee will report this year for the first time on compliance.

1.3 Review of 2014

The Code was established in 2003 and last updated in 2008. Since then, the world has moved rapidly forward and there have been numerous problems that cannot be ignored. The banking crisis reached a climax in the autumn of 2008 and turned into a debt crisis in 2010. Insurers sold products saddled with high costs that later led to claims. It became apparent that cartels were interfering with competitive relationships, which resulted in fines being imposed by the Dutch or European authorities. Financial and economic offences, such as fraud and corruption, also came to light. One source for these abuses often could be found in a focus on short-term profits and a lack of risk management over the long term.

The Committee used its first year especially to focus on evaluating the Code and reviewed the lessons that could be learned from these recent events. The Committee sees a role for the Code in placing greater emphasis on future-focused risk management and culture as the impetus for good corporate governance.

Other aspects should also be given attention, such as the Code's relationship with legislation and the usefulness of the provisions in the current Code. The monitoring has revealed that some Code provisions do not work well or require further explanation.

Compliance study

The study into compliance with the Code and the quality of the explanations provided in the 2013 financial year was conducted by Nyenrode Business University (hereinafter referred to as: Nyenrode). A new methodology was used this year for the compliance study, namely a self-assessment. Whereas, previously, the manner in which companies complied with the Code was monitored by means of desk research (in annual reports, on websites, etc.), this year companies were asked to fill in an online questionnaire. This requires some effort on the part of the companies, but that did not deter them. The response rate was high at 72 out of 95 companies. A list of the companies that participated can be found in the appendix to this report.

Discussions

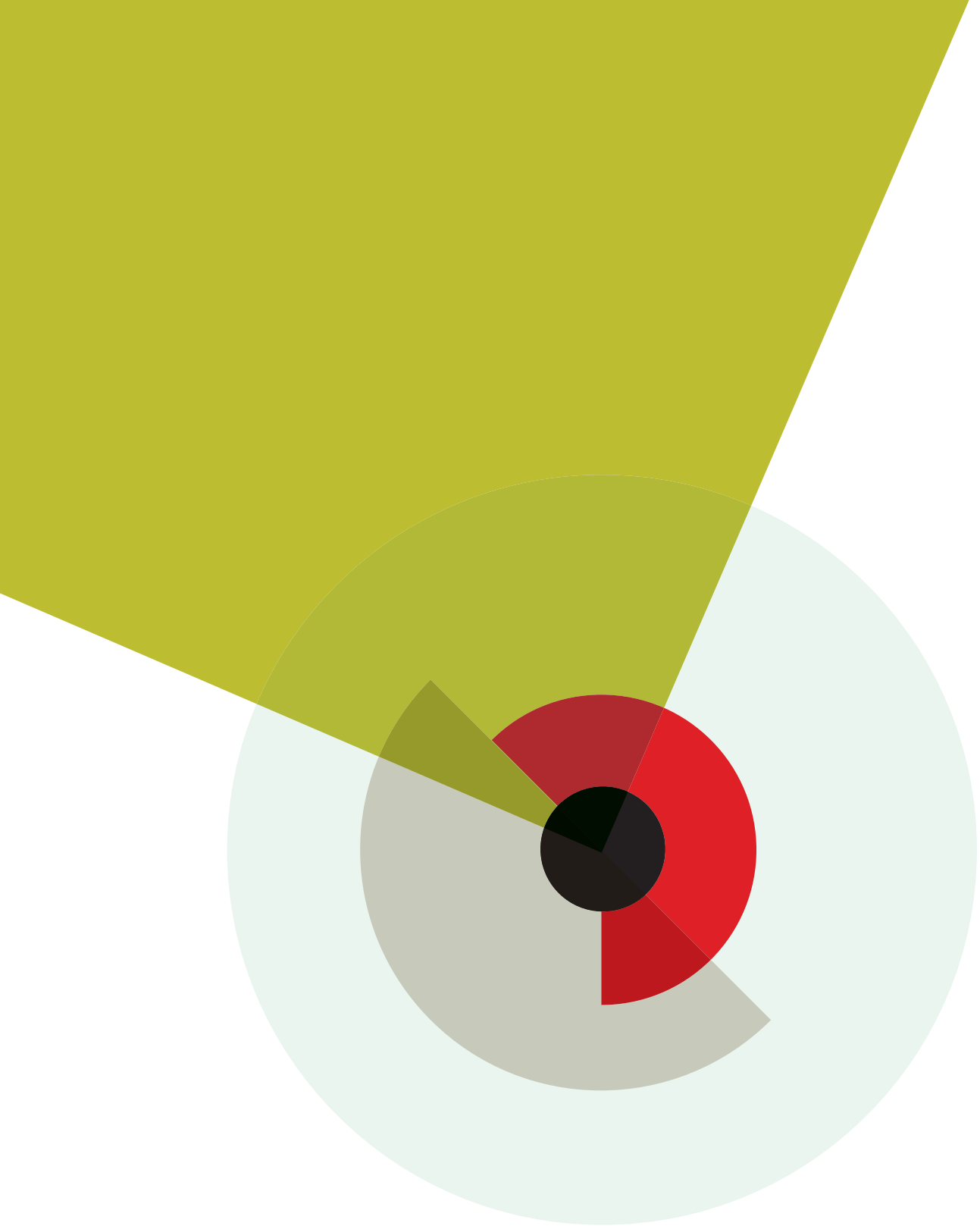
The Committee also made an inventory of the manner in which shareholders, entrepreneurs and trade unions perceived the Code in 2014 and gained insight into the "why" behind compliance and non-compliance with the Code. In March 2014, the first round of discussions was held with the supporters of the Code. In these discussions, the Committee asked about sticking points and any desires for a revision of the Code. At the end of 2014, the Committee once again entered discussion with the supporters of the Code to discuss the outcomes of its evaluation. In addition to the supporters, the Committee also talked directly with the manage-

5 Institutional Decision of the Monitoring Committee for Corporate Governance, Stcrt. 2013, 34316.

ment board members of companies. In September 2014, a meeting was held with the directors of AMS and local listed companies and in October a meeting was held with the directors of the AEX and AMX indexes. The Committee included the outcome of these meetings in Chapter 5, which discusses the evaluation of the Code, and in Chapter 7, which presents the vision for the future.

1.4 Reading guide

This monitoring report is structured as follows. In Chapter 2, a general picture of compliance is sketched. A number of developments with respect to the compliance in the 2013 financial year are also identified and consideration is given to the quality of the explanation given. In Chapter 3, compliance with the three themes is discussed: corporate social responsibility (CSR), remuneration ratios and diversity. The Committee has further studied these specific themes because they are topical and the subject of vexed debate. In Chapter 4, the relationship of the Code with legislation is discussed. Chapter 5 discusses the evaluation of the Code and, in this chapter, the Committee identifies gaps and inclarities in the Code. Relevant international developments in the area of corporate governance are described in Chapter 6. The concluding chapter, Chapter 7, contains a vision for the future.



2. Compliance

The basis for the Code is the "apply or explain" principle. The Code is complied with if (1) a Code provision is implemented; that is to say, put into practice one-to-one, or (2) if a provision is departed from and a reasoned explanation is given for this departure. Nyenrode conducted a study into compliance with the Code and the quality of the explanations given in the 2013 financial year.[6] In comparison with past compliance studies, Nyenrode used a different methodology. Below, this study approach is reviewed before discussing the compliance figures and the quality of the explanations given. This chapter provides a factual picture of the study results. In Chapter 5 "Evaluation of the Code", the conclusions that the Committee has drawn on the basis of these facts are discussed.

2.1 Methodology

The study into compliance with the Code was conducted this year on the basis of a self-assessment by filling in an online questionnaire. Whereas in previous years, the manner in which companies complied with the code was monitored through desk research using publically available sources (such as annual reports, information on websites, etc.), this year companies were asked to fill in an online questionnaire. The report drafted by Nyenrode includes extensive information on the methodology and the validation of the research.[7] This monitoring report limits itself to descriptions in general terms.

The Committee has made a conscious choice of compliance research that is conducted via a questionnaire. This methodology requires an active attitude on the part of the companies and, in the opinion of the Committee, fits in well with the self-regulating character of the Code. The responsibility for providing insight into compliance or non-compliance with the Code is placed more with the company in this methodology. Another benefit of this methodology is that it promotes contact between the company and the Committee. By including open fields in the questionnaire, the companies are given the opportunity to provide additional comments to the Committee, which helps them to gain greater insight into the reasons for the compliance and non-compliance with the Code. In Germany, a questionnaire is also used to conduct research into compliance with the relevant corporate governance codes.

Response and non-response

Whereas desk research can involve the entire population, a questionnaire-based study only includes those companies that have answered the questions. The degree to which a study conducted through a questionnaire is successful stands or falls with the response rate. The Committee and Nyenrode have done their utmost to achieve the highest possible response rate. A total of 72 out of the 95 companies took part in the online questionnaire. This is 76% of the companies. The Committee is happy with this response rate, especially because this is the first time that such a method has been used for the compliance study. The participation of all companies is the ultimate goal and so the Committee hopes that in subsequent compliance studies the response rate will be even higher.

The highest response rate was achieved among companies listed on the AEX index (95%) and the lowest response rate recorded was among companies listed on the local market (44%). A full list of the companies that participated in the questionnaire has been included in the appendix of this report.

6 The full compliance study of Nyenrode has been published on the website of the Committee (www.mccg.nl).

7 Corporate governance in the Netherlands: A study into compliance with the Netherlands' Corporate Governance Code in the 2013 financial year, Nyenrode Business University. Appendix G – Method and validation, can be found on the website www.mccg.nl.

Figure 1 Overview of population in compliance study 2013 [n=72]

Index	Population 2013	Questionnaire Response	Percentage
AEX	21	20	95%
AMX	24	21*	88%
AMS	23	19*	83%
Local	27	12	44%
Total	**95**	**72***	**76%**

* After the closing date of the questionnaire, two companies completed the questionnaire. The data on these questionnaires is being included in the statistical section of the study into compliance, but not in the qualitative section of the study on the quality of the explanations provided and the specific themes (described in Chapter 3). The qualitative section of the study is therefore based on the response of 70 companies.

A total of 23 companies did not participate in the questionnaire. This is the so-called non-response. Nyenrode tried to ascertain what the reason was for the companies refraining from cooperating. Eight companies failed to complete the questionnaire due to a lack of time. The reason for the other companies not completing the questionnaire is unknown. If a company fails to participate in the questionnaire, this does not automatically mean that they are not complying with the Code. Nyenrode has conducted different quality checks to validate the research method used. The compliance of 46 companies was studied through desk research (using the methodology of previous compliance studies).[8]
On the basis of different characteristics, the extent to which the response was representative of the entire study population of 95 companies was also studied. It can be concluded that the response is representative for the entire population and that there is no reason to doubt the quality of the answers provided by the companies.

Answer categories
In presenting the results on compliance, Nyenrode discerns different categories into which the answers of the companies can be divided, namely:

- compliance with the provision:
  - implementation of the provision
  - not implementing the provision, but explaining the reason why:
    - explanation included in the annual report
    - explanation included in a source other than the annual report
- non-compliance with the provision
- provision does not apply

According to best practice I.1 of the Code, companies should explain in a separate chapter in the annual report the extent to which they follow the best practice provisions of the Code and, if they don not, why they do not and to what extent they depart from them. Because there is an observed tendency for companies also to use sources other than the annual report in order to provide an explanation, Nyenrode has included these sources in the study.

The last category "does not apply" is included in the questionnaire because there are provisions that refer to a situation that does not arise at each company. If this is the case, then companies can indicate that the provision does not apply. This answer category has been included in the questionnaire for seventeen provisions (out of a total of 101 provisions). An example of this is provision III.1.4 "interim standing down of a upervisory board member". If a situation in which a supervisory board member stands down never arises, then the company indicates that the provision does not apply.

8 Eleven of the 46 companies studied did not cooperate in the questionnaire.

Comparability with the results of compliance studies from previous years

Because of the revision of the methodology, it is not possible to compare the compliance figures and non-implementation figures for the 2013 financial year one-to-one with the figures for previous financial years. To do so would produce a distorted picture. In places where comparisons can be made, it has been done. There are three important differences with respect to the studies conducted in the past.

This year, compliance with nearly all provisions was studied. This is in contrast to past compliance studies, in which only the best practice provisions were studied, compliance with which was less than 90% in 2008 and in so far as implementation could be established based on publically available information. Under this new method, all provisions of the Code are included, in so far as an effort to comply is expected. A number of provisions were left out of the study. This concerns provisions that are a further definition of a concept, that have now been enshrined in law or in respect of which it is impossible or extremely difficult to study compliance with the provision.[9]

Furthermore a number of provisions have been subdivided into sub-provisions. An example of this is best practice provision II.2.13 "remuneration overview". These provisions have been studied at the level of sub-provision. Next the results of these sub-provisions were condensed to the level of the full provision. This means that the compliance percentage of a provision can be, for example, 80%. In this case, eight out of the ten sub-provisions are being complied with. In compliance studies conducted previously, a provision was considered not to have been complied with when one sub-provision was not being complied with.

