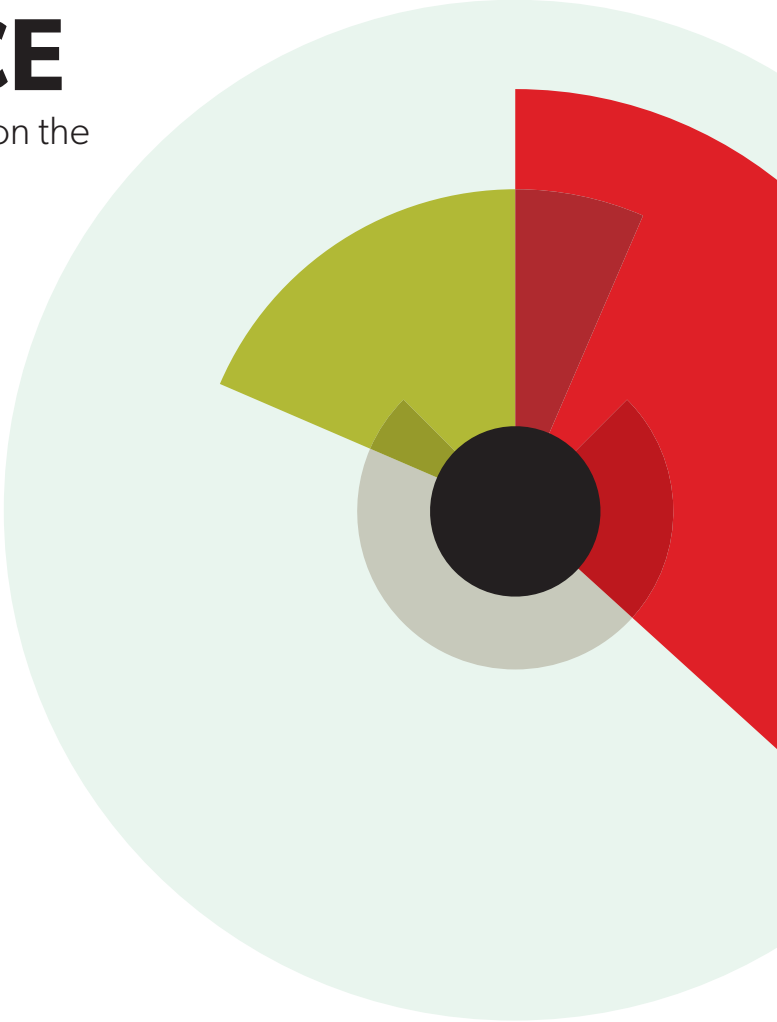
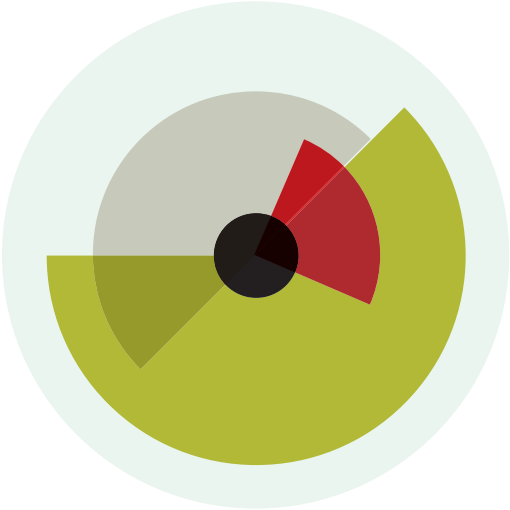
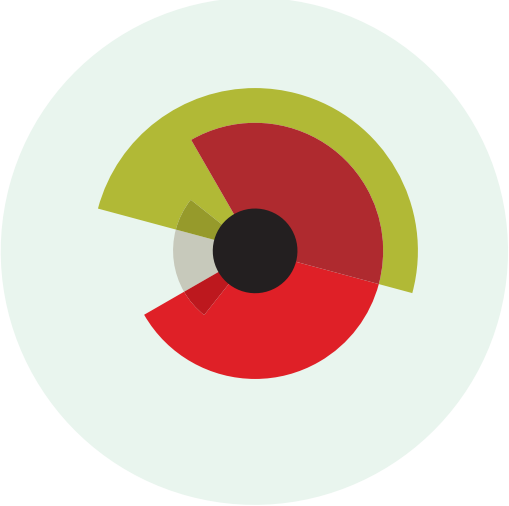
Monitoring Committee

CORPORATE GOVERNANCE CODE

Monitoring report on the 2014 financial year







UNOFFICIAL TRANSLATION

February 2016
Secretariat: PO Box 20401, 2500 EK
The Hague, the Netherlands

www.mccg.nl

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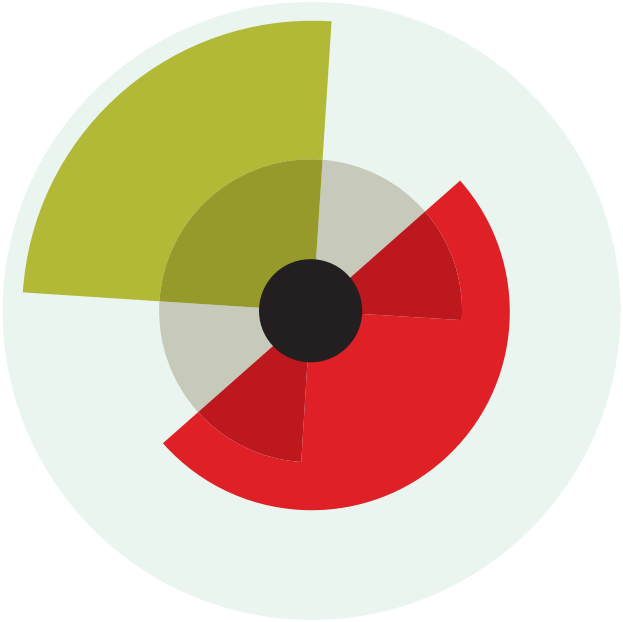

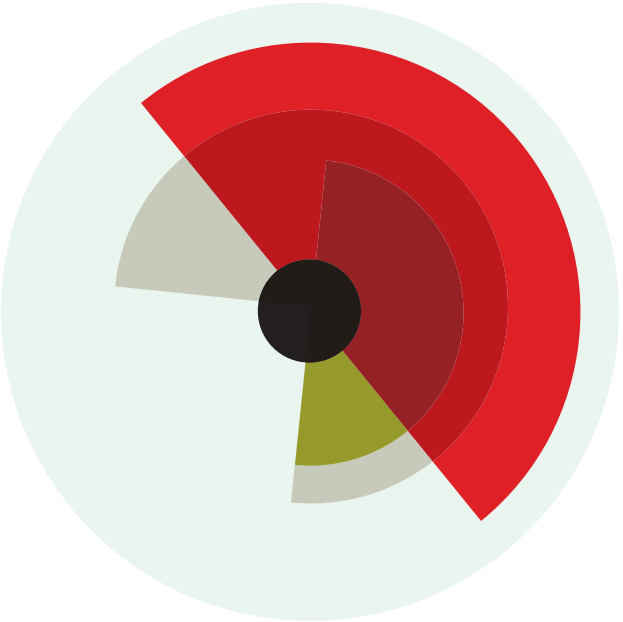

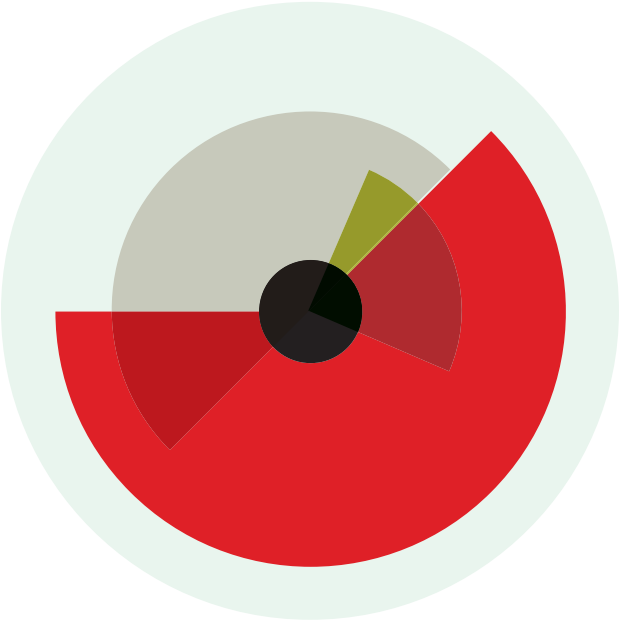

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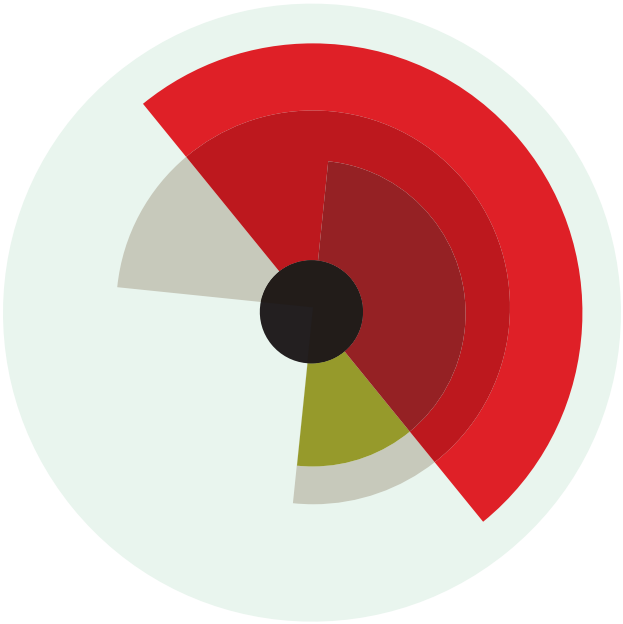
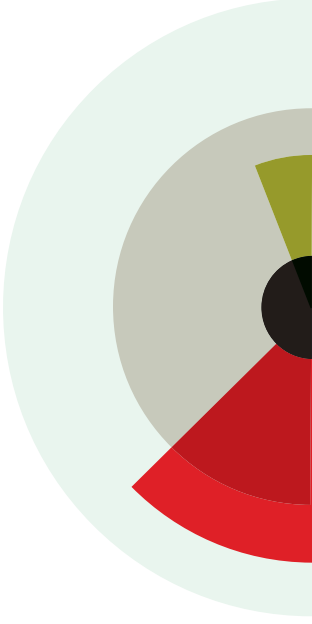



FOREWORD

Compliance with the Corporate Governance Code was good in the 2014 financial year and this was in line with previous years. Self-regulation by listed companies in the area of corporate governance appears to be working well. An integral part of self-regulation is investigating whether the Code is still sufficient and up to date. Together with the supportive parties, we came to the conclusion that the Corporate Governance Code was due for an update. In 2015, the Monitoring Committee's activities were dominated by this revision, which was the focus of much of the monitoring research. As well as a study of compliance based on information from the listed companies, we commissioned a comparison of the Code with the codes of other countries. In addition, to aid the discussions that are undoubtedly to come, we had a survey done on the use of anti-takeover measures by Dutch companies.

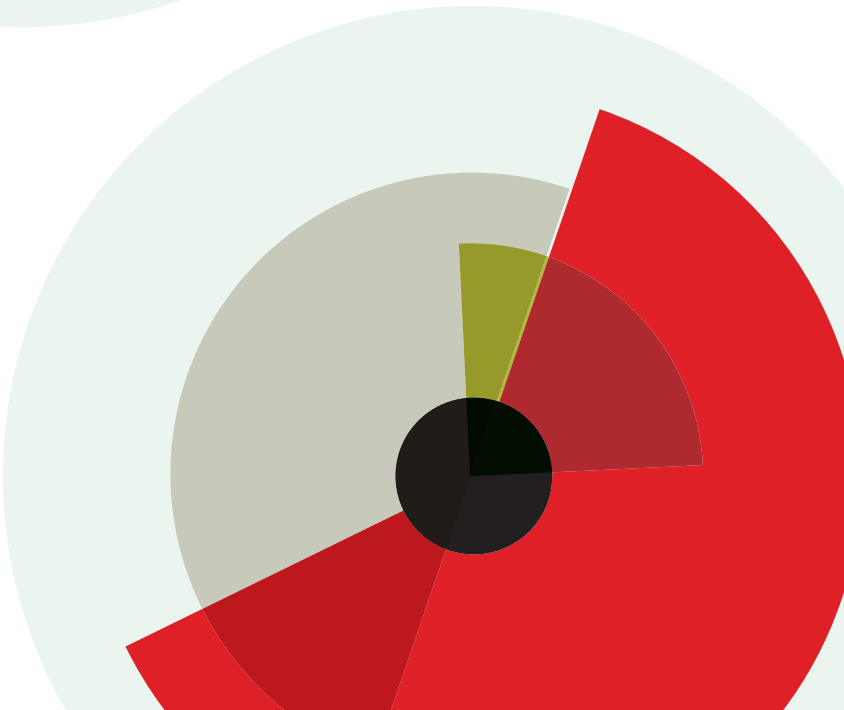
Our work focused primarily on the responsibility of management board and supervisory board members. Management board members and supervisory board members bear responsibility for working towards long-term value creation and managing the associated risks. The responsibility of shareholders with regard to long-term value creation is somewhat neglected in the Code. This cannot continue. Management board members and supervisory board members who want to take steps towards long-term value creation need the cooperation of their shareholders. This means that shareholders should give management board members and supervisory board members room to strive for such long-term value creation, which is in the best interests of the company and ultimately also in the interests of the shareholders.

Where the cooperation of shareholders in long-term value creation is concerned, the voting behaviour of shareholders is of significance, as is the attendance of shareholders at meetings. What is perhaps even more important, however, is for shareholders to show their commitment to the company over a longer period through their buying and selling behaviour. In talks with management board members and supervisory board members, it became clear to us that they assume a lack of endurance on the part of the shareholder. One could therefore say that capital cannot always summon up the patience needed for sustainable business practices.

The big challenge for shareholders in the years to come is to bring change to this situation. Future research for the Monitoring Committee should help those involved to understand this issue better. This research will of course also make use of studies that have been carried out by others.

In 2015, Peter Gortzak joined the Committee, filling a vacancy that arose in 2014. The Committee looks back gratefully at the cooperation with researchers and supportive parties in 2015. We experienced as constructive the contacts with management board members, supervisory board members, external accountants, internal auditors, shareholders and other stakeholders regarding their experiences with the Code and ideas for revision. This was all made possible by the great dedication and enthusiasm of the Committee's secretaries. The Committee is also extremely grateful to them.

Jaap van Manen
Chairman of the Corporate Governance Code Monitoring Committee



1. FINDINGS AND CONCLUSIONS

The Netherlands' Corporate Governance Code (hereinafter referred to as: the Code) provides specifications for proper corporate governance by listed companies in the Netherlands. Compliance with this Code is monitored by the Corporate Governance Code Monitoring Committee (hereinafter referred to as: the Committee), which is installed by the government. In this report the Committee details its monitoring activities in 2015. The report presents the results of three studies:

- A study of compliance with the Code in the 2014 financial year
- A study of anti-takeover measures
- A study of the Code's international context.

In addition, the report looks at relevant national and international developments in the area of corporate governance.

The key issue of 2015 was the revision of the Code. In consequence, the activities undertaken by the Committee, apart from monitoring compliance with the Code, focused mainly on gathering information and evaluating revision proposals. The studies carried out last year also provided information that helped in formulating the proposals. This chapter presents the most important findings of the three studies carried out for the Committee and links these with the revision proposals presented in the consultation document. National and international developments in the area of corporate governance are considered in this context. This monitoring report presents the Committee's findings and conclusions on a variety of subjects. For the translation of these findings and conclusions into concrete proposals for revising the Code, we refer you to the consultation document that will be presented at the same time as the monitoring report.

1.1 Compliance and quality of the explanation

As in the previous financial year, compliance with the Code was high. The companies listed on the AEX index that were investigated complied with all provisions (compliance was 100%), while AMX, AMS and local companies complied with virtually all provisions (compliance was 99.95%, 98.67% and 97.15% respectively). The Committee was pleased with these compliance figures, but of course continues to strive for 100% compliance by all companies.

The quality of explanation in the case of a departure from a provision is crucial for the Code to function properly. If a provision is not complied with unconditionally, but an explanation is provided, it is important for the quality of the explanation to be good. The 2014 financial year saw a continuation of the trend whereby AEX companies explain less (and thus are more likely to implement provisions fully) and local companies provide more explanations (and are thus less likely to implement provisions fully). Companies listed on the AMX index also tended to provide more explanations. Little change could be seen among AMS companies. The study of compliance in the 2014 financial year shows that the quality of explanations remains a concern, as 18% of the explanations provided were of insufficient quality. Therefore, the Committee once again calls on companies to follow the Streppel Committee's guidance on the quality of the explanation. The proposals for revising the Code place greater emphasis on the requirements imposed on the quality of the explanation.

