Monitoring Committee

CORPORATE GOVERNANCE CODE

Monitoring Report on the 2015 Financial Year

UNOFFICIAL TRANSLATION

December 2016

secretariat: PO Box 20401, 2500 EK The Hague

www.mccg.nl

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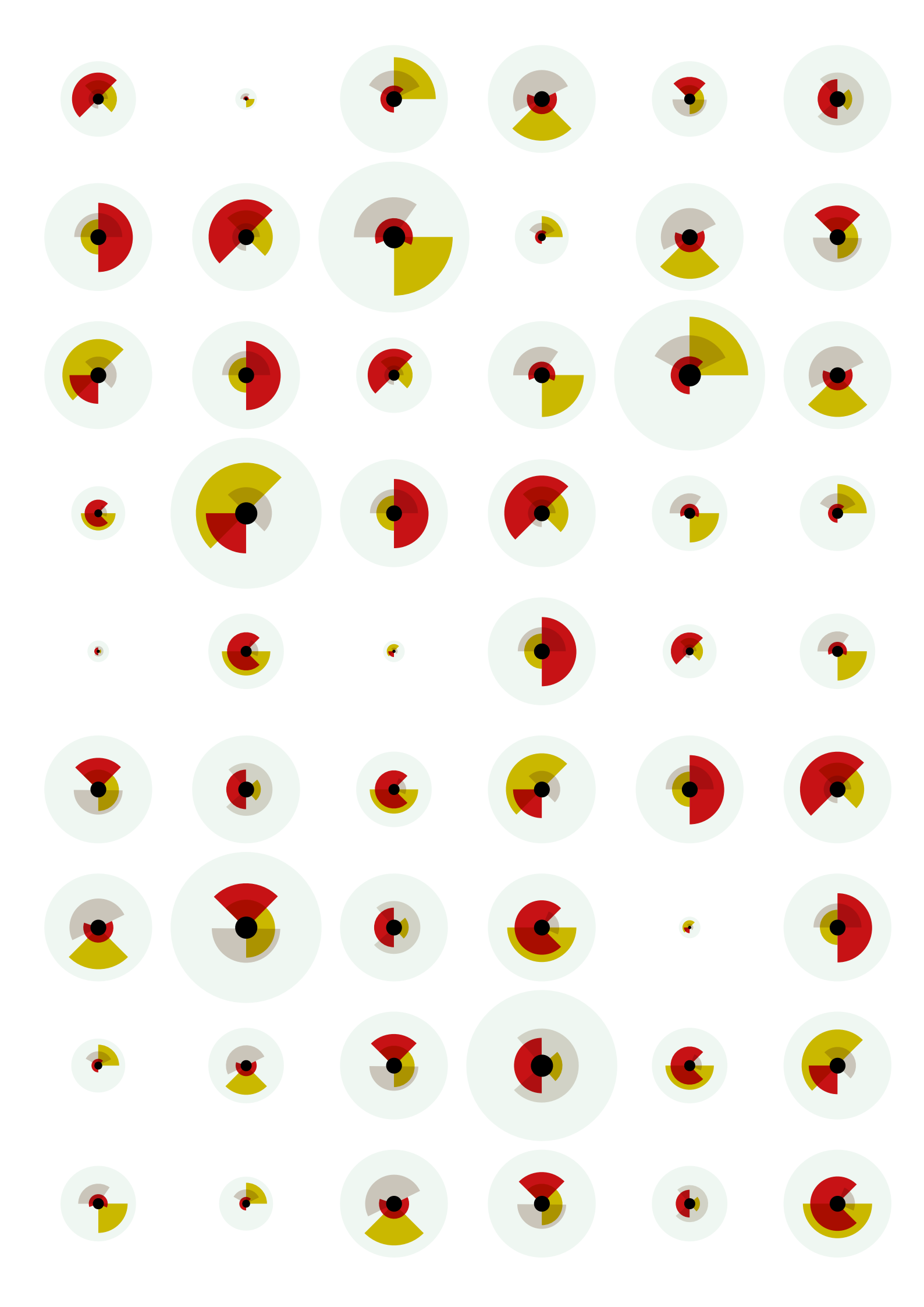


FOREWORD

In 2016, the Dutch Corporate Governance Code Monitoring Committee (hereinafter called the Committee) studied the extent of compliance with the Dutch Corporate Governance Code (hereinafter called the Code) in the 2015 financial year. The study was carried out in cooperation with SEO Amsterdam Economics (SEO).

Listed companies were again called on to participate in the study, and the request was not lost on them. The great majority of those invited took the trouble to answer the researchers' questions and, where applicable, to share their views on the Committee's assessment of compliance with the Code.

Inevitably, part of the study has the character of ticking boxes. All the same, a large part of the Code can be interpreted in different ways; it was not designed to resemble a 'shopping list'. In order to ensure a careful process, company officers and the researchers discussed their respective interpretations. The Committee also took part in these discussions. The researchers' interpretation has been decisive for the report that SEO presented to the Committee. The Committee report is based on the conclusions of the compliance study.

Monitoring compliance while avoiding problems of interpretation requires a shopping list of items that can be ticked off, which is great from a research point of view but undesirable from the point of view of effectiveness. In-depth discussion within and between the company organs on compliance with the Code and the associated interpretations and dilemmas can have a positive influence on the quality of corporate governance. This principle also played an important role in the revision of the Code.

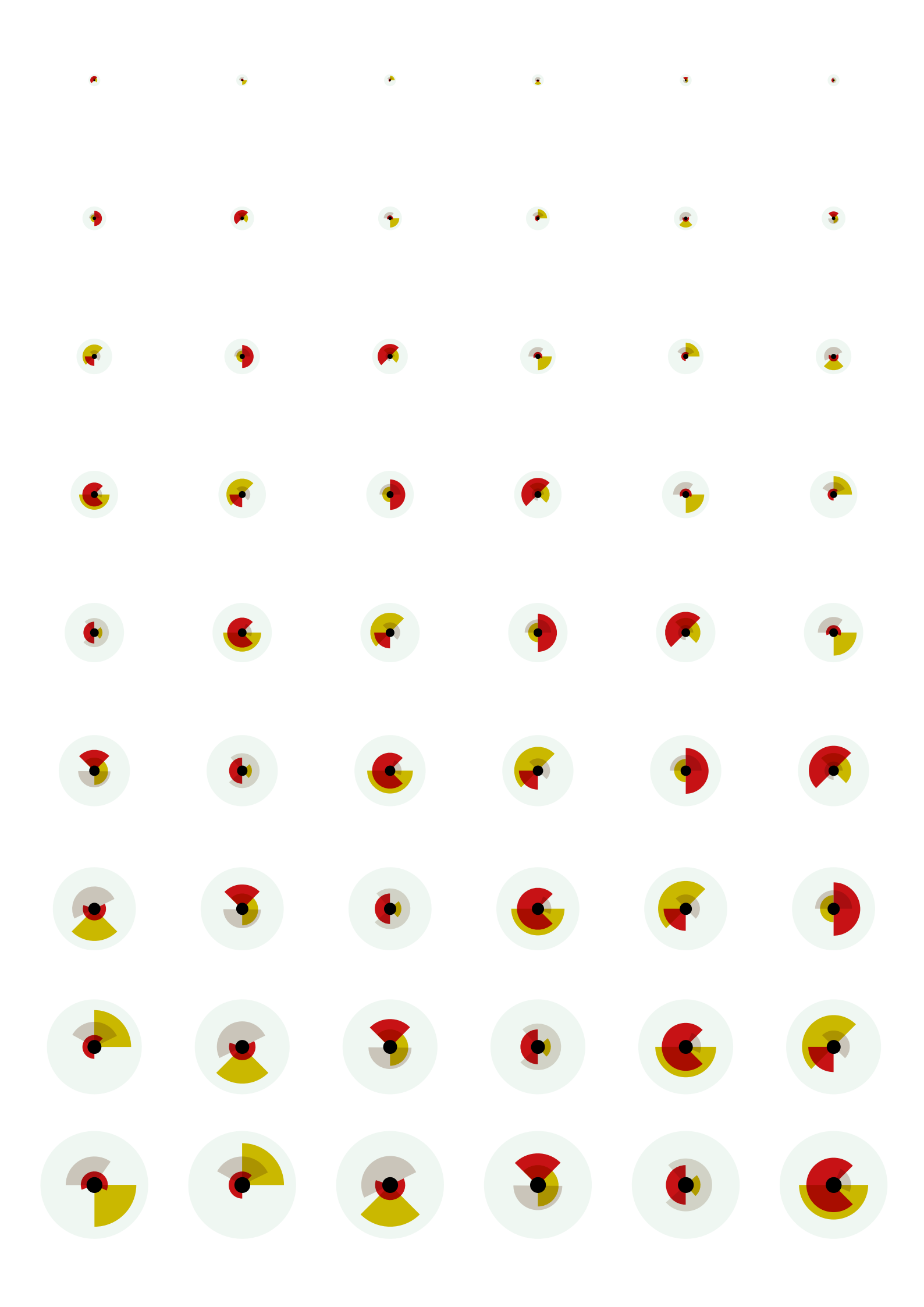
Of course, the Committee again gathered information about national and international developments in the field of corporate governance. Following and summarising these developments for years, as the Frijns and Streppel committees as well as the current Committee have done, proved useful during the Code's revision earlier this year.

In 2015 and 2016, the Committee held extensive consultations with the supportive parties: Eumedion, Euronext, the Federation of Dutch Trade Unions (FNV), the National Federation of Christian Trade Unions in the Netherlands (CNV), the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW). There have also been regular consultations with management board members, supervisory board members, company secretaries, lawyers, advisers and (representatives of) listed company auditors. Shareholders (or their representatives) of listed companies have also been involved in consultations. The discussions included compliance with the Code as well as its revision. The Committee is grateful to all of these parties for the time and energy invested. The Committee members found the consultations to be stimulating and inspiring.

We have also been able to hold regular consultations with the central government in The Hague. Ministers, elected representatives and civil servants showed their interest and involvement. At the same time, they made it possible for the Committee and the supportive parties to cooperate with each other independently from the government.

Lastly, the Committee owes a debt of gratitude to the SEO researchers for their excellent research and to the Committee secretaries for their extensive support.

Jaap van Manen
Chairman of the Dutch Corporate Governance Code Monitoring Committee



1. FINDINGS AND CONCLUSIONS

The Dutch Corporate Governance Code (hereinafter called the Code) offers generally accepted principles and best practice provisions for good corporate governance. Compliance with this Code is monitored by the Corporate Governance Code Monitoring Committee (hereinafter called the Committee), which was set up by the government. In this report the Committee details the monitoring activities it carried out in 2016. The report presents the results of the research by SEO Amsterdam Economics (SEO) into compliance with the Code in the 2015 financial year and discusses relevant national and international developments in the field of corporate governance.

The compliance study looks at compliance by listed companies with the Code adopted in 2008. The study comprised desk-based research into publicly available sources (such as annual reports) and a brief survey distributed among companies. SEO used a research method which in some respects departed from previous compliance studies. For example, with regard to by SEO named reporting provisions SEO verified whether companies actually reported on the required matters fully and in the specified locations. This has resulted in stricter monitoring of compliance with these provisions. Apart from monitoring compliance with the Code's provisions, the Committee requested that the compliance study highlight a number of specific issues through the inclusion of in-depth questions in the survey. These issues touch on the structure of the supervisory board, remuneration and shareholders.

In addition to its monitoring task, the Committee also worked to revise the Code in 2016 at the request of the supportive parties. The revised Code was published on 8 December 2016. To the greatest extent possible, it incorporates the responses to the suggested amendments to the 2008 Code. The first time companies will be expected to report on compliance with the revised Code will be in 2018 (i.e., with regard to the 2017 financial year). However, this is only feasible if the government enshrines the revised Code in Dutch law in 2017.

1.1 Compliance

In line with previous financial years, general compliance with the Code is high at 97.0%, despite the reviewed, stricter assessment of the Code's provisions. Nearly 95% of the Code is put into practice. In 2.1% of cases the Code is not applied, with reasons given for departing from its provisions. Four out of five companies have a general compliance rate of 95% or over. Compliance with the Code varies per stock market index: 98.7% among AEX companies, 97.7% among AMX companies, 97.0% among AScX companies and 94.4% among local companies.

The provision on the overview of remuneration policy in the remuneration report is the least complied with in the 2015 financial year. Other provisions that are often not complied with include the provision on the policy on bilateral contacts with shareholders and the provision on the profile of the supervisory board. Although companies did draw up such profiles, SEO found that what is frequently missing, or inadequate, is a description of the company's specific objectives with regard to diversity and the reasons provided when the existing situation diverges from the objectives.