A third important difference from previous studies is the fact that there can no longer be the assumption of implementation. In many cases, the Code does not indicate whether the implementation of a provision must be explicitly reported. This means that it cannot be concluded from the report of a company that the provision in question is actually being implemented. As a result, it must be assumed that the Code is being implemented according to the principle of trust. A part of the new methodology is the fact that companies make a statement concerning the degree of compliance with all the provisions from the Code presented to them. Considered as a whole, no large changes in the compliance with the Code have been observed in regard to the results of the previous compliance study. The differences in the compliance figures can primarily be attributed to the use of the new methodology.

Nyenrode has included an appendix in its compliance report in which the results for the 2013 financial year are made comparable at the best practice provision level with the results for the years 2012 and 2011.[10] This has shown that no large changes have taken place with respect to compliance with the Code.

Finally, it is good to state that in paragraph 2.2 "Compliance", compliance percentages are given that are representative for all 95 companies. As stated previously, the results based on 72 companies are representative for all companies. In paragraph 2.3 "Nature and quality of the explanation given", the data from the 70 companies that completed the questionnaire before the closing date has been used. These results pertain only to these 70 companies.

9 Corporate governance in the Netherlands: Study into compliance with the Netherlands' Corporate Governance Code in the 2013 financial year, Nyenrode Business University. Appendix E – Overview of provisions that were not included in the questionnaire, which can be found on the website www.mccg.nl.

10 Corporate governance in the Netherlands: Study into compliance with the Netherlands' Corporate Governance Code in the 2013 financial year, Nyenrode Business University. Appendix F – Study of differences in 2013 and 2012, which can be found on the website www. mccg.nl

2.2 Compliance

As in previous years, compliance with the Code was high. The average compliance percentages per stock exchange index were:[11]

- AEX 100.00%
- AMX 99.41%
- AMS 99.88%
- Local 98.40%

The Committee is content with these high average compliance percentages, but is of course striving to achieve a 100% score.

In the figure below, the average compliance percentages are shown, divided between "implemented", "explained" and "does not apply". The category "explained" is subdivided into explained in the "annual report" and explained in "other sources". The average percentages for "non-compliance" are also included. The average percentages for explained in "other sources" are included in the average compliance percentages. This is in line with the manner in which Nyenrode conducted the study into explanations provided.

Figure 2 Average percentages per index for the 2013 financial year

Index	Compliance				Non-compliance
	Implemented	Explained		n.a.*	
		Annual report	Other sourcesn		
AEX	82.09%	1.44%	0.20%	16.26%	0%
AMX	79.84%	1.71%	1.32%	16.54%	0.59%
AMS	78.52%	1.49%	1.10%	18.78%	0.12%
Local	74.11%	2.16%	2.16%	19.98%	1.60%

* If a company declared all previously described 17 best practice provisions to be inapplicable, then a maximum score of 25% can be achieved.

Explanation given in other sources

Strictly speaking, an explanation given in other sources does not constitute compliance with the Code. Provision I.1 of the Code, states that a company should state in a separate chapter in the annual report the extent to which it complies with the provisions in the Code and, if it does not, why it does not and to what extent it departs from them. The compliance study shows that considerable use is made of sources other than the annual report to provide this explanation. The corporate governance statement and the website, in particular, are used for this. This tendency is especially visible among the companies listed on local indexes: half of the explanations given are reported in sources other than the annual report. When explanations are given in other sources, the Committee thinks it is important that the information is easy to find. In Chapter 5 "Evaluation of the Code", this subject is discussed further.

The least complied with provisions

The least complied with provisions in the 2013 financial year are shown for each index in the figure below. Provision V.3.3 "launch evaluation of internal audit function", in particular, is the least complied with provision by companies listed on the AMX index and the AMS index. Among the companies listed on local indexes, compliance with provision II.2.13 "remuneration overview" leaves much to be desired.

11 Explanations from other sources have been included in these average compliance percentages. Strictly speaking, explanations given in sources other than the annual report do not constitute compliance with the Code. When this is translated to the average compliance percentages, these percentages are as follows: 99.8% (AEX), 98.09% (AMX), 98.78% (AMS) and 96.24% (local).

Figure 3 Most provisions not complied with per index in the 2013 financial year [n=95]

Index	Provision	Percentage of companies
AEX	–	--
AMX	V.3.3 Launch evaluation of internal audit function IV.3.13 Policy on bilateral contacts with shareholders IV.3.13 policy on bilateral contacts with shareholders	12% 10%
AMS	V.3.3 Launch evaluation of internal audit function	5%
Local	II.2.13 Remuneration overview II.2.5 Retention period of assigned shares IV.3.11 Overview of protection measures IV.3.13 Policy on bilateral contacts with shareholders	22% 17% 17% 17%

Provisions designated as not applicable

The provisions that were most often indicated as not applicable in the 2013 financial year are shown in the figure below. Provision III.6.7 "supervisory board member that temporarily sits on the management board" and provision III.8.1 "role of the board chairman in a one-tier board" are indicated by companies from all indexes most often as being not applicable. Companies listed on local indexes also often indicate that provision V.3.1 "involvement of external accountant in drafting a work plan for the internal auditor" and provision V.3.2 "access of internal auditor to external accountant and auditing committee" do not apply. This could possibly be explained by the fact that many smaller companies launch no internal audit function.

Figure 4 Provisions most often indicated as not applicable per index in 2013 financial year [n=95]

Index	Provision	Percentage of companies
AEX	III.6.7 Supervisory board member that temporarily sits on the management board III.8.1 role of board chairman on a one-tier board	90% 80%
AMX	III.8.1 role of board chairman on a one-tier board III.6.7 supervisory directory that temporarily sits on the management board	86% 81%
AMS	III.6.7 supervisory board member that temporarily sits on the management board III.8.1 role of board chairman on a one-tier board	90% 90%
Local	V.3.1 Involvement of external accountant in drafting work plan for internal auditor V.3.2 access of internal auditor to external accountant and auditing committee III.8.1 role of board chairman on a one-tier board III.6.7 supervisory board member that temporarily sits on the management board	92% 92% 75% 67%

New provisions studied

Nyenrode studied nearly all provisions in the compliance study. This means that there is new information on the compliance with these provisions, which were not studied in previous years. Those provisions that are not being complied with could be especially interesting. The figure below shows the provisions that were most often not complied with among the new provisions studied by index. (These provisions have been included in the aforementioned overview of the provisions that were most often not complied with). It is notable that provision V.3.3 "launch evaluation of internal audit function" is not complied with by companies listed on the AMX index and the AMS index. Companies listed on local indexes do not comply with the provision IV.3.11 "overview of protection measures". In Chapter 7 "Looking Ahead", these provisions are looked at in greater detail.

Figure 5 Newly studied provisions most often not complied with – by index in the 2013 financial year [n=95]

Index	Provision	Percentage of companies
AEX	--	--
AMX	V.3.3 launch evaluation of internal audit function	12%
AMS	V.3.3 launch evaluation of internal audit function	5%
Local	IV.3.11 overview of protection measures	17%

2.3 Nature and quality of the explanation

In comparison with previous financial years, a tendency has been observed for the companies listed on the AEX index and the AMS index to implement the provisions in the Code more often and to explain departures from them less often. At the same time, companies listed on the AMX index and local indexes are explaining departures from the provisions more often. A total of seventeen companies have indicated that all provisions are being implemented. The figure below shows the average numbers of explanations given per company per index for the last three financial years. In total, explanations were given 338 times.

Figure 6 Average number of the provisions that receive explanations, per company per financial year

Index	2013	2012	2011
AEX	2.3	3.5	3.8
AMX	4.2	4.0	3.8
AMS	5.3	5.9	5.8
Local	9.4	6.3	6.0
Total	4.8	5.0	4.9

As in previous financial years, the provisions for which explanations are given firstly concern provisions that pertain to the management board members (44%) and secondly pertain to provisions that concern the supervisory board members (34%).

Provisions for which most explanations are given

The top four provisions for which explanations were given in the 2013 financial year are shown in the figure below.

Figure 7 Overview of provisions for which most explanations were given in the 2013 financial year [n=70]

Provision	Number of companies*	Percentage of companies
II.2.8 maximum severance pay	23	33%
IV.3.1 communication to shareholders	21	30%
IV.1.1 procedure concerning role of the GMS in the appointment and dismissal of management board members and supervisory board members	18	26%
II.1.1 term for which management board members are appointed	18	26%

*The absolute numbers of companies were lower than in the 2012 financial year because the response was 70.

For the sake of comparison, the top four provisions for which explanations were given in the 2012 financial year are shown in the next figure.

Figure 8 Overview of provisions for which most explanations were given in the 2012 financial year [n=96]

Provision	Number of companies*	Percentage of companies
II.2.8 maximum severance pay	47	49%
II.1.1 term for which management board members are appointed	40	42%
IV.3.1 communication to shareholders	37	39%
III.3.5 maximum terms of supervisory board members	21	22%

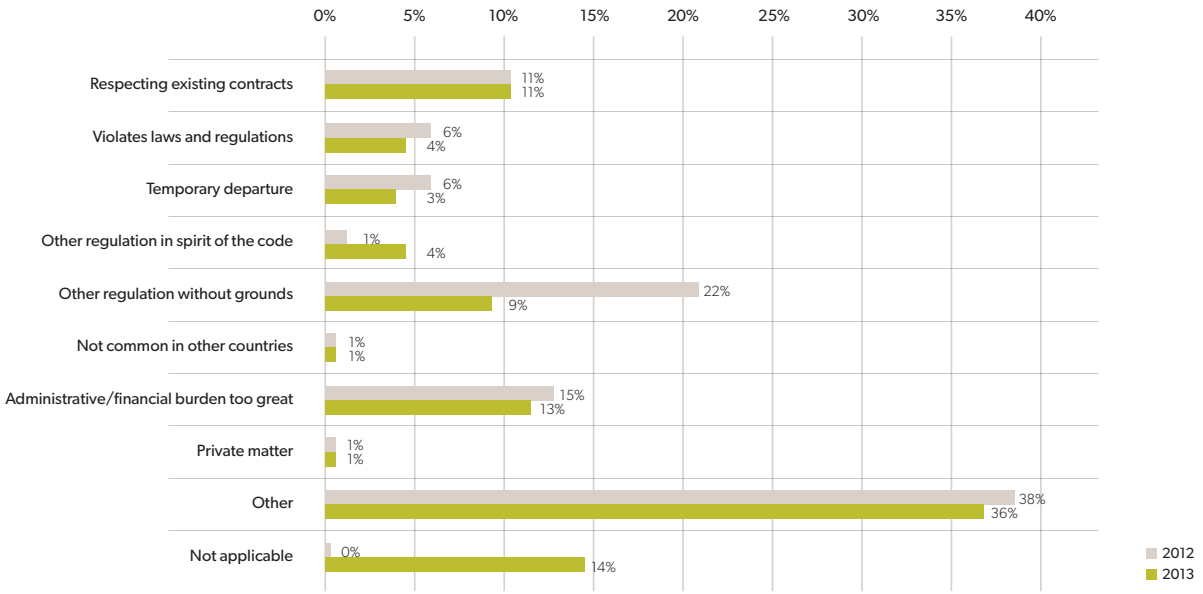
*The absolute numbers of companies were higher than in the 2013 financial year because the study population consisted of 96 companies.

In comparison with the 2012 financial year, it is notable that the "maximum severance pay" again takes first place. In the top four, provision IV.1.1 "procedure concerning the role of the general meeting of shareholders with respect to the appointment and dismissal of management board members and supervisory board members" is new. This provision states that the general meeting of shareholders (GMS) can take a decision on the appointment or dismissal by an absolute majority of the votes cast. A proviso can be attached to this majority to the effect that it represents a certain portion of the issued capital. With respect to the provisions on "maximum severance pay" and "term for which management board members are appointed", it is often indicated that existing contracts will be respected. The explanation given with respect to the communication to shareholders often points to the fact that it is relatively time-consuming and costly to make all analysts meetings, analyst presentations, presentations to investors and press conferences available by means of webcasting.

Nature of the explanation

Companies have different motives for not complying with provisions one-to-one and, instead, giving an explanation for not doing so. The explanation that they give can be categorised according to its nature. Company-specific arguments ("other" category) are the ones most often given. These arguments constitute 36% of the explanations given, compared with 38% of the explanations given in the 2012 financial year. In comparison with 2012, the proportion of provisions that were explained with a temporary departure fell further: from 6% in 2012, to 3% in 2013. The figure below shows all types of explanations in chart form for the last two financial years.

Figure 9 Nature of the explanations given in the 2013 and 2012 financial years



Own scheme

The report of the Streppel Committee on the 2010 financial year identified an increase in the number of times that companies, in their explanation for not implementing a provision of the Code, indicated that they had their own scheme without saying why the Code provision in question was not being implemented. In response to this, the Streppel Committee formulated additional guidance: the application of one's own scheme can only be seen as compliance if it is indicated (1) why one's own scheme is necessary and (2) how it relates to the principle in question in the Code.

This year, too, the Committee gave extra attention to companies' own schemes. In the 2013 financial year, companies referred 46 times (14% of all 338 times explanations were given) to their own scheme. This means that the explanation concerning "own scheme" is now given less often. In 2012, 23% of the explanations given referred to a company's own scheme.