1.2 Current topics

Based on the results of the three studies, as well as national and international developments in the area of corporate governance, the Committee distinguishes at least seven current topics that are addressed in the proposals for revising the Code.

Long-term value creation

In the Monitoring Report Financial Year 2013, the Committee noted that the Code could pay more attention to a company's long-term strategy. The Committee was also interested in the strategic perspective of companies regarding risks and opportunities, and managing such risks and opportunities. The compliance study shows that the way in which the strategic perspective on risks and opportunities is embedded in companies, as well as the way in which responsibilities are allocated, varies from one company to another. It would be helpful if the Code offered more direction. The Committee believes that long-term strategy deserves more attention and as part of the revision of the Code it makes suggestions as to how this subject can be integrated into a company's governance.

One topic that is linked to long-term strategy is Corporate Social Responsibility. Corporate Social Responsibility is an integral part of a company's daily business operations and should be integrated into the strategy. The study of the Code's international context shows that, overall, codes do not incorporate Corporate Social Responsibility, but the Dutch Code is an exception in this regard. The Committee considers this to be of value and in the proposals for revision it therefore also looks at the non-financial aspects of companies. This also ties in with developments in legislation, as large companies have to report on these non-financial aspects.

Internal audit function

The internal audit function plays an important role in internal risk management and control systems. The compliance study showed that a considerable proportion of the companies that took part in the survey – namely 41% – have no internal audit function. The reason given most often is that the organisation is too small in size or that nature of the company's activities is not complex enough for a separate internal audit function. In such situations, this function is usually carried out by a different function in the company, such as risk management. If no internal audit function is in place, the company should evaluate whether there will be a need for it in the future. The results of the survey fail to give a clear enough picture of the quality of this evaluation and do not provide clear recommendations in relation to this evaluation. The Committee wishes to underline the important role played by the internal audit function in internal risk management and control systems. The

Committee would like to see the evaluation performed well and would like companies to consider carefully whether the alternatives that are put in the place of the missing internal audit function are sufficiently effective. The proposals for revision examine how to strengthen the role of the internal audit function, looking also at the considerations that arise from the study of the Code's international context.

Diversity

The Committee employs a broad definition of diversity. As well as gender, it considers factors such as age, nationality, expertise, independence and previous experience. The compliance study shows that companies see expertise, previous experience and independence as the primary aspects of their diversity policy. Gender also has a role to play, but nationality and age are mentioned less frequently. The measures that companies introduce in order to increase diversity focus mainly on including aspects of diversity in an executive search and drawing up a specific policy for promoting diversity.

In discussions on diversity a narrow definition of the term is often used, with diversity reduced to the ratio between men and women in companies. The international comparative study shows that some codes in other countries include targets for the ratio of men to women on companies' supervisory boards or management boards. In the Netherlands, a target figure for the ratio of men to women on supervisory boards and management boards was included in legislation. This regulation lapsed on 1 January 2016, but the Minister of Education, Culture and Science, Jet Bussemaker, recently indicated that she would reinstate this temporary statutory regulation for the period up to 2019.

The Committee notes that awareness is growing of the importance of diversity in companies, though it is important that any measures taken should produce tangible results. A diverse composition of boards and supervisory boards contributes to better decision-making. Diversity and who is responsible for it are included in proposals for revising the Code, with the underlying principle continuing to be a broad definition of diversity.

Terms of appointment of management board members and supervisory board members

One of the findings of the compliance study is that provisions relating to the maximum term of appointment for members of management boards and supervisory boards are frequently subject to explanation rather than being implemented. One reason given for not implementing the provision relating to the maximum term of appointment for board members is that it would not be compatible with the company's long-term perspective. However, the Committee sees no reason to tamper with this provision, as it is in harmony with international practice and stimulates the company and shareholders to keep a sharp eye on the composition of the board and how it functions.

The principal reason for deviating from the provision on the maximum appointment term for supervisory board members is that they are linked to the company for longer due to family connections with the company or that they stay longer because of their substantial experience and expertise, which are scarce in the sector. According to the international comparison, foreign codes contain provisions that involve a critical consideration of the independence of a supervisory board member who sits on the board for more than nine years. Provision III.3.5 of the Code stipulates that supervisory board members may have a maximum of three four-year terms on the supervisory board – a maximum of 12 years. In the eyes of the Committee, 12 years may be too long a time for a person to remain alert and able to maintain an appropriate distance in supervising the management board. Therefore, the Committee has also included this point in the revision of the Code.

Remuneration

The compliance study shows that one of the provisions that was most frequently not complied with in recent years was provision II.2.13 'overview of remuneration policy'. The Committee remains of the opinion that the Code should encourage clarity and completeness as regards remuneration. The current provisions fail to achieve this goal sufficiently and for this reason, the Committee will make proposals for amending the current provisions on remuneration. The compliance study shows that, in common with other years, provision II.2.8 'maximum severance pay' was one of the provisions that was most frequently explained in the 2014 financial year. The explanation is that capping severance pay would lead to unreasonable results. As regards the provisions in the Code on remuneration, the general question arises of whether they achieve their goal. Earlier monitoring reports show that the inclusion of new provisions in the Code in 2008 hardly improved company transparency in relation to remuneration. In the current revision of the Code, the Committee is taking a critical look at the remuneration provisions.

Shareholders

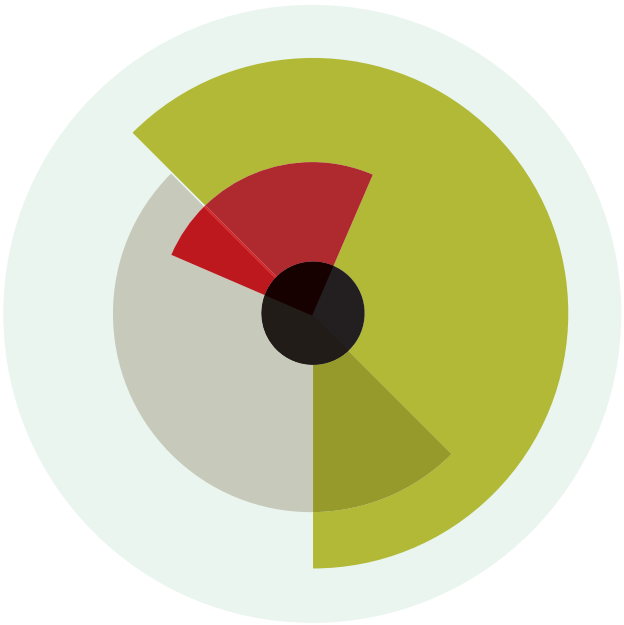
The compliance study shows that AMX, AMS and local companies relatively frequently failed to comply with provision IV.3.13 'policy on bilateral contacts with shareholders'. This provision states that a company should formulate a policy for communication with shareholders and publish this policy on the website. Local companies in particular also frequently give an explanation regarding provision IV.3.1 'communication with shareholders'. Communication between companies and shareholders is therefore also an area of concern.

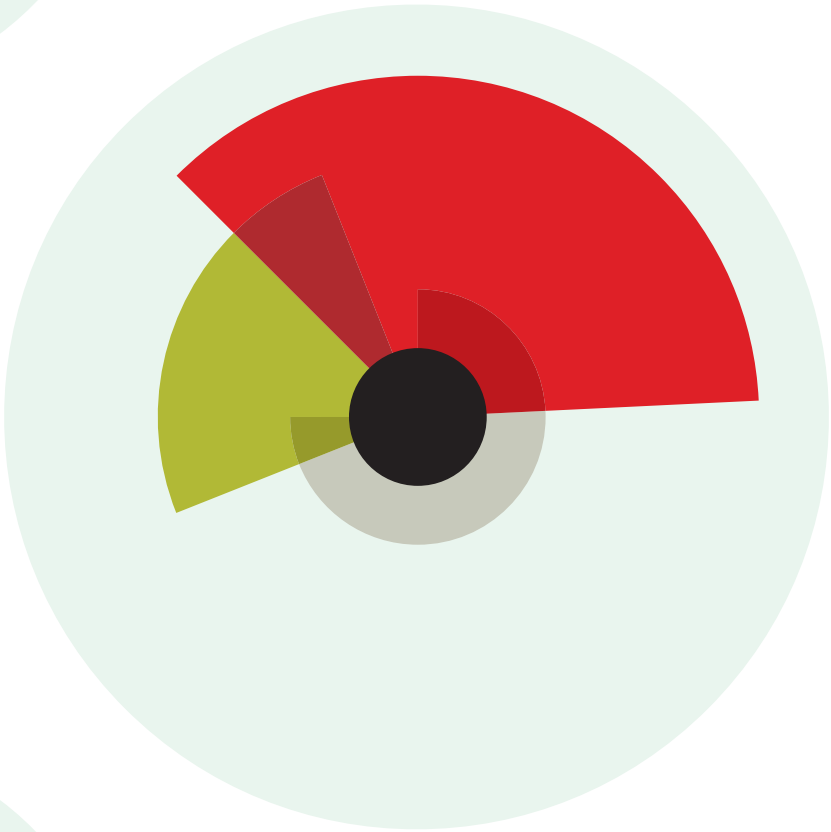
At European level there is currently a discussion about a proposal for a directive with measures relating to the involvement of shareholders. It is still unclear exactly what package of measures will be decided on and what influence this will have on the provisions in the Code. For this reason, the Committee is not proposing any changes in the revision to the provisions that deal with shareholders (with the exception of removing overlap between the Code and legislation).

Anti-takeover measures

The study on anti-takeover measures shows that the previously observed trend, in which companies make less use of anti-takeover measures, is tailing off. The most common anti-takeover measure is the issue of protective preference shares. When a distinction is made between traditional anti-takeover measures (protective preference shares, issue of depository receipts for shares, golden shares and application of the structure regime) and other measures which can have a protective effect against takeovers (special approval rights of supervisory board members, dual-class shares, loyalty voting rights and other special voting right agreements), it appears that companies with a listing outside the Netherlands make less use, both absolutely as well as in relative terms, of traditional protection measures than companies listed on Euronext.

The developments in relation to anti-takeover measures can be placed in the context of the current discussion about the use of anti-takeover measures by the management board and/or major shareholders of the company on the one hand and the rights of minority shareholders of the company on the other hand. This discussion should take place in the context of company law. The results of the discussion are still not clear enough to be able to judge whether further provisions regarding anti-takeover measures should be included in the Code. The Committee is also of the opinion that if there is a need for further regulation on the use of anti-takeover measures, the law is the most appropriate basis for this. It can then be considered whether there is a need for further elaboration in the Code by means of best practices.





2. REVIEW OF 2015

The key issue of 2015 was the revision of the Code. In the Monitoring Report Financial Year 2013, the Committee presented its conclusions on the evaluation of the Code. In reaction to these conclusions, the supportive parties of the Code asked the Committee on 11 May 2015 to make proposals for updating the Code. The Committee has taken on this task and has made the necessary preparations for this purpose. Coinciding with the publication of this monitoring rapport, the Committee is presenting a consultation document with proposals for revising the Code.

In addition, the Committee has carried out activities for the purpose of producing this monitoring report, which is based on three studies.

- An analysis of compliance with the Code by companies and the quality of the explanation in the 2014 financial year. As in the previous year, this study was carried out by Nyenrode Business University (hereinafter referred to as: Nyenrode). This study focused specifically on the internal audit function, appointment and dismissal of management board members and supervisory board members, diversity within the management board and the supervisory board, and a strategic perspective on risks and opportunities.
- A study ccof anti-takeover measures, carried out by Erasmus University Rotterdam. The brief was to investigate the way in which Dutch companies give substance in practice to the possibilities for anti-takeover measures offered by Dutch legislation and regulation, and what information is provided on that subject on the basis of the Code.
- A study of the Code's international context. The University of Groningen made a comparison between the way in which a number of issues are worked out in the Dutch Code and the codes of seven other countries. This study was carried out with a view to revising the Code.

The Committee held 12 plenary meetings in 2015. The key topics of these meetings were monitoring compliance and revising the Code. As well as these meetings and regular talks with the supportive parties, the Committee attended meetings on national or international developments in the area of corporate governance.

2.1 Meeting with external accountants

In the Work Programme for 2015, the Committee set itself the goal of focusing specifically on a number of topics, one of which is the role of the external accountant.[1] In this context a meeting with board members of PwC, Deloitte, EY, KPMG and BDO was held on 3 September 2015. The management board of the Netherlands Institute of Chartered Accountants (NBA) was also represented. The aim of the meeting was to gain a better understanding of the role of the external accountant, the way in which the provisions in the Code that refer to the external accountant can be put into practice, and accountants' observations regarding compliance with the Code. At this meeting, participants discussed both compliance and revising the Code. The following key points were raised during the meeting.

- It is important for companies to have a clear framework for internal risk management. This can have a positive effect on the quality of documentation relating to risk management. A self-evaluation of internal control systems can contribute to this.
- There is sometimes an imbalance between the detailed discussion of the annual accounts within the company and what subsequently appears on that subject in the annual report.[2] The accountant can play a role here by identifying this imbalance.
- The responsibilities of the supervisory board and the audit committee can be made more explicit in the Code. The most important comments in the management letter could be presented clearly in the report by the supervisory board.
- The Code can emphasise more strongly that providing a good explanation equates with compliance with the Code. Explanation is too often placed in the context of non-compliance. This occurs because there is currently a great deal of emphasis on compliance, and providing an explanation is perceived as being non-compliant.
- Culture and conduct are important topics where corporate governance is concerned and soft controls in particular are of importance in this context. The senior level of a company is responsible for creating a culture and an environment in which issues can be raised and there is room for argument. The management board and the supervisory board must pay sufficient attention to this subject.
- The Code should focus more strongly on fraud in the form of, for example, corruption, unusual transactions and accounting fraud. Companies could show greater transparency in their annual reports about risks relating to fraud and continuity.

The Committee has taken account of the above points in drawing up the proposals for an updated Code.

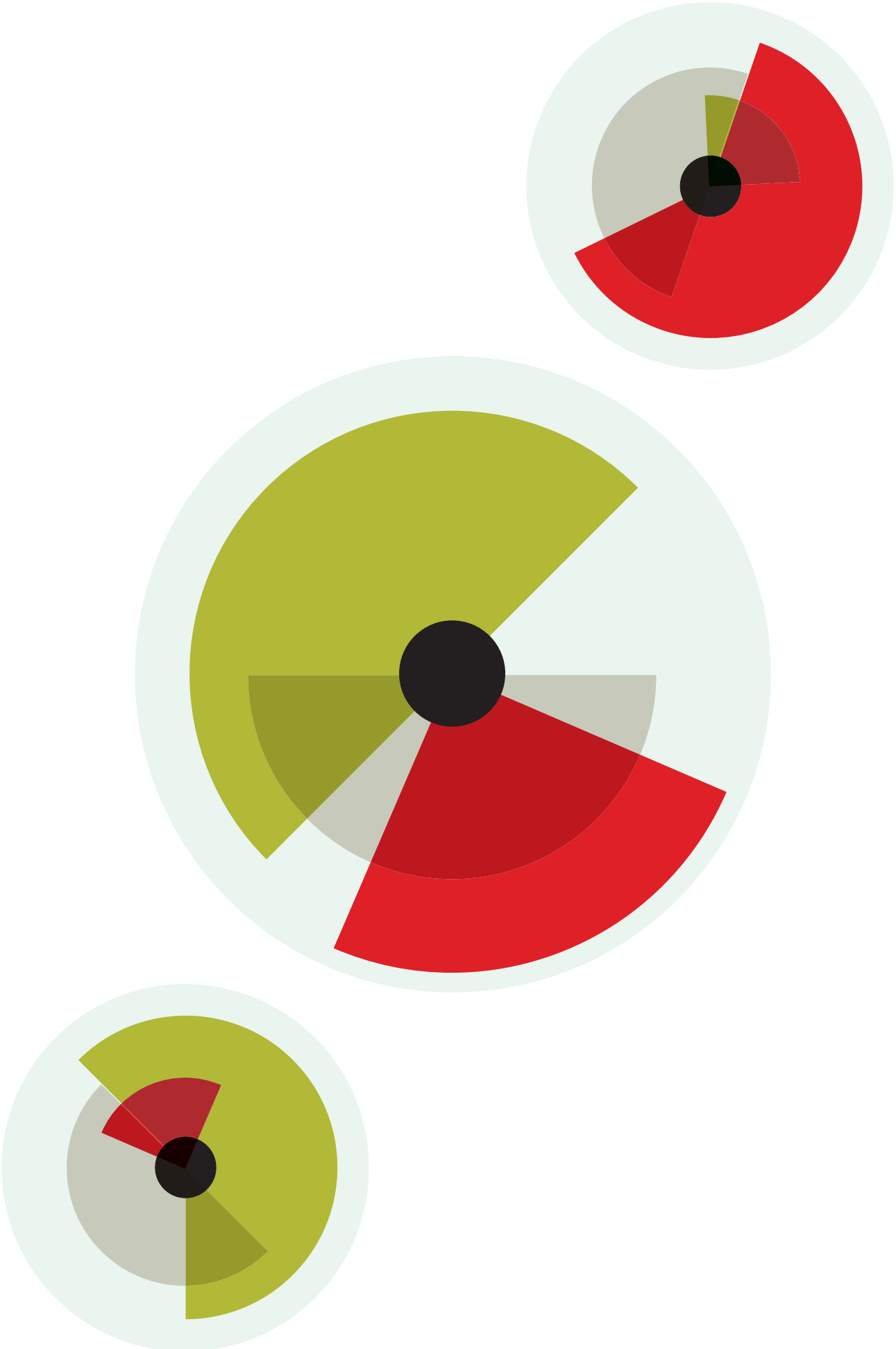
2.2 European contacts

The Committee closely follows developments in the national codes of European countries in particular, but also of other countries. Convergence of national codes can help create a level playing field. However, there should also be room for specific national touches. The Committee's chairman and a secretary took part in a meeting in Berlin of the chairmen and secretaries of the corporate governance code committees of Germany, France, Italy and the UK. The aim of the meeting was to discuss current national and international developments, and exchange experiences. During the meeting, participants considered, among other things, experiences with monitoring and the question of how companies can be encouraged to comply with the national code or to provide good explanations in case of departures from the code. They also discussed various definitions of independence and the role played by the model of governance in this regard, the desirability of working with a stewardship code, and long-term commitment by shareholders, as well as the role of company law in this context.