Although compliance is high, the Committee notes that there is still room for improvement. The Committee emphasises the importance of implementing all the various elements that make up the provisions and of reporting in the specified location, such as the supervisory board's report. This would further improve compliance with the Code. The Committee calls on all companies to strive for a 100% compliance score.

1.2 Specific topics

In the survey administered by SEO as part of the compliance study, special attention was paid to three specific topics: the composition of the supervisory board, remuneration for management board members and supervisory board members, and a number of sub-topics with regard to shareholders. These topics were selected on the basis of the results from the Monitoring Report on the 2014 Financial Year as well as on the basis of the Code's revision. Based on the study by SEO, the Committee made the following findings.

Composition of the supervisory board

With regard to the composition of the supervisory board, two subjects were looked at in greater detail. Firstly, the independence of supervisory board members, which remains a topical issue. The Committee believes it is important that supervisory board members should be able to carry out their supervisory role independently and critically. The compliance study shows that companies take the independence of supervisory board members seriously. For example, 59% of reviewed companies have a supervisory board composed exclusively of independent supervisory board members. A further 27% have one independent supervisory board member. The remaining 14% have indicated that their supervisory board includes more than one supervisory board member who may be considered to be dependent. The compliance study shows that the question of the dependence of supervisory board members is often connected with representing or having a shareholding of over 10%.

Secondly, the Committee paid special attention to the chairmanship of the audit committee and the remuneration committee. In the 2014 financial year, the provision on the chairmanship of the remuneration committee was one of the most frequently explained provisions[1]. As the outcomes of the compliance study show, nearly all companies that completed the survey indicated that the chairmanship of these committees, when installed, is not being filled by the chair of the supervisory board or by a former management board member. This is a difference from the outcomes of the research into the compliance in the 2014 financial year, when the provision on the chairmanship of the remuneration committee was one of the most frequently explained provisions. This difference in results is possibly caused by the revised methodology.

1 For the purposes of this document, an 'explained provision' is a provision that was not complied with, and for which non-compliance the company provides an explanation.

Remuneration of management board members and supervisory board members

Remuneration continues to be a hotly debated topic, both in politics and in society at large. The Committee thinks it is important that the management board and the supervisory board are aware of the broader context in which remuneration is awarded and that they take their responsibility where remuneration is concerned. The compliance study looked at two issues with regard to remuneration: severance payments for management board members and share ownership among supervisory board members.

The provision regarding caps on severance payments is one of the most frequently explained provisions. In 80% of cases, companies observe the cap on severance payments for management board members. When exceeding the cap of one year's salary, this is often because of previous agreements. The Committee wants to point out that when agreements are renewed the point of departure should be that the severance payment is brought in line with the Code.

With regard to the second issue, the compliance study leads the Committee to conclude that companies tend to comply with the provision on not remunerating supervisory board members in terms of shares. The outcomes of the question in which way companies ensure that share ownership among supervisory board members in the own company is a matter of a long-term investment, show that these ways are not effective in all cases. The Committee believes companies could play a more robust role here, including when supervisory board members have bought the shares themselves. The Committee further notes that there are different interpretations of 'long-term' investments among companies. The Committee calls on companies to clarify the term that would be appropriate for the company.

Shareholders

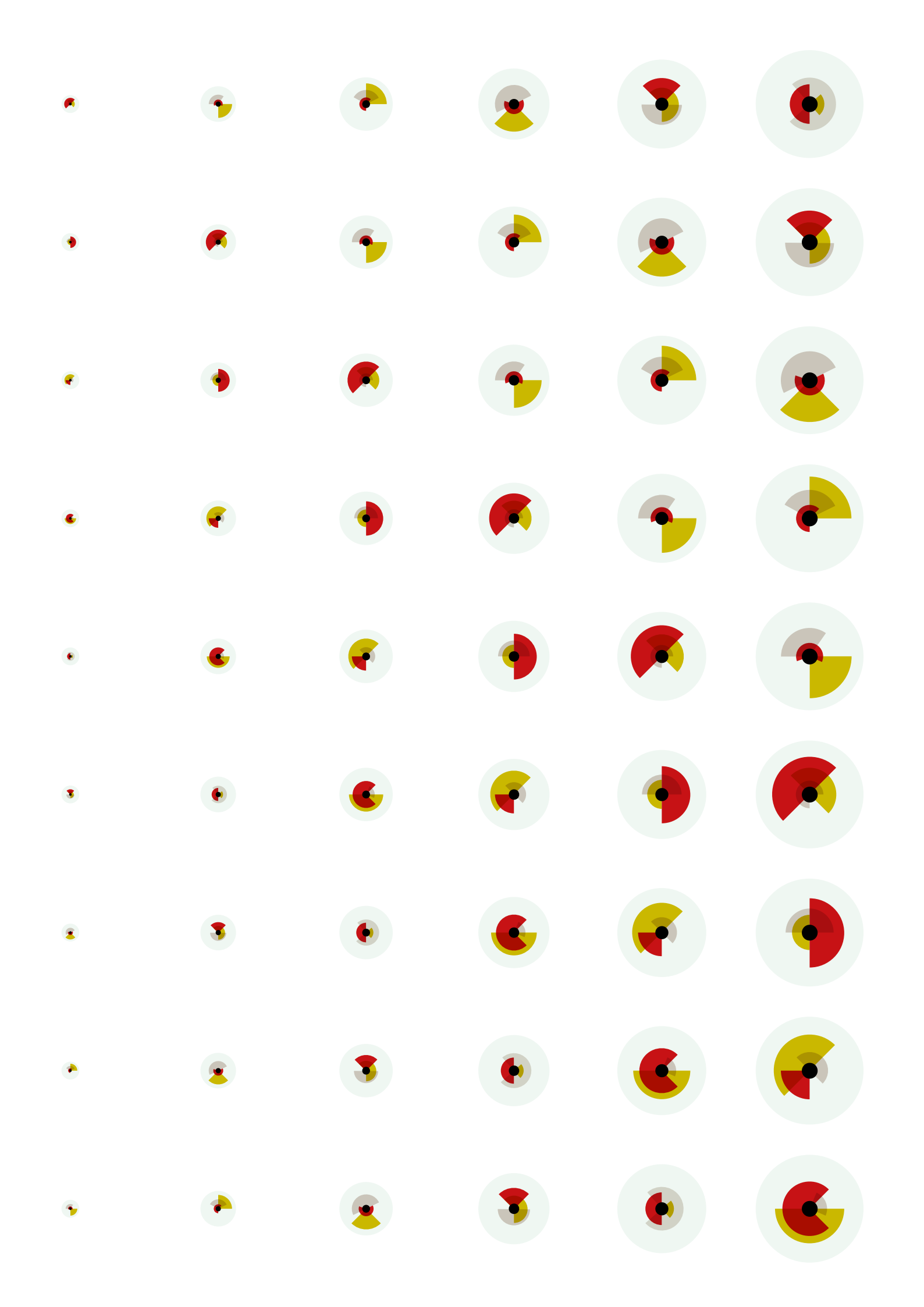
With regard to the subject of shareholders, issues that were examined included invoking the response time, bilateral contacts with shareholders and antitakeover foundations. The study shows that the response time was not invoked during the 2015 financial year, in view of which no further conclusions can be drawn.

The study also shows that the provision regarding publication of the policy on bilateral contacts with shareholders is among the least complied with among smaller companies. Reasons given for not formulating such a policy include the company's limited size, the policy still being in the development phase or the policy having been formulated (and published) since the question was asked. The Committee views the policy on bilateral contacts as an area for these - mostly smaller - companies to work on.

Lastly, the study shows that almost half of the companies surveyed have an antitakeover foundation (*beschermingsstichting*). A third of all companies that answered the survey indicated that they did not know if the administrators of their antitakeover foundations are also members of other antitakeover foundations. The Committee considers this to be remarkable and expects companies to familiarise themselves with what the trust office report says about the functions of foundation members. After all, companies publish this report on their website.

1.3 Relevant national and international developments

As in the previous year, subjects such as remuneration, diversity, quarterly reporting and corporate social responsibility remain topical at the national level. Internationally, corporate governance is changing constantly. Various European countries revised their codes last year. Also, the agreement reached on the compromise text of the Slovak EU Presidency and the European Parliament regarding the draft directive on promoting shareholder participation represents an important step towards greater transparency and greater shareholder participation in large European companies.



2. REVIEW OF 2016

In 2016, the Committee focused both on monitoring compliance with the Code by listed companies and on revising the Code. On 11 February 2016, the Committee published a consultation document proposing a revision of the Code, which elicited over 100 reactions. The Committee also consulted companies on a proposal to apply the Code to companies with a one-tier board structure, to which there were 20 reactions. The Committee deliberated about the input and carefully considered the need for specific amendments to arrive at a revised Code. The revised Code was published on 8 December 2016.

Given the time needed for the revision, the Committee chose not to have a separate in-depth study carried out this year, limiting itself to commissioning a compliance study.[2] This study was carried out by SEO. The Committee asked SEO to provide across-the-board as well as in-depth insight into the extent of compliance with the Code on the part of listed companies in the 2015 financial year. Apart from studying compliance with the principles and best practice provisions, SEO carried out an in-depth study into three topics: the composition of the supervisory board, remuneration and shareholders.

The Committee held 11 plenary meetings in 2016. The key topics of these meetings were monitoring compliance and revising the Code. In addition to these meetings, the Committee held consultations with the supportive parties and participated in meetings organised as part of the discussion around the proposal for a revised Code. The Committee also joined the standing commitee on Finance of the House of Representatives in a round-table discussion on revising the Code, which took place on Wednesday 8 June 2016. Besides the Monitoring Committee, various involved parties and experts had been invited. In the round-table discussion, Members of Parliament gathered information about the draft texts for the revised Code, the support among parties involved and possible matters for discussion. The Committee informed the House of Representatives about the context in which the revision was taking place and explained the proposed amendments.

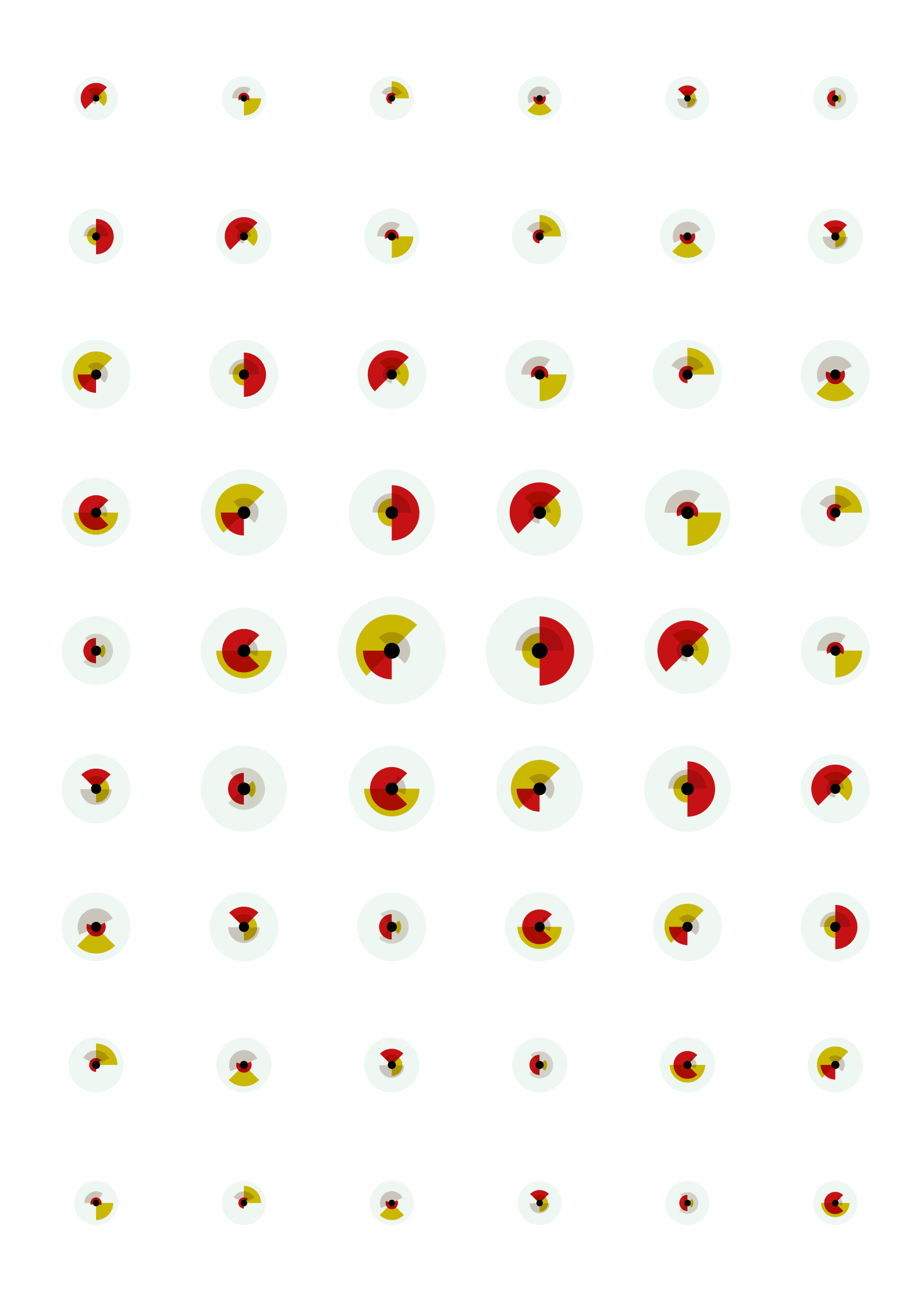
2 The compliance study looked at compliance by listed companies with the Code that was adopted in 2008.

