Monitoring Committee

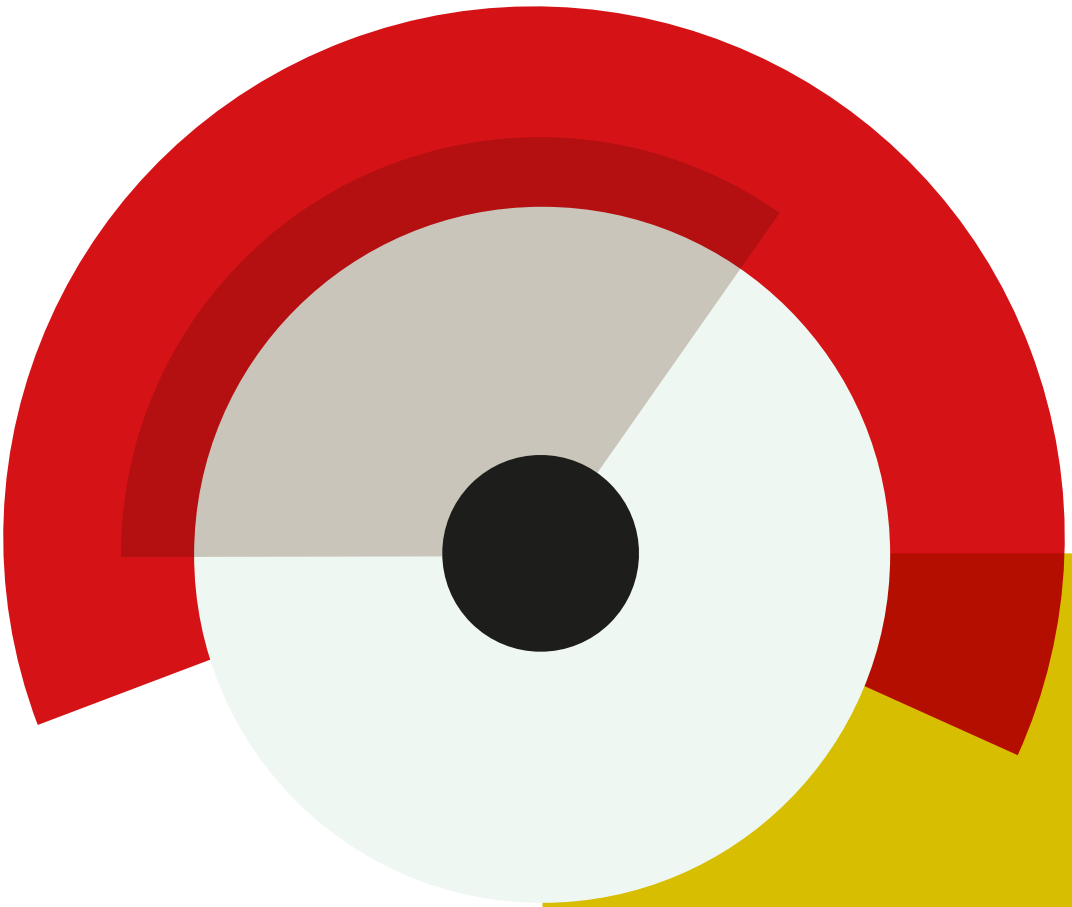
CORPORATE GOVERNANCE CODE

Monitoring Report on the 2019 Financial Year

UNOFFICIAL TRANSLATION

december 2020
secretariat: PO Box 20401, 2500 EK The Hague

www.mccg.nl



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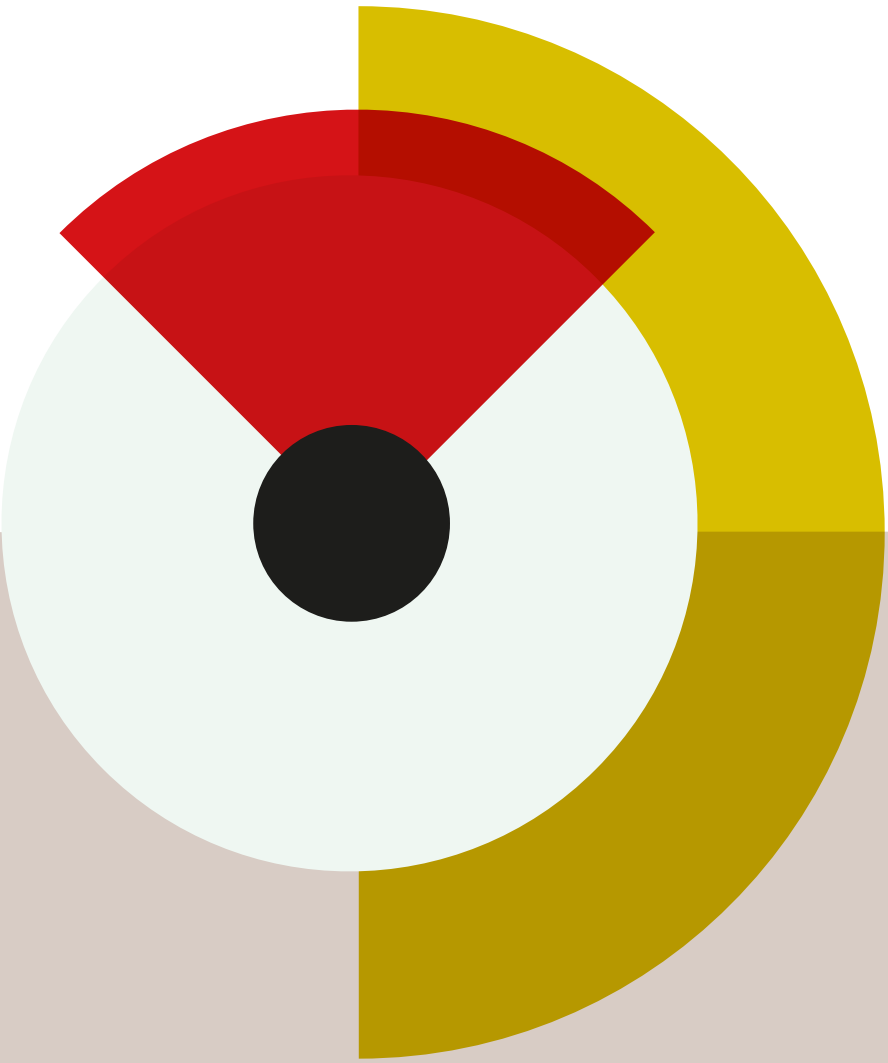


FOREWORD

With the world taken by surprise by the COVID-19 pandemic, last year proved to be an eventful year. The second compliance study of the current Corporate Governance Code Monitoring Committee covers the 2019 financial year. The methodology of the compliance study was modified to minimise the burden on companies during the initial outbreak of the COVID-19 pandemic. The Committee has decided not to carry out the usual in-depth survey among the companies. Instead, SEO has conducted detailed desk research aimed at gaining greater insight into the *quality* of the explanation and substantiation provided in case of deviations from the provisions of the Code.