In 2013 it was explicitly stated fifteen times (4%) that a company's own scheme corresponded with the letter or the spirit of the Code. These cases, therefore, constitute compliance with the Code. The percentage rose in comparison with the 2012 financial year: in 2012 this concerned 1% of all explanations given.
Yet in 31 cases (9% of all explanations given), it concerned a report of a company's own scheme without good grounds being given. There are two categories:

- the explanation concerns an extremely limited description of the company's own scheme, without any further explanation or grounds (six times, 2% of all explanations given);
- the explanation contained detailed information on the company's own scheme, but no grounds for departing from the Code (25 times, 7% of all explanations given).

According to the information above, 31 cases in which an explanation is given do not qualify as compliance. This means that companies are not meeting the Code because they are not giving reasons for why their own scheme is necessary. This has not been incorporated in the compliance figures that appear in paragraph 2.2 "Compliance". A total of 31 out of the 46 references to a company's own scheme (67%) are considered to be non-compliance. In 2012, 83 of the 111 references were designated as non-compliance. The number of references to a company's own scheme has therefore fallen. Despite this decrease, the Committee continues to worry that a large percentage of these references to a company's own scheme do not meet the guidance of the Committee.

Temporary departure

A second point that is given explicit attention is the temporary nature of departures from the Code. In the report on the 2010 financial year, the Streppel Committee states that if the departure from the Code is temporary and lasts longer than one year, then it should be stated when the company expects to implement the Code again. Towards this end, an additional question was included in the compliance study in which companies were asked to indicate whether there were provisions that were temporarily not being implemented:

> *When filling in the study questionnaire, have you indicated one or more times that you "temporarily" are not implementing provisions in the Code?*

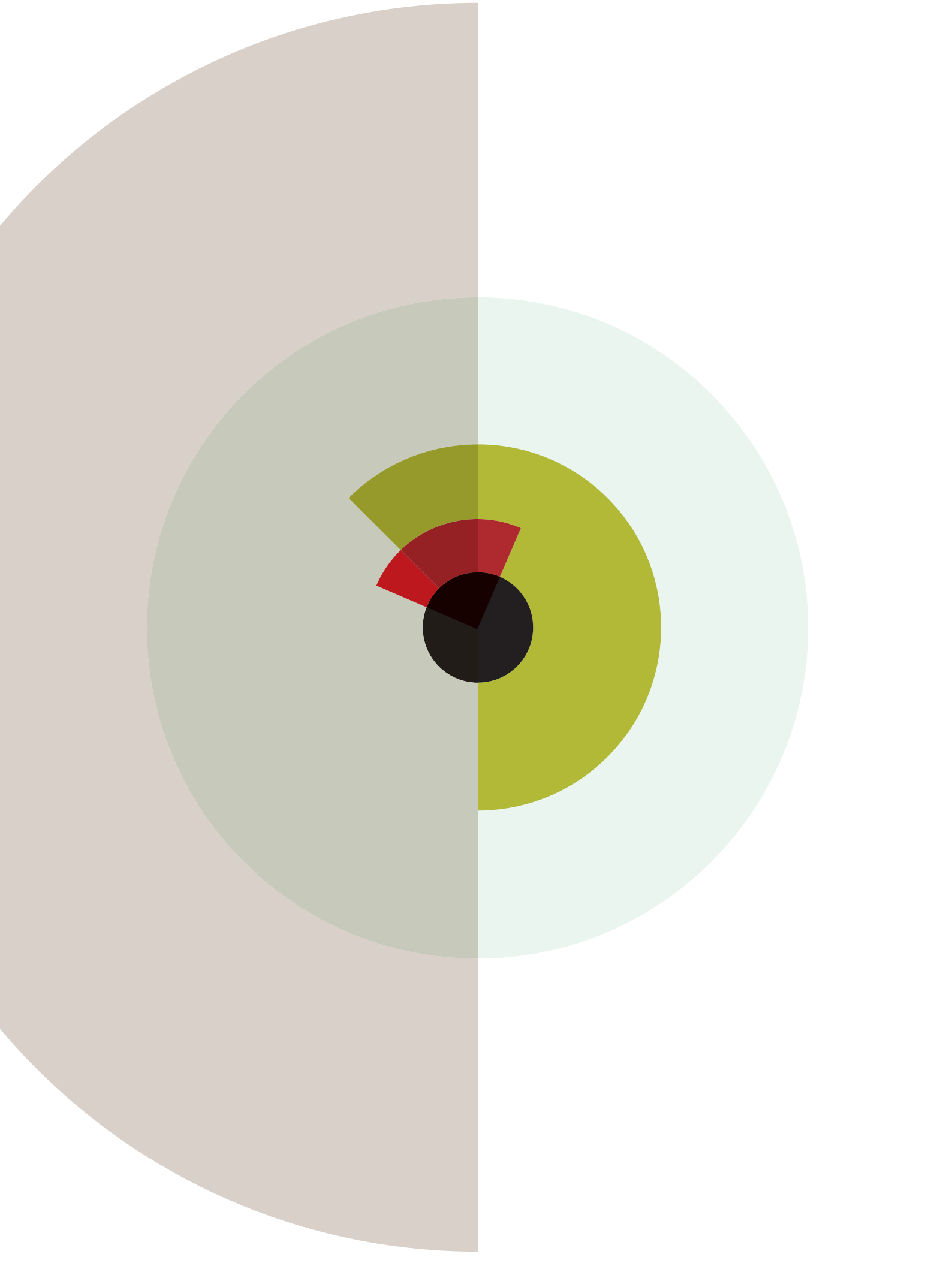
In the study into the 2013 financial year, it was stated a total of twelve times (4% of all 338 explanations given) that a departure concerned a temporary departure from the Code. There are two categories of cases:

- no concrete statement is made concerning the moment at which the provision will be implemented again, except for the statement that it concerned a temporary departure from the Code (nine times, 3% of all explanations given);
- the company indicates that the provision will soon be implemented and gives a concrete date on which it will happen (three times, 1% of all explanations given).

The first category constitutes non-compliance with the Code provision in question. This means that these nine cases should be categorised as being non-compliant. This has not been incorporated into the compliance figures in paragraph 2.2 "Compliance".

In addition to these explicit reports of temporary departure from the Code, there are also explanations that imply that the case concerns a temporary departure from the Code (40 times, 12% of all explanations given). These implied temporary departures from the Code primarily arise for Code provision II.2.8 "maximum severance pay" (eight times, 2% of all explanations given). In such an instance, for example, a company says that a provision does not yet apply to all management board members or that an old regulation will not apply to new management board members. The appearance of an implied temporary departure from the Code is due to the changed methodology. The Committee has resolved to give extra attention in the coming compliance study to implied temporary departures from the Code.

Finally, the study into temporary departures from the Code also delved into whether temporary departures were actually temporary in nature. After all, when a company says that a provision is temporarily not being implemented, the Committee expects that this explanation will not be given for several years in succession. The study has shown that in four cases (out of the nine times that it was explicitly stated that the departure was of a temporary nature) there was a repeat of the explanation that the departure was temporary. The Committee continues to emphasise that departures should be temporary – shorter than a year – in nature. When a departure from the Code lasts longer than one year, a company must indicate when it expects the Code will be met.



3. Specific themes

IIn the study Nyenrode conducted into compliance with the Code in the 2013 financial year, special attention was given to three themes at the request of the Committee: CSR, remuneration ratios and diversity. These specific themes were studied in detail because they are topical themes that are the subject of considerable discussion. In its monitoring reports and final document, the Streppel Committee provided guidance with respect to these subjects. The current monitoring committee has had a study conducted into what the developments are and whether or not the situation has improved. This study included open-ended questions in the questionnaire.

3.1 Corporate Social Responsibility

Two principles and one best practice provision that pertain to CSR have been included in the Code. Guidance is also given on this subject. The Code sets the standard whereby both the management board and the supervisory board of a company focus on CSR:

Principle II.1:
"The role of the management board is to manage the company, which means, among other things, that it is responsible for achieving the company's aims, the strategy and associated risk profile, the development of results and corporate social responsibility issues that are relevant to the enterprise.[…]"

Principle III.1
"[…]In discharging its role, the supervisory board shall be guided by the interests of the company and its affiliated enterprise, and shall take into account the relevant interests of the company's stakeholders. The supervisory board shall also have due regard for corporate social responsibility issues that are relevant to the enterprise. […]"

Best practice III.1.6
"The supervision of the management board by the supervisory board shall include:
[…]
g) corporate social responsibility issues that are relevant to the enterprise."

Based on the aforementioned principles and the best practice provision, it can be expected that companies will focus on CSR using concrete and specific wording. The last monitoring report of the Streppel Committee reported that companies are increasingly focusing on CSR. Yet it has also been found that improvements could be made. The Streppel Committee recommended that CSR become a permanent element in the report of the supervisory board. According to the Code, supervisory board should approve the CSR policy. The supervisory board should provide more information in this respect, rather than simply stating that this approval has been granted. The recommendation was also made that the management board should explain the role of CSR in the company's strategy in the annual report.
In the questionnaire, the companies were asked the following questions:

- Is CSR – as alluded to in the aforementioned three [principles and provision] – named in the Supervisory Board and Management Board reports and, if so, is this done using concrete and specific wording? Please give the exact text of this statement.

The study conducted by Nyenrode shows that half of the companies (35 out of 70) indicated that they report on CSR in both the report of the management board (MB report) and in the report of the supervisory board (SB report). Approximately one-third of the companies (23 out of 70) indicated that they report on this subject only in one of the two reports. One-sixth of the companies (12 out of 70) reported nothing about CSR. Categorised according to index, it is notable that companies listed on the AEX index often give attention to the theme in both reports. Companies listed on the AMS index, in contrast, give little attention to the subject. Taken as a whole, 61% of the companies (43 out of 70) have included CSR in the SB report. This is often done in general terms. In the majority of the cases, companies do not discuss exactly the reasons why the supervisory board has approved the CSR policy. Approximately 71% of the companies (50 out of 70) included the subject of CSR in the MB report. This was done using more concrete wording than was the case in the SB reports. The manner in which the subject was elucidated in the report differs considerably from company to company.

In their answers to the questionnaire, companies refer to passages on CSR in their annual report. CSR is included in the annual reports in different ways:

- in a short passage in the annual report;
- in a chapter in the annual report;
- CSR is integrated into the strategy of the company, which makes it difficult to refer to specific passages;
- companies refer to a sustainability report or have drafted an integrated report.

There seems to be no univocal interpretation of CSR. Companies use different interpretations. There are a range of different definitions of CSR. The Dutch government uses the definition that was formulated by the Social and Economic Council of the Netherlands (SER) as the starting point for its CSR policy.[12] In 2000, the SER published the report "The Benefit of Values" (*"De Winst van waarden"*). In this report, CSR is defined as: "[…] concern for the social effects of a company's operations".[13] The SER fleshes this out in two aspects:

- "consciously directing a company's activities towards the creation of value in three dimensions – Profit, People, Planet – and thus towards making a contribution to social prosperity in the long term;
- maintaining a relationship with the different interested parties based on transparency and dialogue, such that a response is given to the justified questions posed by society."[14]

In 2011, the EU published a statement on CSR in which the following definition is used: "[…] the responsibility of companies for the effect that they have on society."[15]

The EU fleshed out this definition:
"[…] CSR means that companies integrate a focus on human rights, consumer interests and social, ethical and environmental issues into their business activities and core strategy in close cooperation with their stakeholders."[16]

The manner in which companies follow the guidance given by the Streppel Committee concerning CSR is a point of focus for the Committee. The answers given by the companies on the questionnaire demonstrate that only a small number of companies have actually integrated CSR into their strategy and report on it. These companies set themselves concrete goals and report on the achievement of these goals or the failure to do so. In Chapter 5 "Evaluation of the Code" and Chapter 6 "International Developments", further consideration is given to the subject of CSR.

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12 Policy paper 'Corporate Social Responsibility pays' (*Maatschappelijk verantwoord ondernemen loont*), Parliamentary Documents (*Kamerstukken* II 2012-2013, 26485, 164).

13 ER, The Benefit of Values (*De winst van waarden*), publication number 11, 15 December 2000, p. 86.

14 Ibid.

15 Statement of the European Commission of 25 October 2011, "A renewed EU strategy 2011-2014 to promote corporate social responsibility", Commission Document 681 of 2011, p. 7

16 Ibid.

3.2 Remuneration ratios

In the Code, companies are asked to include remuneration ratios when establishing the remuneration paid to management board members:

> *Principle II.2*
> *"[…]When the overall remuneration is fixed, its impact on pay differentials within the enterprise shall be taken into account […]".*

The Streppel Committee supplemented this principle with guidance in the monitoring report for the 2010 financial year. It was recommended that the reports drafted should include a statement on the consideration of internal remuneration ratios when determining the remuneration paid to management board members. The Code does not specifically require such a statement. In its monitoring report on the 2011 financial year, the Streppel Committee established that a majority of the companies stated that they took the remuneration ratios into account. The Streppel Committee recommended in this report that the manner in which companies take these internal remuneration ratios into account should also be explicitly stated. Nyenrode has studied the extent to which this guidance is being followed. An additional question has also been posed about the manner in which remuneration ratios are determined.

In the study, the following questions were put to the companies:

- Is something said about remuneration ratios in the remuneration report and, if so, is this done using concrete and specific wording? (e.g. Is a certain ratio given?)
- What is the exact text of this statement?
- How are the ratios determined?