European contacts

One of the Committee's tasks is to keep track of developments in the field of corporate governance in other countries. This includes maintaining a dialogue with other corporate governance committees. On 24 June 2016, the chair of the Committee took part in a meeting of chairpersons of the committees responsible for monitoring the corporate governance codes in Germany, France, Great Britain and Italy on the role of national corporate governance codes. At this meeting the five chairpersons decided to hold regular informal meetings to exchange ideas and experiences with regard to 1) topical issues in the field of corporate governance and 2) legislative developments. One of the outcomes of this meeting was a shared recognition of the importance of guaranteeing sufficient latitude for national corporate governance codes to have an impact. The five chairpersons recorded this in a joint declaration.[3]

The Committee is also part of the European Corporate Governance Codes Network (ECGCN). This informal network of secretaries of corporate governance code committees meets twice a year to exchange experiences and best practices. In the 2016 meetings, points of discussion included developments within the European Union and the activities of the European Securities and Markets Authority (ESMA), national developments, legislation in the field of 'say on pay', their practical ramifications, and corporate governance culture.

3 The declaration can be found at: http://www.commissiecorporategovernance.nl/nieuws/3044/Gezamenlijke-verklaring-groep-van-vijf-voorzitters



3. COMPLIANCE

The basic principle of the Code is 'comply or explain'. The Code is complied with if a Code provision is (1) implemented, that is to say put into practice unconditionally, or (2) departed from and a reasoned explanation is given for this. The Code adopted in 2008 consists of 22 principles and 129 best practice provisions. This chapter describes how listed complied with the regulations contained in these provisions in the 2015 financial year.

The study of compliance with the Code in the 2015 financial year was carried out by SEO.[4] At the Committee's request, SEO used a research method which in some aspects departs from the compliance study for the 2014 financial year.[5] Although the outcomes of the 2015 compliance study are not substantially different from those for 2014, they cannot be compared directly in all respects. This is explained under §3.2 Methodology.

3.1 Key findings

SEO's compliance study yielded the following conclusions:

- In total, 81 of the 95 companies took part in the survey. Participation was up again from the previous compliance study, rising from 79% (75 companies) in the 2014 financial year to 85% in the 2015 financial year. For the 2013 financial year, 76% (72 out of 95 companies) participated in the online survey.
- The highest response rate was achieved among AEX-listed companies (95%) and the lowest response rate was among local listed companies (75%). Compared to the previous financial year, participation among AEX-listed and local listed companies increased substantially. The response among AScX-listed companies also increased.
- In line with previous financial years, general compliance with the Code is high at 97%. The Code is applied by 94.9% of companies and departed from with reasons provided by 2.1% of companies.
- Compliance rates vary from 98.6% among AEX-listed companies to 94.4% among local companies.
- Four out of five companies have a general compliance rate of 95% or over.
- The provisions most frequently not complied with are: provision II.2.13 'Overview of remuneration policy', provision IV.3.13 'Policy on bilateral contacts with shareholders' and provision III.3.1 'Profile of the supervisory board'.

4 The full compliance study by SEO Amsterdam Economics can be viewed on the Committee's website (www.mccg.nl).

5 *Corporate Governance in Nederland: Onderzoek naar de naleving van de Nederlandse Corporate Governance Code in het boekjaar 2014* (Corporate Governance in the Netherlands: Study into compliance with the Dutch Corporate Governance Code in the 2014 financial year), Nyenrode Business Universiteit. The compliance study by Nyenrode has been published on the Committee's website (www.mccg.nl).

3.2 Methodology

At the Committee's request, the study carried out by SEO consists of a combination of desk research and a survey distributed among listed companies. The desk research forms the basis of the study: publicly available sources (such as annual reports, information from websites, etc.) were used to study how companies comply with the Code's provisions. The outcomes of the desk research for each company were submitted to the company concerned for validation. Additionally, companies were asked to fill in a survey which centred on compliance with 21 'if' provisions and in-depth research into three themes. The 'if' provisions are provisions that cannot apply to a company, such as the provisions on the one-tier management structure (provisions II.8.1 to III.8.4). These provisions were included in the survey with a view to assumed implicit compliance, which means the company does not indicate explicitly that it is complying with the provision and does not provide an explanation either. The SEO report includes an extensive clarification of the methodology used and the study's validation.[6] This monitoring report will restrict itself to a description in outline.

The Committee has opted for a somewhat different methodology from that used for the previous two financial years, when the entire compliance study consisted of a survey among companies. The Committee has strived for the right balance between self-reported compliance, which involves companies indicating their compliance rates themselves through a survey, and an independent measurement of compliance carried out by a research firm. Completing the survey requires an active attitude on the part of companies, which is in keeping with the Code's self-regulating character. The independent measurement carried out in addition to the survey relieved the companies of some of the burden. The Committee asked SEO to evaluate compliance with the Code on the basis of publicly available information and, in a subsequent step, to submit this information for validation. The Committee believes that this makes it possible to benefit from the advantages of both methods. With regard to future research on the compliance the Committee intends to look into possible improvements that can be made in the execution of the research and the process of validation.

Implementation of the study

SEO has elaborated the research framework provided by the Committee by distinguishing between three types of provisions:

- *reporting provisions* require reporting on a specific subject in a specific, public location (for example: III.2.3 'Approving the retirement schedule of supervisory board members and publishing the schedule on the website');
- *behavioural provisions* do not require a specific report or record, but have a bearing on the actions of the company or its constituent bodies (for example: provision II.3.3 'Participation of a management board member in consultations in the case of a conflict of interest');
- *recording provisions* require recording specific things without specifying a public location for the record to be made accessible in (for example: provision III.5.3 'Receipt by the supervisory board of the reports of core committees').[7]

In the case of reporting provisions, it can be verified whether that which is required has been reported correctly in the specified source. In the case of behavioural provisions, there is no requirement to discuss the provision in the management report or any other public source. Similarly, in the case of recording provisions it cannot always be verified whether the requirement has been reported, as the provision does not stipulate a specific, public location for reporting. Behavioural provisions and recording provisions, then, give rise to a category of assumed compliance: within the constraints of the compliance study, it cannot be verified whether a provision is being complied with, nor does the company specify that the provision is *not* being complied with.

6 Compliance with the Corporate Governance Code: Measurement covering the 2015 financial year, SEO Amsterdam Economics. pp. 3-12.

7 For more information on the different types of provisions, see pp. 7-10 of the SEO report.

The distinction between types of provisions has allowed SEO, with regard to the reporting provisions, to actually verify whether companies report that which the provision requires in the specified location and fully. If a company was found to have reported the required information but not in the prescribed way, this was recorded as non-compliance and counted as such for the purpose of calculating compliance rates. As each provision and sub-provision was divided into elements each of which should be complied with, compliance with reporting provisions was monitored more strictly this year. In addition, SEO assessed compliance more critically at the Committee's request.

The Committee also asked SEO to take a different approach to assessing the quality of explanations. This compliance study has rated explanations of insufficient quality as non-compliance and qualified them as such to determine compliance rates (for an elaboration, see the heading Quality of the explanation in §3.3 Compliance). This is in contrast with previous compliance studies, which in fact consisted of two sub-studies – one looking at compliance and one looking at the quality of the explanation – the outcomes of which could not be linked. SEO was asked to take a different approach because the quality of explanations had been a point of concern to the Committee for some time. For example, 18% of explanations provided in the compliance study of the 2014 financial year were of insufficient quality.[8] The Committee believes that having a category of explanations of insufficient quality to calculate compliance rates gives a more accurate impression of actual compliance.

Study population and response

The desk research involves the 95 companies based in the Netherlands and listed on the Dutch stock exchange. Of these, 90 companies have actually been tested for compliance in the compliance study. Five companies – all of them listed on local exchanges – could not be tested for compliance: the 2015 annual report was not (publicly) available for two of them, and three companies indicated not having pursued any material activities over the 2015 financial year.

In total, 81 of the 95 companies approached took part in the survey (85%). A complete list of participants has been included as an appendix to this report. Compared with the compliance study for the 2014 financial year, the response rate rose substantially, from 79% to 85%. As in previous financial years, the highest response rate was achieved among companies listed on the AEX index (95%) and the lowest response rate was found among companies listed on local markets (75%). The response among AScX-listed and local listed companies also increased. The response among AMX-listed companied increased substantially compared to the 2014 financial year. It must be kept in mind that the survey for the 2015 financial year looked at a limited number of provisions, while the survey for the 2014 financial year looked at all of the Code's provisions.

Index	Population for 2015 financial year	No. of respondents	Response rate for 2015 financial year	Response rate for 2014 financial year
AEX	21	20	95%	95%
AMX	22	19	86%	73%
AScX	24	21	88%	83%
Local	28	21	75%	68%
Total	95	81	85%	79%

Table 3.1 Overview of population and response over the 2015 financial year

8 Report on the Monitoring of the 2014 Financial Year, p. 27.

Committee's view on the response from companies

The Committee is pleased to see the rate of response to the survey rise to 85%, a substantial increase compared to the 2014 edition of this compliance study. The Committee continues to strive for 100% participation by companies in the survey that forms part of the compliance study. Among other things, participation in the survey offers companies a solid an useful benchmark to reflect on compliance with the Code, which can help improve compliance. In view of this, the Committee hopes that the rising trend will continue in future studies.

3.3 Compliance

The average rate of compliance with the Code remains high. The compliance study for the 2015 financial year has found an overall compliance rate of 97%. The average compliance rates for each stock exchange index are:

- AEX 98.7%
- AMX 97.7%
- AScX 97.0%
- Local 94.4%

The table below shows the average compliance rates per index for the 2015 financial year, broken down into categories.

Index*	Compliance		Non-compliance
	Implemented	Explained	
AEX	97.5%	1.2%	1.4%
AMX	96.8%	0.9%	2.2%
AScX	95.2%	1.8%	3.0%
Local	90.2%	4.3%	5.6%

Table 3.2 Average compliance rates for each index for the 2015 financial year (N=90)
* Due to rounding differences the percentages will not always add up to 100%.

Detailed comparison of compliance rates with the 2014 financial year

Compliance rates for the 2015 financial year at the stock exchange index level are shown above. A comparison with the 2014 financial year shows that the rates are not substantially different. Compliance rates for the 2014 financial year were:

- AEX 100%
- AMX 99.95%
- AMS 98.67%
- Local 97.15%

The slight difference in outcomes can largely be explained by the modified assessment by SEO as compared to the study carried out by Nyenrode Business Universiteit (hereinafter called Nyenrode).[9]

9 *Corporate Governance in Nederland: Onderzoek naar de naleving van de Nederlandse Corporate Governance Code in het boekjaar 2014* (Corporate Governance in the Netherlands: Study into compliance with the Dutch Corporate Governance Code in the 2014 financial year), Nyenrode. The compliance study has been published on the Committee's website (www.mccg.nl).

Least complied-with provisions

In the 2015 financial year, the least complied-with provisions were II.2.13 'Overview of remuneration policy', IV.3.13 'Policy on bilateral contacts with shareholders', III.3.1 'Profile of the supervisory board' and III.3.6 'Retirement schedule of supervisory board members'. The provisions least complied with in the 2015 financial year are shown in the table below.

Provision	Percentage of companies that do not comply
II.2.13 Overview of remuneration policy (R) *	28%
IV.3.13 Policy on bilateral contacts with shareholders (R)	27%
III.3.1 Profile of the supervisory board (R)	23%
III.3.6 Retirement schedule of supervisory board members (R)	21%
IV.3.11 Overview of protective measures (R) *	18%
II.2.12 Report on implementation of remuneration policy	15%
III.5.1 Regulations on supervisory board committees	11%
III.6.5 Content of supervisory board regulations with regard to conflicts of interest	11%
III.7.2 Share ownership among supervisory board members	9%
II.2.8 Severance payments for management board members	8%
IV.3.1 Communication with shareholders	8%

Table 3.3 Least complied-with provisions in the 2015 financial year (N=90)
* (R) stands for reporting provision.