Our compliance study shows that there continues to be a high level of compliance with the Code during this year as well. However, as in previous years, the Committee has reservations about this high compliance rate. More than three-quarters of this compliance is *assumed compliance* because of the system of the 'comply-or-explain' principle. In addition, the Code contains a large number of provisions relating to corporate conduct (hereinafter: conduct-related provisions) and compliance with these provisions is more difficult to monitor. The Committee intends to discuss with the supporting parties whether a different system could lead to better outcomes.

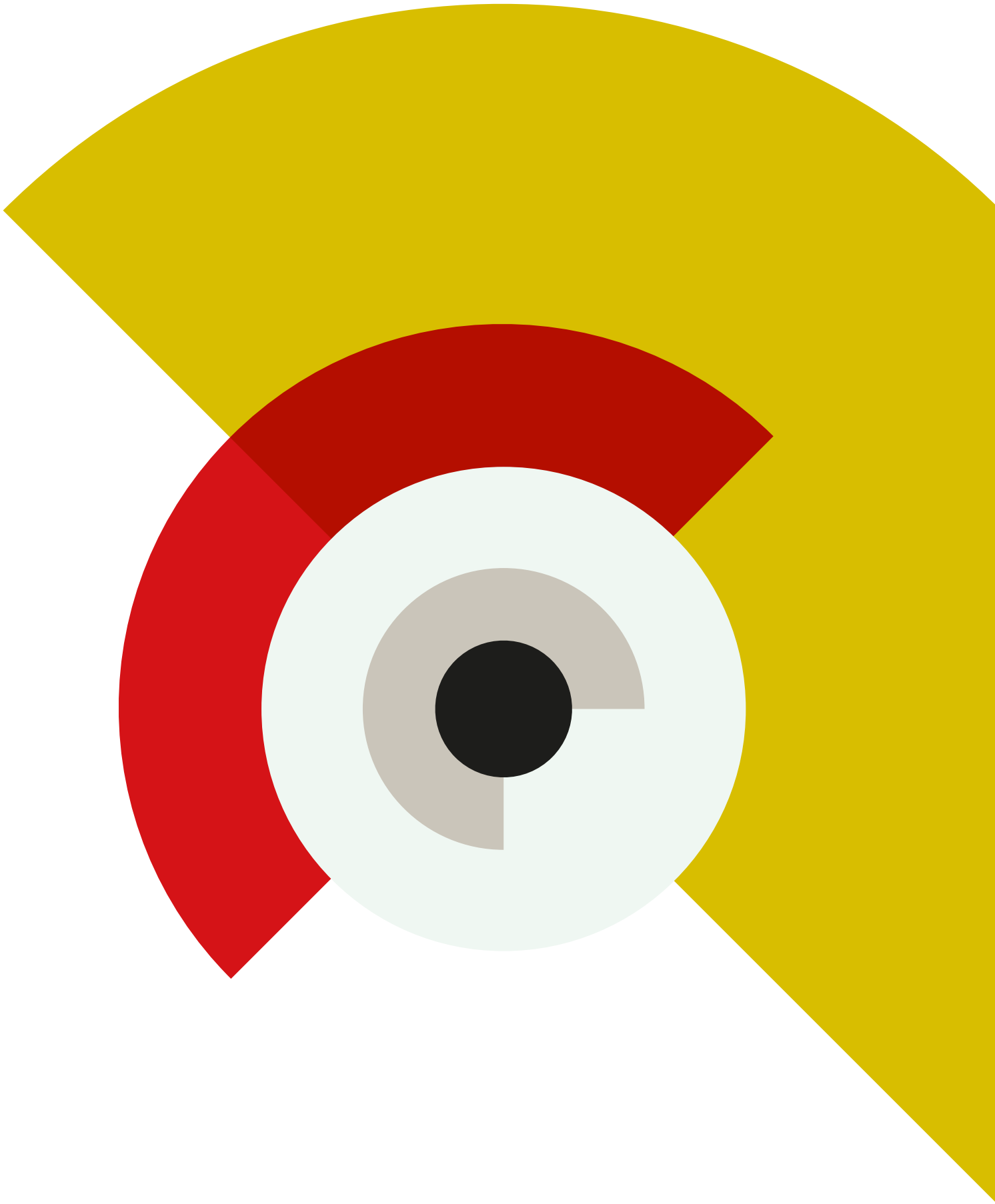
Based on discussions with the supporting parties and other stakeholders, the results of the study carried out by SEO and relevant national and international developments, the Committee has identified various gaps and uncertainties in the Code. For the first time in years, the Committee sees reason to issue guidance, specifically regarding the interpretation of the concept of pay ratios as referred to in provision 3.4.1.iv of the Code. In addition, the Committee wants to offer more clarity on the topic of long-term value creation and it is also conducting discussions with the supporting parties regarding the provisions in the Code on diversity and the dialogue with stakeholders.

Chapter 1 of this report contains the main findings and conclusions of the Committee. Chapter 2 presents the detailed results of the compliance study. In Chapter 3, you will find examples of the gaps and ambiguities identified by the Committee, best practices for the reporting on diversity, long-term value creation, culture and stakeholder involvement as well as guidance in arriving at a clear interpretation of the concept of pay ratios.

The Committee is indebted to the researchers at SEO, to Maarten Buma from the law firm NautaDutilh for the legal support provided, and as always, to the Committee secretariat. A special word of appreciation goes to the supporting parties who kept the Code alive and relevant during the many discussions with the Committee and helped take the reflection process on good governance a step further.

In view of the significantly increased workload of the chairman as a result of COVID-19, Sietze Hepkema has assumed the chairmanship of the Committee since April 2020, for which the Committee is very grateful to him.

Pauline van der Meer Mohr
Chairman of the Corporate Governance Code Monitoring Committee



CHAPTER 1: ACTIVITIES AND MAIN FINDINGS OF THE COMMITTEE

1.1 Dutch Corporate Governance Code

The Dutch Corporate Governance Code (hereinafter: the Code) contains principles and best practice provisions that focus on promoting good governance at listed companies.[1] The Code regulates the relationships between the management board, supervisory board and annual general meeting of shareholders. Listed companies use the Code as a guide for setting up their governance structures and processes. In addition, the Code is a source of inspiration for many other companies and institutions that choose to apply the Code voluntarily.

Listed companies must render account for their compliance with the Code in their management report.[2] Based on the 'comply-or-explain' principle, the provisions of the Code must either be complied with by applying them or the reason for deviating from the relevant provisions must be explained. Dutch institutional investors are required to make a statement in their annual report about compliance with the principles and best practice provisions of the Code that pertain to them.[3]

The Code is a self-regulatory instrument for market parties, i.e. the so-called supporting parties. The supporting parties of the Code are: Eumedion, Euronext, the Dutch Federation of Trade Unions (FNV), the National Federation of Christian Trade Unions in the Netherlands (CNV), the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW).

1 By 'listed companies', we mean:
- all companies with registered offices in the Netherlands whose shares or depositary receipts for shares have been admitted to trading on a regulated market or a comparable system; and
- all large companies with registered offices in the Netherlands (balance sheet value > €500 million) whose shares or depositary receipts for shares have been admitted to trading on a multilateral trading facility or a comparable system.

2 Section 2:391(5) of the Dutch Civil Code in conjunction with Decree on the Content of the Management Report (*Besluit inhoud bestuursverslag*).