1 Other topics in the Work Programme for 2015 are risk management, anti-takeover measures and compliance with the Code by shareholders and institutional investors. The topic of risk management is included in the study on compliance. A separate study was carried out on anti-takeover measures. Compliance with the Code by shareholders and institutional investors was not investigated this year. The Committee will focus on this topic in the future.

2 The Dutch version of this report uses the term 'jaarverslag' for 'annual report'. The Financial Statements Guideline (Implementation) Act stipulates that the term 'jaarverslag' in Section 391(2) of the Dutch Civil Code should be changed to 'bestuursverslag' (Stb. 2015, 349).

The Committee is also part of the European Corporate Governance Codes Network (ECGCN). This informal network of corporate governance code committees focuses on exchanging experiences and best practices. The network meets twice a year and the secretaries of the Committee take part in these meetings. Those present at the meetings in 2015 spoke among other things about methods for monitoring codes, developments within the European Union and the activities of the European Securities and Markets Authority (ESMA).



3. COMPLIANCE

The Code consists of 22 principles and 129 best practice provisions. This chapter describes how these principles and provisions were complied within the 2014 financial year. The basic principle of the Code is that of 'comply or explain'. The Code is complied with if (1) a Code provision is implemented, that is to say put into practice unconditionally, or (2) if a provision is departed from and a reasoned explanation is given for this departure. Nyenrode conducted a study into compliance with the Code and the nature and quality of the explanations given in the 2014 financial year.[3] For this study, Nyenrode used the same methodology as last year: a self-assessment by completing an online questionnaire.

3.1 Key findings

The results of Nyenrode's compliance study produced the following findings:

- In total, 75 of the 95 companies approached took part in the online survey. Compared with the previous compliance study, participation by companies in the survey rose slightly: from 76% in the 2013 financial year to 79% in the 2014 financial year.
- The highest response rate was achieved among AEX-listed companies (95%) and the lowest response rate was among local companies (68%). Compared with last year, participation by local companies rose sharply. Participation by AMX-listed companies declined somewhat.
- As in previous financial years, compliance with the Code was high, and varies from 97.15% among the local companies to 100% among the AEX listed companies.
- The provisions that were most frequently not complied with are provision IV.3.13 'policy on bilateral contacts with shareholders', which AMX, AMS and local companies failed to comply with relatively frequently, and provision II.2.13 'overview of remuneration policy', which was relatively frequently not complied with by AMS and local companies.

3 The complete compliance study by Nyenrode (written in Dutch) has been published on the Committee's website (www.mccg.nl).

3.2 Response and non-response

In total, 75 of the 95 companies approached completed the online questionnaire. A comprehensive list of the companies that took part in the survey is included in the appendix to this report. Compared with the 2013 financial year, the response rate rose slightly, from 76% to 79%. As in the previous financial year, the highest response rate was achieved among companies listed on the AEX index (95%) and the lowest response rate was among companies listed on the local market (68%). Participation by companies listed on the local market rose sharply in comparison with the 2013 financial year, while participation by companies listed on the AMX index declined somewhat.

Index	Population 2014	Response	Percentage 2014	Percentage 2013
AEX	21	20	95%	95%
AMX	22	16	73%	88%
AMS	24	20	83%	83%
Local	28	19	68%	44%
Total	95	75	79%	76%

Figure 1 Overview of compliance study population in 2014 [n=75]

A total of 20 companies did not take part in the compliance study. This is what is called non-response. Nyenrode tried to ascertain the reasons for companies not participating.

- Four companies said they had not participated because their stock exchange listing ended in 2015. We should note here that the study focused on compliance with the Code in the 2014 financial year. The above-mentioned companies thus still came within the scope of the Code and therefore formed part of the study population.
- Eight companies indicated that they were unable to take part due to changes in the management board.
- Three companies gave lack of time as the reason. Due to the illness of a key member of staff or a takeover or bidding process, there was not enough time to complete the questionnaire.

3.3. Compliance

As in previous years, compliance with the Code was high. The average compliance percentages for each stock exchange index are:

- AEX 100.00%
- AMX 99.95%
- AMX 98.67%
- Local 97.15%

In the figure below, the average compliance percentages are shown, divided into 'implemented', 'explained' and 'not applicable'. The category 'explained' is further divided into explained in the 'annual report' and explained in 'other sources'. The average percentages for 'non-compliance' are also included.

Index	Compliance				Non-compliance
	Implemented	Explained		N/A*	
		Annual report	Other sources		
AEX	89,41%	1,52%	0,04%	9,04%	0%
AMX	87,45%	1,39%	0,74%	10,37%	0,05%
AMS	84,85%	2,15%	1,78%	9,89%	1,33%
Lokaal	79,45%	6,40%	1,13%	10,18%	2,85%

* If a company declared all 18 best practice provisions to be inapplicable, wherever this was possible, a maximum score of 13.3% could be achieved.

Figure 2 Average percentages for each index for the 2014 financial year

Provisions most often not complied with

The provisions that were most often not complied with in the 2014 financial year are shown for each index in the figure below. A striking outcome is that AMX, AMS and local companies relatively frequently failed to comply with provision IV.3.13 'policy on bilateral contacts with shareholders'. This provision states that a company should formulate a policy for communication with shareholders and publish this policy on the website. It is also notable that provision II.2.13 'overview of remuneration policy' was relatively frequently not complied with by AMS and local companies. This provision sets out the various components that should make up the overview of remuneration policy.

Index	Provision	Percentage of companies
AEX		--
AMX	IV.3.13 Policy on bilateral contacts with shareholders	6%
AMS	II.2.13 Overview of remuneration policy (varies per sub-provisions)	10%-15%
	IV.3.13 Policy on bilateral contacts with shareholders	15%
	III.5.11 Chairmanship of remuneration committee not filled by chairman of supervisory board	10%
	IV.1.1 Procedure concerning role of the AGM with reference to appointment and dismissal of management board members and supervisory board members	10%
Local	IV.3.13 Policy on bilateral contacts with shareholders	21%
	II.2.13 Overview of remuneration policy (varies per sub-provisions)	11%-16%
	III.5.9 Consultation of audit committee with external accountant without presence of management board	16%
	V.3.3 Evaluation of creating internal audit function	16%
	II.1.4c Description in the annual report of possible major shortcomings in internal risk management and control systems	11%
	II.2.14 Making public most important elements of management board member's contract	11%
	III.5.6 Chairmanship of audit committee not filled by chairman of supervisory board	11%
	III.5.13 Involvement of remuneration advisor	11%
	III.8.1 Role of management board chairman on a one-tier board	11%
	III.8.4 Composition of management board in the case of a one-tier board	11%

Figure 3 Provisions most often not complied with for each index for the 2014 financial year [n=95]

When the results are compared with the study of the 2013 financial year, a number of things stand out.

- Just as in the previous year, companies listed on the AEX index either implemented the provisions, provided explanations or indicated that provisions were not applicable.
- Companies listed on the AMX index once again did not always comply with provision IV.3.13 'policy on bilateral contacts with shareholders'. Provision V.3.3 'evaluation of creating internal audit function' is no longer on the list of provisions most often not complied with by AMX-listed companies.
- While AMS companies implemented, explained or declared as not applicable virtually all provisions in the 2013 financial year, a number of provisions were more frequently not complied with in the 2014 financial year. In the 2013 financial year, only provision V.3.3 'evaluation of creating internal audit function' was not complied with.
- The list of provisions most often not complied with by local companies was significantly longer in 2014 than in the year before. In addition to the provisions II.2.13 'overview of remuneration policy' and IV.3.13 'policy on bilateral contacts with shareholders', provisions relating to risk management, remuneration and one-tier management structure were more frequently not complied with.

Regarding provision V.3.3 'evaluation of creating internal audit function', it should be noted that, in contrast to the 2013 financial year, it was possible in 2014 to declare this provision to be not applicable. Companies selected this answer if they had an internal audit function. This explains the changes observed above in the companies listed on the AMX, AMS and local stock exchange indices.

Provisions declared not applicable

Not all provisions in the Code can be complied with by companies, for example because some provisions contain regulations for specific situations which do not arise in a particular company. The figure below shows the provisions that were most often declared not applicable during the 2014 financial year. A total of 18 provisions could be classified as non-applicable.[4] These include provisions relating to the one-tier management structure, share certification and the lack of an internal audit function. A noticeable outcome is that all companies listed on the AEX index declared that provision V.3.3 'lack of an internal audit function' was not applicable. This means that all AEX companies have an internal audit function. It is also noticeable that local companies often declared provision II.2.15 'justification of severance pay for management board member' to be not applicable. This implies that if a management board member leaves, no severance pay or other special compensation is given, or that no change has taken place on the management board.

Index	Provision	Percentage of companies
AEX	V.3.3 Evaluation of creating internal audit function III.6.7 Supervisory board member who sits temporarily on the management board I.2 Submitting substantial changes relating to the Code to the AGM	100% 95% 90%
AMX	III.6.7 Supervisory board member who sits temporarily on the management board III.8.1 to III.8.4 One-tier management structure	94% 94%
AMS	I.2 Submitting substantial changes relating to the Code to the AGM III.6.7 Supervisory board member who sits temporarily on the management board	95% 90%
Lokaal	II.2.15 Verantwoording vertrekvergoeding bestuurder III.6.7 Commissaris die tijdelijk in het bestuur plaatsneemt	95% 89%

Figure 4 Provisions most often classified as not applicable for each index for the 2014 financial year [n=95]

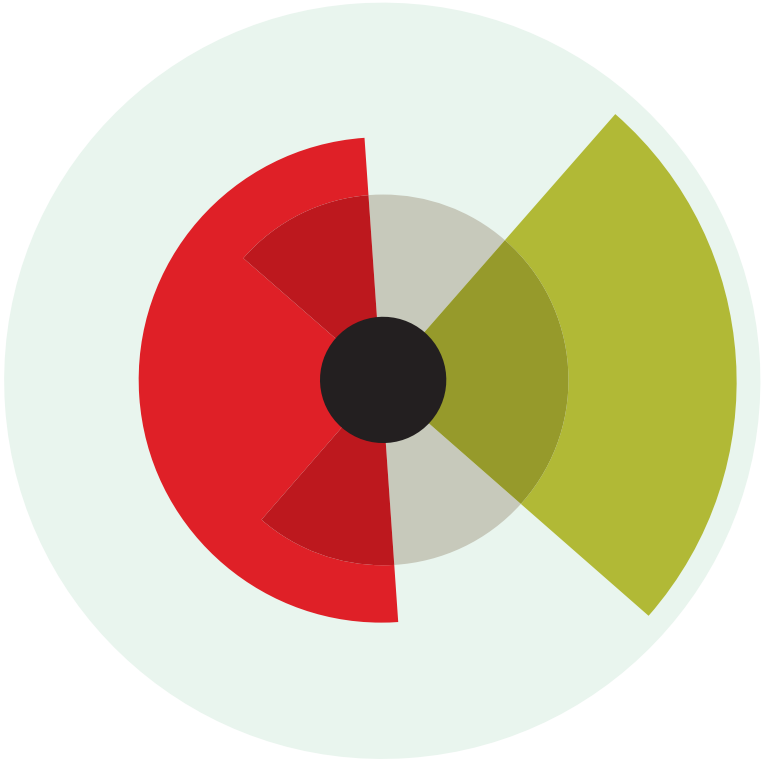
If these results are compared with those of the 2013 financial year, it is noticeable that companies more often indicated that a provision was not applicable. The increase among companies listed on the AEX, AMX and AMS indices was mainly due to the fact that in 2014 it was possible to declare provision V.3.3 'evaluation of creating internal audit function' to be not applicable. Among local companies, as well as an increase in the number of times that provision V.3.3 was declared to be not applicable, an increase was also observed in the number of times that provisions relating to share certification (provisions IV.2.1 to IV.2.8) were said to be not applicable.

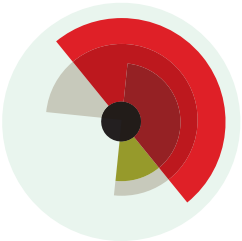
4 In the study of compliance in the 2013 financial year, a maximum of 17 provisions could be classified as not applicable. In the study of the 2014 financial year, provision V.3.3 'evaluation of creating internal audit function' was added to this list, because this is also a provision that describes a specific situation. This was noticed due to the greater focus on the internal audit function in this compliance study.

Committee's view on compliance

The Committee is pleased with the 79% response rate to the survey, particularly as it was conducted during the summer, which could have had a negative effect on the number of responses. The Committee continues to strive for 100% participation by companies. Therefore, it hopes that the rising trend in the response rate compared to the 2013 financial year will continue with the next compliance study. Average compliance percentages were also high in the financial year studied. Companies listed on the AEX index scored 100%. The Committee calls on the other companies to strive for this compliance score as well.

As regards compliance with provisions, it is noticeable that in 2014 provision II.2.13 'overview of remuneration policy' was once again one of the provisions most frequently not complied with. In particular companies listed on the AMS index and local companies failed to comply with this provision. In the Monitoring Report Financial Year 2013, the Committee noted that the provisions in the Code relating to remuneration had hardly improved company transparency regarding remuneration. The results of the study of provisions that are most often not complied with confirm this. The Committee remains of the opinion that the Code should encourage clarity and completeness as regards remuneration. The current provisions fail to achieve this goal sufficiently and as a result, the Committee is making proposals for amending the current provisions on remuneration. Another provision that companies often fail to comply with is provision IV.3.13 'policy on bilateral contacts with shareholders'. Companies are expected to formulate a policy for communication with shareholders and publish this policy. It is specifically AMX, AMS and local companies that relatively frequently fail to comply with this provision. The underlying reason for non-compliance was not investigated.





4. NATURE AND QUALITY OF THE EXPLANATION

According to the 'comply or explain' principle, a provision is either implemented or a reasoned explanation is given if a provision is not put into practice unconditionally. This gives companies room to depart from the precise way in which the principles of good corporate governance are expressed in the provision. The effectiveness of the 'comply or explain' principle stands or falls with the quality of the explanation provided by the companies. In its study of the 2014 financial year, Nyenrode made an analysis of the nature and quality of the explanations given. Companies submitted a total of 405 explanatory texts. This chapter first details the provisions for which companies most often provided an explanation for non-implementation and the nature of these explanations. Next, it examines the quality of the explanatory texts.

4.1 Key findings

The results of Nyenrode's study of the nature and quality of the explanations produced the following findings:

- The trend noted the previous year, with AEX and AMS-listed companies implementing more provisions and explaining less, while AMX and local companies, in contrast, explained more, continued as far as AEX and local companies were concerned. As regards companies listed on the AMX index, it can be concluded that they tended to explain less and implement more. Little change could be seen among AMS companies.
- Provision II.2.8 'maximum severance pay' was explained most often, just as in the previous financial year. Explanation was also often given in relation to provision II.1.1 'term of appointment of management board members'.
- The quality of the explanation remains an area of concern, as 18% of explanations given were of insufficient quality.

4.2 Explanation

The monitoring report on the 2013 financial year noted that companies listed on the AEX and AMS indices implemented the provisions in the Code more often and provided explanation less often, and that, in contrast, AMX-listed companies and local companies explained more often. This trend continued in 2014 for AEX and local companies, with AEX companies implementing provisions more often and explaining less, while local companies instead gave more explanations and implemented provisions less. As regards companies listed on the AMX index, it can be concluded that they tended to explain less and implement more. Little change could be seen among AMS companies over the period.

Index	2014	2013	2012	2011
AEX	2,2	2,3	3,5	3,8
AMX	3,0	4,2	4,0	3,8
AMS	5,4	5,3	5,9	5,8
Lokaal	10,8	9,4	6,3	6,0
Total	5,4	4,8	5,0	4,9

Figure 5 Average number of provisions that are explained per company and per year

Provisions most often explained

The top 10 provisions most often explained in the 2014 financial year are shown in the figure below.