A number of things stand out with regard to the provisions that were least complied with.

- The top five of least complied-with provisions consists of reporting provisions. SEO notes that reporting provisions have lower compliance rates mainly because it was verified whether that which the provision required was actually reported on in the specified location.
- Best practice provision II.2.13 'Overview of remuneration policy' is the least complied-with provision. Having various sub-provisions, it describes the elements which the overview of the remuneration policy in the remuneration report should consist of. For each sub-provision it was determined whether it had been reported on in the remuneration report and if so, what was reported. Of provision II.2.13, sub-provision (e) is the least complied with. Where applicable, sub-provision (e) concerns the composition of the group of companies whose remuneration policy is one factor in deciding the amount and structure of remuneration for management board members.
- Both the level of detail and the complexity of these sub-provisions are likely to contribute to the relatively low compliance rates.
- The figures show that best practice provision IV.3.13 'Bilateral contacts with shareholders' is among the least complied-with provisions especially among local listed companies (57%). AEX-listed and AMX-listed companies do not comply with this provision in 4.8% and 9.5% of cases, respectively. This subject was also included in the in-depth part of the study; see Chapter 4: Specific subjects.
- In 23% of cases, best practice provision III.3.1 'Profile of the supervisory board' was not (entirely) complied with. Although almost all companies did draw up a profile of the supervisory board, SEO found that what is regularly missing is a description of specific objectives with regard to diversity and an explanation when the existing situation diverges from the objectives.

Comparison of least complied-with provisions with the 2014 financial year

Looking at the least complied-with provisions and comparing their results with the 2014 financial year, a number of issues become salient.

- In the 2014 financial year, the provisions II.2.13 'Overview of remuneration policy' and IV.3.13 'Bilateral contacts with shareholders' were also among the least complied with. Provisions III.3.1 'Profile of the supervisory board' and III.3.6 'Retirement schedule of supervisory board members' were not in the top ten of least complied-with provisions in 2014.
- The top ten of least complied-with provisions in the 2014 financial year hardly included any provisions that might be characterised as reporting provisions. Rather, it includes several provisions with regard to behaviour.
- While AEX-listed companies complied with all provisions in the 2014 financial year, this is different for the 2015 financial year. Non-compliance among AEX-listed companies was found with regard to provisions IV.3.11 'Overview of protective measures' (14% of AEX-listed companies), II.2.13 'Overview of remuneration policy' (10%) and IV.3.13 'Policy on bilateral contacts with shareholders' (9%), all of which are reporting provisions.
- Nine percent of AMX-listed companies did not comply with best-practice provision IV.3.13 'Policy on bilateral contacts with shareholders' in both the 2014 and 2015 financial years. In the 2014 financial year, this was the only provision on which AMX-listed companies were non-compliant, whereas in the 2015 financial year these companies were non-compliant on several provisions. Provisions II.2.13 'Overview of remuneration policy' (19% of AMX-listed companies), III.3.6 'Retirement schedule of supervisory board members' (18%) and IV.3.11 'Overview of protective measures' (18%) are also on the list for the 2015 financial year.
- With regard to AScX-listed companies, provisions II.2.13 'Overview of remuneration policy' (27% of companies) and IV.3.13 'Policy on bilateral contacts with shareholders' (25%) were found to be among the least complied-with provisions just as in the 2014 financial year. However, the non-compliance rates for these provisions have risen. What is new in the overview is provision III.3.1 'Profile of the supervisory board' (29% of AScX-listed companies).
- The list of provisions least complied with by local companies has changed since the previous financial year. While compliance with provisions II.2.13 'Overview of remuneration policy' (55% of local companies) and IV.3.13 'Policy on bilateral contacts with shareholders' (57%) has gone down, provisions with respect to risk management, remuneration and the one-tier management structure are mostly complied with better (risk management) or fully (the other provisions).

Quality of the explanation

According to the 'comply or explain' principle, the Code is complied with when a provision is either implemented or a reasoned explanation is given in the absence of straightforward compliance. The effectiveness of the 'comply or explain' principle depends on the quality of the explanation provided by the companies.

Other than in previous years, reasons of insufficient quality qualified as non-compliance and counted as such to calculate compliance rates. In line with previously issued guidance by the Streppel Committee, the Committee has identified instances of 'reasons of insufficient quality'.[10] The application of a company's own scheme can only be seen as compliance with the Code if it is indicated (1) why that own scheme is necessary and (2) how it matches the principle in question in the Code. In its report on the 2011 financial year, the Streppel Committee also said that if a departure from a provision in the Code is temporary and lasts longer than one year, the company must explain when it can be expected to implement the provision once more. These definitions form the basis for the Committee's evaluation of the quality of explanations.

10 The basis for assessing the quality of reasons for non-compliance is the guidance provided by the Streppel Committee in the Monitoring Report for the 2011 financial year, p. 8.

Most frequently explained provisions

The most frequently explained provisions for the 2015 financial year are listed below.

Provision	Percentage
II.1.1 Term of appointment of management board members	28%
II.2.8 Maximum severance pay	21%
IV.1.1 Binding nomination	17%
III.4.3 Company secretary	13%
III.2.1 Independence of supervisory board members	12%
III.3.5 Maximum term of supervisory board members	12%
IV.3.1 Communication with shareholders	12%
II.2.5 Conditions for awarding shares	9%
III.5.1 Regulations on supervisory board committees	7%
III.6.5 Content of supervisory board regulations with regard to conflicts of interest	7%
III.3.3 Introduction programme for supervisory board members	7%
III.5.2 Specifying composition of committees in supervisory board report	7%
II.2.3 Supervisory board report on the independence of individual supervisory board members	7%

Table 3.4 Overview of most frequently explained provisions in the 2015 financial year (N=90)

With regard to the most frequently explained provisions, the following comes to the fore.

- Of the three most frequently explained provisions, provision II.1.1 'Term of appointment of management board members' and provision IV.1.1 'Binding nomination' are the most frequently explained by local listed companies. Provision II.2.8 'Maximum severance pay' is mainly explained by companies listed on the AEX index.
- In comparison with the compliance study for the 2014 financial year, the top eight of most frequently explained provisions has stayed more or less the same, with only provision III.2.1 'Independence of supervisory board members' not being in the overview for the 2014 financial year.
- There have been some further changes since the 2014 financial year. Firstly, several provisions make their first appearance in the overview of most frequently explained provisions, among them best-practice provision III.2.1 'Independence of supervisory board members', for non-compliance with which 13% of companies provide an explanation. The following provisions are also new to the overview: III.5.1 'Regulations on supervisory board committees', III.6.5 'Content of supervisory board regulations with regard to conflicts of interest', III.3.3 'Introduction programme for supervisory board members', III.5.2 'Specifying composition of committees in supervisory board report' and II.2.3 'Supervisory board report on the independence of individual supervisory board members', all of which were explained by 7% of companies.
- No longer included in the list are best practice provisions II.2.13 'Overview of remuneration policy', II.2.4 'Exercise period of options' and III.5.11 'Chairmanship of the remuneration committee'. Note that here, too, changes compared with 2014 may be due in part to the different research approach.

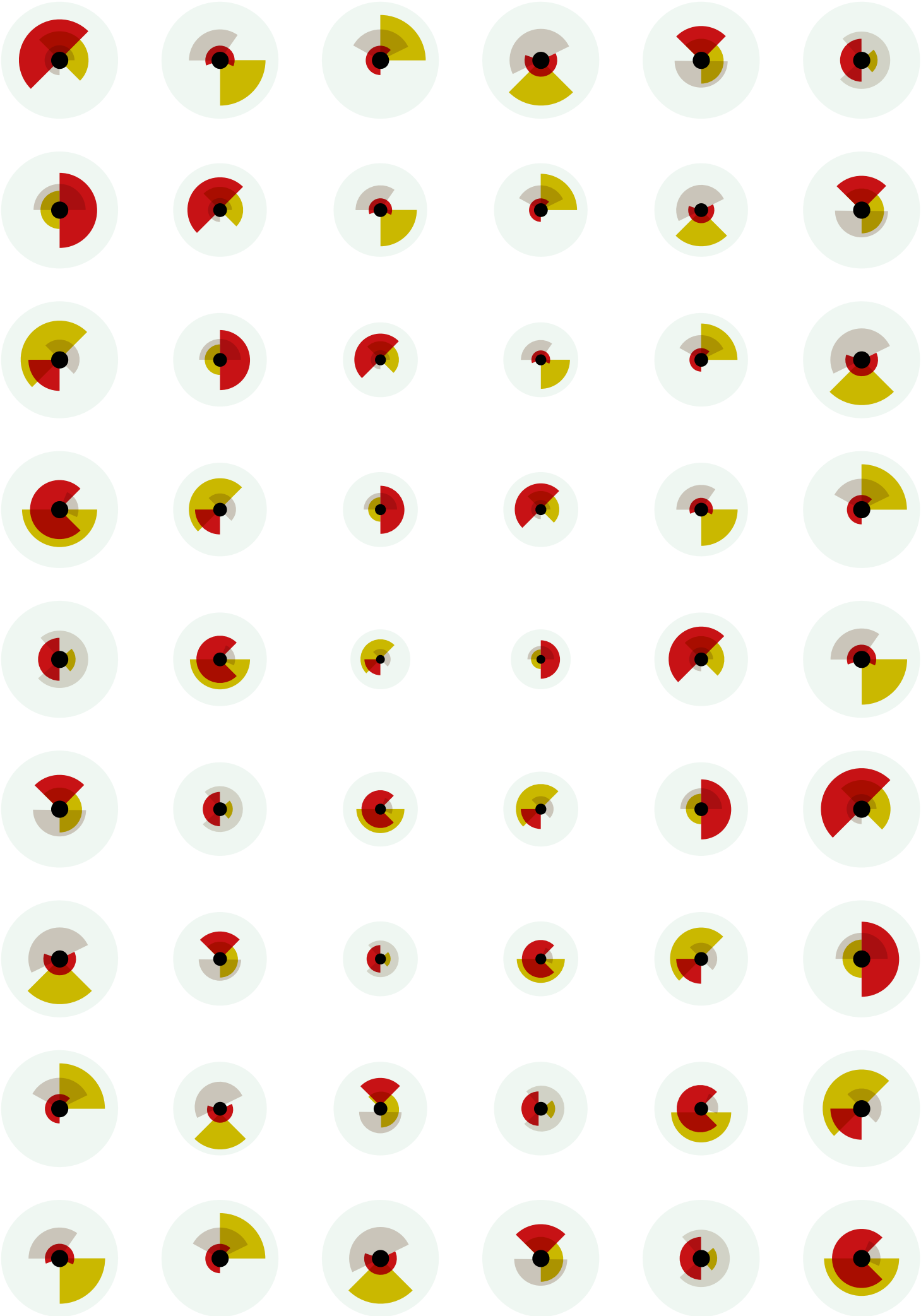
Committee's view on compliance

This financial year, too, the average compliance rate is high at 97%, in spite of the revised, stricter assessment of the reporting provisions. This revised assessment only leads to marginal shifts in compliance rates. AEX-listed companies, for example, score 99% in the 2015 financial year compared to 100% in the 2014 financial year. The Committee calls on all companies to strive for a 100% compliance score.

It has been found that overall, provisions – and especially reporting provisions – were more frequently not complied with in the 2015 financial year. There is a good case for assuming that the new assessment method has revealed that companies do not always comply with the exact provisions of the Code, and that there is often room for improvement. This is especially true for local companies. The Committee emphasises the importance of implementing all elements of a provision and of reporting on this in the specified location, such as the report of the supervisory board. The underlying reasons for non-compliance were not investigated. There may be cases of deliberate non-compliance, but also of uncertainty as to the exact requirements of a given provision. In this sense, the Code was not written with monitoring in mind.

For the 2015 financial year, it was again found that provision II.2.13 'Overview of remuneration policy' had the highest non-compliance rate. Compliance with this provision was already relatively low in previous financial years and has gone down considerably now that the new assessment method means more companies – especially the smaller ones – fail to implement provisions fully and correctly. The Committee has found that part of the listed companies have not drawn up the remuneration report satisfactorily. The compliance study does not look into the causes for non-compliance with this provision.

There is also room for improving compliance with best practice provision IV.3.13 on the policy on bilateral contacts with shareholders. This is dealt with in more detail in Chapter 4: Specific topics.



4. SPECIFIC TOPICS

At the Committee's request, SEO paid special attention to three subjects in its study into compliance with the Code for the 2015 financial year:

- composition of the supervisory board;
- remuneration of management board members and supervisory board members; and
- shareholders.