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

1.2 Task of the Corporate Governance Code Monitoring Committee

The task of the Corporate Governance Code Monitoring Committee (hereinafter: the Committee) is to ensure that the Code remains relevant and useful. It performs this task by:

- taking stock at least once a year of how and to what extent the regulations of the Code are being complied with;
- keeping up-to-date with national and international developments and practices in the area of corporate governance to ensure that national codes are convergent with these; and
- identifying gaps or ambiguities in the Code.[4]

At least once a year, the Committee reports its findings to the Ministers of Economic Affairs and Climate Policy, Finance, and Legal Protection. In this report, the Committee may also provide guidelines for complying with one or more regulations in the Code.
The current Committee consists of a chairman and six members. As of 1 January 2019, the Committee was appointed for a term of four years by Minister Wiebes of Economic Affairs and Climate Policy. An overview of the composition of the Committee can be found in Appendix 1.

The Committee held eight plenary meetings in 2020. The vast majority of the meetings took place virtually.

An overview of the national and international developments can be found in Appendix 2.

1.3 Compliance study, key findings and guidance

Modified methodology of the compliance study

One of the tasks of the Committee is to identify how and to what extent the provisions of the Code are complied with by the listed companies that have their registered office in the Netherlands and which fall under the scope of the Code. This year, the Committee decided to modify the methodology of the compliance study to minimise the burden on companies during the initial outbreak of the COVID-19 pandemic. At the request of the Committee, instead of carrying out an in-depth survey among the companies, SEO Amsterdam Economics (hereinafter: SEO) performed a detailed desk research study, to gain more insight into the quality of the explanations and substantiation provided in the event of deviations from the provisions of the Code. This detailed desk research does more than just record incidences of compliance or non-compliance; it offers better insight into how listed companies explain provisions and/or deviate from provisions with accompanying reasons. The topics chosen for the study were those for which a relatively large degree of substantiated deviation and/or a high level of non-compliance have been found in previous financial years as well as in the 2019 financial year.
In view of the high compliance rates observed in previous compliance studies (of which more than three-quarters of the compliance is assumed compliance based on the 'comply-or-explain' principle of the Code), the Committee requested SEO to further investigate, where possible, the extent of compliance with the conduct-related provisions of the Code.
Finally, the Committee also requested SEO to include 15 Dutch companies that are listed abroad, and therefore fall under the scope of the Code, in this year's study.

4 Article 2(3) of the Decree Establishing the Corporate Governance Code Monitoring Committee (*Instellingsbesluit Monitoring Commissie Corporate Governance Code*).

Main findings of the Committee based on the compliance study

I. Comments on high compliance rates

For the 2019 financial year, SEO reports a 98.4% compliance rate with the Code among the listed companies. Of this, 96.5% relates to the application of the provisions of the Code and 1.9% to substantiated deviations. Non-compliances were found in 1.6% of the cases. More than three-quarters of the compliance is *assumed compliance* because of the 'comply-or-explain' principle of the Code. The monitoring of the conduct-related provisions via related reporting provisions shows that the system of assumed compliance paints an overly optimistic picture of the actual level of compliance with a number of basic conduct-related provisions of the Code. More information on this is included in Section 2.2.3. Based on the results of the study carried out using the modified design, the Committee sees reason to view the high compliance rates in a somewhat different light. The Committee will consider how best to deal with this in the future.

II. Process-oriented rather than a content-oriented explanation of long-term value creation and culture

Based on detailed desk research, the Committee concludes that the reporting on long-term value creation and culture is too often *process-oriented* and insufficiently *content-oriented*. The Committee expects companies to make an explicit statement about their relevant values and conduct, clearly outlining the relationship with the strategy and linking it to the value that the company wants to add in the longer term. Integrated reporting, through which companies clarify the non-financial indicators that contribute to long-term value creation, may be helpful in this respect. The Committee intends to provide further clarification on the subject of long-term value creation.

III. Involving stakeholders and considering their interests

The management board and the supervisory board have a responsibility to carefully consider the interests of stakeholders, as follows from Principles 1.1, 2.4 and 2.8 of the Code. SEO's study reveals a 100% rate of compliance with these principles and some of the related best practice provisions (e.g. 1.1.1.v). Since this relates to assumed compliance, the Committee has reservations about the high compliance rate. The Committee considers it very important that companies clearly indicate in their annual reports how and which stakeholders are involved and how the interests of these stakeholders are taken into consideration. The Committee is investigating how companies can provide better insight regarding this.

IV. Focus on diversity

The compliance rate for the provision concerning accountability about diversity has decreased from 91.6% to 89.1%. According to the Committee, this is an excessively low rate of compliance. It is also notable that some listed companies aim for a lower target figure than 30% of the management board consisting of women. In addition, relatively little attention is paid to forms of diversity other than gender diversity. Many listed companies also find it difficult to set a period within which the diversity objectives must be achieved. The Committee finds that many companies are not paying sufficient attention to this topic as required in line with recent social developments. Legislation is currently being drafted for ensuring a more balanced male-female ratio in top and senior management positions in Dutch listed companies. Partly in the light of this, the Committee is considering revising the diversity-related provisions in the Code. The Committee expects companies to place the topic of diversity higher on their agenda and calls on them to provide, until the new statutory regulation enters into force, meaningful justification for any departures from the statutory target applicable till 1 January 2020.

V. Higher rates of non-compliance with regard to risk management

Compared to 2018, there is a higher rate of non-compliance with respect to the provisions pertaining to risk management accountability (1.4.2 and 1.4.3). What is particularly striking is that non-compliance with provision 1.4.3 (the In-control Statement) has increased from 0.3% in 2018 to 7.8% in 2019. This kind of non-compliance mainly occurs among smaller companies (local funds). The higher rates of non-compliance may be due to the changed method of monitoring in 2019 (not via a survey but detailed desk research, whereby the

monitoring may have been more strict) and/or because companies have been reticent in rendering account for the risks and how they were managed during the initial outbreak of COVID-19. The Committee sees this as a worrying development insofar as this involves systematic non-compliance with the above-mentioned provisions. The Committee intends to pay specific attention to this in the next monitoring study.

VI. Findings with regard to companies listed abroad

Companies that have their registered office in the Netherlands and whose shares or depositary receipts for shares are only listed outside the Netherlands fall under the scope of the Code and must, in principle, comply with the Code. Out of a total of 68 Dutch companies that only have a listing abroad, 15 were selected at random for the compliance study. Within this selection, the companies that showed absolutely no evidence of complying with the Code have not been taken into consideration. During the monitoring study, it appeared that companies that are only listed abroad respond less frequently to requests to participate in the compliance study. Therefore, the 15 selected companies are the ones that are relatively more compliant within the group of companies with only a listing abroad. The random sample shows that substantiated deviations from the Code are more frequent among the selected companies than among companies with a listing in the Netherlands, in particular with regard to themes such as the ownership of shares by supervisory board members, the composition and independence of supervisory board and terms of appointment and remuneration of management board members and supervisory board members. The Committee strives to elicit a greater degree of involvement in the compliance study from this group of companies, since they fall within the scope of the Code.