Provision	Number of companies	Percentage of companies
II.2.8 Maximum severance pay	25	33%
II.1.1 Term of appointment of management board members	21	28%
IV.3.1 Communication with shareholders	20	27%
IV.1.1 Procedure concerning role of the AGM with reference to appointment and dismissal of management board members and supervisory board members	19	25%
II.2.5 Requirements for allocation of shares to management board members without financial contribution	14	19%
III.3.5 Maximum term of supervisory board members	13	17%
II.2.13 Overview of remuneration policy	13	17%
III.4.3 Support of supervisory board by company secretary	11	15%
II.2.4 Exercise period for options	10	13%
III.5.11 Chairmanship of remuneration committee	10	13%

Figure 6 Overview of provisions most often explained in the 2014 financial year [n=75]

There were no great changes compared with the 2013 financial year. The same provisions were in the top 10 and only the order changed slightly. When we look, for each provision, at the distribution of the explanatory texts over the indices, the following facts stand out.

- Provision II.2.8 'maximum severance pay' is mainly explained by companies listed on the AEX index. These companies apply a different rule from that of 'a maximum of one annual salary'. Most companies offer the explanation that in some cases capping severance pay can lead to unreasonable results.
- Local companies provide explanations specifically regarding provisions II.1.1 'term of appointment of management board members' and IV.3.1 'communication with shareholders'. Provision II.1.1 sets a maximum term of four years for management board members. Companies indicate that limiting the term does not fit in with the company's long-term perspective. Provision IV.3.1 states that meetings of analysts and analysts' presentations, presentations to institutional and other investors, and press conferences should be announced in advance and it should be possible to follow them simultaneously by means of webcasts. Local companies explain that this is too expensive or that the company is too small to be able to organise such things satisfactorily.
- The extent to which explanation is given regarding provision IV.1.1 'procedure concerning role of the AGM with reference to appointment and dismissal of management board members and supervisory board members' is virtually the same for the four indices.

Nature of the explanation

Companies have different motives for not complying with provisions unconditionally and, instead, giving an explanation for not doing so. The explanations they give can be categorised according to their nature.

- Company-specific arguments ('other' category) are the ones most often given.
- Explanatory texts in the category 'other regulation without grounds' are texts that can be classified as being of insufficient quality. The following section examines this category in greater detail.
- The category 'administrative/financial burden too great' includes the explanation that the company is too small to be able to comply with a provision. The percentage in this category is relatively stable over the years.
- Explanatory texts in the category 'respecting existing contracts' refer to agreements and contracts that were drawn up or concluded prior to the introduction of the Code in 2004. This category is slowly declining over time.

The figure below shows all types of explanations in chart form.

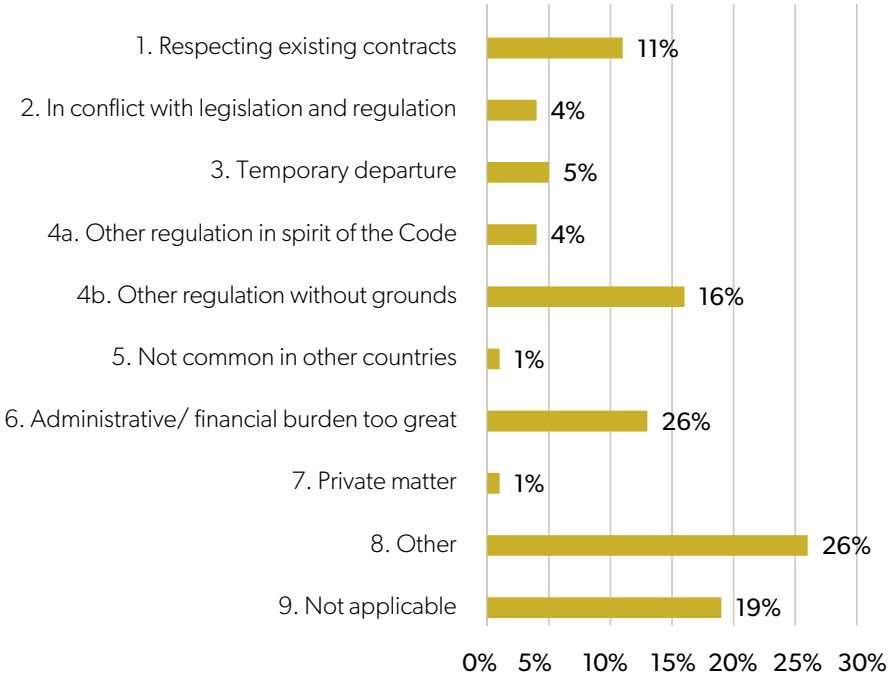


Figure 7 Nature of the explanations in the 2014 financial year

4.3 Quality of the explanation

The quality of the explanation is an important concern for the committees that monitor compliance with the Code. The report of the Streppel Committee on the 2010 financial year identified an increase in the number of times that companies, in their explanation for not implementing a provision of the Code, indicated that they had their own scheme. In response to this, the Streppel Committee formulated guidance: the application of one's own scheme can only be seen as compliance with the Code if it is indicated (1) why one's own scheme is necessary and (2) how it relates to the principle in question in the Code. In its report on the 2010 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 the explanation.

The following can be concluded from the compliance study:

- 16% of all explanatory texts in the 2014 financial year referred to a company's own scheme without good grounds;
- 1.5% of all explanatory texts referred to a temporary departure from a provision without any specific mention of when the provision would again be implemented;
- 0.5% of all explanatory texts referred to a renewal of a temporary departure from a provision without giving an end date;

These conclusions are explained further below.

Company's own scheme

This year too, the Committee had more research done into the number of times that companies gave as the reason for non-implementation the fact that they were applying their own scheme, without saying why the provision in question was not being implemented. Nyenrode's study of the 2014 financial year shows that:

- companies referred to their own scheme 83 times (20% of the total of 405 explanatory texts). This is an increase compared to the 2013 financial year, when 14% of all explanations referred to a company's own scheme;[5]
- in the 2014 financial year companies indicated 18 times (4% of all explanatory texts) that they were implementing a scheme of their own that was in accordance with the spirit of the Code. In these cases it could be said that there was compliance with the provision in the Code. This percentage was the same as the percentage in the 2013 financial year;
- 65 cases (16% of all explanatory texts) involved a reference to a company's own scheme without good grounds. This means that in these cases the Code was not being complied with.[6] In the 2013 financial year, 9% of all explanatory texts involved a reference to a company's own scheme without sufficient grounds.

The percentage of companies' references to their own schemes that have to be classified as non-compliance was 78% (65 of the total of 83) in the 2014 financial year. It was specifically the AMX and AMS-listed companies that provided explanations judged to be of insufficient quality. The quality of the explanation in the case of references to companies' own schemes was higher among local companies in relative terms.

Temporary departure

The Committee also had additional research done into the number of times that companies stated that the departure from a provision was temporary. Nyenrode's study showed that companies stated on 20 occasions (5% of the total of 405 explanatory texts) that a departure from a provision was temporary. Two categories can be distinguished.

- The company states that the provision will be implemented again within a short time, and gives a precise date (14 times; 3.5% of all explanatory texts).
- No precise information is given as to when the provision will again be implemented; it is only stated that the departure is temporary (six times; 1.5% of all explanatory texts).

Explanatory texts in the second category do not conform to the guidance from the Streppel Committee, so that in these six cases there is non-compliance with the provision in the Code.[7]

Nyenrode also investigated this year whether temporary departures from the Code were in fact temporary in nature or whether the same explanation was given several years in a row. The analysis of the 2014 financial year shows that in two cases (0.5% of all explanatory texts) there was repetition of the explanation that the departure was temporary. In these two cases there was non-compliance with the Code.[8]

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5 This difference can be explained by an adjustment in the manner of coding. The percentage of references to a company's own scheme in the 2014 financial year is more in line with the percentage in the 2012 financial year (23%).

6 This percentage is not incorporated into the compliance figures in section 3.3 'Compliance'.

7 Ditto.

8 Ditto.

View of the Committee on the nature and quality of the explanation

Both the unconditional implementation of provisions in the Code and giving explanation if a provision is not implemented are regarded as compliance. After all, the Code works according to the 'comply or explain' principle, which gives companies room to depart from provisions. However, this is on condition that the quality of the explanation given is good, as otherwise there is non-compliance. The study of compliance in the 2014 financial year showed that the quality of explanations remains a concern. Therefore, the Committee once again calls on companies to follow the Streppel Committee's guidance. The proposals for revising the Code place greater emphasis on the requirements imposed on the quality of the explanation.

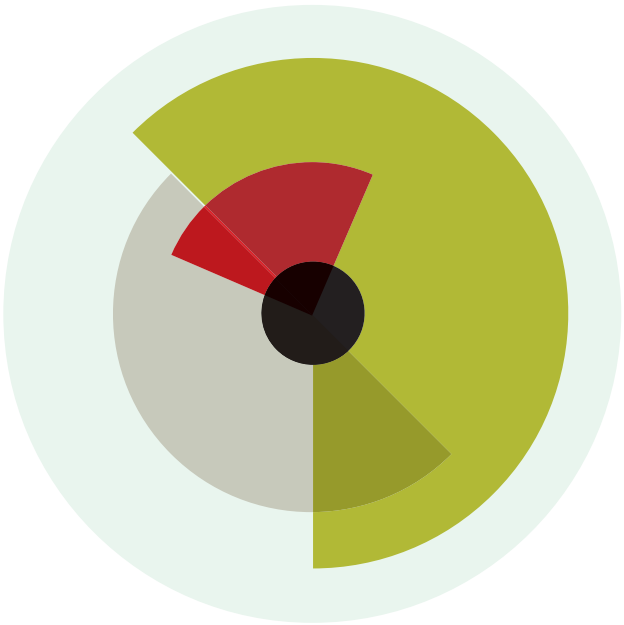
In relation to the nature of the explanation, the Committee expects that the percentage of explanatory texts in the category 'in conflict with legislation and regulation' (4%) will decline further in future. This is because in the revision of the Code, overlap with legislation will be removed. The percentage of explanatory texts in the category 'respecting existing contracts' is slowly decreasing. The Committee asks companies to extend agreements and arrange new contracts that are in line with the Code.

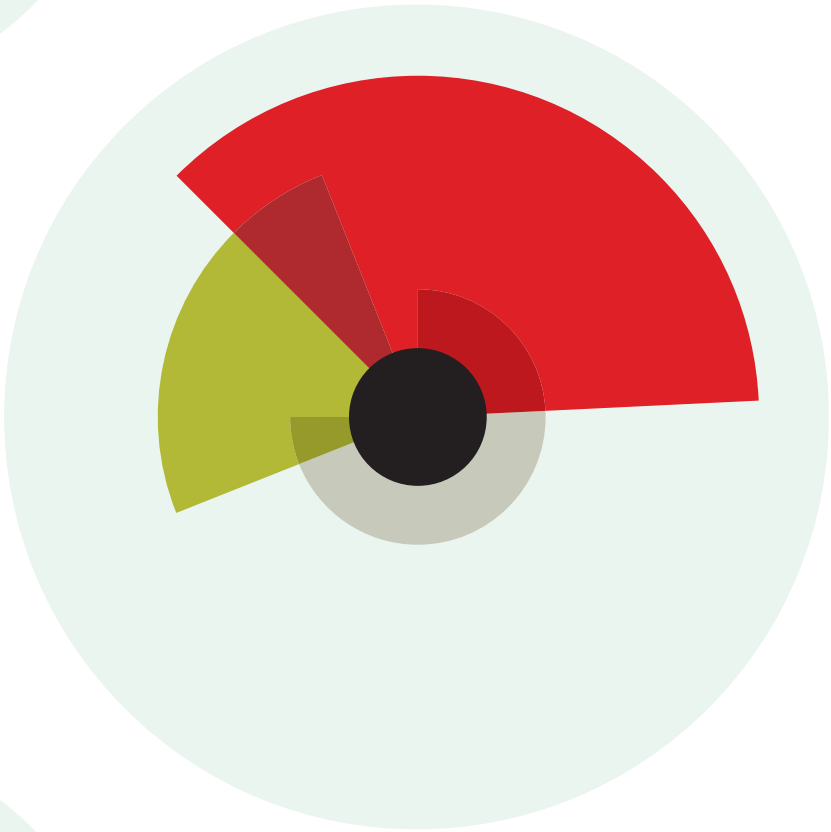
As regards companies providing explanations, it is noticeable that provision II.2.8 'maximum severance pay' was one of the provisions most frequently explained, as in other financial years. Most companies offer the explanation that in some cases capping severance pay can lead to unreasonable results. The Committee is taking account of this input in its proposals for revising the Code.

Provision II.1.1 'term of appointment of management board members' was also one of the provisions that was most often explained in 2014. Companies departed from the maximum term of four years, with some companies stating that limiting the term did not fit in with their long-term outlook. When provision II.1.1 was introduced in the original Code of 2003, this argument was also raised in the commentaries on the proposals: introducing the appointment term might prompt management board members to achieve short-term objectives, especially towards the end of the term of appointment.9 Nevertheless, the provision was introduced at that time, because it was in accordance with international practice and the connection between the term of appointment and striving to achieve short-term goals had not been demonstrated. The current Committee also sees no reason to scrap the limit on the term of appointment for management board members. This is in harmony with international practice and stimulates the company and shareholders to keep a sharp eye on the composition of the board and how it functions.

Companies also frequently depart from provision IV.3.1 'communication with shareholders', in particular local companies. The previous chapter showed that compliance with provision IV.3.13 'policy on bilateral contacts with shareholders' is generally poor. Communication between companies and shareholders is an area of concern.

9 The Netherlands' Corporate Governance Code (Tabaksblat code), December 2003, paragraph 40 on p. 53.





5. SPECIFIC SUBJECTS

At the Committee's request, Nyenrode paid particular attention in the compliance study to four subjects:

- the internal audit function
- appointment and dismissal of directors and supervisory board members
- diversity within the management board and the supervisory board
- strategic perspective on risks and opportunities

The Committee asked Nyenrode to do a survey on the extent and manner of compliance in relation to these subjects. Results from the Monitoring Rapport Financial Year 2013 prompted the Committee to have these subjects investigated. Among others things, Nyenrode looked at one of the provisions that was most often explained in the 2013 financial year, provision II.1.1 'term of appointment of management board members'. A second reason for examining these specific subjects is that a survey can supply valuable information for revising the Code.

These specific subjects were investigated by including a number of additional open or closed questions in the questionnaire that was completed by companies.[10] Companies did not have to answer these questions in order to complete the survey. As a result, the 75 companies that took part in the survey did not all answer the additional questions. In addition, some questions were only posed if the company had given a particular answer to an earlier question, for example in the case of a provision not having been implemented. Therefore, the number of observations varies from one question to another. For some subjects there were only a limited number of observations, so that not all outcomes were usable. As far as is possible and insofar as they are relevant, the results of this additional survey have been incorporated into the consultation document with proposals for revision.

10 See Appendix F of the report 'Corporate Governance in the Netherlands: study of compliance with the Netherlands' corporate governance code in the 2014 financial year' by Nyenrode Business University for the list of questions put to the companies.

5.1 Key findings

The survey by Nyenrode resulted in the following findings.

- 41% of the companies that took part in the survey (31 of 75) have no internal audit function. If the internal audit function is lacking, companies are expected to evaluate each year whether there is a need for such a function. The results of the survey fail to give a clear enough picture of the quality of this evaluation.
- Companies give different motives for departing from the terms of appointment given in the Code. For management board members the most important reasons for such departures are that the management board member in question was appointed before the Code came into force or that the company aims for long-term employment contracts or agreements. Motives given for supervisory board members are that supervisory board members are linked to the company by family relationships and that they have long experience and considerable expertise that are scarce in the sector. On the basis of the limited number of observations in the study, no precise conclusions can be drawn for improving the Code.
- Companies see expertise, previous experience and independence as the most important factors in their diversity policy. Gender also has a role to play, but nationality and age are mentioned less frequently. The measures that companies introduce in order to increase diversity focus mainly on including aspects of diversity in a specific executive search and drawing up a specific policy for promoting diversity.
- With a view to encouraging companies to focus on their long-term orientation, a strategic view of risks and opportunities, and of managing these risks and opportunities, and embedding this in the company's in control statement are important subjects for the Committee. The way in which the strategic perspective is embedded in companies, as well as the way in which responsibilities in the company are allocated, varies from one company to another. The Code can give direction to the way in which the subject can be integrated into the company's governance.