The Committee asked SEO to do a survey on the extent and manner of compliance in relation to these subjects. These topics were selected on the basis of the results of the Monitoring Report on the 2014 Financial Year as well as on the basis of the Code's revision. These specific subjects were investigated by including a number of additional (partially open) questions in the survey that was completed by companies.[11] The survey was sent out to all 95 companies and eventually completed by 81 of them. Some questions were not answered by all 81 companies, as these questions did not apply to all companies. The results include the total number of companies that answered each question. For some subjects there were only a limited number of observations, so that not all outcomes were equally usable. As far as possible and useful, the results of this inventory were included in deliberations on the definitive revised Code, which was published on 8 December 2016.

4.1 Key findings

- In 41% of cases, companies have a dependent supervisory board member. In about 14% of cases, companies indicated having more than one dependent supervisory board member. Supervisory board members being dependent mostly refers to their representing or having a shareholding of over 10%.
- Most companies have an audit committee and a remuneration committee. Nearly all of these companies indicated that the chairmanship of these committees is not being filled by the chairman of the supervisory board or by a former management board member.
- Four out of five companies implement the best practice provision on maximum severance payments to management board members. The main reasons companies have for *not* implementing this provision are that they go by the provisions in the employment contract or that the management board member was appointed before 2004.
- There is good compliance with the provision on not remunerating supervisory board members in shares. The compliance study for the 2015 financial year shows that companies do not share a uniform method for guaranteeing that share ownership among supervisory board members is a matter of long-term investment. Different companies also think differently about what constitutes the 'long term'.
- The response time was not invoked in the 2015 financial year.
- The great majority of companies formulate and publish an outline policy on bilateral contacts with shareholders. Reasons offered for *not* formulating a policy include the company's limited size, the policy still being developed or the policy having been formulated (and published) since the question was asked.
- About half of all companies have an antitakeover foundation.

11 For the list of questions submitted to companies, see Appendix C of the SEO report entitled 'Compliance with the Corporate Governance Code: Evaluation of the 2015 financial year'.

4.2 Composition of the supervisory board

Independence of supervisory board members

The Code includes two best practice provisions on the independence of supervisory board members. Best practice provision III.2.2 stipulates that all supervisory board members should be independent, with a maximum exception of one person. In preparing the revised Code, the Committee found that the independence of supervisory board members is a topical issue. In the interest of revising the Code, the Committee was interested in knowing how many companies have supervisory board members that are dependent in the sense envisaged by the Code. The Committee also wanted to know the nature of such dependence, and whether companies have more than one dependent supervisory board member. The Committee has requested SEO to study this in greater detail. The relevant provisions are the following:

Best practice provision III.2.1

'All supervisory board members, with the maximum exception of one person, should be independent in the sense of best practice provision III.2.2.'

Best practice provision III.2.2

Supervisory board members shall be deemed to be independent if the following dependence criteria do not apply to them. Supervisory board members are dependent if they or their spouse, registered partner or life companion, foster child or relative by blood or marriage up to the second degree:

i. *has been an employee or management board member of the company (including affiliated companies in the sense of Section 5:48 of the Financial Supervision Act) in the five years prior to the appointment;*
ii. *is a recipient of financial remuneration from the company or from an affiliated company, other than the remuneration received for exercising the capacity of supervisory board member and insofar as the remuneration is not in keeping with the normal course of business;*
iii. *has had a material business relationship with the company, or an affiliated company, in the year prior to the appointment. This includes, but is not limited to, the case where the supervisory board member, or the firm of which he is a shareholder, partner, associate or adviser, has acted as adviser to the company (consultant, external auditor, civil-law notary and lawyer) and the case where the supervisory board member is a management board member or an employee of any bank with which the company has a lasting and significant relationship;*
iv. *is a member of the management board of a company in which a member of the management board of the company which he supervises is a supervisory board member;*
v. *holds at least ten percent of the shares in the company (including the shares held by natural persons or legal entities which cooperate with him under an express or tacit, oral or written agreement);*
vi. *is a member of the board of management or supervisory board, or is a representative in some other way, of a legal entity which holds at least ten percent of the shares in the company, except in the case of group companies;*
vii. *has temporarily performed management duties during the previous twelve months in the absence or incapacity of management board members.'*

In the SEO study, 41% of companies (33 out of 81) indicate having at least one dependent supervisory board member. Eleven of the 81 companies (14%) indicate having more than one dependent supervisory board member. A total of 33 companies have 43 dependent supervisory board members, which means that these companies are not applying best practice provision III.2.1.

Companies were then asked to indicate which dependence criterion was, or which independence criteria were, applicable to the supervisory board members concerned. All 33 companies concerned answered this question, for which it was possible to give more than one answer. Of 16 supervisory board members identified as dependent, it was indicated that they – or a relative up to the second degree – represented a legal entity which holds at least 10% of the shares in the company (sub-provision (f)). Of 11 dependent supervisory board members, it was indicated that they themselves – or a relative up to the second degree – held at least 10% of the shares in the company (sub-provision (e)). This concerns a total of 27 of the 43 dependent supervisory board members. The survey further showed that in 7 cases the dependent supervisory board member – or a relative up to the second degree – had been an employee or management board member in the last five years. The table below shows all of the criteria given by the companies.

Criteria	Number of times mentioned
Represent a legal entity which holds at least 10% of shares	16
Holds at least 10% of shares	11
Was an employee or management board member in the last five years	7
Had a material business relationship with the company in the year prior to the appointment	5
Is dependent in another way	2
Is a recipient of a personal financial remuneration other than the remuneration received for exercising the capacity of supervisory board member	1
Has temporarily performed management duties for the company during the year before appointment	1
Total	43

Table 4.1 Applicable dependence criteria (N=33)

In the case of AEX-listed or AMX-listed companies, supervisory board members are more frequently management board members or supervisory board members (or representatives in a different capacity) of a legal entity holding at least 10% of shares in the company (other than group companies). In local listed companies, the dependent supervisory board member often holds at least 10% of shares. The two criteria are roughly equally applicable to supervisory board members of AScX-listed companies.

Chairmanship of the audit committee and remuneration committee

The compliance study for the 2014 financial year found that the provision on the chairmanship of the remuneration committee was one of the most frequently explained provisions. Especially among local companies, about 33% did not apply the provision and provided reasons for departing from it. This led the Committee to ask SEO to inventory how many companies work with an audit committee and a remuneration committee, and how these committees are being chaired. This concerns the following provisions:

Best practice provision III.5.6

The audit committee should not be chaired by the chairman of the supervisory board or by a former member of the management board of the company.

Best practice provision III.5.11

The remuneration committee should not be chaired by the chairman of the supervisory board, a former member of the management board of the company, or a supervisory board member who is a management board member at another listed company.

The SEO study shows that of the 81 companies, 72% set up an audit committee and 73% set up a remuneration committee. The inventory further showed that almost all AEX-listed and AMX-listed companies have an audit committee and a remuneration committee. About half of AScX-listed companies have a remuneration committee, while the majority have an audit committee. Local listed companies usually have neither an audit committee nor a remuneration committee.

Nearly all companies with an audit committee and a remuneration committee indicate that these committees are not being chaired by the chairman of the supervisory board or by a former management board member. With regard to provision III.5.6 on the chairmanship of the audit committee, one company was not applying the provision. With regard to provision III.5.11 on the chairmanship of the remuneration committee, two companies were not. The reasons provided by the companies concerned are that the supervisory board consists of a single member and there is an interim chair.

View of the Committee

It is important that supervisory board members be able to operate independently and critically vis-à-vis one another, the management board, and any particular interests involved. The compliance study shows that companies take the independence of supervisory board members seriously. A comfortable majority of supervisory board members in companies are independent in the sense of best practice provision III.2.2. The compliance study shows that 59% of reviewed companies have a supervisory board composed exclusively of independent supervisory board members. A further 27% have one independent supervisory board member, which means that 86% of reviewed companies are applying provision III.2.1.

The Committee also concludes that the question of the independence of supervisory board members is often connected with representing or having a shareholding of over 10%. The revised Code introduces a limited increase in the permitted number of dependent supervisory board members representing or having a shareholding of over 10%. This is because the Committee believes that shareholdings of that size are a sign of long-term involvement and interests that are parallel to the company's interests.

The provision on the chairmanship of the remuneration committee was among the most frequently explained provisions in the previous financial year, but this is not the case for the 2015 financial year (also see §3.3 Compliance). Strikingly, local companies applied this provision considerably more often in the 2015 financial year (91.3% of them did so) than they did in the previous financial year. Local companies also feature a high rate of compliance with provisions on audit committee chairmanship (91.3%). On the basis of the available information, the difference from the 2014 financial year cannot be explained; it might be related to the revised methodology and the different qualification of the outcomes.

4.3 Remuneration of management board members and supervisory board members

Severance payments for management board members

The desk research into compliance in the 2015 financial year shows that the provision on severance payments for management board members is among the most frequently explained provisions (21%). The compliance study for the 2014 financial year showed a similar picture, and this provision was also among the most frequently explained ones in previous financial years.[12] The reason most often given in the compliance study for the 2014 financial year is that capping can in some cases lead to unreasonable outcomes.[13] The Committee is interested in the reasons for departing from this provision and commissioned SEO to further examine this in the in-depth study. SEO asked companies to indicate whether or not they apply the provision and, if they do not, to provide a reason for adopting a different arrangement. This concerns the following provision:

> *Best practice provision II.2.8*
> *The remuneration in the event of dismissal should not exceed one year's salary (the 'fixed' remuneration component). If the maximum of one year's salary would be manifestly unreasonable for a management board member who is dismissed during their first term, this member shall be eligible to a severance payment not exceeding twice the annual salary.*

The SEO study shows that 81% of the 81 companies who completed the survey comply with the severance payment cap, while 16 of these companies do not apply this provision. Especially local companies and AEX-listed companies do not apply this provision. The main reasons for non-compliance given by the 16 companies are that the company goes by the provisions in the employment contract or that the management board member was appointed before 2004. The outcomes show that departing from the provision in view of an unreasonable outcome only occurs sporadically, in contrast to the compliance study for the 2014 financial year, when this reason was frequently given. The table below shows all of the reasons given by the companies.

Reasons	Number of companies
Following the employment contract	6
The management board member was appointed before 2004	5
Other reason	3
Legislation and regulations in other countries play a part in determining severance payments	2
In 2015 the company did not have a policy on severance payment caps	1
Application would lead to an unreasonable outcome	1

Table 4.2 Reasons for non-compliance with provision II.2.8 (N=16)

Share ownership among supervisory board members

The Code stipulates that supervisory board members may not be remunerated in (rights to) shares. The Code further addresses any shares owned by supervisory board members in their own company, stipulating that these must be long-term investments. On the basis that the Code might be somewhat contradictory by not allowing remuneration in the form of shares but allowing share ownership, the Committee had proposed for the revised Code to allow for remuneration in shares under strict conditions. This would remove the contradiction between the best practice provisions in the 2008 Code. As the proposal led to concerns about the consequences for the independence of supervisory board members, the Committee considered it expedient

12 Report on the Monitoring of the 2014 Financial Year, p. 27.

13 Report on the Monitoring of the 2014 Financial Year, p. 28.

to have this issue studied in greater detail. To aid its decision-making, the Committee wants to know how many companies there are in which supervisory board members own shares and how companies guarantee that these shares are owned for the long term. This concerns the following provisions:

Best practice provision III.7.1
Supervisory board members may not be awarded remuneration in the form of shares and/or rights to shares.

Best practice provision III.7.2
Any shares held by a supervisory board member in the company on whose supervisory board they serve should be long-term investments.

As in previous years, compliance with the provision on not remunerating supervisory board members in shares is high: the desk research shows that 94.4% of all companies comply with this provision. The survey looked at compliance with provision III.7.2. Thirty-nine companies indicated having supervisory board members who owned shares in the company itself. Of these, 31 companies indicated complying with provision III.7.2. The remaining eight indicated they departed from this provision, with one company stating reasons.

A number of in-depth questions about this provision were then asked. Companies were asked to indicate how they guarantee that shares are owned for the long term. The SEO inventory shows that companies use various ways of guaranteeing this. Eight companies indicate that they rely on the supervisory board regulations for this purpose. Seven companies responded that the supervisory board members concerned had paid for the shares themselves. Six companies indicated that the shares were given out for a specified period, which implies that these companies do remunerate supervisory board members in shares. In the case of three companies, share ownership went back to the distant past. Another seven companies gave other reasons.

Companies were further asked to indicate what they see as the long term in this respect. The answers show that different companies define the long term differently, with definitions ranging from one year to three years or the supervisory board member's term on the supervisory board. The table below gives the definitions that were provided.