Gaps and ambiguities

The Committee has identified certain gaps and ambiguities in the Code. For example, the Committee has observed that there are differences in how companies interpret the concept of pay ratios, as referred to in provision 3.4.1.iv of the Code. This makes it difficult to compare the pay ratios of different companies. In order to arrive at an unambiguous interpretation of this concept, the Committee has decided to issue the following guidance:

The concept of pay ratios, as referred to in provision 3.4.1.iv of the Code, is understood to mean the ratio between (i) the total annual remuneration of the CEO and (ii) the average annual remuneration of the employees of the company and group companies whose financial data is consolidated by the company, where:

- » the total annual remuneration of the CEO includes all the remuneration components (such as fixed remuneration, variable cash remuneration (bonus), share-based part of the remuneration, social contributions, pension, expense allowance, etc.) included in the consolidated annual accounts on an IFRS basis;
- » the average annual remuneration of the employees is determined by dividing the total wage costs in the financial year (as included in the consolidated annual accounts on an IFRS basis) by the average number of FTEs during the financial year; in addition, the hiring of external employees is taken into account pro-rata, insofar as they are hired for at least three months during the financial year; and
- » the value of the share-based component of the remuneration is determined at the time of assignment in accordance with the applicable rules under IFRS.

The Committee calls on companies to include at least the above information in their remuneration reports from the financial year starting on or after 1 January 2021. More information on this is included in Chapter 3. This chapter also contains some examples of best practices selected by the Committee with respect to the reporting on diversity, long-term value creation, culture and stakeholder involvement.

1.4 Other activities

Current relevance and usefulness of the Code

The Committee attaches great importance to promoting and conducting a broad-based discussion on corporate governance. In 2020, the Committee held several discussions about the current relevance and usefulness of the Code, involving the supporting parties as well as management board members, regulators, shareholders, interest groups and other stakeholders. In January 2020, the Committee and the supporting parties discussed the Code and developments in the field of corporate governance in a plenary meeting. Following this, and with some delay due to COVID-2019, the Committee is organising a series of work meetings - on 11 December 2020, 11 January and 27 January 2021 - with representatives of the supporting parties, to further explore the following three themes: 'Stakeholders and the company in dialogue', 'Diversity' and 'Best practices in the area of long-term value creation'.

International contacts

One of the explicit tasks of the Committee is to keep track of international developments in the field of corporate governance. The Committee fulfils this task by attending international meetings. The knowledge gained at these meetings helps deepen the Committee's understanding of good corporate governance. A virtual meeting of the Seven Chairs group took place on 20 October 2020. This is an annual meeting of the chairmen of the corporate governance code committees of Germany, France, Italy, Sweden, the United Kingdom, Belgium and the Netherlands. This meeting was dominated by the following themes: diversity policy, role of shareholders, sustainable corporate governance and interpretation of the term 'pay ratio'.

The Committee is also part of the European Corporate Governance Codes Network (ECGCN). This informal network, consisting of the secretaries to the various corporate governance code committees, is focused on the exchange of experiences and best practices. The network met virtually twice in 2020. The meetings were focused primarily on the theme of sustainable corporate governance. In addition, the developments within the European Union and the activities of the European Securities and Markets Authority (ESMA) were also discussed.

National and international developments

The Committee follows the various national and international developments on corporate governance (see Appendix 2 for a detailed description) with great interest. In line with last year, the Committee sees the topics of remuneration, diversity, long-term value creation, sustainable corporate governance and the role of shareholders often recurring in the public debate.

Diversity

The Balanced Male-Female Ratio Bill (*Voorstel van wet inzake evenwichtige man/vrouwverhouding*) aims to create a more balanced ratio between the number of men and women in top and senior management positions in large companies. This Bill was initially combined with the Bill on the Modernisation of Public Limited Company Law (*Wetsvoorstel modernisering NV-recht*) during the consultation phase, but it has now been submitted to the House of Representatives as a separate bill.5 Other countries have even more extensive laws on corporate diversity policy. For example, in Canada, from 1 January 2020 onwards, the obligation to provide shareholders with information regarding diversity policies applies not only to gender diversity but also other forms of diversity related to specific personal characteristics.[6]

5 Parliamentary Papers II, 2020/21, 35 628 No. 1.

6 Statutes of Canada, An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act, available at https://www.parl.ca/DocumentViewer/en/42-1/bill/C-25/royal-assent.

Long-term value creation and sustainability

At the international and national level, companies are increasingly expected to act in a sustainable manner and focus on the creation of long-term value while carefully considering the interests of all stakeholders. For example, on 6 October 2020, the House of Representatives passed a motion stating that the Netherlands has a rich tradition in the area of corporate governance, where the management board of a company is expected to take into consideration a broader range of economic and social interests that affect all stakeholders and where the government is requested to examine how this form of governance (in which the interests of all stakeholders are taken into consideration in a balanced manner) can be laid down by law and otherwise encouraged.7 Furthermore, the European Commission is preparing a legislative initiative to strengthen the EU regulatory framework for company law and corporate governance.[8] This initiative aims to ensure that the principle of sustainability becomes better embedded within the corporate governance framework, so that the long-term interests of the management board, shareholders, stakeholders and society are better aligned to one another. This is also an important topic in neighbouring countries and hence the Committee is keeping a close track of developments in other countries. For example, it is looking with great interest at the so-called Section 172(1) Statement in the United Kingdom, under which large English companies will be obliged, from the 2019 financial year onwards, to explain in their annual report how their management board members have taken into account the interests of various stakeholders.[9]

1.5 Outlook

Based on the compliance study for the 2019 financial year and the other activities of the Committee in 2020, the Committee has selected the following special focus areas for the coming period:

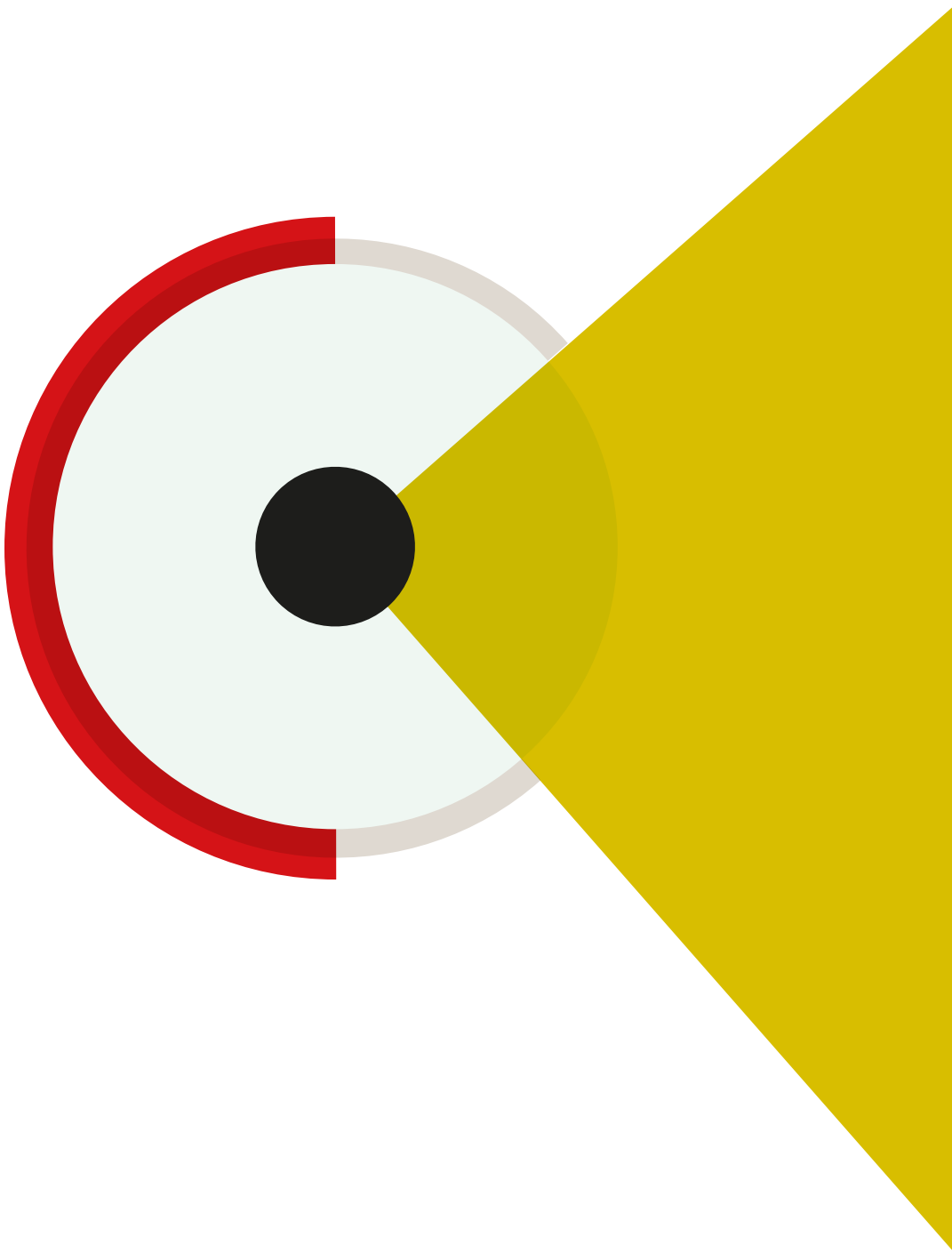
- Gaining a deeper understanding of the following themes: long-term value creation, stakeholder dialogue, the role of shareholders and diversity
- Quality of the explanations and substantiation for deviations since the Committee believes that this is essential for a meaningful monitoring process
- Exploring possibilities for further refinement of the study methodology
- Ensuring that Dutch companies with only a listing abroad participate to a greater degree in the compliance study since the Code also applies to these companies
- Examining the quality of the reports of the supervisory board and those of its committees

The Committee will develop these focus areas in greater detail based on the results generated from the aforementioned work meetings, discussions with supporting parties and other stakeholders and insights gained from the monitoring of the 2019 financial year.

7 Motion by members Sneller and Slootweg, Parliamentary Papers II, 2020/21, 35 570-IX No. 13.

8 European Commission, Sustainable Corporate Governance Initiative, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance.

9 Section 172 of the Companies Act 2006, Provision 5, UK Corporate Governance Code 2018.



CHAPTER 2: COMPLIANCE STUDY

2.1 Introduction

This is the second time that the current version of the Code is being monitored for compliance. The Committee has commissioned SEO to conduct the compliance study.

As stated earlier, companies comply with the Code according to the 'comply-or-explain' principle. The Code is considered to have been complied with if a company applies a principle or provision of the Code (hereinafter: application) or if a company provides substantiation for why it has not applied a provision (hereinafter: substantiated deviation). Deviation from a provision (i.e. non-application) without substantiation in the annual report is regarded as non-compliance.

Since the Committee's task is to prepare an annual inventory of how and to what extent the provisions of the Code have been complied with by the listed companies that have their registered office in the Netherlands and that fall within the scope of the Code, the Committee has decided to exclude unlisted organisations from the compliance study this year. Instead of this, 15 Dutch companies that are only listed abroad were included in the study this year. All these companies are expected to comply with the Code but, for the purposes of the compliance study, 15 out of a total of 68 Dutch companies having only a listing abroad were selected at random. However, for the sake of comparability with the results of compliance studies of previous years, these foreign companies have not been taken into account when calculating the general compliance rates.

In the light of the COVID-19 pandemic, the Committee has decided not to conduct a company survey this year. Instead, this year - in addition to the usual desk research - SEO conducted a detailed desk research study that focused on the quality of the explanations and substantiation provided by companies for deviations. This detailed desk research goes further than merely recording incidences of compliance or non-compliance. It offers more insight into how listed companies explain their compliance with the provisions and/or deviate from provisions with substantiation. The selected themes were those that companies had frequently deviated from in previous financial years as well as in the 2019 financial year, and/or for which a relatively high level of non-compliance was found: long-term value creation, internal audit function, risk management accountability, composition and size, appointment, succession and evaluation, organisation of the supervisory board and reports, culture, preventing conflicts of interest, accountability for implementation of the remuneration policy and the provision of information. Companies were allowed to validate the results of this detailed desk research study.

As the final step in the process, 15 companies participated in three focus groups. The aim of the focus groups was to discuss the Code and reflect on a number of themes in the Code for which there is a high rate of non-compliance and/or relatively high proportion of substantiated deviations and on the methodology of the compliance study. This year, there was also a focus group consisting of companies listed abroad that fall under the scope of the Code. The Committee believes that these focus groups made a valuable contribution this year as well, both with respect to the further interpretation of the results of the monitoring conducted among various groups of companies and the relationship with the companies. The following is an overview of the most impor-

tant results that emerged from the compliance study carried out by SEO, the insights the Committee has gained from these results, the Committee's recommendations to ensure compliance by companies and the follow-up steps that the Committee intends to take. For a detailed overview of the study results as well as an explanation of the methodology and validation of the study, the Committee refers to the SEO study report.[10]

2.2 Desk research on compliance in the 2019 financial year

2.2.1 Study population and response

The study population for the compliance study consisted of 87 companies with a registered office in the Netherlands and a listing on Euronext and 15 companies with a registered office in the Netherlands and only a foreign stock exchange listing. These 15 companies were randomly selected from a population of 68 companies listed abroad. Within this selection, the companies that showed absolutely no evidence of complying with the Code have not been taken into consideration. The 15 selected companies are among those that are relatively more compliant. As a result, a certain selection bias may be involved. The compliance study covers a total of 102 listed companies.

The companies included in the study population are listed in Appendix 3.

2.2.2 Overall compliance

For the 2019 financial year, SEO reports a 98.4% compliance rate with the Code among the listed companies. Of this, 96.5% relates to the application of the provisions of the Code and 1.9% to substantiated deviations. Non-compliances were found in 1.6% of the cases. In those cases, companies did not apply provisions and the deviations are not or not correctly substantiated.

In the 2019 financial year, the compliance rate was 0.6% lower than the 99.0% compliance rate in the 2018 financial year. The number of provisions deviated from with substantiation is fractionally lower: 2.2% in the 2018 financial year versus 1.9% in the 2019 financial year. The rate of non-compliance increased slightly from 1.0% in 2018 to 1.6% in 2019.