5.2 Internal audit function

The Monitoring Report Financial Year 2013 showed that companies listed on the AMX and AMS indices most often failed to comply with provision V.3.3 'evaluation of creating internal audit function'. The Committee is interested in the reasons for not complying with this provision, as the internal audit function has an important role to play in a company's risk management. The Committee therefore commissioned Nyenrode to identify the motives for not complying with the provision. The provision is as follows:

> *Best practice provision V.3.3*
> *"If there is no internal audit function, the audit committee shall evaluate each year whether there is a need for an internal auditor. On the basis of this evaluation, the supervisory board, on a proposal from the audit committee, shall make a recommendation on this subject to the management board and includes this in the report by the supervisory board."*

Nyenrode put six questions on this subject to 31 companies. These were the companies that had stated in the compliance part of the study that they did not have an internal audit function. This means that 41% of the companies that took part in the survey had no internal audit function. None of these was a company listed on the AEX index. A majority of the companies without an internal audit function (24 of the 31) gave as their motive the fact that the company was of a limited size and/or that it did not have complex business activities.

Companies were then asked to explain how they nevertheless ensured expert supervision of the creation and functioning of the risk management system when there was no internal audit function. Companies were allowed to give multiple answers. A majority of the companies (mentioned 17 times) said that this function was carried out by, for example, risk management or another department. A number of other companies (mentioned 8 times) asked the external accountant to perform this task. From these answers it is not possible to deduce whether these are comprehensive and sufficient alternatives.

In the provision in the Code, companies are asked to evaluate each year whether there is a need for an internal audit function. A majority of the companies without an internal audit function (21 out of 31) said that they carried out this evaluation each year. Nyenrode presented the companies with a number of factors and asked whether these formed part of the evaluation. These factors were:

- need for expert supervision
- nature and complexity of the risks
- need for objective monitoring and other information
- responsibility for internal control if tasks are outsourced

The companies stated that all the factors given were included in the evaluation. These answers fail to give a clear picture of the quality of the evaluations that have been carried out. The provision also says that the supervisory board makes a recommendation to the management board based on the results of the evaluation. Nyenrode asked the companies about these recommendations. However, no clear picture emerges from the answers of the 21 companies regarding (i) the extent to which the supervisory board makes a recommendation with respect to the internal audit function and (ii) the contents of any recommendations that are made.

Ten companies said they did not evaluate annually whether there was a need for an internal audit function and Nyenrode asked them the reason for this. A majority of these companies (6 out of 10) indicated that the company was of a limited size and/or that it did not have complex business activities.

Committee's view on the internal audit function

The Committee notes that a significant proportion – 41% – of the companies that took part in the survey have no internal audit function. If the internal audit function is lacking, companies are expected, according to provision V.3.3, to evaluate each year whether there is a need for such a function. On the basis of the results of the evaluation, the supervisory board makes a recommendation to the management board. The results of the survey fail to give a clear picture of the quality of this evaluation and the recommendations that are made. The Committee wants to emphasise that the internal audit function plays an important role in internal risk management and control systems. The Committee would like to see the evaluation performed well and wants the alternatives that are put in the place of the missing internal audit function to be sufficiently effective.

5.3 Appointment and dismissal of management board members and supervisory board members

The Monitoring Report Financial Year 2013 shows that the provisions dealing with the term of appointment of management board members and the maximum term for supervisory board members were two of the provisions that were explained most in the 2013 financial year. This was also the case in the 2012 financial year. The Committee is interested in the reasons for departing from these provisions and commissioned Nyenrode to identify these motives. Nyenrode also asked about the reasons for the premature departure of management board members and supervisory board members. This concerns the following provisions:

Best practice provision II.1.1
"A management board member shall be appointed for a maximum period of four years. Reappointment is possible for a maximum period of four years in each case."

Best practice provision III.3.5
"A supervisory board member may have a maximum of three four-year terms on the supervisory board."

Best practice provision III.1.4
"A supervisory board member shall step down prematurely due to inadequate performance, structural incompatibility of interests or in other instances where this is deemed necessary at the discretion of the supervisory board."

Management board members

The questions relating to the appointment and reappointment of management board members were put to 21 companies. These were the companies that had stated in the compliance part of the study that they had not implemented provision II.1.1 'term of appointment of management board members'. Twenty of the 21 companies indicated that they had a management board member who had been appointed for a period longer than four years. At six of the 20 companies this was the case for several management board members. A variety of motives were given for departing from the term of appointment given in the Code. The two most important reasons for an appointment longer than four years were that the management board member in question had been appointed before the Code came into force in 2004, and that the company strove for long-term agreements and contracts of employment as well as continuity in the company. The figure below shows all the reasons given by the companies.

What was the reason for appointing a management board member for a period longer than four years?	Number of times mentioned
Appointment before Code came into force	8
Striving for long-term agreements/contracts of employment	7
Appointment of management board members before stock exchange listing	2
Previous employment of management board member	1
Unclear reasons	2
Total	20

Figure 8 Reasons for term of appointment departing from the Code [n=20]

Of the 21 companies that did not implement the provision, only one company said that it had one or more management board members who had been reappointed for longer than four years. This concerned two management board members. The company said the reason for this was that it reappointed management board members for two terms of three years each, which made the maximum term for reappointment longer than four years.[11]

11 Despite the explanation by the company concerned, the Committee was of the opinion that the company was implementing the provision. The Code only sets a maximum term of appointment for management board members (four years); no restriction is set on the number of times directors can be reappointed.

Nyenrode also investigated the possible employment relationship of management board members. Nineteen of the 21 companies stated that there was one director (or several directors) sitting on the board who had a permanent contract of employment. Seven of these 19 companies said that several management board members were involved.

Supervisory board members

The questions relating to the appointment and reappointment of supervisory board members were put to 12 companies. These were the companies that had stated in the compliance part of the study that they did not implement provision III.3.5 'maximum term of supervisory board members'. Three of the 12 companies indicated that they had a supervisory board member who had been appointed for a period longer than four years, and two companies said that they had one or more supervisory board members who had been reappointed for a period longer than four years. Motives given for departing from the term of appointment given in the Code were that supervisory board members were linked to the company by family relationships and that supervisory board members had long-term experience and expertise that were scarce in the sector.

Premature resignation

Nyenrode also looked into premature resignation by management board members and supervisory board members. The questions on this subject were put to 75 companies, of which 73 companies provided answers. Of these 73 companies, 16 stated that a management board member had stepped down prematurely in the 2014 financial year. A variety of motives were given for premature resignations. The figure below shows all the reasons given. Companies were allowed to give multiple reasons. In all 16 cases, the resignation was explained in a press release.

What was the reason for a management board member stepping down prematurely?	Number of times mentioned
Change in strategy, policy or organisation	5
Choice by management board member, in mutual consultation or difference in viewpoint	4
Pursuing career elsewhere	3
Natural wastage or pension	3
Family circumstances or illness	1
Unclear reasons	1
Total	17

Figure 9 Reasons for premature resignation of management board member [n=16]

Of the 73 companies, 13 reported that a supervisory board member had stepped down prematurely in the 2014 financial year. A variety of motives were given for premature resignations. The figure below shows all the reasons given. Companies were allowed to give multiple reasons. In 12 cases the resignation was explained in a press release, which means that in one case the departure was not explained.

What was the reason for a management board member stepping down prematurely?	Number of times mentioned
Death, family circumstances or illness	4
Choice by supervisory board member, in mutual consultation or difference in viewpoint	4
Change in strategy, policy or organisation	3
Natural wastage or pension	2
Pursuing career elsewhere or increased pressure of work	2
Compliance with legislation and regulation	2
Total	17

Figure 10 Reasons for premature resignation of supervisory board member [n=16]

Committee's view on appointment and dismissal

The above survey results have given the Committee a greater understanding of the reasons for departing from the terms of appointment given in the Code for management board members and supervisory board members. The Committee would like to underline that the aim of the terms laid down for management board members and supervisory board members in the Code is to help the management board and the supervisory board to work properly. Turnover ensures that board members remain sufficiently focused and critical. A long term can influence a supervisory board member's independence. Provision III.3.5 of the Code stipulates that supervisory board members may have a maximum of three four-year terms on the supervisory board – a maximum of 12 years. In the Committee's view, 12 years may be too long a time for a person to remain alert and able to maintain an appropriate distance in supervising the management board. Therefore, the Committee has also included this point in the revision of the Code.

5.4 Diversity within the management board and the supervisory board

The Committee employs a broad definition of diversity. As well as gender, diversity also involves factors such as age, nationality, expertise, independence and previous experience. In the Monitoring Report Financial Year 2013 the Committee emphasises the importance of pursuing a broad-based discussion of diversity. This is because the compliance study showed that many companies refer to the target figure for the ratio of men to women from the Act on Management and Supervision (Wet bestuur en toezicht) when they are asked about their diversity policy, which means that companies explain diversity on the basis of gender diversity.

The Committee is interested in the experiences companies have of measures that can contribute towards increasing diversity (in the broad sense) and in the effectiveness of such measures. In addition, the Committee wants to gain a better understanding of how companies define diversity. The Committee asked Nyenrode to identify by means of an additional question in the survey which measures, according to companies, are or are not effective in enhancing diversity. The Code states that a company must take account of diversity in the composition of the supervisory board:

Best practice provision III.3.1

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

The questions about diversity were put to 75 companies, of which 72 provided answers. Companies were asked which factors made up their diversity policy. The answers showed that a large majority of the companies consider expertise (72 out of 72 companies), previous experience (70 out of 72) and independence (63 out of 72) to be part of their policy. The majority of the companies (50 out of 72) also sees gender as part of the policy. A smaller proportion of the companies also consider nationality (35 out of 72) and age (33 out of 72) to be aspects of diversity.

Companies were also asked to indicate what measures they had taken over the previous two years to increase diversity at the top of the organisation – the management board, the supervisory board and the executive committee. The companies' answers show that they implement a specific policy and set objectives for diversity (mentioned 30 times), and also include aspects of diversity in specific executive searches (mentioned 27 times). The figure below shows all the measures reported. Companies were allowed to give multiple answers.

What measures have been taken in the past two years to increase diversity?	Number of times mentioned
Formulating specific policy and setting objectives	30
Vague answers	29
Including aspects of diversity in executive search	27
For new appointment choosing person who makes positive contribution to diversity profile	21
Adjusting the profile of the supervisory board	17
Creating new positions	8
Measures pursuant to the target figure	6
Measuring diversity	1
Total	139

Figure 11 Measures to increase diversity [n=72]

This overview shows that companies take various different measures to increase diversity. Companies were also asked about the effectiveness of the measures reported. However, no clear and unambiguous picture emerges from the companies' answers. Seventeen companies indicated that there were one or more appointments of management board members or supervisory board members in the 2014 financial year that had actually increased diversity.

Committee's view on diversity

Based on this survey, the Committee notes that companies employ a broad definition of the concept of diversity. Companies see expertise, previous experience and independence as the most important aspects of their diversity policy. Gender is also a key part of their policy, while nationality and age are mentioned less frequently. The results of this survey show that companies have tackled the issue and have taken various measures to increase diversity. These measures focus mainly on including aspects of diversity in a specific executive search and formulating a specific policy for promoting diversity. The Committee notes that awareness is growing among companies of the importance of diversity, though it is important that any measures taken should produce tangible results. A diverse composition of management boards and supervisory boards contributes to better decision-making.

5.5 Strategic perspective on risks and opportunities

In the Monitoring Report Financial Year 2013, the Committee noted that little attention is paid to strategic risk management over the long term. In consequence the Committee raised the question of whether the Code should not concentrate more on this subject. With the revision of the code in mind, the Committee is interested in companies' long-term orientation. The Committee asked Nyenrode to look more closely at the strategic perspective of companies regarding risks and opportunities, and managing such risks and opportunities, and to find out whether the long term is considered when drawing up the in control statement.

The questions on this subject were put to 75 companies, 73 of which provided answers. The first question asked by Nyenrode was about the responsibilities of the companies' organs for long-term strategy. The companies' answers show that the majority of companies consider the management board to have final responsibility for formulating (65 out of 73 companies) and implementing (58 out of 73) the strategy over the long term. According to the majority of the companies (64 out of 73), the supervisory board has responsibility for monitoring the strategy. No clear and unambiguous picture emerged from the answers regarding responsibility for determining the long-term strategy: some see the management board as being responsible (35 out of 73) and others see responsibility lying with the supervisory board (37 out of 73).

A second question was about the way in which the long-term perspective is anchored within the company.

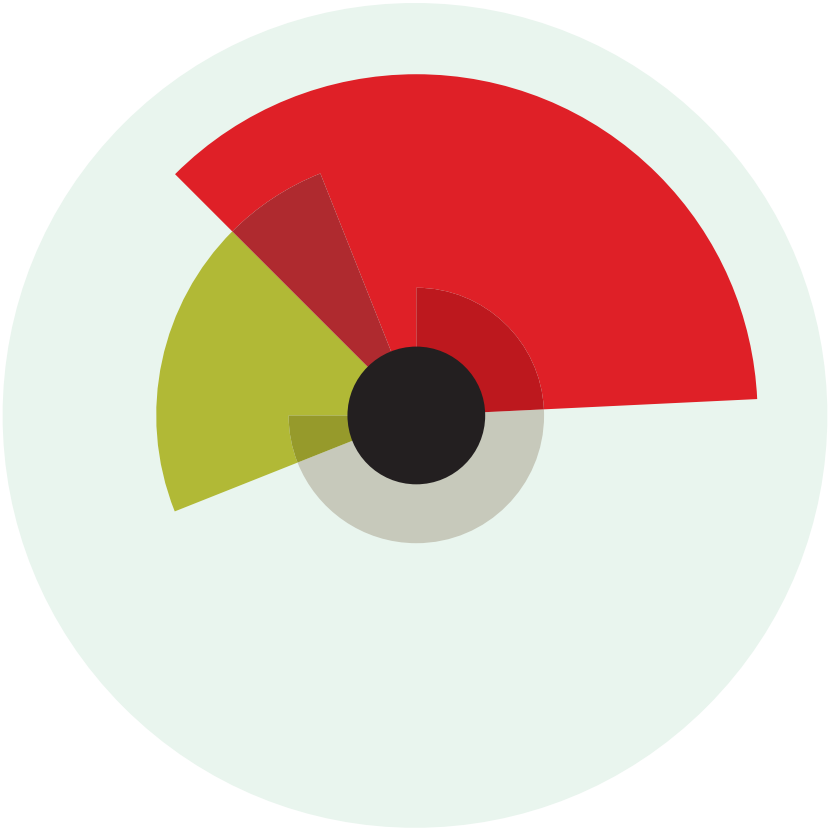
Companies were allowed to give multiple answers. No clear and unambiguous picture emerges from the companies' answers. A number of companies indicated that the strategy is anchored in the risk management system and in the administrative organisation (mentioned 23 times). Other companies indicated that they use the long-term strategy in drawing up multi-annual plans and corresponding budgets (mentioned 17 times). A number of other companies emphasised that the strategy is an integral part of discussions with the supervisory board and/or the audit committee (mentioned 16 times).

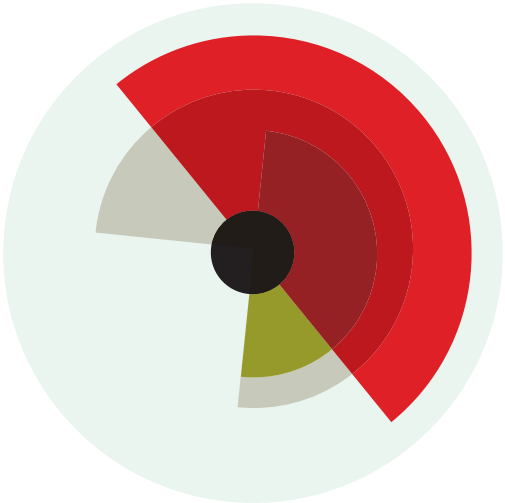
The next question asked by Nyenrode was whether the long-term strategy is taken into account when drawing up the in control statement. A total of 53 companies gave positive answers, but the answers to the follow-up question as to how this is done were of little use. Twenty of the 73 companies indicated that the long-term strategy was not taken into account when drawing up the in control statement. These companies consider that this strategy is already integrated into daily business operations.

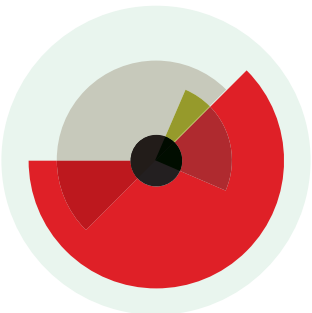
Nyenrode also asked what the role of the supervisory board is in relation to the in control statement. Fifty-nine of the 73 companies answered that the supervisory board says that it evaluates the in control statement. In answer to the follow-up question on the way in which the supervisory board evaluates the in control statement, the majority of the companies (mentioned 35 times) said that the in control statement was discussed within the supervisory board and approved after being discussed with the external accountant. Fourteen of the 73 companies indicated that the supervisory board did not evaluate the in control statement, but gave no explicit reasons for this.

Committee's view on strategic perspective on risks and opportunities

Based on the above survey, the Committee noted that the way in which the strategic perspective is embedded in companies, as well as the way in which responsibilities are allocated, varies from one company to another. The way in which the long-term strategy is taken into account when drawing up the in control statement is unclear. The Code could give more direction regarding the way in which the subject can be integrated into the company's governance. The Committee therefore makes proposals for making this clearer in the Code.