Definitions	Number of companies
Other	8
Not specified	5
No obligation	4
At least for the duration of the term on the supervisory board	4
Mandatory investment between one and three years	3
Mandatory investment between three and five years	2
Mandatory investment of five years or over	2

Table 4.3 Definitions of 'long term' in the sense of provision III.7.2 (N=28)

View of the Committee

The Committee concludes that 80% of companies comply with severance payment caps. The above inventory has given the Committee greater insight into the reasons companies have for non-compliance. In the 2014 financial year, the most frequently stated reason was that application could lead to unreasonable outcomes. This conclusion does not apply however to the 2015 financial year. The reasons given often refer to previously made agreements.

In the Monitoring Report on the 2014 Financial Year a general call on companies was included to renew agreements and establish new contracts. This because the compliance research showed that in general companies state that they do not apply a provision because they want to respect existing agreements. This general call also applies to existing agreements concerning severance pay. In this report, the Committee wants to point out that when agreements are renewed the point of departure should be to bring the severance payment in line with the Code. The Committee expects that in the coming years companies will refer less to existing agreements in the provided explanations. For the sake of completeness, note that best practice provision II.2.8 only returns in the revised Code in part. The possibility of a severance payment of twice the annual salary in the case of manifestly unreasonable dismissal during the first term has been removed. The revised Code only allows for a severance payment of up to one year's salary in the case of dismissal.

The compliance study leads the Committee to conclude that companies tend to comply with the provision regarding not remunerating supervisory board members in terms of shares. The outcomes of the question in which way companies ensure that share ownership among supervisory board members in the own company is a matter of a long-term investment, show that these ways are not effective in all cases. The Committee therefore finds that companies could take more care to ensure that share ownership among supervisory board members is for the long term, including in cases where supervisory board members have bought the shares themselves. The Committee further finds that companies are not unanimous in how they define 'long term' in this context. The Committee recognises that different companies may have different interpretations. What is important is that the supervisory board member's commitment is reflected in the intention to keep the shares for the long term. The Committee calls on companies to clarify the term that would be appropriate for the company.

4.4 Shareholders

The Committee is aware that various developments are taking place with regard to the rights and responsibilities of shareholders. At the time of the Code's revision the Committee believed it was still too early to make major changes with regard to the relationship between the company and the (general meeting of) shareholders. In the Committee's view, specific proposals for principles and best practice provisions can be drawn up only once the broader context has played out. In view of this, the Committee intends to revisit the theme of shareholders in greater detail in the future. In preparation for this and to develop a better understanding, the Committee has selected a number of shareholder-related subjects to explore.

Invoking the response time

SEO has asked companies about their use of the provisions regarding invoking the response time. This concerns the following provisions:

Best practice provision IV.4.4

A shareholder should only exercise the right to put items on the agenda after having consulted the management board. If one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company's strategy, for example as a result of the dismissal of one or several management board or supervisory board members, the management board should be given the opportunity to stipulate a reasonable period in which to respond (the response time). This also applies to an intention as referred to above for judicial leave to call a general meeting pursuant to Section 2:110 of the Dutch Civil Code. The relevant shareholder should respect the response time stipulated by the management board, within the meaning of best practice provision II.1.9.

Best practice provision II.9.2

If the management board stipulates a response time within the meaning of best-practice provision IV.4.4, this should be a period not exceeding 180 days from the moment the management board is informed by one or more shareholders of their intention to put an item on the agenda to the day of the general meeting at which the item is to be dealt with. The management board should use the response time for further deliberation and constructive consultation, in any event with the relevant shareholder(s), and should explore the alternatives. This is monitored by the supervisory board. The response time may be stipulated only once for any given general meeting and should not apply to an item in respect of which a response time has been previously stipulated, or to meetings where a shareholder holds at least three-quarters of the issued capital as a consequence of a successful public bid.

The inventory shows that companies have not invoked the response time in the course of the 2015 financial year. Two of the companies that completed the survey indicate that in the 2015 financial year, their shareholders exercised the right to put items on the agenda. In one case this right was exercised after the shareholder(s) had consulted the management board on the matter. However, in this case the management board did not invoke the response time.

Bilateral contacts with shareholders

The Monitoring Report on the 2014 Financial Year showed that there was room for improving compliance with provision IV.3.13 on the policy on bilateral contacts with shareholders.[14] It was especially AScX-listed and local companies that were non-compliant in the 2014 financial year. In previous years, as well, this was among the least complied-with provisions. The outcomes of previous compliance studies led the Committee to take a closer look at the reasons companies have for not complying with this provision. The Committee has requested SEO to study this in greater detail. This concerns the following provision:

Best practice provision IV.3.13

The company should formulate an outline policy on bilateral contacts with the shareholders and should post this policy on its website.

The SEO's inventory warrants the conclusion that the great majority of companies, in line with provision IV.3.13, have formulated an outline policy on bilateral contacts and published it on their website. However, 15% of the 81 companies do not apply the provision. This mainly involves AScX-listed and local listed companies. With a single exception, the reason given by these companies is that they do not have a policy, which is why they have not published it on the website. One reason provided for not formulating a policy is the limited size of the company. Some companies have indicated that they are in the process of developing a policy, or that they have formulated a policy (and published it) in the meantime.

Antitakeover foundations

The Code includes a number of provisions on the issuance of depositary receipts for shares and the role of the trust office. Following several discussions held in preparation for the revision, the Committee concluded it needed a better overview of the number of companies that have an antitakeover foundation and the composition of the boards of these foundations. SEO researched this at the Committee's request. It was decided to request this information from companies without distinguishing between trust offices and preference shares foundations.

14 Monitoring Report on the 2014 Financial Year, p. 23.

The inventory revealed that just under half of the companies have an antitakeover foundation.[15] Among AEX-listed companies, 14 out of 20 companies have an antitakeover foundation, compared with 12 out of 21 companies among AScX-listed companies. About half of AMX-listed companies have such a foundation. Among local listed companies, only 3 out of 18 companies have an antitakeover foundation.

With regard to the question of whether there are foundation board members who are also on the board of one or more additional antitakeover foundations, it was found that this applies to about a third of board members. This is most frequently the case among foundation board members of AEX-listed and AScX-listed companies. Furthermore, 12 out of 38 companies noted that they did not know whether board members of their antitakeover foundations were also on the board of other such foundations. The reason for this was not examined. In most cases, board members are not on the boards of more than five additional antitakeover foundations, although one member was on nine other boards. As the survey did not ask specifically about Dutch antitakeover foundations, it cannot be ruled out that a number of board members are on the boards of foreign antitakeover foundations.

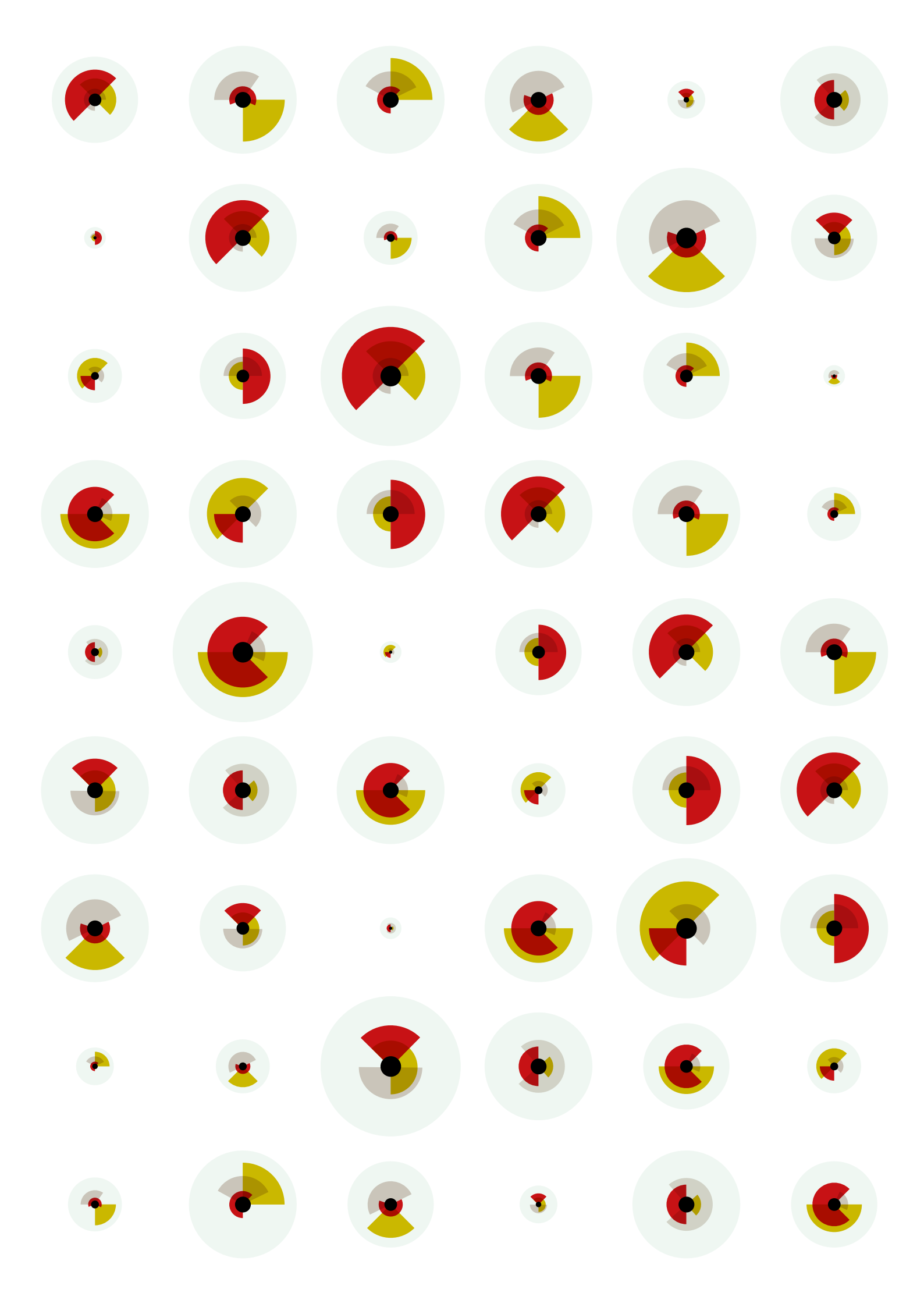
View of the Committee

The Committee believes that it is important for companies to have a policy on bilateral contacts with shareholders. This encourages the company to engage itself on behalf of an active dialogue with the shareholder. It also helps shareholders to be informed equally and at the same time about any events that might influence share prices. The Committee views formulating a policy on bilateral contacts as an area for these, mostly smaller, companies to work on.

On the basis of the inventory, the Committee concludes that almost half of the companies have an antitakeover foundation. The research by SEO has shown that 12 out of 38 reviewed companies were not sure whether board members of their antitakeover foundations were also on the boards of other such foundations. The Committee thinks it is remarkable that this outcome was found for a substantial number of companies. Pursuant to provision IV.2.7 sub (i)), the trust office's report should include information about the functions of trust office board members. Pursuant to provision IV.2.6, the trust office's report should be published on the company's website. The Committee expects companies to apprise themselves of the contents of this report.

The study shows that the response time was not invoked in the 2015 financial year. The research data are factual in nature and do not permit further conclusions to be drawn.

15 SEO defines an antitakeover foundation (*beschermingsstichting*) as a legal entity independent of the company, the objective of which is to protect the company from hostile takeovers. In requesting this information, the compliance study did not distinguish between trust offices and preference shares foundations.



5. THE CODE FROM A NATIONAL AND INTERNATIONAL PERSPECTIVE

National as well as international developments in the field of corporate governance can have a direct influence on the Code and its functioning. Developments in legislation and regulations relevant to companies have an effect on the way in which listed companies approach corporate governance. Social developments, current events and the public debate about them can also affect that approach, for instance by influencing behaviour within the company and the boardroom, or by being reflected in national and international regulations. The Code also forms part of the international corporate governance playing field. In view of this, the Committee is alert to national and international developments and their significance to the Code. This chapter looks at the broad outlines of relevant national and international developments. It discusses developments at the national level and within the European Union (EU), developments within a number of relevant international organisations and developments in various EU Member States and other countries.

5.1 Key findings

The following conclusions can be drawn on the basis of recent national and international developments.

- As in the previous year, subjects such as remuneration, diversity, the publication of quarterly reports and corporate social responsibility remain topical at the national level.
- With agreement reached on the draft text of the Slovak EU Presidency and the European Parliament regarding the draft directive on promoting shareholder participation, an important step towards greater transparency and greater shareholder participation in European companies has been made.
- Internationally, corporate governance is changing constantly. Various (European) countries revised their codes last year. (International) developments in regulations and good governance standards get reflected in updated codes. Themes such as 'say on pay', internal differentials in remuneration, transparency, risk management, diversity, independence, appointment and succession remain very much on the agenda and subject to revision.