The study conducted by Nyenrode shows that 34% of the companies (24 out of 70) reported on remuneration ratios in their annual report. This is notable in view of the fact that the monitoring report on the 2011 financial year shows that 67% of the companies reported their consideration of internal remuneration ratios in the remuneration report. It is unclear what exactly has caused this large discrepancy, but it could in part be explained by the change in the methodology used. Whereas in previous research public sources were consulted, the study conducted by Nyenrode asked an explicit question on the subject. It is possible that companies have answered the question in another manner, comparable to the manner in which previous studies assessed compliance based on the annual report.

In the box below, a number of examples of answers given by companies on the questionnaire are presented. These examples demonstrate that there are large differences in the manner in which companies report the inclusion of remuneration ratios in their considerations. The sources of the examples given have been made anonymous.

Box 1 Examples of the reporting of remuneration ratios

"The remuneration ratios within the Management board are presented in detail in […] different tables […]. The remuneration policy prescribes that the remuneration paid to the Management board is determined by referring to the median remuneration at the Peer Group companies listed in the remuneration policy." (AEX index listed company)

"The Remuneration Committee has made sure that, when establishing and implementing the remuneration policy, the remuneration ratios within the company are taken into account and that possible outcomes of the variable pay elements (short term and long term) for the remuneration of individual management board members have been analysed and also established based on the scenario analyses conducted." (AMX-listed company)

"The remuneration [should] have a reasonable relationship to the other members of management. When establishing the amount and the structure of the remuneration, the development of results, among other things, as well as other developments that are relevant to the company, are taken into account. […] The policy [is] aimed at positioning the pay packets at a competitive level in the Dutch head-hunting market for management board members at large companies." (AMS index listed company)

The manner in which the guidance of the Streppel Committee is followed with regard to remuneration ratios is a point of focus. From the answers given on the questionnaire, it seems that few companies mention remuneration ratios in their annual report. It also appears that companies, generally speaking, do not provide any concrete, specific information on the role of remuneration ratios within the remuneration policy. Often only a general picture of the policy is outlined or it is stated simply that the ratios meet the policy.

It is furthermore notable that companies usually do not give insight into the manner in which the ratios are established. Moreover, the term "remuneration ratio" is explained in different ways and the explanation given is often of a summary nature. From the answers given on the questionnaire, it is not clear what the scope of the term "remuneration ratios" is, as understood by the companies: it is unclear whether it pertains only to the Dutch employees or whether the focus is on the remuneration ratios in the company as a whole (including subsidiaries, etc.).

3.3 Diversity

The Code states that a companies should take diversity into account when it comes to the composition of the supervisory board:

Best practice III.3.1
"[…]The profile shall deal with the aspects of diversity in the composition of the supervisory board that are relevant to the company and shall state what specific objective is pursued by the board in relation to diversity. In so far as the existing situation differs from the intended situation, the supervisory board shall account for this in the report of the supervisory board and shall indicate how and within what period it expects to achieve this aim. […]."

Due to this best practice provision, the companies are asked to formulate a diversity policy and to indicate what the results of this policy are. The Streppel Committee confirmed in its monitoring report for the 2012 financial year that gender diversity among the supervisory board members has scarcely increased. At a little

more than half of the companies with new appointments, all of the self-formulated diversity objectives were achieved. The Streppel Committee recommended that companies improve the information they provide on the achievement or non-achievement of the diversity objectives. It also recommended that a company's own diversity policy be reviewed with a critical eye and to tighten the profile sketches. The Streppel Committee stressed the fact that the aim is to create a general culture in which there is greater room for diversity.

On the questionnaire, companies are asked to answer the following questions:

- Has the company established diversity objectives and communicated them outside the company?
- What precisely are the diversity objectives formulated by the company?
- Have the diversity objectives formulated by the company been achieved?
- If the diversity objectives set have not been achieved, is it explained in the SB report why the objectives have not been achieved?
- Is it indicated how the objectives will be achieved?
- Is it indicated by when the objectives will be achieved?

The answers given to these questions show that approximately 76% of the companies (53 out of 70) have formulated diversity objectives and communicate this policy outside the company. This is particularly common among the companies listed on the AEX index. The number of companies that have formulated a diversity policy and reported on it is considerably smaller among the other indexes. From the answers given, it appears that the diversity policies of companies generally pertain to gender, age, nationality, expertise and experience, background and ethnicity.

In the box below, a number of examples of diversity objectives are presented, as described by companies in the compliance study. The examples presented demonstrate that the manner in which the objectives of companies have been formulated varies widely. The examples are presented as anonymised texts.

Box 2 Examples of diversity objectives

"With respect to the diversity of its composition, the Supervisory Board strives to achieve variation among its members with regard to age, gender, area of expertise and social background. It endeavours to strike a balance in which the aforementioned variation is expressed with due consideration given to achieving a ratio of at least 30% of the seats being occupied by women and at least 30% by men." (AEX index listed company)

"Within the framework [of criteria to determine a candidate's suitability to sit on the Supervisory Board,] an endeavour is made to come to a mixed composition for the board as much as possible, according to age and gender when possible. With respect to gender diversity, the Supervisory Board has set the concrete objective of trying to appoint a female member of the Supervisory Board as of 2015, or earlier if possible." (AMX listed company)

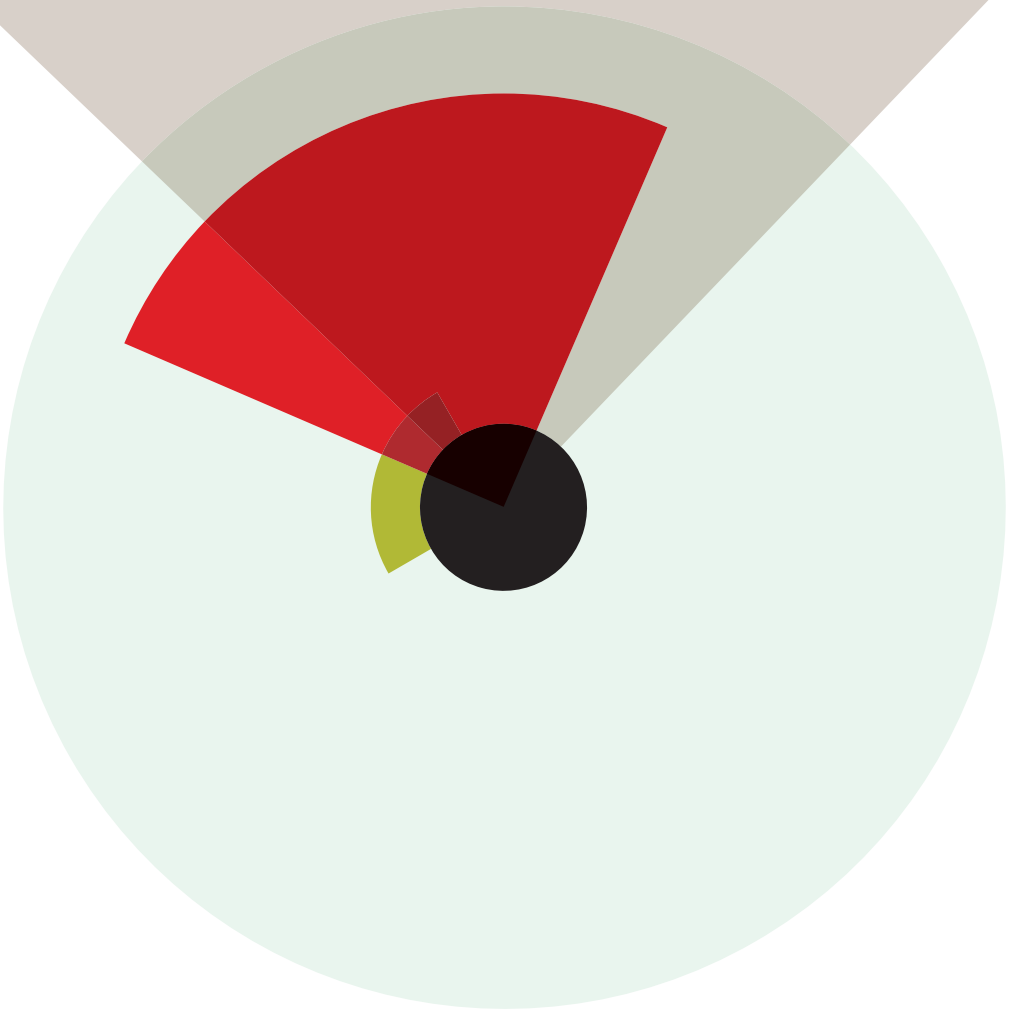
"30% women in management within a number of years." (AMS index listed company)

"Among new candidates we will strive to achieve a mixed composition. When a candidate is nominated, relevant experience and expertise will always count for more than the candidate's gender." (local listed companies)

The study also shows that, out of all the companies with a diversity policy, a little more than half of the companies (53% or 28 out of a total of 53 companies) have achieved the diversity objectives. The companies that failed to achieve the objectives have answered additional questions on the questionnaire. It shows that:

- 76% of these companies (19 out of 25) state in the SB report what the reasons are for them failing to achieve the objectives;
- 48% of the companies (12 out of 25) indicate what measures have been taken to enable them to achieve the objectives;
- approximately 36% of the companies (9 out of 25) also indicate by when they expect to achieve the objectives.

The Committee has discovered that the manner in which companies follow the guidance given by the Streppel Committee with regard to the diversity policy leaves room for improvement. From the answers given on the questionnaire, it appears that the information provided by companies about the achievement of the objectives or the failure to do so is limited. Also, when the objectives are not achieved, the companies generally do not state clearly why the objectives have not been achieved or how they eventually plan to achieve them and by what time this will be accomplished.



4. Relationship of the Code with legislation

The Code is self-regulating: it has been framed by the "market", it is implemented by companies and compliance with it is independently monitored by the Committee. At the same time, this self-regulation is conditioned: the Code is legally enshrined in Article 2:391 (5) of the Civil Code, which establishes the obligation for companies to include information on their compliance with the Code in their annual report.[17]

The Code sets additional requirements or further supplements legislation. A number of subjects that are included in the Code have been legally regulated since the last revision of the Code, e.g. by the Act amending the rules on the management and supervision of Dutch corporations (*Wet bestuur en toezicht*) and the Revision and Clawback of Bonuses Act (*Wet aanpassing en terugvordering bonussen*). As a result, self-regulation is a thing of the past. The company will be obliged to comply with the legal norm, making a departure from it via the "apply or explain" principle no longer possible. And in the event of a stricter norm in legislation than is in the Code, the former shall prevail. To avoid any possible lack of clarity, the Code should be brought into line with legislation.

This Chapter considers national developments in legislation since the appearance of the final document of the Streppel Committee. Next a schematic overview will be shown of the overlap between the law and the Code that has come about since the change in the Code in 2008.

4.1 National developments in legislation

Recent developments with respect to remuneration

On 1 January 2014, the Revision and Clawback of Bonuses Act (*Wet aanpassing en terugvordering bonussen*) took effect, thus amending provisions in Book 2 of the Civil Code and the Financial Supervision Act (*Wet op het financieel toezicht*). The Act introduces the authority for the supervisory board to revise and recover bonuses and profit-sharing from management board members and daily policymakers. This pertains to bonuses that in hindsight were awarded on the basis of inaccurate information (clawback) and to bonuses whose payout cannot be justified on the grounds that it would be unreasonable and unfair to do so. An account is given in the annual report about whether or not this authority has been used. This Act has created an overlap with the best practice provisions II.2.10 "revising the value of the conditional variable remuneration component" ("*aanpassen waarde voorwaardelijke variabele bezoldigingscomponent*") and II.2.11 "clawback clause" of the Code.

On 16 October 2014, the House of Representatives adopted the bill proposing the Remuneration Policy in Financial Institutions Act (*Wet beloningsbeleid financiële ondernemingen, Wbfo*). The bill proposes an amendment to and change of the Financial Supervision Act (*Wet op het financieel toezicht*) and is aimed at financial institutions. The bill pertains to controlling the risks of the remuneration policy and curbing excessive variable

17 Article 2, Decree on the adoption of further requirements regarding the contents of annual reports.

remunerations. The bill aims to combine existing regulations on remunerations into a single law. Amongst other things, a bonus ceiling of 20% has been established, which means that a variable remuneration may amount to no more than 20% of the fixed salary. This applies to everyone working in the financial sector. There are also provisions in the bill pertaining to severance pay, retention bonuses (an incentive payment made to keep a valuable person at an organisation) and variable remuneration at an organisation receiving state aid. At the time of writing this report, the bill is being considered by the Senate. The Act is expected to take effect in the first half of 2015. The Wbfo also applies to management board members of financial institutions and therefore affects the Code (provision II.2.8 "severance pay to management board members"). On the point of maximising the severance pay, at least, the Wbfo goes farther than the Code.
Severance pay is therefore not possible when someone leaves employment voluntarily. The maximum severance pay amounts to no more than 100% of the fixed annual salary and, in certain cases, can be limited to a maximum of 20% of that salary. The Wbfo is also stricter: whereas the Revision and Clawback of Bonuses Act (*Wet aanpassing en terugvordering bonussen*) gives the company authority, this is formulated in the Wbfo as an obligation. The Wbfo shall only apply to those companies that fall within the scope of the Financial Supervision Act (*Wet op het financieel toezicht*).