In this financial year as well, the reporting provisions have been more often not complied with (4.9%) than the conduct-related provisions (0.2%). There is approximately the same extent of substantiated deviation from conduct-related provisions as from reporting provisions (reporting provisions: 2.0%, conduct-related provisions: 1.9%). A relevant factor in this respect is that reporting provisions are, by definition, verifiable because it can be checked whether reporting has actually taken place. This is not the case with the conduct-related provisions. The 'comply-or-explain' principle implies that the compliance of conduct-related provisions is assumed, unless the company reports substantiated deviations from these provisions. A large part (75.8%) of the application concerns assumed application. See Table 2.1.

Table 2.1 Overall rate of compliance with the Code for the 2019 financial year is 98.4%

	Total
Application,	96.5%
Of which assumed application	75,8%
Substantiated deviation	1.9%
Subtotal compliance	**98,4%**
Non-compliance	1.6%

Source: SEO Amsterdam Economics (2020)

Note: n = 87 companies listed in the Netherlands.

10 Compliance with the Corporate Governance Code: Monitoring for the 2019 financial year: SEO Amsterdam Economics, available at https://www.seo.nl/monitor-nederlandse-corporate-governance-code-boekjaar-2019.

The Committee has found that, when monitored via this method, there continues to be a high rate of compliance with the Code. But it notes that more than 75% of this compliance is assumed compliance as a result of the 'comply-or-explain' principle of the Code, i.e. if a company does not indicate that a provision will not be applied, it is assumed that the provision is applied. The level of assumed compliance was the same in 2018. In the case of the reporting provisions, it is relatively easy to verify whether the assumed compliance is valid. It can be established based on public documents such as annual reports whether these provisions have indeed been applied. In case of some conduct-related provisions, it is possible to check for assumed compliance to some extent by checking the related reporting provisions, as explained below. This verification revealed that the method of assumed compliance paints an overly optimistic picture of the actual level of compliance with a number of basic conduct-related provisions of the Code. In view of this, the Committee is considering whether the monitoring method needs to be amended and whether the 'comply-or-explain' principle offers sufficient scope for understanding the actual level of compliance with the Code during monitoring.

2.2.3 Verification of compliance with conduct-related provisions via reporting provisions

As indicated above, the application of reporting provisions is usually easier to test, but compliance with conduct-related provisions is often difficult or impossible to test. Some conduct-related provisions can be checked for compliance by checking the related reporting provisions. Based on this method, non-compliance with conduct-related provisions is implied if the related reporting provisions are not complied with, which essentially involves a different study method. In fact, this relates to 'assumed non-compliance' rather than 'assumed application'.

Table 2.2 shows that the use of the two different methods (assumed non-compliance versus assumed application) leads to considerable differences in the rates for application and non-compliance with some of the principles of the Code. If all the principles of the Code are considered together, the method of assumed non-compliance would lead to an increase of 1.2% in the total rate of non-compliance.[11] In that case, the total rate of substantiated deviation would increase by 0.7%. The relatively limited differences in the total count are because only a small number of the conduct-related provisions can be 'linked' to a reporting provision. Moreover, a part of this difference is due to the fact that this process of verification requires a different aggregation method.[12] The link between reporting and conduct-related provisions is not one-to-one. That is why a different aggregation method needs to be used.[13]

11 See Table 2.9 of the SEO report.

12 According to the SEO study, the different method of aggregation accounts for 0.1% of the difference in substantiated deviation and 0.3% of the difference in non-compliance.

13 The monitoring study normally uses an unweighted aggregation of the sub-provisions at the level of the provisions. Since a one-to-one connection does not exist between the reporting provisions or sub-provisions and the conduct-related provisions or sub-provisions, SEO applies a binary aggregation here: if there is evidence of non-compliance or substantiated deviation for one sub-provision, SEO classifies the entire provision as a non-compliance or substantiated deviation.

Table 2.2: Principles with a Delta non-compliance starting from 5%

		Difference in application	Difference in substantiated deviation	Difference in non-compliance
2.5	Culture	-12.6%	-0.3%	12.9%
2.2	Appointment, succession and evaluation	-10.2%	2.2%	8.1%
3.4	Accountability for the remuneration policy	-8.8%	1.9%	6.9%
1.2	Risk management	-5.7%	0.6%	5.2%

Source: SEO Amsterdam Economics.

Note: n = 87 companies listed in the Netherlands.

2.2.4 Compliance by stock market index

The Amsterdam stock exchange consists of three indices (AEX, AMX and AScX) as well as so-called local funds that are listed but not included in an index. Compliance is slightly higher among AEX funds than among companies included in other indexes and the local funds have a higher rate of non-compliance than the other funds. This is in line with the compliance study for the 2018 financial year. In the 2019 financial year, 15 companies that fall under the Code but only have a stock exchange listing outside the Netherlands were additionally monitored. These companies show a higher degree of substantiated deviation on average and have on average a lower compliance rate than the companies included in the aforementioned indices. Section 2.2.8 discusses this in more detail.

Table 2.3: Compliance by stock market index

	Application	Substantiated deviation	Non-compliance
AEX:	99.3%	0.5%	0.2%
AMX	98.4%	1.2%	0.5%
AScX	97.7%	1.0%	1.3%
Local funds	91.8%	4.4%	3.8%
Listing outside the Netherlands	94.6%	3.0%	2.4%

Source: SEO Amsterdam Economics.

Note: n = 87 companies listed in the Netherlands, n = 15 companies listed abroad

2.2.5 Compliance at the level of the principles

Each of the chapters of the Code contains one or more principles. The table below shows the 10 least-complied-with principles.

Table 2.4: Compliance at the level of the principles

		Application	Substantiated deviation	Non-compliance
3.4	Accountability for implementation of the remuneration policy	91.6%	3.1%	5.4%
1.4	Risk management accountability	95.4%	0.8%	3.8%
2.2	Appointment, succession and evaluation	94.9%	2.3%	2.8%
2.5	Culture	97.0%	0.3%	2.7%
2.1	Composition and size	95.7%	1.9%	2.4%
4.1	General meeting	96.2%	1.4%	2.4%
4.4	Issuing depositary receipts for shares	96.9%	1.0%	2.1%
2.3	Supervisory Board organisation and report	96.0%	2.6%	1.5%
2.4	Decision-making and functioning	98.1%	0.5%	1.4%
4.2	Provision of information	95.7%	3.0%	1.3%

Source: SEO Amsterdam Economics.

Note: n = 87 companies listed in the Netherlands.

The highest non-compliance was found for the principles relating to accountability for implementation of the remuneration policy (3.4), risk management accountability (1.4), appointment, succession and evaluation within the management board and/or supervisory board (2.2), culture within the company (2.5), composition and size of the supervisory board or management board (2.1) and the general meeting (4.1). This is largely in line with the overall compliance study for the 2018 financial year, except that non-compliance with Principle 1.4 (risk management accountability) increased significantly in 2019 (from 0.1% in 2018 to 3.8% in 2019). The difference may be due to the different method of monitoring used in 2019 (not a survey but detailed desk research, whereby the monitoring may have been more strict), because companies were more reticent as a result of the COVID-19 situation in rendering account for the risks and how they were being managed, or perhaps due to a combination of both these factors.