5.2 National developments

Legislative proposal extending legal target figures for diversity

On 25 March 2016, the Minister of Security and Justice and the Minister of Education, Culture and Science introduced a legislative proposal to reaffirm the legal basis, pursuant to Section 2:166 of the Dutch Civil Code, for the target of a minimum male-female diversity ratio of 30% on the management boards and supervisory boards of 'large' public limited companies and private companies.[16] The target set by law, effective since 1 January 2013, expired on 1 January 2016. Since the government considered the increase in female board members to be insufficient, it decided to reintroduce the target for the period up to 1 January 2020. The state of affairs will again be evaluated in 2019. The bill is currently being debated in Parliament.

Proposal to amend the Works Councils Act in respect of the competences of works councils regarding remuneration for management board members

On 13 June 2016, Minister Asscher of Social Affairs and Employment presented a legislative proposal which would provide for annual consultations between the works councils of large companies (of at least 100 employees) and the management board (Works Councils Act: entrepreneur) on the development of remuneration differentials within the company, including remuneration rates for management board members.[17] The proposal does not affect the legal rights of the general meeting, which is the default body to decide on remuneration for management board members, but aims to help prevent disproportionate remuneration differentials. The bill is currently being debated in Parliament.

Implementation of directive on disclosure of non-financial and diversity information

As per the directive on disclosure of non-financial and diversity information[18] public-interest entities of over 500 employees, such as listed companies, banks and insurers, are required to include a non-financial statement in the management report while large listed companies are required to provide insight into their diversity policy. The directive was signed into law on 28 September 2016, amending Book 2 of the Dutch Civil Code in implementation of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ EU 2014, L 330) (Bulletin of Acts and Decrees 2016, 352). The directive is also expressed in two Orders in Council (*Algemene Maatregelen van Bestuur*).

Act implementing the amending directive and regulation on statutory audits of annual accounts

On 11 October 2016, the Senate of the Dutch Parliament adopted the Act implementing the amending directive on statutory audits of annual accounts and consolidated accounts as well as a regulation setting out specific requirements for statutory audit of public-interest entities (including listed companies).[19] This directive also finds expression in an Order of Council. The directive and the regulation provide rules bearing on subjects such as the audit committee, including its tasks and composition. Also requirements for the quality of the auditor with regards to the preparation and audit of the annual accounts are included in legislation.

16 Parliamentary Papers II 2015/2016, 34 435, Nos. 1-3.

17 Parliamentary Papers II 2015/2016, 34 494, Nos. 1-3.

18 Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ EU 2014, L 330) (Bulletin of Acts and Decrees 2016, 352).

19 Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EG on statutory audits of annual accounts and consolidated accounts (OJ EU 2014, L 158) and Regulation (EU) No. 537/2014 of the European Parliament and the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities (OJ EU 2014, L 158).

5.3 European regulations

Directive for the encouragement of shareholder participation

On 9 December 2016, agreement was reached on the compromise text of the Slovak EU Presidency and the European Parliament on the draft directive for the encouragement of shareholder participation. The draft directive amends the existing directive on shareholder rights (2007/36/EC) and aims to create more transparency and encourage greater shareholder participation.[20] The compromise text contains the following elements, among others:

- Shareholders will have the right to vote every four years on the policy on remuneration for company management board members. The remuneration policy should contribute to the company's strategy, long-term interests and sustainability;
- The identification of shareholders will be made easier, among other ways by making it possible to request information on shareholder identity from intermediates;
- Intermediates should facilitate the exercise of the rights of shareholders by providing all the information a shareholder may need;
- Institutional investors and asset managers will be required to make their policy on shareholder participation known to the public. Proxy advisers will be bound by transparency requirements and a code of conduct;
- Companies will be required to seek the approval of shareholders or of the supervisory board for material transactions with related parties and to make these transactions public.

The amendment by the European Parliament requiring issuers to publish information annually about tax payments to governments in the countries in which they operate, as well as information about tax rulings, is not reflected in the draft text. Following definitive ratification by the European Council and the European Parliament, which is expected in the coming year, Member States will have to transpose the directive into national legislation within two years.

Draft directive on the disclosure of profit tax by multinationals

All companies registered in the EU with an annual consolidated turnover of at least €750 million will be required to make their tax payments to EU governments public. This proposal is part of a draft directive published by the European Commission on 11 April 2016. The European Commission believes companies should be more transparent so that all stakeholders can know whether tax is being paid where value is being created. On the basis of the directive, large companies will have to start publishing information per EU Member State and per tax jurisdiction not complying with international standards of good government (yet to be defined by the European Commission) on their turnover, profit, number of employees, the nature of their activities and their tax payments. Additionally, the directive includes stricter requirements with regard to the activities of companies in countries that do not adhere to international norms for good fiscal governance, including transparency and the exchange of information. Auditors are to verify whether companies actually publish the information concerned. The draft directive is currently being debated.

5.4 International organisations

ICGN

On 23 September 2016, the International Corporate Governance Network (ICGN), the worldwide network of institutional investors, published the ICGN *Global Stewardship Principles*, a global stewardship code for institutional investors. The document offers a framework to investors that enumerates the basic responsibilities with regard to stewardship. It lays out seven principles which cover, among other things, investors' own governance, cooperation between institutional investors, voting policy, emphasis on the long term and the integration of sustainability aspects, and enhancing transparency regarding activities. The principles have been expressed in the form of best-practice provisions.

20 Proposal for a European Parliament and Council Directive amending Directive 2007/36/EG specifically on the promotion of long-term shareholder participation and Directive 2013/34/EU specifically on certain elements of the corporate governance statement.

5.5 Developments in other countries

Denmark

Denmark is working on a stewardship code modelled on the British example, which will address pension funds in particular. On 2 February 2016, the government asked the Danish Committee on Corporate Governance (*Komitéen for god Selskabsledelse*) to formulate a set of recommendations which are to promote an active dialogue between institutional investors and listed companies. To assist in the development of these recommendations, the Danish committee was enlarged with two members experienced in the world of investment. It is not yet known when the stewardship code will actually take effect.

Germany

On 2 November 2016, the Government Committee for the German Corporate Government Code (*Regierungskommission Deutscher Corporate Governance Kodex*) published suggestions for a revision of the *Deutscher Corporate Governance Kodex*. The current *Kodex* will not be undergoing exhaustive revision. The suggestions incorporate the understanding that good corporate governance aimed at sustainable value creation requires taking the principles of the social market economy into account. The *Regierungskommission* sees transparency as the basis of a good corporate governance code. In line with this, a number of provisions have been suggested that require information provision allowing for a better assessment of a company's corporate governance. What is new about the code - although it is already being practised in Germany - is the provision regulating communication between the chair of the supervisory board and investors. The *Kodex* stipulates that the chair of the supervisory board can discuss matters pertaining to the supervisory board with shareholders. The new *Kodex* is expected to take effect in the course of 2017.

France

The French Association of Large Companies (*Association Française des Entreprises Privées*, AFEP) and the French Business Movement (*Mouvement des Entreprises de France*, MEDEF), the French employers' organisations that have written and are maintaining the Corporate Governance Code of Listed Corporations (*Code de gouvernement d'entreprise des sociétés cotées*), revised the French code in 2016. On 23 May 2016 they published a draft amendment of the code for consultation. The proposed amendments mainly concern remuneration for management board members. One of the suggestions was that the implementation of the remuneration policy should at least be submitted to an advisory vote in the general meeting (mandatory 'say on pay'). This was in response to the general meeting of Renault, in which the remuneration package of a management board member was rejected but the management board did not see a case for amending the package. The proposal further suggested stricter conditions under which variable remuneration can be awarded, which would make such remuneration more tightly evaluated, more transparent and in line with the company's long-term interests. The revised code, including the above-mentioned proposals, was published on 24 November 2016. The provision with regard to 'say on pay' was included pending the enactment of a French legislative proposal which would give the general meeting a vote on remuneration prior to the remuneration being rewarded. On 8 November last, the Assemblée Nationale (the French parliament) passed an act requiring that from 2017 on, the remuneration policy must be submitted to the general meeting for approval. The act further specifies that as of 2018, awarded variable and exceptional remunerations must be submitted to the general meeting each year.

United Kingdom

On 27 April 2016, the Financial Reporting Council (FRC) ratified an updated version of the British code, the *UK Corporate Governance Code*, which became effective on 17 June 2016. The British code was only amended slightly since the version of September 2004. The amendments are mainly a reflection of the implementation of the Accountancy Directive[21] and govern the reappointment of the external auditor and the composition of the audit committee. At the same time the Code was updated, supplementary guidance for audit committees was issued.

21 Directive 2014/56/EU of the European Parliament and the Council dated 16 April 2014 amending Directive 2006/43/EG on legally mandated audits of annual accounts and consolidated accounts.

On 20 July 2016, the FRC published a report entitled *Corporate Culture and the Role of Boards*, which contains the results of an exploratory study into the relationship between corporate culture and the long-term success of listed companies in the United Kingdom. The study, carried out by the FRC, consisted of a literature review, interviews, surveys and round-table meetings with management board members, investors, internal auditors, experts in the field of corporate culture and others. It was concluded that a healthy entrepreneurial culture is essential for long-term value creation. The FRC makes several recommendations, including openness throughout the company and embodiment of the desired values by company executives. Further, case studies are used to show how important cultural values can be put into practice.

On 29 November last, the British government published a Green Paper for consultation, which includes suggested amendments to the corporate governance of British companies. An important topic is the remuneration of management board members. Stakeholders are invited to share their views on proposals to strengthen the influence of shareholders on the remuneration of management board members, strengthen the role of the remuneration committee, further improve transparency in the remuneration of management board members, and improve the effectiveness of measures to stimulate long-term remuneration. The document further includes proposals to enhance the say of consumers and employees through their representation in the boardroom. If the consultation leads to the conclusion that a stronger framework is desirable, this may result in a revision of the British code.

United States

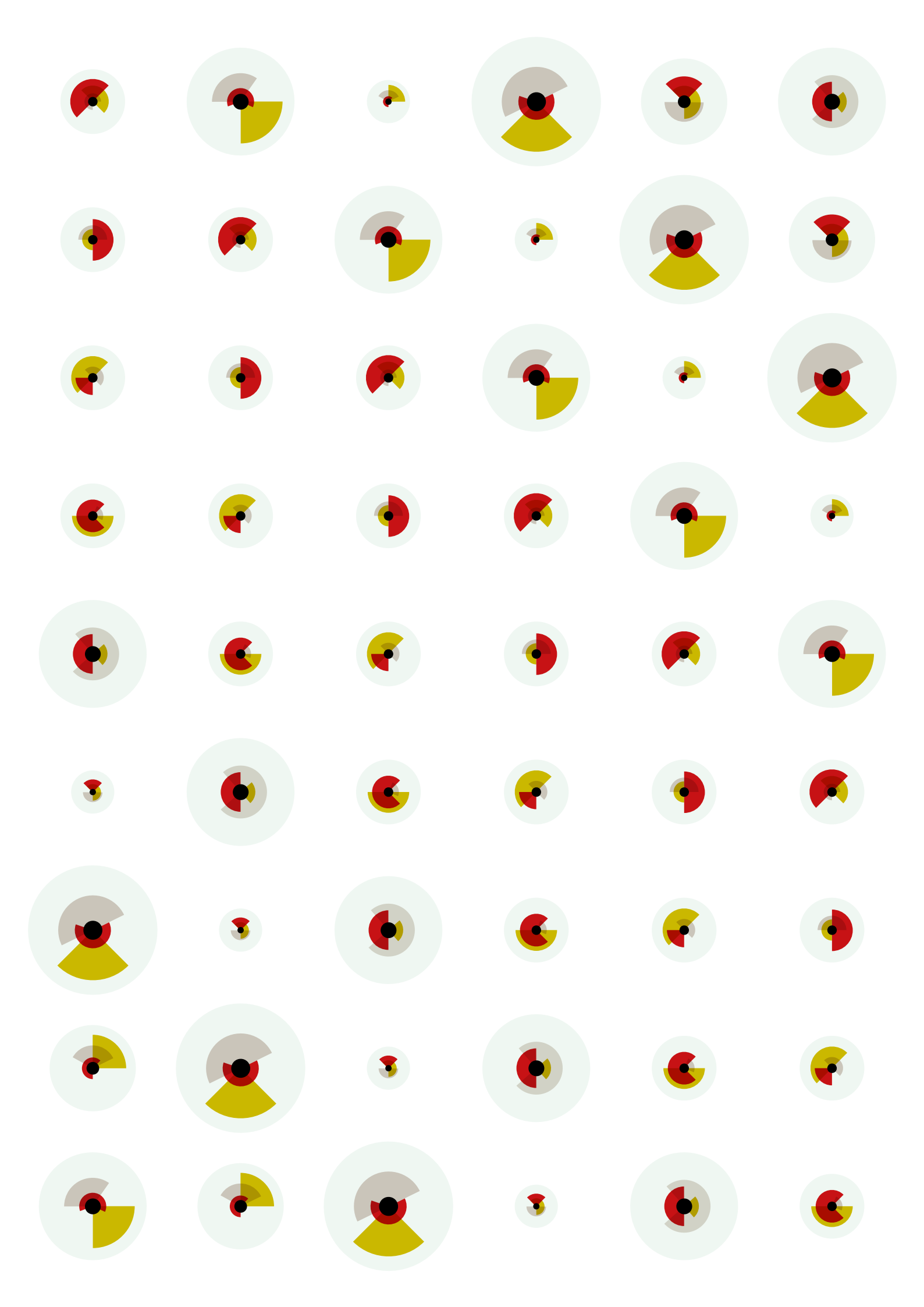
On 21 July 2016, an American group of influential management board members and institutional investors published the *Commonsense Principles of Corporate Governance*. These principles could be a first step towards drawing up an American corporate governance and stewardship code. They are a starting point for across-the-board promotion of economic growth to benefit shareholders, employees as well as the overall economy. The principles contain regulations for management board members and shareholders of listed companies. Subjects covered include the composition, appointment, remuneration and responsibilities of the management board, financial reporting and shareholder participation.