6. ANTI-TAKEOVER MEASURES

The subject of anti-takeover measures continues to be topical. In the last few years anti-takeover measures have had a role to play in various takeover situations. A well-known example is the attempt by América Móvil, S.A.B. de C.V. to take over Koninklijke KPN N.V. in 2013. A discussion has also recently begun about the position of major shareholders and its influence on the position of minority shareholders. A number of companies whose shares and depository receipts for shares can be traded on the Dutch stock exchange make use of special voting rights agreements or issue diverse types of shares, where a distinction is made between high and low voting stock. Another recent development was the stock market flotation of ABN AMRO Group N.V.: there was discussion about the way in which the company could best be protected, partly in view of the influence of financial supervision legislation.

The Code does not regulate the use of anti-takeover measures. When drafting the Code in 2003, the Committee at the time assumed that the use of anti-takeover measures would have to be regulated through legislation and did not lend itself to inclusion in the Code:

> *"In view of the fact that in such situations the future of the company is at stake and that takeover battles are often fierce and ferocious, the Committee takes the view that these situations must be regulated by law. Self-regulation by means of a corporate governance code is too weak an instrument for this and therefore unsuitable."*[12]

The Code does contain a principle and provision that reflects the Committee's viewpoint in relation to anti-takeover measures. Principle IV.2 stipulates that issuance of depository receipts for shares is not to be used as an anti-takeover measure. Based on provision IV.3.11 in the Code, the annual report should contain an overview of all outstanding or potentially usable measures for protection against control being taken of the company, and should indicate under what circumstances such measures can be expected to be used. In the Monitoring Report Financial Year 2013, the Committee noted that companies listed on local indices were not properly complying with this provision. Recent developments and the results given in that monitoring report prompted the Committee to have further research done.

12 The Netherlands' Corporate Governance Code (Tabaksblat code), December 2003, paragraph 57 on p. 53.

The Committee commissioned Erasmus University Rotterdam to do a survey of anti-takeover measures.13 The brief was to investigate the way in which listed Dutch companies give substance in practice to the possibilities for anti-takeover protection offered by Dutch legislation and regulation, and what information is provided on that subject on the basis of the Code. The emphasis here was on the legal possibilities for protection against takeover. The study by Erasmus University Rotterdam gives insight into the use of anti-takeover measures by companies with registered offices in the Netherlands and listed on the Euronext Amsterdam exchange, as well as companies with registered offices in the Netherlands and a stock exchange listing outside the Netherlands. The study also gives an overview of compliance with provision IV.3.11 and of how opinions relating to anti-takeover measures have developed over the years.

6.1 Key findings

The study by Erasmus University Rotterdam provided the following findings.

- The trend observed in earlier studies of a decrease in the number of anti-takeover measures seems to have tailed off somewhat since 2009.
- The most common anti-takeover measure appeared to be the issue of protective preference shares.
- It was shown that companies with registered offices in the Netherlands and a stock exchange listing outside the Netherlands used 'traditional' anti-takeover measures less often than companies with registered offices in the Netherlands and listed on the Euronext Amsterdam exchange, both in relative and absolute numbers.
- Compliance with provision IV.3.11 of the Code was high.

6.2 Definition and trends observed

The study by Erasmus University Rotterdam uses a broad definition of anti-takeover measures. It considers not only possibilities for a company and its management board to defend itself against hostile takeovers, but also other possibilities offered by Dutch legislation and regulation to restrict shareholders in exercising rights attached to ordinary shares. The study distinguishes between two types of anti-takeover measures:

- traditional anti-takeover measures, such as protective preference shares, issuance of depository receipts for shares,14 golden shares and application of the structure regime;15
- other measures that may have an anti-takeover effect, such as special approval rights of supervisory board members, dual-class shares, loyalty voting rights and other special voting rights agreements.

Two developments can be seen in relation to these other anti-takeover measures. The first development concerns the direct or indirect representation of major shareholders on the supervisory boards of companies. This is the case particularly, though not exclusively, for companies listed on Euronext Amsterdam. The second development concerns the use of multiple voting rights schemes for major shareholders. This is the case particularly, though not exclusively, for companies with a stock exchange listing outside the Netherlands. The use of these other forms of protection is not aimed at protecting the company against hostile bidders or sitting shareholders who want to gain control over the company, but rather it is aimed at defending the position of existing major shareholders. This raises the question of how this affects the position of minority shareholders and whether enough regulations exist within the company to safeguard their position.

The researchers from Erasmus University Rotterdam conclude that scientific research does not show clearly whether the possibility of using anti-takeover measures is a positive or a negative factor for the Dutch business climate. However, in practice the existence of outstanding or potentially usable anti-takeover measures seems to be perceived and judged to be negative, as a result of which the presence of anti-takeover measures may have a negative effect on the share price.

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13 The complete study of anti-takeover measures by Erasmus Universiteit Rotterdam has been published on the Committee's website (www.mccg.nl).

14 Issuance of depository receipts for shares/conversion of shares into depository receipts is not used as an anti-takeover measure in the Code.

15 There is an ongoing discussion as to whether the structure regime should be considered to be an anti-takeover measure. Because application of the structure regime has a protective effect in relation to takeovers, it is classified as an anti-takeover measure in the study.

6.3 Use of anti-takeover measures

The study by Erasmus University Rotterdam shows that the number of companies that have one or more outstanding or usable anti-takeover measures has been declining over the years. However, this decline is slowing. If the structure regime is not classified as an anti-takeover measure, this makes the decline in the number of anti-takeover measures used stronger. The most common anti-takeover measure is the issue of protective preference shares. The figure below shows developments over the years. The figure is based on various sources and as a result there is not a division by stock exchange index for each year.

	1992	2006	June2009	2013	June 2014	2014
Preference shares	64%	61%	N/A AEX: 62% AMX: 57% AScX: 24% Local: 37%	45% AEX: 57% AMX: 58% AScX: 38% Local: 32%	N/A AEX: 64% AMX: 55% AScX: 40% Local: 35%	44% AEX: 57% AMX: 55% AScX: 42% Local: 29%
Depository receipts for shares	39%	15%	N/A AEX: 14% AMX: 9% AScX: 24% Local: 16%	14% AEX: 14% AMX: 13% AScX: 21% Local: 11%	N/A AEX: 14% AMX: 9% AScX: 28% Local: 8%	15% AEX: 14% AMX: 9% AScX: 29% Local: 7%
Golden shares	42%	20%	N/A AEX: 10% AMX: 30% AScX: 24% Local: 26%	14% AEX: 5% AMX: 25% AScX: 8% Local: 18%	N/A AEX: 5% AMX: 23% AScX: 8% Local: 15%	13% AEX: 5% AMX: 23% AScX: 8% Local: 14%
Structure regime (total)	53%	48%	N/A	36% AEX: 24% AMX: 29% AScX: 42% Local: 46%	N/A	35% AEX: 14% AMX: 41% AScX: 50% Local: 32%

Figure 12 Development of anti-takeover measures in the period 1992-2014

As already mentioned, it appears that companies with registered offices in the Netherlands and a stock exchange listing outside the Netherlands use 'traditional' anti-takeover measures less often than companies with registered offices in the Netherlands and listed on the Euronext Amsterdam exchange, both in relative and absolute numbers.

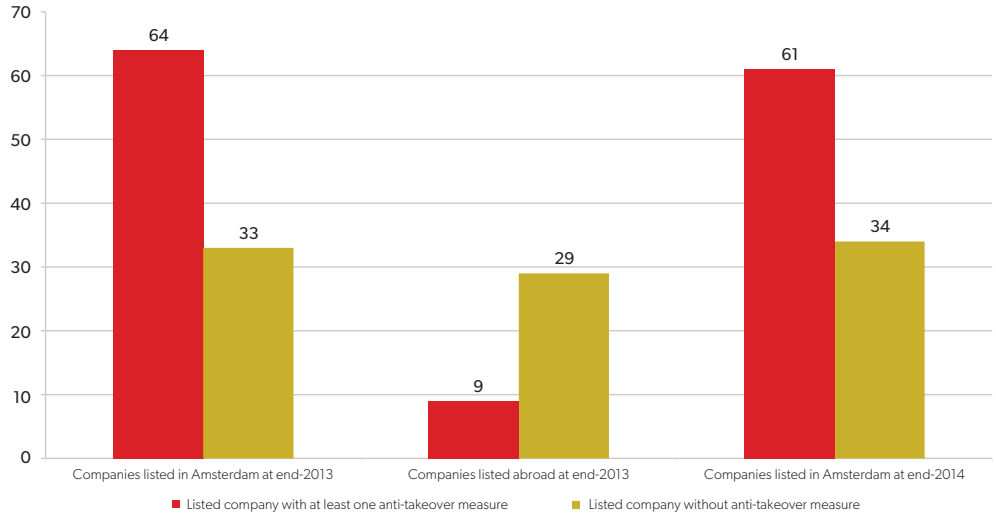


Figure 13 Number of companies with anti-takeover measures at end-2013 and end-2014

Erasmus University Rotterdam also studied the accumulation of anti-takeover measures at each company. The figure below shows the situation of the companies with registered offices in the Netherlands and listed on the Euronext Amsterdam exchange and the companies with registered offices in the Netherlands and a stock exchange listing outside the Netherlands at the end of 2013.

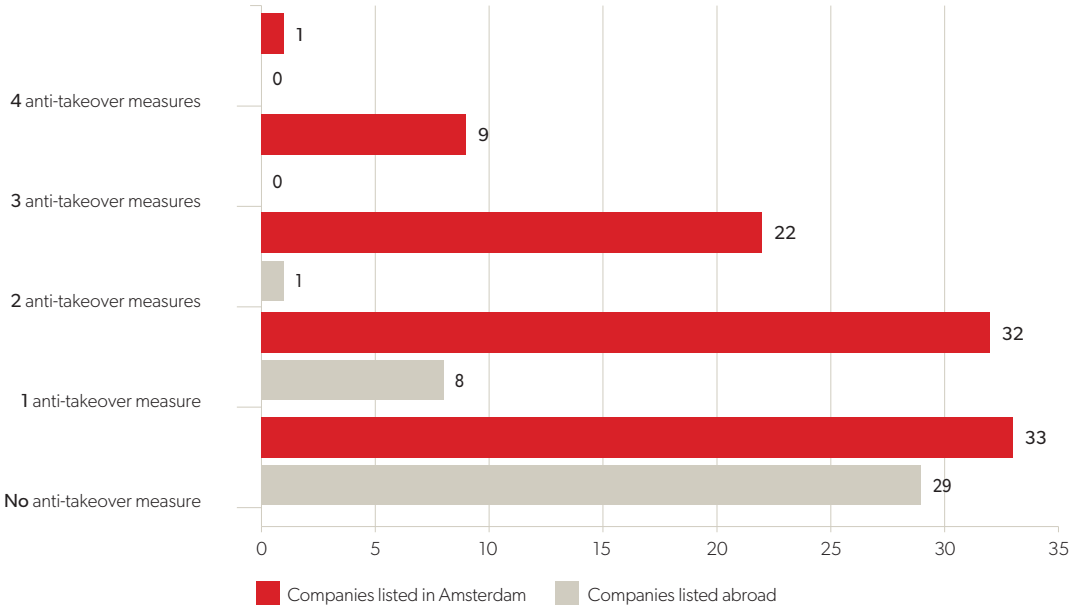


Figure 14 Number of anti-takeover measures per company

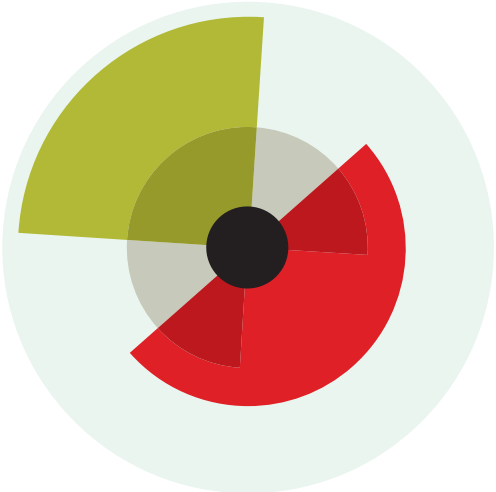
Erasmus University Rotterdam also did research on compliance with provision IV.3.11 of the Code during the 2014 financial year. The study showed that 91% of the companies investigated complied with the provision. The explanation for non-compliance by the remaining companies could be that these companies do not see the structure regime as an anti-takeover measure or do not have any outstanding or usable anti-takeover measures. Non-compliance with this provision is most frequent among local companies.

6.4 Possible implications for the Code

Erasmus University Rotterdam states that in practice there is some confusion about the scope of the term anti-takeover measure as referred to in provision IV.3.11. The researchers say that this is partly due to the fact that the term is not explained in more detail in the Code. They therefore suggest that the Committee consider amending the provision in the Code by including a clarification of the term. In view of the development that has been observed of declining use of 'traditional' anti-takeover measures and increasing use of other tools offered by company law which can have a protective effect, the researchers also suggest research should be done on whether the use or potential use of this latter category of tools available under company law should come within the scope of the Code. The researchers say that one could also investigate the relationship between these information requirements and existing requirements regarding the contents of the annual report, such as the Decree on Article 10 of the Takeover Directive.

Committee's view on anti-takeover measures

The developments in relation to anti-takeover measures can be placed in the context of the current discussion about the use of anti-takeover measures by the management board and/or major shareholders of the company on the one hand and the rights of minority shareholders of the company on the other hand. This discussion should take place in the context of company law. In line with the Tabaksblat Committee, the Committee holds to the principle that any regulation of the use of anti-takeover measures should be achieved first and foremost through legislation. In the revision of the Code, the Committee will therefore make no proposals for amending the current best practice provision IV.3.11 of the Code, relating to the use of anti-takeover measures. The Committee wishes to encourage companies to be transparent not only about traditional anti-takeover measures, but also about other measures that can have an anti-takeover effect. In the revision of the Code, the Committee will examine the relationship between the Decree on Article 10 of the Takeover Directive and the provision in the Code.



7. INTERNATIONAL COMPARISON

The University of Groningen was commissioned by the Committee to conduct a study of the international context of the Code.16 This study compared the corporate governance codes of different countries with respect to topics that are central to the revision of the Code. The Dutch Code was compared with the codes of Germany, France, Hong Kong, Italy, Singapore and the United Kingdom. The study also included legislation and detailed regulation within the United States. The 'Global Governance Principles' of the International Corporate Governance Network (ICGN) were also included in the comparison. The study focused specifically on corporate governance codes, so that with the exception of the United States, there was no examination of legislation in the area of management and supervision.

The central subjects of the study were: strategic risk management, the internal audit function, appointments, terms of appointment and the role of the external accountant, conduct and culture at the top and throughout the company, and the departure of management board members and supervisory board members, Corporate Social Responsibility, remuneration of management board members, diversity, the executive committee, the one-tier board and loyalty dividend for shareholders. In the study, a number of these subjects are further divided into subsidiary subjects. As well as comparing these subjects in the codes, the study identifies a number of other subjects that are not addressed in the Dutch Code. On the basis of these, the researchers formulated a number of related points for the Committee to consider in revising the Code.

7.1 Key findings

The study by the University of Groningen provided the following findings.

- On the whole, the Dutch Code is in line with the codes of the other countries. The codes studied mostly address the same subjects, though the emphasis and details vary.
- In some areas the Dutch Code is more advanced and more demanding than the other codes. These areas are the requirements relating to the whistle-blower scheme, the publication requirements with respect to the contract of a management board member upon appointment, and Corporate Social Responsibility.
- Particular emphases in other codes could form the basis for adjusting or tightening requirements in the Dutch Code.

16 The complete study of the international context of the Code by the University of Groningen has been published on the Committee's website (www.mccg.nl).

7.2 Notable results

The subjects and the way in which these subjects are worked out in the various codes are to a great extent the same. In some areas the Dutch Code is more advanced and more demanding than the other codes. The requirement to publish both a code of conduct and a whistle-blower scheme, for example, is more far-reaching than the international standard. In the Netherlands the details of the contract when a management board member is appointed must also be published. The Dutch Code is the only Code that includes provisions on Corporate Social Responsibility (the social aspects of companies). A number of subjects are not addressed in any code. For example, the subject executive committee is currently not part of the various codes. Moreover, the one-tier management structure does not play a significant role in any of the codes. (This depends, of course, on what the usual management structure is in a specific country and whether several types of structure are possible). The French and Italian codes do insist that the company should explain the reasons for the choice of management structure. At present none of the codes addresses the subject of loyalty dividends for shareholders.

7.3 Possible considerations for revision

Based on their survey, the researchers from the University of Groningen were unable to identify any substantial blind spots in the Dutch Code. However, on the basis of the comparison with foreign codes, the researchers formulated a number of key issues to consider in relation to the further development of the Dutch Code. These issues are given below. The way in which the Committee has dealt with the various issues in the revision is explained in the consultation document.