2.2.6 Compliance with best practice provisions

At the level of the best practice provisions, the provisions with the lowest compliance rates in the 2019 financial year are shown in the table below. All of these are reporting provisions.

Table 2.5: Provisions with a compliance rate of less than 95%

		Application	Substantiated deviation	Non-compliance
2.3.11	Report of the supervisory board	78.2%	1.2%	20.7%
2.2.8	Evaluation accountability by the supervisory board	81.6%	2.3%	16.1%
3.4.2	Agreement of management board member	81.6%	4.6%	13.8%
2.5.4	Accountability regarding culture	86.2%	0.0%	13.8%
2.1.6	Accountability about diversity	83.7%	6.2%	10.1%
1.4.3	Statement by the management board	92.0%	0.3%	7.8%
2.4.4	Attendance at supervisory board meetings	90.8%	1.7%	7.5%
4.2.2	Policy on bilateral contacts with shareholders	89.7%	3.5%	6.9%

Source: SEO Amsterdam Economics.

Note: n = 87 companies listed in the Netherlands.

The least-complied-with provision (20.7% non-compliance) is provision 2.3.11. This provision prescribes that the report of the supervisory board should form part of the company's annual accounts and that the supervisory board must account for the supervision exercised in the past financial year, reporting on subjects that have been elaborated in other provisions of the Code (1.1.3, 2.1.2, 2.1.10, 2.2.8, 2.3.5 and 2.4.4, and if applicable, 1.3.6 and 2.2.2). Due to the overlap with the other provisions mentioned, provision 2.3.11 has an extensive scope and is considered to be not complied in the event that one or more of the overlapping provisions are not complied with. Moreover, as in previous years, it appears that the reporting on some topics that should be included in the report of the supervisory board in accordance with provision 2.3.11 is included elsewhere in the annual report. For example, the personal details of the members of the supervisory board or the fact that the report of the supervisory board often states that a supervisory board member can be reappointed after the regular term of office of eight years but the reappointment is often not provided with any further substantiation as required under provision 2.2.2. In view of this, the Committee is considering investigating the level of compliance with provision 2.3.11 more closely in the next monitoring period, in order to determine whether further guidance is necessary.

As in the last year, provision 2.2.8 (accountability for the evaluation of the supervisory board) is the second least-complied-with provision. The other provisions that were not complied with relatively often in the 2018 financial year (2.3.3 (committees' terms of reference), 1.1.4 (accountability of the management board) and 3.4.1 (remuneration report)) have a higher application score in the 2019 financial year, as a result of which they are no longer part of the list of provisions that are most frequently not complied with.

This year, too, accountability regarding culture (2.5.4) and diversity (2.1.6) remains an area of concern. Provision 3.4.2 requires that the most important aspects of a contract with a management board member must be posted on the website. Such an overview is not always available. This also applies to the policy on bilateral contacts with shareholders (4.2.2) which, with a non-compliance rate of 12.9%, was the provision most frequently deviated from in the 2018 financial year. In the 2019 financial year, this provision was ranked eighth on the list of provisions most frequently not complied with and the rate of non-compliance has decreased significantly. The Committee hopes that this trend will continue in the coming years.

While provision 1.4.3 (risk management accountability; statement by the management board) demonstrated a low rate of non-compliance in the 2018 financial year (0.3%), a significantly worse compliance score emerged from the SEO study for the 2019 financial year. A possible explanation for this may be that the monitoring for the 2019 financial year has been done in a different manner and that some companies, in view of the situation surrounding COVID-19, have exercised restraint in issuing the ‹*In-control Statement*› as required in provision 1.4.3, but this cannot be said with certainty. The Committee will continue to monitor the level of compliance with provision 1.4.3 to assess whether this involves a break in the trend or a one-off change.

Notably, the percentages of the provisions most frequently deviated from in the 2019 financial year are considerably higher than those in the 2018 financial year.

Table 2.6: Comparison of rates of non-compliance in the 2018 financial year and the 2019 financial year

		Non-compliance (2019)	Non-compliance (2018)	Difference
2.3.11	Report of the supervisory board	20.7%	8.6%	12.1%
2.2.8	Evaluation accountability by the supervisory board	16.1%	10.4%	5.7%
3.4.2	Agreement of management board member	13.8%	7.5%	6.3%
2.5.4	Accountability regarding culture	13.8%	7.0%	6.8%
2.1.6	Accountability about diversity	10.1%	8.4%	1.7%
1.4.3	Risk management accountability	7.8%	0.3%	7.5%
2.4.4	Attendance at supervisory board meetings	7.5%	6.5%	1%
4.2.2	Policy on bilateral contacts with shareholders	6.9%	12.9%	-6%

Note: n = 87 companies listed in the Netherlands.

Compliance has generally improved in recent years compared to previous years, which is why the current decrease in compliance is remarkable. There are three possible reasons for this. Firstly, the methodology of the compliance study was modified for this financial year and the monitoring was done in a different way. The Committee instructed SEO to carry out a detailed desk research study to examine the quality of the explanations and substantiation provided for deviations. This changed method (a more textually oriented approach) may lead to a stricter method of monitoring. Secondly, the COVID-19 situation prompted the Committee to decide not to conduct a corporate survey this year. The survey usually supports the desk research. For example, the survey can be used to identify the provisions that are entirely inapplicable to a listed company in the relevant financial year. Since this survey was not conducted, less information was available, possibly resulting in a higher rate of non-compliance. Thirdly, the listed companies included in the study may have been affected by the COVID-19 crisis. During the focus groups, it emerged that the uncertainty arising due to COVID-19 has made it difficult for some listed companies to issue a going concern statement as referred to in provision 1.4.3.iii of the Code.

2.2.7 Substantiated deviation of provisions

The best practice provisions with more than 5% substantiated deviation are shown in table 2.7.

Table 2.7: Provisions with more than 5% substantiated deviation

		Application	Substantiated deviation	Non-compliance
4.3.3	Cancelling the binding nature of a nomination or dismissal	78.2%	21.8%	0.0%
2.3.3	Committees' terms of reference	83.9%	14.9%	1.2%
4.2.3	Meetings and presentations	83.9%	14.9%	1.2%
1.3.1	Appointment and dismissal	85.1%	14.9%	0.0%
2.2.1	Appointment and reappointment periods – management board members	83.9%	13.8%	2.3%
1.3.2	Assessment of the internal audit function	89.7%	10.3%	0.0%
1.3.3	Internal audit plan	89.7%	10.3%	0.0%
1.3.5	Reports of findings	91.4%	8.6%	0.0%
2.3.4	Composition of the committees	89.7%	8.1%	2.3%
1.3.4	Performance of work	92.0%	8.0%	0.0%
3.2.3	Severance payments	92.0%	8.0%	0.0%
2.3.5	Reports of the committees	93.1%	6.9%	0.0%
2.3.10	Company secretary	93.6%	6.4%	0.0%
2.1.6	Accountability about diversity	83.7%	6.2%	10.1%
2.7.2	Regulations	89.7%	5.7%	4.6%
3.3.2	Remuneration of supervisory board members	94.3%	5.7%	0.0%

Source: SEO Amsterdam Economics.