Hong Kong

In Hong Kong, following a consultation period of over a year, the Securities and Futures Commission took a first step towards shareholder participation with the publication, on 7 March 2016, of the *Principles for Responsible Ownership*. The British and Japanese equivalents, among others, served as inspiration. Adoption of the principles, which apply to institutional investors and involve the 'comply or explain' principle, is voluntary.

South Africa

On 1 November 2016, the updated *King IV Code on Corporate Governance* was adopted in South Africa. The new version of the code works on the basis of 'comply and explain', which means that companies must explain the way in which they put the code's principles into practice. It further emphasises that corporate governance is also about ethical leadership and behaviour. Compared to the previous version, there is more attention for the remuneration of management board members and for the role and responsibilities of shareholders.



6. ABOUT THE CODE AND THE COMMITTEE

6.1 The Dutch Corporate Governance Code

The Dutch Corporate Governance Code, which came into effect on 1 January 2004, contains principles and best practice provisions aimed at sound corporate governance. The Code regulates the relationships between the management board, the supervisory board and (the annual general meeting of) shareholders. According to the 'comply or explain' principle, a company is compliant either by implementing the relevant provision unconditionally or by explaining why it is departing from the provision in the Code. A company's management board and supervisory board justify the chosen corporate governance structure and the compliance with the Code to their shareholders. The Code was revised in 2016 and the revised Code was published on 8 December last. In 2018, Dutch listed companies will be expected to report on compliance with the revised Code with regard to financial year 2017. However, this is only feasible if the government enshrines the revised Code in Dutch law in 2017.

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

Compliance with the Code has a legal basis. By a General Order in Council, the Code has been designated as a code to which Dutch listed companies must refer in their annual report by virtue of Section 391(5) of Book 2 of the Dutch Civil Code.[22] Dutch institutional investors have been required since 1 January 2007 to include a statement in their annual report about compliance with the principles and best practice provisions of the Code that pertain to them.[23]

The parties that the Code is aimed at are represented by Eumedion, Euronext, the Federation of Dutch Trade Unions (FNV), the National Federation of Christian Trade Unions in the Netherlands (CNV), the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW). Together these are referred to as the supportive parties of the Code.

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

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

6.2 Task of the Corporate Governance Code Monitoring Committee

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

- identifying gaps or ambiguities in the Code;
- keeping up to date on national and international developments and 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'. The current Committee consists of the chairman and six members who all have experience and expertise in the area of corporate governance. An overview of Committee members is included on page X. The Committee was established by the Minister of Economic Affairs, Henk Kamp, on 11 December 2013. The Committee has been appointed for a period of four years.

COMPOSITION

MONITORING COMMITTEE CORPORATE GOVERNANCE CODE

Chairman

prof. dr. J.A. van Manen

Partner at Strategic Management Centre

Vice Chairman of the supervisory board at De Nederlandsche Bank NV

Member of the supervisory board at Bornet Groep Rotterdam BV

Member of the board at Stichting Maatschappij en Veiligheid

Member of the board at Stichting Endowment Museum Boijmans Van Beuningen

Secretariat

mr. I.L.J.M. Heemskerk

Ministry of Economic Affairs, Directorate of Entrepreneurship

K. van Kalleveen, MA

Ministry of Economic Affairs, Directorate of Entrepreneurship

mr. C.M. Molkenboer

Ministry of Economic Affairs, Directorate of Entrepreneurship

Advisors

mr. dr. M. Meinema en mr. L.D.V.M. Kompier

Directorate of Legislation, Ministry of Security and Justice

mr. M. Rookhuijzen

Directorate of Financial Markets, Ministry of Finance

Members

prof. dr. B.E. Baarsma

Director of knowledge Development Rabobank

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

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

drs. E.F. Bos

Chief executive officer at PGGM

Member of the supervisory council at Nederlandse Opera & Ballet

Non-executive director at Sustainalytics Holding BV

mr. P.J. Gortzak

Head of Policy Group Strategie en Beleid APG

Member of the supervisory council at CFK

Member of the committee Evaluatie Politiewet

Member supervisory council at Nationaal Register

Member of the board at NL Sporter

mr. S. Hepkema

Chairman of the supervisory board at Wavin NV

Member of the supervisory board at SBM Offshore NV

Member of the board at VEUO

R.J. van de Kraats, RA

CFO & vice chairman at Executive Board Randstad Holding NV

Non-executive Director at OCI NV

Member of the supervisory board at Schiphol Group

prof. mr. H.M. Vletter-van Dort

Professor of Financial Law and Governance at Erasmus School of Law

Chairman of the supervisory board at Intertrust NV

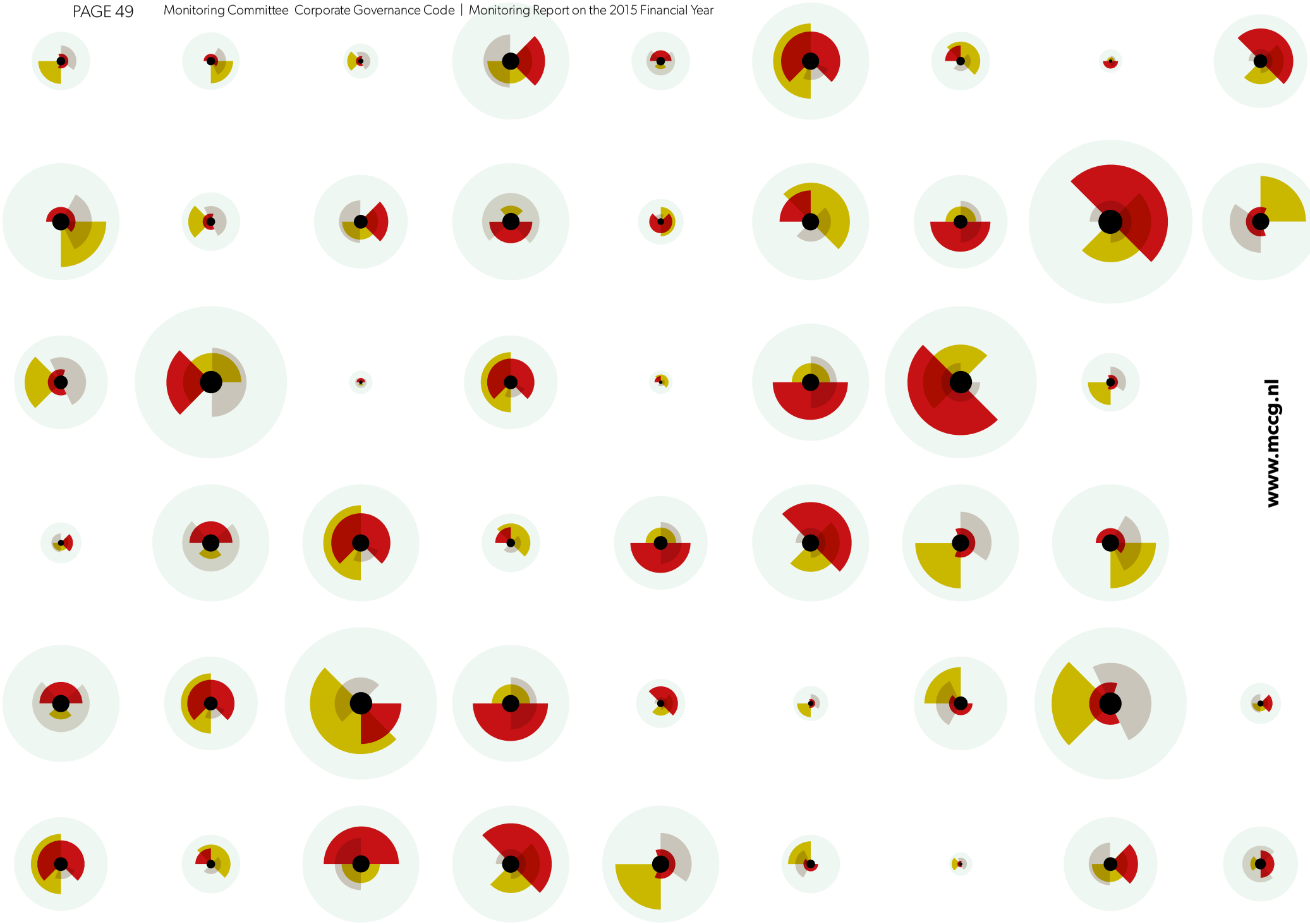
Member of the supervisory board at NN Group NV

Chairman of the SRB's Appeal Panel

Member of the board at IVO Center for Financial Law & Governance

APPENDIX: COMPANIES THAT TOOK PART IN THE SURVEY

Aalberts Industries N.V.	Kardan N.V.
ABN AMRO Group N.V.	KAS BANK N.V.
Aegon. N.V.	Kendrion N.V.
Koninklijke Ahold N.V.	Kiadis Pharma N.V.
AFC Ajax N.V.	Koninklijke KPN N.V.
Akzo Nobel N.V.	Lucas Bols N.V.
AMG Advanced Metallurgical Group N.V.	N.V. Nederlandse Apparatenfabriek NEDAP
Amsterdam Commodities N.V.	Nedsense Enterprises N.V.
AND International Publishers N.V.	Neways Electronics International N.V.
Arcadis N.V.	NN Group N.V.
ASM International N.V.	Novisource N.V.
ASML Holding N.V.	NSI N.V.
Ballast Nedam N.V.	OCI N.V.
Koninklijke BAM Groep N.V.	Ordina N.V.
Batenburg Techniek N.V.	Pharming Group N.V.
Beter Bed Holding N.V.	Koninklijke Philips N.V.
Bever Holding N.V.	Koninklijke Delftsch Aardewerk-fabriek (…) N.V.
Binckbank N.V.	PostNL N.V.
Koninklijke Boskalis Westminster N.V.	Randstad Holding N.V.
Koninklijke Brill N.V.	Refresco Gerber N.V.
Brunel International N.V.	Relx N.V.
Core Laboratories N.V.	R&S Retail Group N.V.
Delta Lloyd Groep N.V.	Koninklijke Reesink N.V.
DOCDATA N.V.	SBM Offshore N.V.
DPA Group N.V.	Sligro Food Group N.V.
Koninklijke DSM N.V.	SnowWorld N.V.
Esperite N.V.	Telegraaf Media Group N.V.
Eurocommercial Properties N.V.	Koninklijke Ten Cate N.V.
Flow Traders N.V.	TIE Kinetix N.V.
Fugro N.V.	TKH Group N.V.
GrandVision N.V.	TNT Express N.V.
Groothandelsgebouwen N.V.	TomTom N.V.
Heijmans N.V.	Unilever N.V.
Heineken N.V.	Value8 N.V.
Holland Colours N.V.	Van Lanschot N.V.
Hydratec Industries N.V.	Vastned Retail N.V.
ICT Automatisering N.V.	Verenigde Nederlandse Compagnie N.V.
IEX Group N.V.	Koninklijke Vopak N.V.
IMCD N.V.	Wereldhave N.V.
ING Groep N.V.	Wolters Kluwer N.V.
Intertrust N.V.	



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