The role of the external accountant

Considerable attention was given in 2014 to the state of affairs in the accountancy sector. The sector itself is engaged in implementing reforms. The Netherlands Institute of Chartered Accountants (*Nederlandse Beroepsorganisatie van Accountants - NBA*) established the working group "the future of the accountancy profession". This working group has made proposals to improve the quality and the independence of the audit, which resulted in the report "In the Public Interest". In this report, a broad package of measures is proposed. Amongst others, concrete proposals to revise provisions in the Code are presented. Thus the working group proposes that the role of shareholders and the supervisory board should be made clearer in the appointment of and communication with the accountant. Towards this end, principle V.2 could be further developed in best practice provisions that place the primary role and responsibilities with the supervisory board. The working group also states that a best practice provision can be included in the Code that calls on the supervisory board to indicate the basis on which an accountant is put forward for appointment at the general meeting of shareholders (GMS) at which votes are to be cast to appoint the accountant. There is a focus here on the quality and the fee of the accountant.

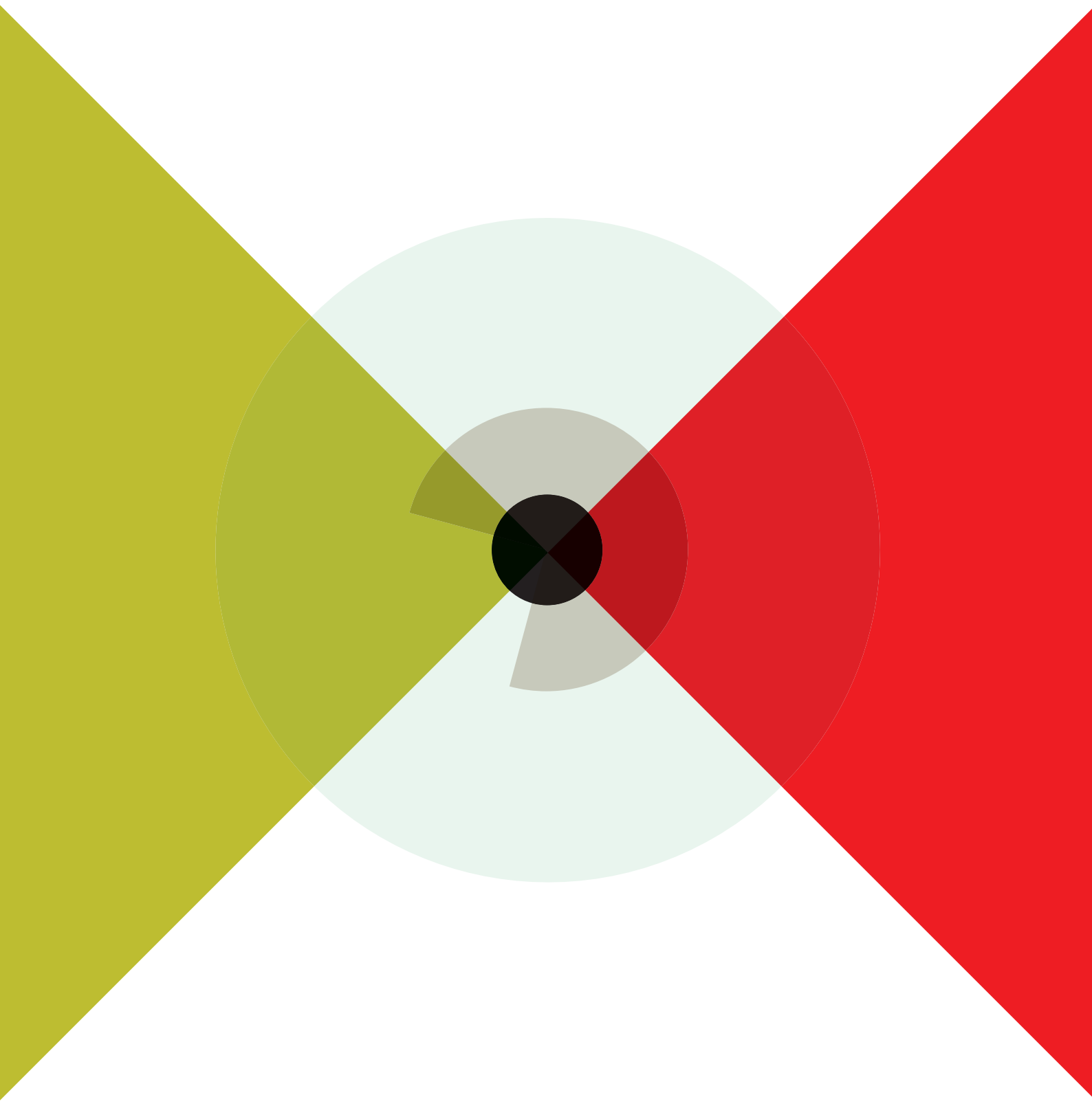
In response to the publication of a report by the AFM on 25 September 2014, the so-called "big 4" accountancy organisations (Deloitte, EY, KPMG en PwC) announced measures. From the AFM report, it appears that the quality of the legal auditing of the accountancy firms is substandard. It also seems that insufficient improvements in the quality have been made in comparison with 2010, when AFM published its first report on this subject. The Minister of Finance has resolved to take additional legal measures. In Chapter 7 of the present report, the role of the external accountant is discussed.

4.2 Overview of Code provisions and legislation

Below is an overview of Code provisions that have also (in some part) been embedded in legislation. After the publication of the present report, the Committee will publish a document with a more extensive explanation of the relationship between the Code provisions and legislation.

Figure 10 Overview of provisions in the Code that have been enshrined in law

Provision in Code	Description	Law
II.1.8	Limit to number of supervisory board memberships.	Article 2:132a, Civil Code
II.2.10	Authority of the supervisory board to revise variable remuneration component.	Article 2:135, paragraph 6, Civil Code
II.2.11	Authority of the supervisory board to recover variable remuneration (*claw back*).	Article 2:135, paragraph 8, Civil Code
II.3.3	Refraining from discussion and decision-making on subjects and transactions in which the managing director has conflicting interests.	Article 2:129, paragraph 2, Civil Code
III.3 and III.3.1	Mixed composition of the supervisory board with respect to gender.	Article 2:166, Civil Code
III.3.4	Limiting number of supervisory board memberships of members of the supervisory board.	Article 2:142a, paragraph 1, Civil Code
III.6.2	Refraining from discussion and decision-making on subjects and transactions in which the supervisory director has conflicting interests.	Article 2:140, paragraph 5, Civil Code
IV.1.1	Taking away binding character of a nomination by the general meeting of shareholders (GMS).	Article 2:133, Civil Code
IV.1.7	Company sets registration date for the exercise of voting and meeting rights. The Implementation of Directive for Shareholders' Rights Act (*Wet implementatie richtlijn aandeelhoudersrechten*) establishes this date in law.	Article 2:119, paragraph 1, Civil Code
IV.3.5	Obligation to provide information to the general meeting of shareholders (GMS), barring weighty interests of the company.	2:107, paragraph 2, Civil Code
IV.3.8	The management board explains the proposal for approval or authorisation by the general meeting of shareholders in writing and it is placed on the website.	Article 5:25ka, paragraph 1, Wft
IV.3.11	Overview of all outstanding or potentially usable protection measures.	Art. 1, paragraph 1, sub b, Decision Article 10, Acquisition Directive
V.2 and V.2.2	Combination of auditing and advisory activities by the same accountant.	Art. 24b of the Supervision of Accountancy Organisations Act (*Wet toezicht accountantsorganisaties*)



5. Evaluation of the Code

In addition to monitoring compliance with the Code, the Committee is responsible for identifying gaps and inclarities in the Code. Since the last revision of the Code in 2008, corporate governance has been experiencing development both within companies and in national and international contexts. Emphases have shifted, legislation has been developed and new issues have arisen. In this chapter, subjects are discussed that, in the opinion of the Committee, are not addressed in the Code or are unclearly or incompletely addressed. Here the Committee elaborates to an extent on the issues that the Streppel Committee has identified in its document.[18]

5. 1 General

Strategic risk management focused on the long term

Strategy is discussed at different places in the Code. The management board is responsible for the strategy and the accompanying business model. It renders an account of this to the supervisory board and to the shareholders. However, the Code is silent about the shelf life of the strategy in the long term. Will the business model be profitable in the future? To what extent is the strategy supported by stakeholders? What might cause problems in the future? What are the risks? Recent crises and abuses at companies, as outlined in the introduction, have underlined the importance of a real long-term strategy. The same applies to internal risk and assessment systems. The regulations in the Code that pertain to the internal risk and assessment system are primarily aimed at its existence and set-up. Greater attention is necessary for the implementation and effectiveness of these systems, how they are perceived and applied. So this also concerns the role that monitoring functions – namely internal audit and compliance – fulfil in this and the risk-taking culture. According to generally accepted views, a long-term strategy and effective internal risk and assessment systems can no longer be absent from properly functioning corporate governance. An obvious question, therefore, is whether or not the Code should give greater attention to these subjects.

The driving force of conduct and culture

When the Code was revised in 2008, greater emphasis was placed on influencing the conduct of management board members, supervisory board members and shareholders. From the account rendered of the work done, it appears that principles and provisions have been formulated so as to encourage desirable behaviour and that a more substantial discussion on behaviour is taking place within and between the bodies of the company.[19]

Behaviour is often a reflection of culture. Since 2008, culture within corporate governance has more emphatically been brought out into the open. Culture can get people to move forward by, for example, having senior managers serve as an example of good conduct or by offering employees guidance for everyday choices. The question is whether or not there is a role for the Code to play in this. According to the Committee, this role is not to prescribe what the definition of culture is. It is up to the company to interpret this by establishing values and principles for which it stands and then guaranteeing a suitable implementation throughout the organisation. The Code could indicate how and where culture can be discussed within the triad of management board, supervisory board and shareholders.

18 Final document of the Streppel Committee 2013, pp. 21-23. The issues pertain to the remuneration structure, transparency in appointments and the departure of management board members and supervisory board members, the quality of the reporting, CSR, the quality of the explanation given, the assumed implementation and the impact of new legislation on Code provisions. This document can be found at www.mccg.nl.

19 The Netherlands' Corporate Governance Code, December 2008, p. 48. This document can be found at www.mccg.nl.

5.2 Specific topics

Corporate Social Responsibility

The quality of compliance with the Code provisions with regard to CSR should be improved. Based on the guidance given by the Streppel Committee, companies are expected to give greater attention to CSR in their MB and SB annual reports, to clarify what they understand CSR to be and to provide insight into the manner in which CSR is integrated in the (long-term) business strategy. From the compliance study, it appears that only a small number of companies have actually integrated CSR into their strategy and reported on this. These companies set concrete goals for themselves and report on whether or not they achieve these objectives. Yet at the majority of the companies, the explanation of the company CSR policy has been insufficiently developed or the reporting on CSR is done outside the annual report. The significance that companies give to CSR also differs. What role does the Code play with respect to CSR and how can compliance with these Code provisions be improved? That is a question that the Committee would like to study further.

The complexity of remunerations

Remunerations, also referred to as emoluments in the Code and in legislation, remain a focus point. The Code prescribes that the remuneration structure, including severance pay, should be simple and clear. Emoluments should serve the interests of the company in the medium to long term. When the Code was revised in 2008, provisions that pertained to remunerations were expanded. Amongst other things, an explicit reference was included in principle II.2 to the management board members' attitude to risks and the responsibility for the remuneration structure was placed with the supervisory board.
The Code also addresses the ratio between the fixed and variable part of the remuneration and the internal remuneration ratios. From previous monitoring reports, it appears that the inclusion of these new provisions has scarcely brought about any improvement in the transparency of the companies with respect to remunerations. This is confirmed by the results from the compliance study for the 2013 financial year. This study also reveals that provision II.2.8 "maximum severance pay" is the provision for which most explanations are given. Out of the 70 companies, 23 have given an explanation concerning this provision. From the compliance study, it also appears that the guidance given by the Streppel Committee with respect to taking the internal remuneration ratios into account is often not followed.

In addition to transparency with regard to remunerations, another point of focus is the overlap of the Code provisions with legislation. The debate on remunerations is being conducted in a broader sense in the political arena. Since the last revision of the Code, rules have been developed or are under development both in the Netherlands and in Europe. These rules are aimed at minimising perverse incentives and curbing excesses. This is a result of the social debate surrounding remunerations. The overlap of Code provisions with legislation has created a lack of clarity. The national developments involving the Revision and Clawback of Bonuses Act (*Wet aanpassing en terugvordering bonus sen*) and the bill proposing the Remuneration Policy in Financial Institutions Act (*Wetsvoorstel beleid financiële ondernemingen*) were explained in the previous chapter. The developments in Europe in the area of remunerations will be discussed in the next chapter.

Reassessing the role that the Code plays in regard to remunerations is an obvious step. In the opinion of the Committee, the Code can stimulate clarity and comprehensiveness in the debate on remunerations. For their part, companies can give a better account in their annual reports of the relationship between the remunerations actually paid out and the current policy.