Risk management

As regards risk management, the internal audit function and the external accountant, the researchers identified four key issues.

- The Hong Kong and UK codes lay down that any difference of opinion between the management board and the audit committee must be clearly substantiated and explained in the annual report. There is no provision in the Dutch Code on this matter.
- Contrary to the Dutch Code, the codes of Singapore, Italy and the 'Global Governance Principles' of the ICGN mention the establishment of a separate risk committee that deals specifically with risk management within the company.
- According to the Dutch Code, access to information by the internal audit function is limited to access to the external accountant and the chairman of the audit committee. The codes of Italy and Singapore stipulate that the internal audit function should have access to all relevant information.
- Contrary to the Dutch Code, in the codes of Hong Kong and Singapore a former partner of the accountancy firm that audited the company's annual accounts – the external accountant – is excluded from sitting on the audit committee for a period of at least one year.

Composition, appointment and functioning

As a result of the international comparison, diverse points for consideration were raised in relation to the composition of the management board and the supervisory board, the appointment of board members and how the boards function.

- Other countries' codes often list possible factors that are part of diversity, but the Dutch Code gives no definition of this term. However, the Committee has already indicated a number of times in guidance that it uses a broad definition of diversity: as well as gender, diversity also involves factors such as age, nationality, expertise, independence and previous experience. Another point to consider in relation to diversity is the formulation of specific objectives. Germany and France set concrete targets for the percentages of women sitting on the supervisory board or the management board. In other codes – including the Dutch Code – there are no such generally applicable targets. Furthermore, in the Dutch Code diversity is limited to the supervisory board, while in other codes diversity objectives focus on the board as a whole, or on the supervisory board and the management board.

- Contrary to the Dutch Code, the codes of the United Kingdom, Singapore, Italy and Hong Kong state that the independence of supervisory board members who sit on the board for more than nine years should be considered critically.
- Provisions referring to the attendance of supervisory board members at meetings are usually more specific in other codes than in that of the Netherlands. In some countries an attendance overview is presented for each supervisory board member. Other codes state that if an individual supervisory board member fails to attend more than a certain percentage of board meetings, his or her name will be mentioned in the report.
- In a number of codes – the 'Global Governance Principles' of the ICGN and the codes of France, Singapore, the United Kingdom and Italy – the use of an external facilitator for the purpose of evaluating the board is mentioned. The Dutch Code does not go into the subject of deploying an external facilitator.
- A number of codes mention the appointment of a lead independent director in order to strengthen the position of non-executive directors in a one-tier structure. The lead independent director functions among other things as a channel of communication between investors and the board, plays a major role in evaluating the chairman and chairs executive sessions. The Dutch Code has no separate provision that deals with the lead independent director.
- The codes of Hong Kong, the United Kingdom and Singapore consider the company secretary. These codes state that all directors should have access to the secretary and that the secretary is appointed and dismissed by the board of directors. In contrast, the Dutch Code stipulates that the secretary shall be appointed and dismissed by the management board.

Remuneration

As regards remuneration, the researchers of the University of Groningen raise the idea of also giving the remuneration committee a role in the remuneration of senior management or key personnel. This follows the example of the codes of Hong Kong, Singapore, the United Kingdom, and Italy, as well as legislation in the United States. In the Dutch Code, the role of the remuneration committee is limited to the policy on the remuneration of management board members.

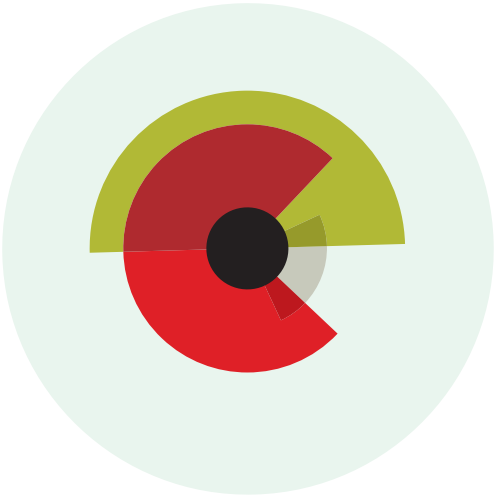
Shareholders

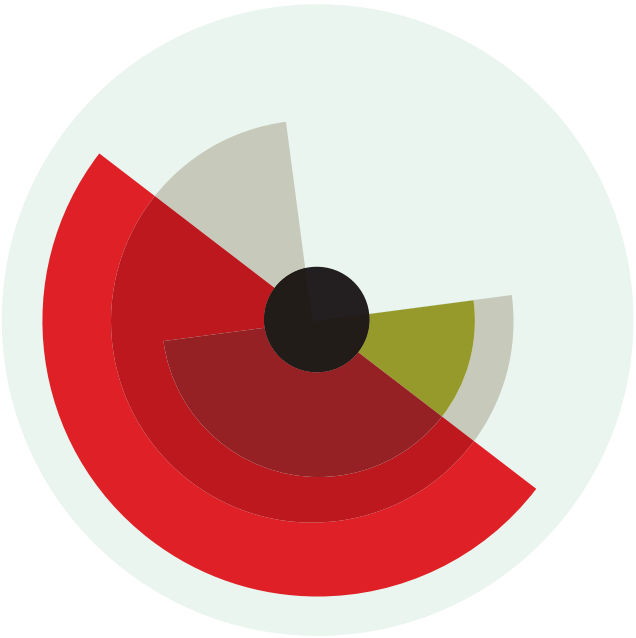
Regarding the subject of shareholders, the researchers raise a consideration relating to the attendance of directors at the Annual General Meeting. In contrast to the Dutch Code, the codes of France, Singapore, the United Kingdom and Italy recommend that all directors should in principle attend the AGM.

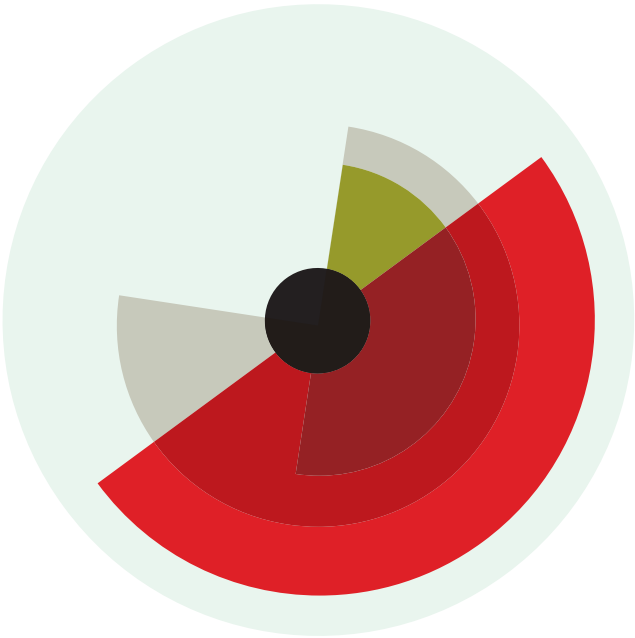
Committee's view on the international comparison

Based on the international comparison, the Committee notes that, on the whole, the Dutch Code is in line with those of the other countries, but that in some cases the emphasis is different. The international comparison provided useful input for the revision of the Code. The results of the study have been used in formulating the proposals for the revision.

Two comments should be made regarding this comparison. Firstly, the study only analysed corporate governance codes, so that with the exception of the United States, there was no examination of legislation in the area of management and supervision. It is not excluded that in a particular country, a specific regulation is not in the national corporate governance code, but is covered by legislation. In order to gain a comprehensive picture of the way in which corporate governance is organised in a country, one would need to look at the code and relevant legislation in their entirety. Secondly, it should be noted that the contents of a national code have to be placed in the context of the Code's past history, national traditions such as the governance model (one-tier or two-tier structure), culture and the influence of the political climate. These two aspects were outside the scope of the study.







8. THE CODE FROM A NATIONAL AND INTERNATIONAL PERSPECTIVE

In the Netherlands the corporate governance rules of listed companies can be found in legislation and in the Code. Legislation offers the framework with the most important rules for establishing a company. The Code provides further details for proper corporate governance. Developments in national legislation can have an influence on the way the Code functions. The same is true for international developments. The international playing field in the area of corporate governance is in a constant state of flux. Convergence of national corporate governance codes can help create a level playing field, where there should also be room for national touches. The Committee therefore also has the task of keeping track of international developments and practices in the area of corporate governance.

This chapter outlines developments at national and international level that are relevant to the Code. National developments can include new regulations and translating European regulations into national rules. Examples of international developments include new European Union regulations, developments within other international organisations, and developments at national level in various European and non-European countries.

8.1 Key conclusions

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

- At the national level there are developments relating to diversity, the publication of quarterly reports, Corporate Social Responsibility and the role of the audit committee. In the revision of the Code, the Committee will look at overlap with legislation that arises from recent national developments, among other things.
- At European level there is an ongoing discussion about measures relating to the commitment of shareholders. It is still unclear exactly what package of measures will be decided and what influence this will have on the provisions in the Code.
- National codes are continuing to develop. Diverse European and non-European countries deal with comparable subjects such as remuneration, risk management, diversity, attendance at meetings by management board members and supervisory board members, independence, making appointments, and succession.

8.1 National developments

Evaluation of target figure for ratio of men to women

With the entry into force of the Act on Management and Supervision (Wet bestuur en toezicht) on 1 January 2013, a target figure was introduced for the ratio of men to women in large public limited companies and limited companies of at least 30% women and at least 30% men on the management board and the supervisory board. This regulation was temporary and lapsed on 1 January 2016. In autumn 2015, the Minister of Education, Culture and Science, Jet Bussemaker, informed the Lower House of Parliament regarding the monitoring and evaluation of the target figure.17 In the letter, she noted that since the introduction of the target figure, the number of women in management boards and supervisory boards had risen, but that progress was limited. Companies that have not reached the target figure have to explain the reason for this in the annual report. Reporting on this still leaves something to be desired. Bussemaker therefore indicated in the letter that she intended to continue actively encouraging self-regulation by companies and to intensify these efforts. In the short term, a bill will be presented to the Lower House to reintroduce the target figure. Enforcement will also be tightened by actively involving relevant stakeholders at companies, and accountants and shareholders. Bussemaker also called on the Committee to look at the issue of gender diversity more closely and in more concrete terms when revising the Code. She said that if in 2019 it turns out that a real increase has been achieved and the corporate governance code contains a serious standard for the promotion of women to the top levels, the statutory target figure may become superfluous.

Implementation of change to directive on transparency

In December 2015, parliament approved the bill to implement the change in the directive on transparency. This bill involves a change to the Financial Supervision Act (Wet op het financieel toezicht, Wft) and other existing regulations. The bill implements Directive 2013/50/EU. This amending Directive aims to simplify implementation of the transparency directive, specifically for small and medium enterprises, and to enhance its effectiveness, particularly as regards transparency in relation to control at issuers. Among other things, the bill includes the abolition from 1 January 2016 of the requirement for issuers to publish interim declarations twice a year (quarterly reports). In the legislative deliberation, Minister of Finance Jeroen Dijsselbloem indicated that he wished the Committee to devote attention to acting against voluntary publication of quarterly figures by issuers.

In addition, the bill contains a requirement for issuers that are active in the extractive industry (oil, gas and mining) or the logging industry to publish a report on payments to the governments of countries where they exploit raw materials. This requirement to produce annual reports on payments of more than €100,000 arises from the transparency directive and Accounting Directive 2013/34/EU. For the implementation of this reporting requirement, the Decree on reporting of payments to governments (Besluit rapportage van betalingen aan overheden) was published (Stb. 2015, 439).

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

The Ministry of Security and Justice consulted from 11 November 2015 to 18 January 2016 on two draft decrees for the implementation of Directive 2014/95/EU relating to disclosure of non-financial information and diversity policy. This directive obliges certain large companies to set out once a year in a non-financial statement how they deal with environmental, social and staff matters, respect of human rights and fighting bribery and corruption. The directive also contains a requirement for large listed companies to report on their diversity policy to the management board and the supervisory board. This concerns a change in the accounting directive.18 A bill for implementing the directive has also been put to the Lower House. In this bill the legal basis in Article 391 of book 2 of the Dutch Civil Code for laying down rules for the annual report in a general order in council (algemene maatregel van bestuur, amvb) is extended to laying down rules relating to the non-financial statement (Parliamentary papers 34 383).

17 Letter to parliament on progress of Women to the Top, Lower House, session 2015-2016, 30 420, no. 227.

18 For more information see p. 47 of the Monitoring Report Financial Year 2013.

Implementation of directive and regulation on statutory audit of annual accounts

In 2015, the Ministry of Finance consulted the market about a draft bill and a draft decree for the implementation of Directive 2014/56/EU to amend the existing directive relating to the statutory audit of consolidated and unconsolidated annual accounts, and to amend parts of Regulation 537/2014 relating to specific requirements regarding statutory audit of financial statements of public-interest entities (organisaties van openbaar belang, OOBs). The aim of the directive is to increase investors' confidence in the accuracy of consolidated and non-consolidated annual accounts by further improving the quality of statutory audits. The directive also intends to enable external accountants and accountancy firms to offer their services in the area of statutory audit, under certain conditions, in an EU member state other than the one in which they are certified. The regulation contains specific requirements for statutory audits of OOBs. The aim of the regulation is to improve the integrity, independence, objectivity, responsibility, transparency and reliability of external accountants and accountancy firms that carry out statutory auditing of financial accounts of OOBs. Among other things, the European regulation addresses the special role of the audit committee in appointing the accountant of the OOB, the procedure that has to be followed in making the appointment, and the statutory audit. The draft decree amends, among other things, the Supervision Accountants Organisations Decree (Besluit toezicht accountantsorganisaties) and the Decree of 26 July 2008 on the audit committee.

8.2 European regulations

Draft directive for the encouragement of shareholder engagement

On 9 April 2014, the European Commission published a proposal for revising the directive on shareholder rights (COM (2014) 213), with the aim of achieving more transparency and greater shareholder engagement. On 25 March 2015, the Council member states agreed with a mandate to begin the informal trialogue with the European Parliament. In July 2015, the European Parliament approved in plenary session several amendments to the proposal, after which it was possible to begin the informal trialogue for the purpose of an agreement at first reading. An important amendment by the European Parliament concerns the proposal to require that issuers publish information annually about tax payments to governments in the countries in which they are active, as well as information about tax rulings. The European Commission has announced that it will publish an impact assessment in the first quarter of 2016. The negotiations between the European Commission, the Council and the European Parliament regarding the definitive text of the directive are still in progress.

8.3 International organisations

OECD

In 2015, the Organisation for Economic Cooperation and Development (OECD) finished updating the Principles of Corporate Governance. The motives for updating the 2004 principles were recent challenges to corporate governance and the financial crisis. Attention was paid to issues such as the changing role of the capital market, the greater complexity of the investment chain and the arrival of new investors, investment strategies and trade practices. Other substantive changes in the principles relate to transactions with related parties, voting by shareholders on the management board's remuneration policy, and disclosure of non-financial information. The new principles have been ratified by the G20.

The OECD also updated the Corporate Governance Factbook in 2015. This Factbook gives an overview of important corporate governance topics (such as management and supervision, remuneration, institutional investors, transactions with related parties, appointments, and risk management) and the way in which the different countries have given substance to these topics through legislation and regulation, and codes.

ESMA

In 2013, the European Securities and Markets Authority (ESMA) recommended to the proxy advisory services sector that it develop a code of conduct. Following this recommendation, in 2014 the sector drew up the Best Practice Principles for Providers of Shareholder Voting Research and Analysis. In 2015, ESMA applied itself to an evaluation of the Principles. An important finding from this evaluation is that a large part of the sector endorses the Principles. Nevertheless, the ESMA is striving for greater compliance with the Principles within the sector. The ESMA also noted that the contents of the Principles conform to its expectations. Proxy advisory services publish compliance statements in which they look at compliance with the code of conduct. Although the statements vary in length and in the amount of detail, they generally contain the minimum amount of information necessary. The ESMA further concludes that the Principles have a positive influence on the market, specifically as regards transparency in the work of proxy advisory services. Finally, the ESMA concludes that the Best Practices Principles Group can reinforce its own structure and can further strengthen the method of monitoring the Best Practice Principles.

EcoDa

In October 2015, the European Confederation of Directors Associations (EcoDa) brought out a report on compliance with European corporate governance codes and monitoring compliance. The study was carried out in cooperation with the European Corporate Governance Codes Network (ECGCN), among others. EcoDa concludes that compliance by companies with the national codes is generally increasing. Companies indicate that monitoring, dialogue and peer pressure have contributed towards greater compliance. However, according to the bodies that monitor compliance with the code within their particular countries, it is still important to avoid a 'box-ticking mentality'.

The report also shows that there are major differences between the countries studied when it comes to the monitoring mechanism, the status of the monitoring committee and the way in which the code is revised. It appears that in many countries there is no monitoring of the quality of compliance, but only of compliance as such. Many monitoring committees are voluntary in character and few of them operate on the basis of legislation. In addition, the approach to revising codes varies from one country to another. Regarding the contents of the codes, EcoDa concludes that the provisions that are departed from most are provisions that relate to the following subjects: transparency on remuneration, independence of supervisory board members and non-executive directors, and evaluation of the functioning of the management board and the supervisory board members. Departing from provisions is not really accepted by investors or proxy advisory services. In a number of countries, the quality of the explanation remains an area of concern.