Diversity

The Code asks companies to formulate a diversity policy and to report on the results. When the Act amending the rules on the management and supervision of Dutch corporations (Wet bestuur en toezicht)[20]

20 Act of 6 June 2011 to change Book 2 of the Civil Code in connection with the revision of the rules governing management and supervision in public and private limited liability companies, Stb 2011, 275

took effect, a target figure of at least 30% women and at least 30% men on the management board and the supervisory board was introduced here with regard to the ratio of men to women.[21]
This regulation is temporary and will legally expire on 1 January 2016. In view of the fact that the legislation is limited to this specific part of diversity, this could lead companies to limit their explanation of the Code provision to gender. In the results of the compliance study, a tendency in this direction can be observed. The Committee would like to emphasise the importance of broadening the debate on diversity (and continuing to do so). In addition to gender, diversity also pertains to aspects such as age, nationality, expertise, independence and previous experience.

One-tier board

When the Act amending the rules on the management and supervision of Dutch corporations (*Wet bestuur en toezicht*) took effect on 1 January 2013[22], the one-tier board was introduced into Dutch company law. A one-tier board is a governance model in which there is one Board of Directors and no separate supervisory board. This board consists of executive and non-executive directors, whereby the executive directors are responsible for the daily operations. The non-executive directors have a supervisory role and also give direction to the strategy and the policy of the company. The attention that the Code gives to the one-tier board is limited. Principle III.8 of the Code contains several specific provisions for companies with a one-tier board structure that pertains to the guarantee of proper and independent supervision. In the fourth monitoring report, the Streppel Committee has provided guidance: provisions that pertain to supervisory board members should be applied directly to non-executive directors in a one-tier board governance model, without prejudice to the other responsibilities that these non-executive directors have.[23]
Companies that fail to meet these requirements can apply the "apply or explain" principle in full. The extent to which the other provisions of the Code apply to a one-tier board can be made clearer. Clearly there should be an integrated approach, as much as possible, to the one-tier board and two-tier board governance models.

Executive Committee

A recent trend among companies is the reduction of the management board's/board of statutory directors' size to encompass only two directors, often the CEO and the CFO.[24] These directors are responsible under the articles of association for the board decisions and for the policy followed by the company. The senior management of the company, a few of whom would have previously sat on the management board, have been given seats in an executive committee. The members of such an executive committee are not subject to being appointed by the general meeting of shareholders (GMS). At the same time, the necessary tasks and/or decisions are delegated by the management board to this executive committee.

This trend creates an interesting governance issue, particularly for a two-tier board. The distance between the supervisory board and the persons responsible for the daily management of the company can become (too) large. The members of the executive committee, after all, are required to report to (render an account) only to the CEO (and CFO). This introduces a new dynamic into the system of checks and balances under a two-tier board model between the supervisory board, the management board and the executive committee. Due to the limited size of the management board, special attention should also be given to a division of positions and the two-person principle. Although the current provisions in the Code with respect to checks and balances remain in full force, in the case of an executive committee, the Code was not written with this governance structure in mind. The role of the executive committee can be held up to the Code to see whether the consequences for management and supervision have been correctly addressed.

21 Articles 2:166 and 2:276 of the Civil Code
22 Ibid
23 Monitoring Committee for Corporate Governance – Fourth report on the compliance with the corporate governance code, p. 12. This report can be found on the website www.mccg.nl.
24 eg Aegon N.V., AkzoNobel N.V., ASM International N.V., Ballast Nedam N.V., Heineken N.V., TNT Express N.V. & Wolters Kluwer N.V.

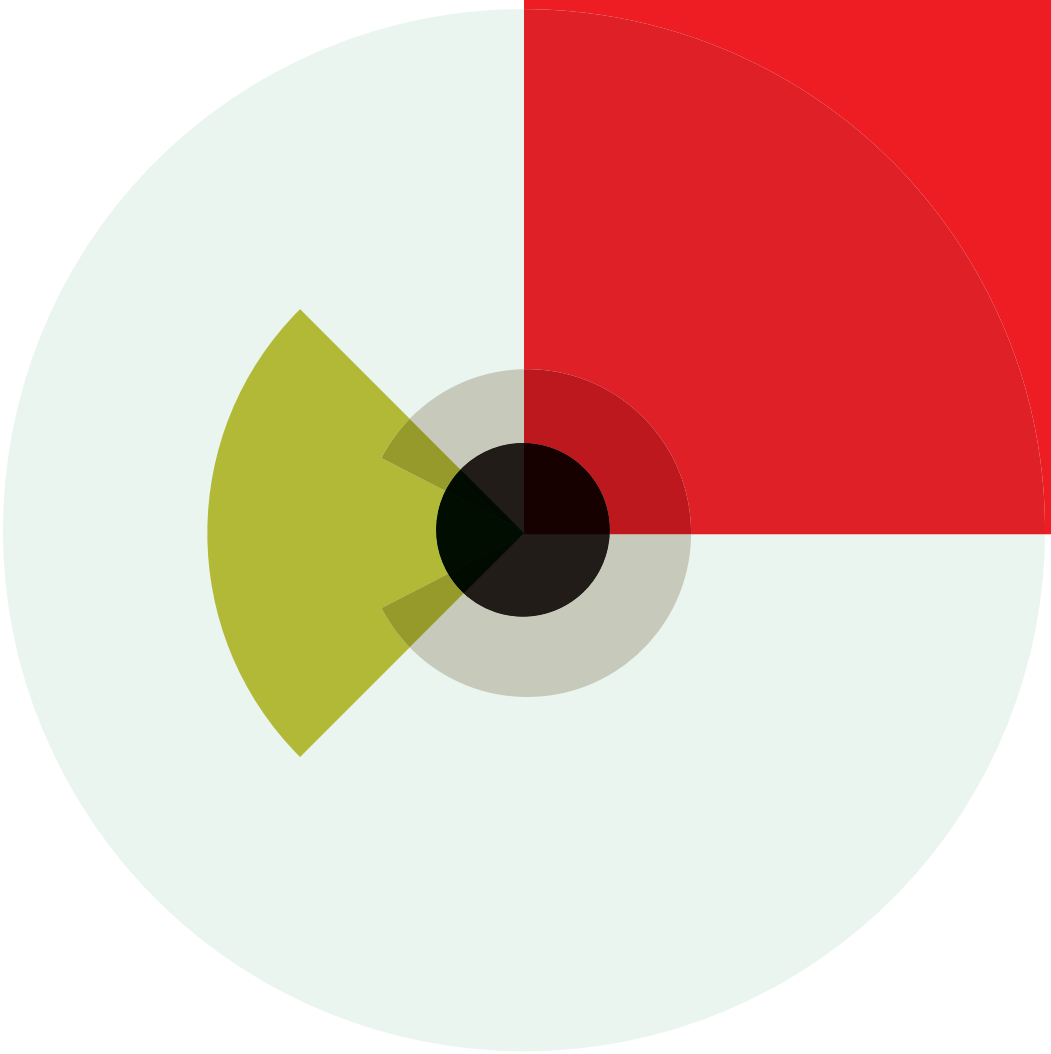
Increasing accessibility to guidance

Lack of clarity in the Code prompted previous Committees to develop guidance that provided an explanation of certain principles or provisions. They thus provided a guideline to companies for achieving a better or more uniform implementation of the Code. The guidance was broadly included in the previous monitoring reports. The Committee would like to improve the accessibility of this guidance and, after the publication of the present report, will publish a document with an overview of all guidance provided.
In addition to clarifying provisions in the Code, providing guidance is a way to ensure the Code moves forward with the times. As already stated, the Code has been revised once since 2003. Besides providing guidance, consideration could also be given to introducing a fixed moment at which it is assessed whether or not an update of the Code is necessary. In the United Kingdom, France and Germany, the Code is regularly held up to the light. The Committee would like to give the supportive parties a similar work method to consider with a view to introducing it into the Dutch Code.

Providing an explanation in sources other than the annual report

A final subject that the Committee would like to call attention to in this chapter is the place where the company renders an account of the compliance with the Code. The Code is legally enshrined in Article 2:391, paragraph 5, of the Civil Code. From it ensues the obligation to report on compliance with the Code in the annual report. Then the best practice provision I.1 stipulates that the account rendered should be explained in a separate chapter in the annual report. The compliance study shows that companies more often place information on compliance with the Code on the website or in a corporate governance statement. Nyenrode has also designated this as constituting compliance.

The Committee thinks it is important for the account rendered about the compliance with the Code to be available and accessible in one place. For the time being, the annual report has been designated as the place for this, as also ensues from the Act and Code provision I.1. The Committee shall investigate, in consultation with legislators, whether there might be an alternative to the annual report that achieves the same purpose.



6. International developments

The Code is a part of the international playing field of corporate governance. This field is on the move. With a view to the convergence of national codes, keeping abreast of international developments and practices in the field of corporate governance is one of the tasks of the Committee. It is important for the Netherlands' Code to keep pace internationally, partly in view of the fact that many investors in Dutch companies come from abroad.

In general outline, this chapter discusses relevant international developments during the years 2013 and 2014, and the significance of these developments for the Code. Consideration is given to developments at the level of the European Union, within different European member states and other countries, and developments within a number of relevant international organisations.

6.1 European Commission

As a part of the "Action Plan: European company law and corporate governance – a modern legal framework for more involved shareholders and more sustainable companies", the European Commission (EC) established measures on 9 April 2014 to strengthen the corporate governance of approximately 10,000 companies listed on European stock exchanges. These measures should help improve the competitive capacity and sustainability of these companies. In concrete terms, the EC proposed a revision of the directive on shareholders' rights and made a recommendation concerning the quality of the reporting on corporate governance.

Draft directive promoting shareholder involvement

The EC proposed a revision of the directive on shareholders' rights with the aim of achieving greater transparency and greater shareholder involvement. The most important parts of the proposal for revision of the directive concern:

- institutional investors and asset managers are required to make public their investment strategy and, based on the "apply or explain" principle, their policy concerning shareholder involvement. Asset managers are required to provide information on institutional investors;
- the participation of shareholders with respect to remunerations will be increased and listed companies are required to provide detailed, user-friendly information about their remuneration policy and the remuneration of individual management board members and to include the remuneration report in the corporate governance statement. The ratio between the remuneration paid to a managing director and that paid to employees should be made transparent. If no remuneration ratio is included in the policy, then it should be explained why it has not been included;
- listed companies are required to submit certain transactions with affiliated parties for the approval of shareholders and to publish smaller transactions, accompanied by a report from an independent third party;
- proxy advisors are required to provide accurate and reliable voting advice that is not influenced by conflicts of interests;
- brokers are required to pass on the name and contact information of shareholders to the company.

In September 2014, the Committee responded to the plans of the EC from the perspective of its monitoring duties.[25] Firstly, the Committee asked that attention be given to the space afforded self-regulating codes (or a combination of a self-regulating code and legislation) and advised the EC to study whether measures, by means of codes, could be implemented instead of legislation. This was because codes are more flexible instruments that can anticipate developments faster and offer more made-to-measure work. Secondly, the Committee pointed to the tension between the existing system, in which investors are assessed on the short-term results, and the wish to let institutional investors concentrate on the long term. The Committee furthermore emphasised that the discussion on corporate governance must not be restricted to a discussion on remunerations and should focus on the wider role of the managing director. In its response, the Committee emphasised, finally, the importance of having a level playing field internationally and the role that cooperation and the exchange of experience play in this.

The European Parliament and the European Council still have to rule on the directive proposal. Over the course of time, governments should convert this directive to national legislation. The subjects in this directive proposal touch on the Code. At the moment that the directive is established and implemented in Dutch legislation, the extent to which provisions in the Code square with the new legislation will become clear.

Recommendation regarding apply or explain

Coinciding with the proposal to revise the directive, the EC presented a recommendation on the "apply or explain" principle. This recommendation is an addition to the obligation for listed companies to include a corporate governance statement in their annual report. In the recommendation, the EC indicates that the "apply or explain" principle is widely supported by companies, investors and regulators as a useful instrument for corporate governance. At the same time, the practice appears to show that the quality of the explanation given has shortcomings. With the recommendation, the EC offers a guideline to companies to help with improving the quality of the reporting. A general framework is provided that can be further developed and can be adapted to the specific national context. This general framework for the quality of the explanation consists of a number of elements. Companies must:

- explain the way in which they have departed from a provision;
- give the reasons for this departure;
- describe how the decision to depart from the provision came about;
- when the departure is of a temporary nature, indicate when the company plans to comply with a specific provision;
- in cases arising, describe the measure taken as an alternative to complying with the provision and explain how this measure achieves the underlying objective of the specific provision or of the Code as a whole, or clarify how the measure contributes to good corporate governance at the company.

It is notable that the EC asks companies to state how they have implemented the Code provisions that are most important for the shareholders. The "apply or explain" principle is thus changed to an "apply and explain" principle, because companies must now also specifically explain cases of implementation. European member states should inform the EC before 13 April 2015 about measures that have been taken in accordance with the recommendation. In the aforementioned response document from September 2014, the Committee has also responded to this European recommendation.

The Committee has indicated that it agrees with the EC that companies should provide information about the structure of their governance so that shareholders can form a well-considered opinion about it. This means that it will be explained what specific circumstances justify a departure from the Code. In its response, the Committee has stated that it is aware of the added value of a level playing field in Europe in the area of criteria for reporting, but also emphasised the need for member states to have the freedom to determine the development and implementation themselves.

25 Response to the proposals of the European Commission, September 2014. This response can be found at http://commissiecorporategovernance.nl/nieuws/2488/Reactie-op-de-voorstellen-van-de-Europese-Commissie

Directive for publishing non-financial information and diversity

In addition to the aforementioned package of measures that is relevant for the Code, a revision of the annual accounts directive was presented on 15 November 2014 in the Official Journal of the European Union. The revised directive requires large companies to publically report each year how they implement corporate social responsibility and diversity in their company management. The new European legislation requires organisations that are of public importance (listed companies, banks and insurers) with more than 500 employees to publish their company policy with respect to the environment, social and personnel affairs, human rights and corruption and bribery. The companies should also report on the results of the policy and to present the primary risks and non-financial performance indicators.

The legislation also asks large listed companies to report on their diversity policy, giving attention to aspects such as age, gender, education and professional background. The report on the diversity policy will be a part of the statement on corporate governance. Companies that have not implemented a diversity policy should state clearly in their corporate governance statement why they have not done so.

The reporting obligation is form-free and based on the "apply or explain" principle. Companies can make use of national, European and international guidelines for reporting, such as the OECD Guidelines for Multinational Enterprises, ISO 26000 and UN Global Compact. It is expected that 6,000 companies in the EU will have to contend with the new reporting regulations. To convert the directive into legislation, the member states have two years. This means that companies have the time to become familiar with the new regulations under which they are expected to start reporting from the 2017 financial year.

This directive on non-financial information can provide further interpretation for the term "social aspects" that is used in the Code. Companies are required to include extensive information on non-financial aspects in their management report. This can have positive consequences for the compliance with the best practice provision III.1.6, which stipulates that the supervision of the supervisory board over the management board encompasses social aspects, amongst other things. The legislation shall furthermore regulate that companies reveal information about their diversity policy. This could have a positive impact on the compliance with the best practice provision III.3.1 "composition of the supervisory board".

6.2 Developments in other countries

A corporate governance code is an international phenomenon. Over the years, various corporate governance systems and codes have been set up across the world. These systems and codes continue to develop. The Committee is interested in the manner in which the national frameworks for corporate governance currently relate to one another and what trends are visible here. Below is an outline of the most important developments in the area of codes and legislation in a number of countries.

United Kingdom

The United Kingdom has two codes: the UK Corporate Governance Code and the UK Stewardship Code. Every two years, the Financial Reporting Council (FRC) assesses whether a revision of the UK Corporate Governance Code is necessary. On 17 September 2014, a revised code was presented that is aimed at improving the quality of the information for investors with regard to the health and strategy of the company and at improving risk management. The revised code took effect on 1 October 2014. The most important revisions concern:

- risk management and internal control:
  - companies should identify the most important company risks and explain how these risks are being managed;
  - a statement is included in the annual report explaining whether or not the company can guarantee the continuity and whether it can meet future obligations. The company indicates the period to which this pertains. In any case, this statement looks ahead beyond 12 months;
  - furthermore, companies should thoroughly assess their internal risk management and monitoring

systems each year for effectiveness. They should report on this in the annual report.
- remuneration:
  - greater emphasis in the long term on the remuneration policy;
  - in the remuneration agreements with management board members, the possibilities for clawing back bonuses and the non-payment of a postponed remuneration should be included.
- shareholders' involvement:
  - when shareholders with a significant percentage of the shares vote against a certain proposal during the general meeting of shareholders, the company should ascertain what the background is of the voting result.

In December 2013, the FRC published the third monitoring report on compliance with the UK Corporate Governance Code and the Stewardship Code. In the report, the FRC concluded that compliance with the code was still high. The quality of the explanation given, however, left much to be desired. This is primarily the case with smaller listed companies. The FRC also announced the identification of good examples in the area of compliance issues within the management boards of companies and the role of the selection committee so that other companies can learn from this. The FRC also states that investors should strive to achieve the same level of transparency as the level that they expect from companies. It is a cause for concern for the FRC that institutional investors primarily focus on the dialogue with the largest companies and give no attention to the smaller listed companies. There has been a rise in the number of institutional investors that inform the company if they are planning to vote against a proposal or to abstain from voting.

Germany

Each year the *Regierungskommission Deutscher Corporate Governance Kodex* reviews the German code, which leads to the code being (slightly) revised every year. The revisions in 2013, published on 13 May 2013, pertain primarily to remuneration. The supervisory boards should implement a maximum amount for the total remuneration and for the variable remuneration of management board members. In establishing the remuneration structure for management board members, the remuneration structure of the senior management and other employees should be taken into account. The actual remunerations paid to management board members should be presented in a clear, organised manner in the annual report using tables. The *Regierungskommission* also made textual changes: a number of recommendations were scrapped from the code.

In 2014, the *Regierungskommission* welcomed a new Chairman, Dr H.C. Manfred Gentz. Under the leadership of Dr Gentz, the focus of the *Regierungskommission's* work shifted from the development of new recommendations to the improvement of current recommendations and suggestions in the code and the acceptance of international developments, such as proposal of the EC. On 24 June 2014, the code was changed further. Several revisions were made with regard to remuneration: the explanation in the tables that were published in 2013 was made clearer.

Another notable development in Germany is that, on 25 November 2014, the governing parties agreed to introduce a female quota of 30% for boards of supervision at the largest German listed companies to take effect in 2016. The new quota will not pertain to senior management positions.

France

On 17 June 2013, the revised *Code de gouvernement d'entreprise des sociétés cotées* was published. A new provision was added that asks companies to present the implementation of the remuneration policy to the general meeting of shareholders for at least a non-binding (or advisory) vote (say on pay). The remuneration committee should announce the way in which the policy will take the shareholders into account in the event that the majority casts a negative vote. Stricter rules have been included with respect to the award of options, bonuses, redundancy schemes and pensions. Also included in the code is the requirement that there should, in any case, be one representative of the employees on the remuneration committee. Management board

members may also not hold more than two supervisory board memberships (including positions as supervisory board members for foreign companies). In addition to the revised code, it was announced in 2013 that a monitoring committee would be established by the Employers Organisations of Association Française des Entreprises Privées (AFEP) and Mouvement des Entreprises de France (MEDEF). This committee will be called the Haut Comité de Gouvernement d'Entreprise.

The Autorité des Marchés Financiers (AMF – the French supervisory body) publishes its own report annually on corporate governance and the remuneration paid to management board members in which recommendations are made. In the report of 10 October 2013 (which reviewed the French code of 2012), the AMF made recommendations with regard to supervisory board members that represent employees and with regard to the contribution of supervisory board members to the work of the management board. The AMF also stressed that the updated code and the establishment of a monitoring committee served as evidence of progress. The AMF plans to monitor the work of the monitoring committee, paying special attention to the way in which the code is periodically updated. In the report of the AMF on corporate governance and the remuneration paid to management board members, dated 24 September 2014, the AMF focuses on the new provisions in the revised code. The report contains recommendations with respect to the criteria for determining the independence of supervisory board members (primarily focused on the persons who have been supervisory board members for a long time), remunerations and the circumstances under which supervisory board members stand down.

In addition to the AMF reports, the Haut Comité de Gouvernement d'Entreprise – the recently established French monitoring committee – presented its first monitoring report on 21 October 2014. In this report, the monitoring committee placed emphasis on say on pay, in view of the fact that French companies first dealt with this provision in 2013. Furthermore, the monitoring committee discovered that the code is respected by the majority of the companies and that further improvements have been made with respect to the quality of governance and the information published on this subject. The French monitoring committee plans to update the code every three to five years. The guidance provided for implementing the code will be updated each year.

Italy

In July 2014, the Comitato per la Corporate Governance presented an updated *Codice di Autodisciplina*. The most important changes are a new provision on the clawback of variable remunerations from management board members and top managers, which pertains to remuneration payments that, in hindsight, were awarded on the basis of inaccurate information, the further revision of the "apply or explain" principle as a result of the recommendation of the EC and the full publication of the severance pay for management board members and supervisory board members according to the recommendations of the Commissione Nazionale per le Società e la Borsa (CONSOB – the Italian supervisory body). Furthermore, the Italian Stewardship Code took effect on 1 January 2014. This code was established by Assogestioni, the association of Italian asset managers, and pertains to the exercise of shareholder rights.

Japan

The financial overseer and the stock exchange in Japan are working on the development of a Japanese corporate governance code. They are doing this on the instruction of the Japanese government with a view to quickening economic growth. The code will work on the basis of the "apply or explain" principle.
The code is expected to be established in 2015. A Japanese stewardship code was set up previous to this on 26 February 2014. This code of conduct for institutional investors is largely based on the UK Stewardship Code. Institutional investors are expected to take on an active role with regard to the company and to be transparent about their voting activities.

6.3 International organisations

There have been different developments within international organisations that could have an influence on the Code. The following sections consider the developments with respect to integrated reporting, the role of proxy advisors and the revision of international corporate governance principles.

IIRC

Following worldwide consultation and a number of pilot projects, the International Integrated Reporting Council (IIRC) presented the final International Integrated Reporting (IR) Framework on 9 December 2013. In this framework for integrated reporting, the concepts and principles are presented for drafting a report in which financial and non-financial achievements are reported in connection with one another. The aim is to give investors and other interested parties better insight into the way in which a company creates value in the short and long terms. Companies that use the framework provide access to material information on their strategy, governance, results and prospects in a clear and comparable manner. The framework does not require external verification, but the management board and the supervisory board are expected to issue a statement that says that the integrated report was drafted in accordance with the IR framework.

ESMA

In February 2013, the European Securities and Markets Authority (ESMA) published a report in which the conclusions drawn from a consultation over the role of proxy advisors are presented. The report states that, because ESMA cannot find any clear evidence of market failure, it is not providing any binding measures. ESMA is making the recommendation that the sector should come up with its own European code of conduct that ensures greater transparency about the process in which shareholder voting advice comes about. Since then, a number of proxy advisors have developed their own code of conduct, which was published on 5 March 2014. In accordance with the recommendation of ESMA, this code of conduct requires parties that have signed the code to provide insight into the method behind the realisation of shareholder voting advice, the policy with respect to the prevention of conflicting interests and the policy in the area of communication with companies, shareholders and other interested parties. All proxy advisors are called on to sign the code of conduct. In February 2015, ESMA will evaluate whether the measures taken by the market are sufficient and will assess whether it is necessary to take binding measures.

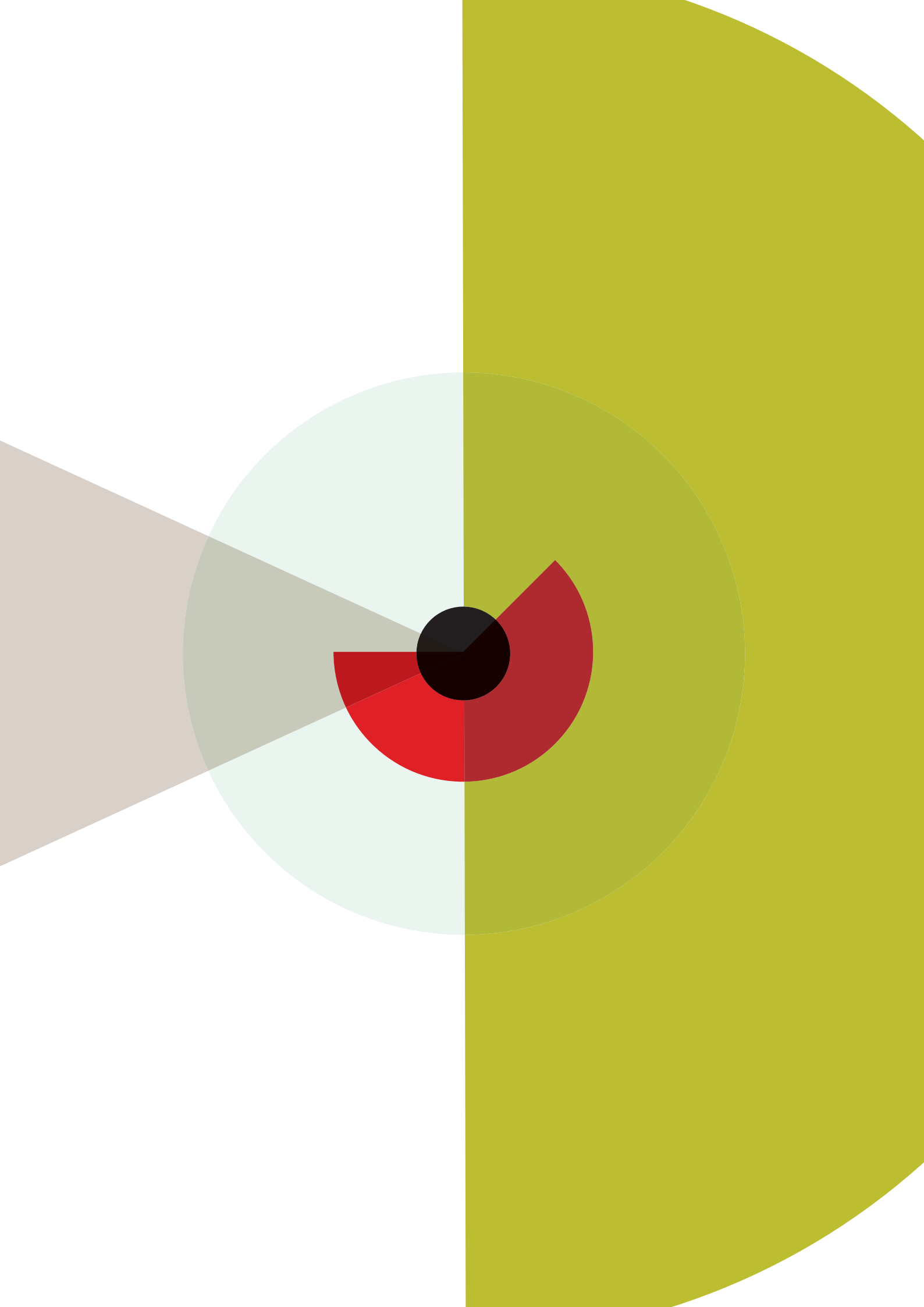
OECD

The current Principles of Corporate Governance of the Organisation for Economic Co-operation and Development (OECD) date from 2004. In order to ensure that the levels of quality, relevance and applicability remain high, the principles are being updated at present. On 14 November 2014, a consultation was opened concerning a work document containing proposals for the revision of the corporate governance principles. The proposed changes concern, amongst other things, transactions with affiliated parties, internal audits and non-financial information. The goal is to complete the revision in 2015.