ICGN

The International Corporate Governance Network (ICGN), the worldwide network of institutional investors, published a draft of a worldwide code for institutional investors in November 2015. This code will offer institutional investors a 'passport' for responsible shareholding for markets without their own stewardship code or markets with different codes. The ICGN emphasises that the code complements national codes and does not replace them. The code can also offer inspiration to jurisdictions that wish to draw up their own stewardship code. The draft code contains seven principles which concern, among other things, investors' own governance, voting policy, cooperation between institutional investors, emphasis on the long term and the integration of sustainability matters, and enhancing transparency regarding activities.

Basel Committee on Banking Supervision

The Basel Committee on Banking Supervision established new corporate governance principles for banks in July 2015. The new principles further emphasise risk management and embedding supervision thereof in the governance structure of a bank. For example, guidance relating to the implementation of effective risk management systems is expanded and it addresses the importance of the 'three lines of defence' and the risk culture. Moreover, the new principles address the issue of management board members devoting sufficient time to be able to perform their tasks and to keep up to date with relevant developments in banking.

8.4 Developments in European and non-European countries

Germany
In May 2015, the new version of the German corporate governance code was established by the Regierungskommission Deutscher Corporate Governance Kodex. This code states, among other things, that German listed companies will be asked to lay down maximum terms of appointment for their supervisory board members, with the companies being allowed to decide themselves what the maximum term should be. Another provision is that if a supervisory board member is present at fewer than half of the supervisory board's meetings, this should be mentioned in the annual report. A provision has also been added which says that henceforth the management board must set specific targets for the number of women in the two layers of management according to the articles of association.

Finland
The new Finnish corporate governance code was established in October 2015 and came into effect on 1 January 2016. The number of provisions is limited in the new code. A substantive change is the inclusion of a provision stipulating that Finnish listed companies shall formulate a diversity policy, specify their objectives regarding the ratio of men to women on the management board, and explain the measures they take to achieve their objectives. This change is a result of the implementation of the European directive on disclosure of non-financial and diversity information. In addition, a new provision has been included to increase transparency in transactions with related parties. The provision states that a company should report on decision-making regarding unusual transactions with related parties.

France
The French securities commission, the Autorité des Marchés Financiers (AMF), published its annual report on corporate governance and the remuneration of management board members in November 2015. The report says that the AMF believes parts of the French corporate governance code need to be adjusted. This specifically concerns provisions relating to remuneration of management board members and the independence of non-executive directors. The authors of the French corporate governance code, the employers' organisations Association Française des Entreprises Privées (AFEP) and the Mouvement des Entreprises de France (MEDEF), have said that they will take account of the recommendations in the planned revision of the French code in 2016.

Italy
In July 2015, the revised Italian corporate governance code was published by the Comitato per la Corporate Governance. A new provision is that Italian listed companies are expected to provide insight into the attendance of management board members at board meetings. Furthermore, the report underlines the responsibility of the management board for the effectiveness of the internal risk management and control systems. The Italian corporate governance committee also indicates that a number of principles in the area of Corporate Social Responsibility have been included. The committee has announced that it will evaluate the effectiveness of the code every two years and make any necessary proposals for revision.

Japan
In March 2015, Japan presented its first corporate governance code, which took effect in June. The code is supposed to boost the confidence of domestic and foreign investors in Japanese listed companies. It is based partly on the Principles of Corporate Governance of the OECD. Provisions in the code include one stipulating that Japanese listed companies should have at least two independent non-executive directors sitting on their board. In addition, the code encourages Japanese companies to take measures to ensure that as many shareholders as possible can be involved in decision-making at the AGM, for example by providing an English translation of the agenda. The Japanese securities exchange in Tokyo will make the code part of its listing rules.

United Kingdom

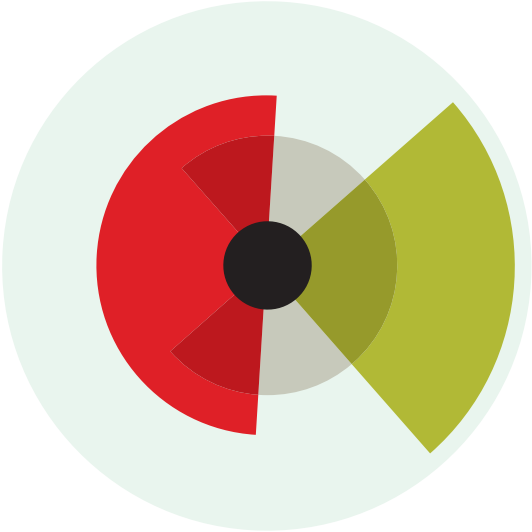
In January 2015, the Financial Reporting Council (FRC) published its annual report on developments in British corporate governance and shareholder engagement. In this report, the FRC concludes that compliance with the UK Corporate Governance Code has improved and that reporting has become more transparent and informative. The number of signatories to the UK Stewardship Code has grown, but the dialogue between UK companies and investors is still of insufficient quality. There is also room for improvement in the quality of the documentation on compliance with the Stewardship Code by institutional investors. In the report, the FRC underlines the importance of a good culture within an organisation and announces a project on corporate culture. The focus of this project is to understand the way in which a management board can give shape to and communicate the organisation's culture, and to find out what the best practices are. The report additionally shows that progress has been made regarding diversity policy, but that further improvement is possible. The FRC also says that it is working on a project dealing with the succession of management board members. A discussion paper published on this subject in October looked at strategy and culture, the role of the selection and appointment committee, evaluation of the management board, the growth of talent, diversity, and the role of institutional investors.

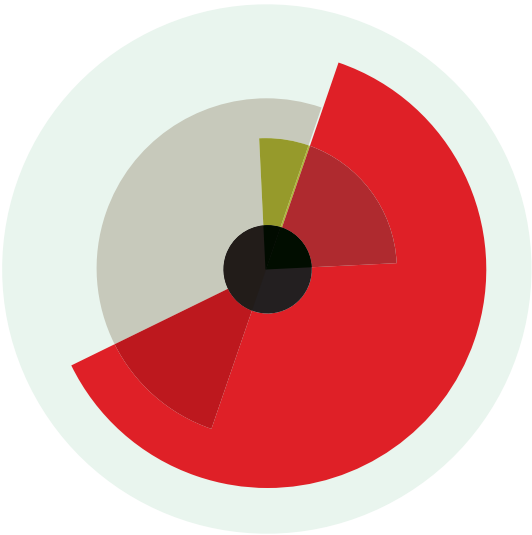
United States

In 2015, the US watchdog, the Securities and Exchange Commission (SEC), published diverse rules and draft rules relating to corporate governance among US listed companies. A number of rules and draft rules concern remuneration policy. For example, from the 2017 financial year US companies will have to provide information about pay ratios within companies. The SEC has made a proposal that companies should develop and publicise a policy aimed at being able to demand the repayment of a bonus already paid to a management board member (claw-back), if this bonus turns out to have been based on incorrect financial information. The SEC has also published a proposal that companies should be obliged to provide information about the relationship between the remuneration of directors and the company's financial performance compared with companies in a reference group. Another SEC proposal would require audit committees to supply more information about their responsibilities and activities, such as the decision-making involved in appointing a new external accountant and evaluating his or her effectiveness. In December, the SEC published a new proposal according to which US and non-US companies from the extraction industry (mining, gas and oil companies) would be required to be transparent about payments they have made to governments (such as taxes and fees).

Sweden

The new corporate governance code in Sweden came into force in November 2015. One change concerns the provision that the management board's selection and appointment committee should carefully assess whether a candidate has a possible conflict of interest. Another change is that management board members should draw up guidelines for the company's social responsibility in order to ensure long-term value creation. Companies must also give better information about the way in which the effectiveness of the management board is evaluated. Furthermore, the provisions relating to remuneration have been simplified.





9. ABOUT THE CODE AND THE COMMITTEE

9.1 The Netherlands' Corporate Governance Code

The Netherlands' Corporate Governance Code contains principles and best practice provisions focused on sound corporate governance and it came into effect on 1 January 2004. 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 complies with the Code 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. In December 2008, the Code was updated by the Frijns Committee and this updated Code took effect on 1 January 2009.

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

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 Article 391(5) of Book 2 of the Dutch Civil Code.[19] Dutch institutional investors have been required since 1 January 2007 to make a statement in their annual report about compliance with the principles and best practice provisions of the Code that pertain to them.[20]

The parties to which the Code applies are represented by the Association of Securities Holders (Vereniging van Effecten Bezitters, VEB), Eumedion, Euronext, FNV and CNV, the Association of Securities Issuing Companies (Vereniging van Effecten Uitgevende Ondernemingen, VEUO) and VNO-NCW. Together these are referred to as the supportive parties of the Code.

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

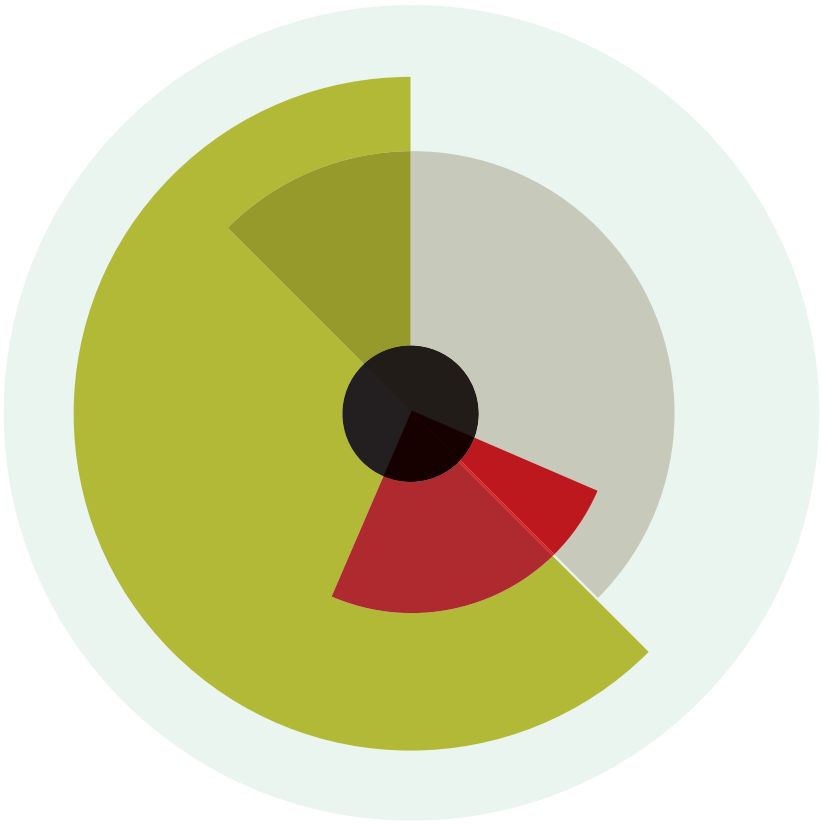
20 Article 5:86 of the Financial Supervision Act (Wet op het financieel toezicht).

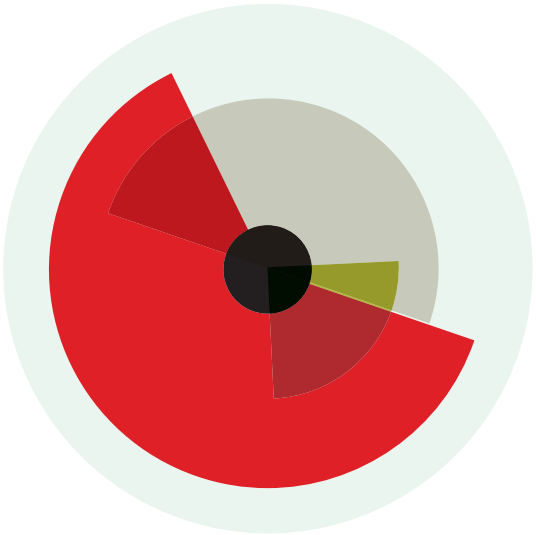
9.2 Task of the Corporate Governance Code Monitoring Committee

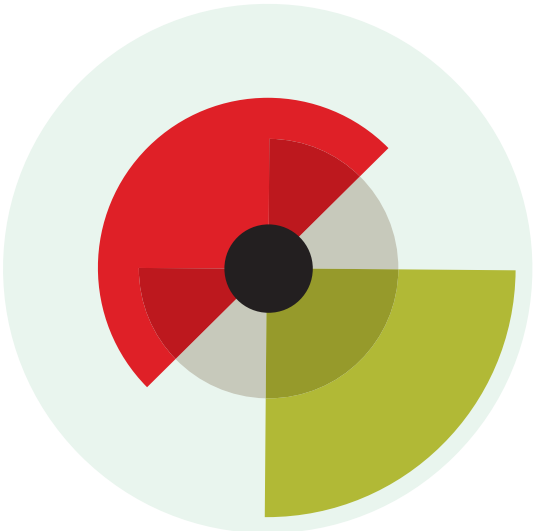
The task of the Committee is to promote current relevance and usefulness of the Code. It performs its task, among other ways, by:

- 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 the composition of the Committee can be found on page 63.







COMPOSITION

MONITORING COMMITTEE CORPORATE GOVERNANCE CODE

Chairman[1]

prof. dr. J.A. van Manen

Partner at Strategic Management Centre

Vice Chairman of the supervisory board at De Nederlandsche Bank NV

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

Advisors

mr. L.D.V.M. Kompier

Directorate of Legislation, Ministry of Security and Justice

M. Rookhuijzen, LLM

Directorate of Financial Markets, Ministry of Finance

Members

prof. dr. B.E. Baarsma

General Director at SEO Economic Research

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

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

Vice Chairman of the supervisory board at Loyalis NV

Member of the supervisory board at Aon Groep Nederland BV

Vice Chairman of the supervisory board at Espria foundation

Member of the Advisory Board Responsible Investment at PGGM

drs. E.F. Bos

Chief Executive Officer at PGGM

Member of the supervisory board at Nederlandse Waterschapsbank NV

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

Secretary and Treasurer of the management board at Stichting de Volkskrant

Member of the supervisory council at IDH

mr. S. Hepkema

Member of the supervisory board at SBM Offshore NV

Chairman of the supervisory board at Wavin NV

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

1 This is an overview of positions and secondary positions as of January 2016. A full overview of positions and secondary positions of members of the Committee can be found on the website (www.mccg.nl).

Appendix:

Companies that took part in the survey

AEX	AMX	AMS	Local
Aegon. N.V.	Aalberts Industries N.V.	Accell Group N.V.	AFC Ajax N.V.
Koninklijke Ahold N.V.	Arcadis N.V.	AMG Advanced Metallurgical Group N.V.	AND International N.V.
Akzo Nobel N.V.	ASM International N.V.	Amsterdam Commodities N.V.	Batenburg Techniek N.V.
ASML Holding N.V.	Koninklijke BAM Groep N.V.	Ballast Nedam N.V.	Core Laboratories N.V.
Koninklijke Boskalis Westminster N.V.	Binckbank N.V.	BE Semiconductor Industries N.V.	Van Lanschot N.V.
Delta Lloyd Groep N.V.	Brunel International N.V.	Beter Bed Holding N.V.	Holland Colours N.V.
Koninklijke DSM N.V.	Eurocommercial Properties N.V.	DOCDATA N.V.	Hydratec Industries N.V.
Fugro N.V.	Nieuwe Steen Investments N.V.	DPA Group N.V.	IMCD N.V.
Gemalto N.V.	NN Group N.V.	Grontmij N.V.	Inverko N.V.
Heineken N.V.	Post NL N.V.	Groothandelsgebouwen N.V.	Kardan N.V.
ING Groep N.V.	Sligro Food Group N.V.	Heijmans N.V.	Koninklijke Reesink N.V.
Koninklijke KPN N.V.	TomTom N.V.	ICT Automatisering N.V.	Mota-Engil-Africa N.V.
OCI N.V.	USG People N.V.	KAS BANK N.V.	Bever Holding N.V.
Koninklijke Philips N.V.	Vastned Retail N.V.	Kendrion N.V.	Koninklijke Delftsch Aardewerk-fabriek "De porceleyne fles Anno 1653" N.V.
Randstad Holding N.V.	Koninklijke Vopak N.V.	Koninklijke Wessanen N.V.	Novisource N.V.
Relx N.V.	Wereldhave N.V.	N.V. Nederlandse Apparatenfabriek NEDAP	Pharming Group N.V.
SBM Offshore N.V.		Neways Electronics International N.V.	Roto Smeets Group N.V.
TNT Express N.V.		Ordina N.V.	SnowWorld N.V.
Unilever N.V.		Telegraaf Media Group N.V.	TIE Kinetix N.V.
Wolters Kluwer N.V.		Value8 N.V.