6.4 Conclusion

From the previous sections, it is notable that different countries periodically assess whether or not their corporate governance code needs to be revised. In the United Kingdom, an assessment is made every two years about whether the code should be revised. Germany revises the code every year. In France, the monitoring committee plans to revise the code every three to five years and the guidance provided every year. Also in different countries, continual attention is requested for the quality of the explanation given, which corresponds with the recommendation of the EC.

It has also become clear that corporate governance is receiving a lot of attention internationally. Codes and regulations continue to be developed and norms are further elaborated. In view of these developments, it seems that countries are facing a number of similar themes: in particular, remunerations, shareholder involvement, risk management and non-financial information stand out. In the area of remunerations, standards with respect to clawback, remuneration structure, say on pay and greater transparency are being developed and fleshed out. Similar issues are being dealt with in the Netherlands. Developments at the international and European level influence the existing national frameworks. Depending on the national (political) context, these developments are given a place in legislation and/or a code.



7. Looking ahead

The Code was established in 2003 and last updated in 2008. In the last decade, corporate governance has been lifted to a higher level; the Code was able to guide this process. In the meantime, the world has not stood still. Lessons can be learned from abuses that have arisen since the last revision of the Code and new issues have arrived on the scene. National and international rules have also been drafted or are under development with respect to subjects that are addressed by the Code. All of these developments do not leave the Code unaffected.

7.1 Revision of the Code

The Code is a document from the "market" itself. The parties to which the Code is addressed – the management board members, supervisory board members and shareholders of Dutch listed companies – determine for themselves, in so far as the law gives them the freedom to do so, what the values and standards of good corporate governance are. The initiative for a revision of the Code lies with the supportive parties, with the Committee playing an identifying and unifying role.

Contacts with supporters and other parties have produced various wishes for changing the Code. On the one hand, there is a need to include more standards and details in the Code. The Code needs to be maintained to remain up to date. On the other hand, changing the Code is not seen by all supporters as necessarily desirable. There is a need for sufficient continuity and the freedom to be flexible in implementing the Code. It is essential to strike a balance. A simplification of the Code and attention for its relationship with the law is the desire that has reached the Committee from different sides.

The Committee advises the supportive parties to launch a revision of the Code. In this report, the Committee has already taken the first step with respect to subjects that need to be attended to during a revision. The accessibility of the Code can also be improved and a fixed revision cycle might be in order to keep the Code up to date. In the United Kingdom and Germany, they are already working with such a fixed cycle.
Within a process of revision, the Committee thinks it is important to prevent the Code from containing too many details and addressing subjects that do not lie at the core of corporate governance. The goal of the Code continues to be to realise a sound and transparent system of checks and balances within Dutch listed companies and, towards this end, to regulate the relationships between the management board, the supervisory board and the (general meeting of) shareholders.

7.2 Work programme for 2015

On the agenda for 2015 are the regular activities dictated by the duties of the Committee: taking stock of the manner and degree to which companies complied with the Code in the 2014 financial year, keeping abreast of national and international developments and identifying gaps and inclarities in the Code. For the compliance study, the same methodology will be used as was employed for the 2013 financial year.
The Committee is satisfied with the response to the questionnaire. An effort will however be made to increase participation among companies, particularly participation by companies listed on the local stock market. Participation from this index was low, at 44%. The Committee also plans to give extra attention in the coming compliance study to implied temporary departure from the Code. This pertains to explanations that imply that the departure will be temporary.

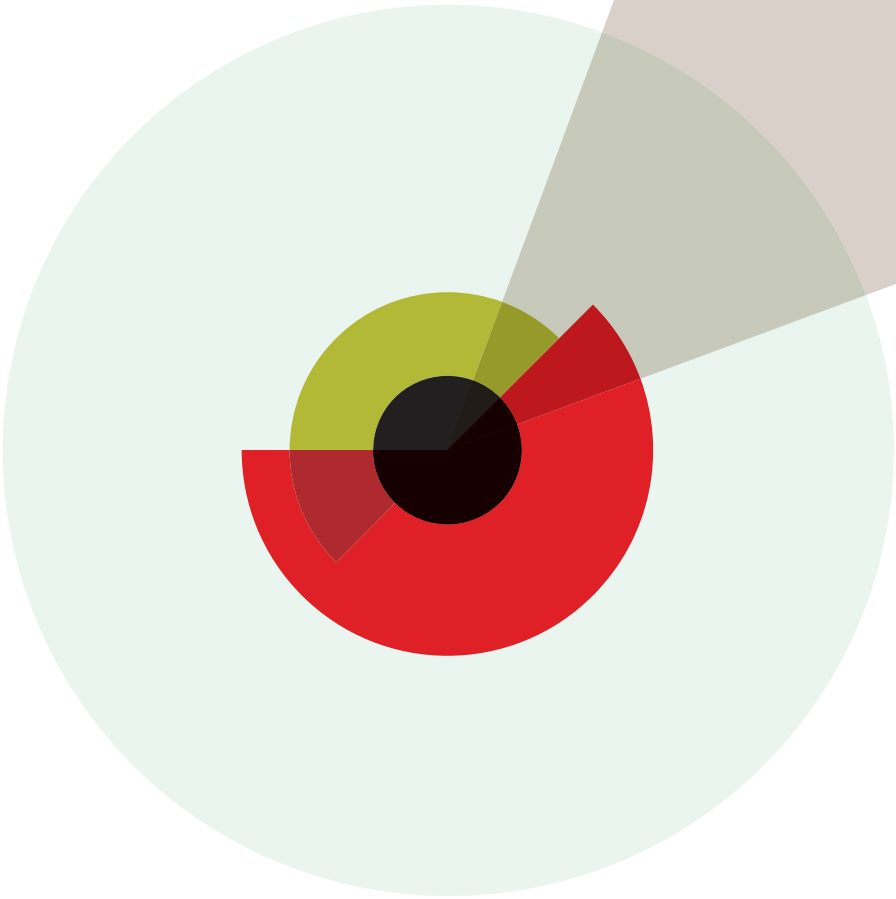
The Committee also plans to focus on four subjects in particular.

Compliance with the Code by shareholders and institutional investors.
Section IV.4 of the Code pertains to the responsibility of institutional investors and shareholders towards the company. The shareholders are expected, concisely put, to behave towards the company, its bodies and their fellow shareholders according to the standards of reasonableness and fairness. This is understood to mean, amongst other things, the willingness to maintain a dialogue with the company and fellow shareholders, such as consulting with the management board when exercising the right to put subjects on the agenda. The Code also contains a requirement for institutional investors to act primarily in the interest of their underlying beneficiaries or investors and to give an account of these actions on their website or in their annual report. In imitation of previous monitoring reports, the Committee will include the compliance with these provisions in the study on the 2014 financial year.

The role of the external accountant
The developments with regard to the role of the external accountant have been described earlier in this report. The Committee keeps abreast of these developments. The Code does not focus directly on the external accountant and so the Committee is, for now, hesitant with respect to the application of the Code on this point. Formally speaking, a good framework is in place. The material compliance with the Code provisions concerned could be examined. The Committee will also give attention to this in its work programme for 2015, specifically to the interaction between the triad of management board, supervisory board and the external accountant.

Risk management
Risk management is a future point of focus for the Committee. It is important for companies to indicate how their risk management system is set up and how it works. The internal audit function has a role to play in this. The compliance study has revealed that provision V.3.3 "launch evaluation of the internal audit function" is the provision least complied with for both the AMX index and the AMS index listed companies. The Committee is interested to know the reasons for this non-compliance.

Protection measures
Protection measures are relevant for the Code. They limit the power of the shareholder and thus influence the regular relationships in the triad of management board, supervisory board and shareholders. Based on provision IV.3.11 in the Code, an annual report should contain an overview of all outstanding or potentially deployable protection measures against a takeover of control of the company and also indicate under what circumstances these measures could be expected to be deployed. The compliance study conducted by Nyenrode reveals that this provision is not commonly complied with by companies listed on local indexes. This constitutes a reason for the Committee to scrutinise the subject of protection measures.



COMPOSITION

CORPORATE GOVERNANCE CODE MONITORING COMMITTEE

Chairman[26]

prof. dr. J.A. van Manen
Partner at Strategic Management Centre
Professor of Corporate Governance - University of Groningen
Member of Supervisory Board at De Nederlandsche Bank NV

Members[27]

prof. dr. B.E. Baarsma
General Director SEO Economic Research
Professor of market mechanism and competitive economy at the University of Amsterdam
Crown-appointed member of the Social and Economic Council of the Netherlands
Vice Chairman of Supervisory Board at Loyalis NV

drs. E.F. Bos
Chief Executive Officer PGGM
Member of the Supervisory Board at Nederlandse Waterschapsbank NV
Vice Chairman of the Supervisory Board at SWEW (Stichting Waarborgfonds Eigen Woningen)

mr. S. Hepkema
Member of the Board of Directors at SBM Offshore NV
Member of the Supervisory Board at Wavin NV
Member of the Supervisory Board at RBS Holdings NV

RJ. van de Kraats RA
CFO & Vice Chairman of Executive Board Randstad Holding NV
Non-Executive Director OCI NV

prof. mr. H.M. Vletter-van Dort
Professor of Financial Law and Governance at Erasmus School of Law
Profession of Securities Law at the University of Groningen

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mr. I.L.J.M. Heemskerk
Ministry of Economic Affairs, Directorate of Entrepreneurship

K. van Kalleveen, MA
Ministry of Economic Affairs, Directorate of Entrepreneurship

Advisors

mr. M. Meinema
Directorate of Legislation, Ministry of Security and Justice

drs. V. Lieffering
Directorate of Financial Markets, Ministry of Finance

26 A full overview of the positions and secondary positions of the Supervisory Board members can be found at www.mccg.nl

27 Due to the death of H.C.J. van den Burg, there is currently a vacancy within the Committee.

Appendix:

Companies that took part in the survey

Aalberts Industries N.V.
Accell Group NV
Aegon N.V.
Koninklijke Ahold N.V.
Akzo Nobel N.V.
AMG Advanced Metallurgical Group N.V.
Amsterdam Commodities N.V.
AND International Publishers N.V.
ARCADIS N.V.
ASM International N.V.
ASML Holding N.V.
Ballast Nedam N.V.
Koninklijke BAM Groep N.V.
BE Semiconductor Industries N.V.
Beter Bed Holding N.V.
Bever Holding N.V.
BinckBank N.V.
Koninklijke Boskalis Westminster N.V.
Brunel International N.V.
Corbion N.V.
Corio N.V.
Crown Van Gelder N.V.
Koninklijke Delftsch Aardewerkfabriek "De Porceleyne Fles Anno 1653" N.V.
Delta Lloyd Groep N.V.
DOCDATA N.V.
DPA Group N.V.
Koninklijke DSM N.V.
Esperite N.V. (voorheen: Cryo-Save Group N.V.)
Eurocommercial Properties N.V.
Exact Holding N.V.
Fugro N.V.
Gemalto N.V.
Groothandelsgebouwen N.V.
H.E.S. Beheer N.V.
Heijmans N.V.
Heineken N.V.
Holland Colours N.V.
Hydratec Industries N.V
Royal Imtech N.V.
ING Groep N.V.
Kardan N.V.
KAS BANK N.V.
Kendrion N.V.
Koninklijke KPN N.V.
New Sources Energy N.V.
NSI N.V. (Nieuwe Steen Investments)
Nutreco N.V.
OCI N.V.
Ordina N.V.
Pharming Group N.V.
Koninklijke Philips N.V.
PostNL N.V.
Randstad Holding nv
Reed Elsevier N.V.
Koninklijke Reesink N.V.
Roto Smeets Group N.V.
SBM Offshore N.V.
Simac Techniek N.V.
Sligro Food Group N.V.
SnowWorld N.V.
Telegraaf Media Groep N.V.
TKH Group NV
TNT Express N.V.
TomTom N.V.
Unilever N.V.
USG People N.V.
Value8 N.V.
Van Lanschot N.V.
Vastned Retail N.V.
Koninklijke Vopak N.V.
Koninklijke Wessanen N.V.
Wolters Kluwer N.V.