Note: n = 87 companies listed in the Netherlands.

Provision 4.3.3, which is accompanied by the most explanations, refers to the cancellation of the binding nature of nomination or dismissal. As in previous years, listed companies frequently explain that they rely on criteria other than the absolute majority of the votes and one-third of the issued capital as prescribed in the Code. Some listed companies also state that they do not have a legally binding nomination. Substantiated deviations are also relatively frequent for the provisions outlining how shareholders can simultaneously attend meetings and presentations (4.2.3) and the maximum appointment and term of office of supervisory board members (2.2.1). This is in keeping with the picture that has emerged in past years. Just as in the 2018 financial year, substantiated deviations from the provision concerning the appointment and dismissal of the senior internal auditor were also frequent in 2019. Smaller funds, in particular, deviate with substantiation from the provision concerning the appointment and dismissal of the holder of the audit position, often because they have not set up such a position in all cases. Finally, listed companies regularly opt for an alternative interpretation of the internal audit function. Almost all provisions or sub-provisions regarding the internal audit function are included in the list of provisions with the most explanations, the only exception being provision 1.3.6.

2.2.8 Companies listed abroad

The part of the study conducted among the companies listed abroad that have their registered office in the Netherlands and therefore fall under the Code, shows that substantiated deviations are generally more common among them than among the companies listed in the Netherlands (with the exception of local funds, as shown in Table 2.3 in Section 2.2.4). At the level of the provisions, this table compares the compliance of the 15 companies with a listing abroad with the 87 companies with a listing in the Netherlands.

Substantiated deviations are common among these companies on themes such as the ownership of shares by supervisory board members, the composition and independence of the supervisory board and terms of appointment and employment such as remuneration and severance payments. During the focus group with 'foreign' companies, it emerged that a different governance climate prevails in Anglo-Saxon countries with respect to the above themes. Major shareholders tend to nominate non-independent supervisory board members more often and it is also often customary to reward supervisory board members with shares. Sometimes, share ownership by supervisory board members is even mandatory.

There are also certain provisions that are less frequently deviated from with substantiation by foreign companies. These include the provisions concerning the establishment of committees of the supervisory board (provisions 2.3.2 and 2.3.3) and the internal audit function (Principle 1.3). This is probably because these listed companies are larger in size. Of the Dutch listed companies, it is mainly the smaller listed companies that deviate with substantiation from these provisions.

The table below shows the largest differences in application by companies with a listing abroad compared to companies with a listing in the Netherlands. The areas in which the companies listed abroad do relatively better than companies listed in the Netherlands are marked in green. Hence, in these areas, the companies listed abroad apply more of the provisions, have fewer substantiated deviations and are therefore more compliant. The areas in which the companies listed abroad are relatively worse than companies listed in the Netherlands are marked in red.

Table 2.8: Largest differences in application by companies with a listing abroad compared to companies with a listing in the Netherlands.

		Difference in application	Difference in substantiated deviation	Difference in non-compliance
2.3.3	Committees' terms of reference	16.1%	-14.9%	-1.1%
1.3.3	Internal audit plan	10.3%	-10.3%	0.0%
2.1.7	Independence of the supervisory board	-14.6%	14.6%	0.0%
2.3.4	Composition of the committees	-16.3%	18.6%	-2.3%
2.2.8	Evaluation accountability	-17.2%	-2.3%	19.5%
2.2.2	Appointment and reappointment periods of supervisory board members	-18.6%	18.7%	-0.1%
4.1.8	Attendance of members nominated to the management board or supervisory board	-18.9%	18.9%	0.0%
2.3.2	Establishment of committees	-24.4%	24.4%	0.0%
4.3.3	Cancelling the binding nature of a nomination or dismissal	-24.8%	24.8%	0.0%
3.2.3	Severance payments	-25.3%	25.3%	0.0%
2.2.4	Succession of management board members and supervisory board members	-25.4%	28.3%	-2.9%
3.3.2	Remuneration of supervisory board members	-40.9%	34.3%	6.7%

Source: SEO Amsterdam Economics.

Note: n = 87 companies listed in the Netherlands and n = 15 organisations listed abroad.

The 'foreign' companies discussed in the focus group indicated that they are comfortable with the current Code. They appreciate the fact that it is possible to deviate from the provisions with substantiation. In addition to the Dutch Code, some companies also comply with foreign codes. This usually does not lead to friction with the Dutch Code since the various codes largely overlap with one another. The focus group also revealed that there are some subtle differences between the Dutch text and the English translation of the Code. Furthermore, companies with a one-tier management board indicated that the Dutch Code remains largely focused on the management model with a separate supervisory board, while companies abroad more often have a one-tier management board.

2.3 A deeper insight into 11 themes

2.3.1 Introduction

As mentioned earlier, in the light of the COVID-19 situation, it was decided not to conduct a survey this year. Instead, at the request of the Committee, SEO conducted an in-depth study of the content of the explanations and substantiation provided by companies for deviations. This study does more than merely record the incidence of compliance or non-compliance. Having said that, in many cases, the Code does not impose strict requirements on companies with regard to how detailed their reporting should be. The in-depth study aims to provide better insight into *how* companies explain deviations and provide substantiation for them.[14] SEO has focused on the themes listed below because a relatively frequent deviation and/or a relatively high level of non-compliance can be observed for these themes in previous financial years (as well as in this financial year):

I. **Long-term value creation**: specifically provisions 1.1.3 (role of the supervisory board) and 1.1.4 (accountability of the management board);
II. **Internal audit position**: specifically provisions 1.3.5 (reports on findings) and 1.3.6 (absence of an internal audit department);
III. **Risk management accountability**: specifically provisions 1.4.2 (accountability in the management report) and 1.4.3 (statement by the management board);
IV. **Composition and size**: specifically provisions 2.1.6 (accountability about diversity) and 2.1.7 (independence of the supervisory board);
V. **Appointment, succession and evaluation**: specifically provisions 2.2.1 (appointment and reappointment terms of management board members) and 2.2.8 (accountability for evaluation);
VI. **Organisation of the supervisory board and reports**: specifically Provisions 2.3.3 (committees' terms of reference), 2.3.4 (composition of committees), 2.3.10 (company secretary) and 2.3.11 (report of the supervisory board);
VII. **Culture**: specifically provision 2.5.4 (accountability regarding culture);
VIII. **Preventing conflicts of interest**: specifically provisions 2.7.2 (terms of reference of the supervisory board), 2.7.4 (accountability regarding transactions - management board members and supervisory board members) and 2.7.5 (accountability for major shareholder transactions);
IX. **Accountability for implementation of the remuneration policy**: specifically provisions 3.4.1 (remuneration report), 3.4.2 (agreement of management board member) and 3.2.3 (severance pay);[15]
X. **Provision of information**: specifically provision 4.2.3 (meetings and presentations)
XI. **Casting of votes**: specifically provision 4.3.3 (cancelling the binding nature of nomination or dismissal)

14 The SEO report contains various examples/quotes from annual reports that have not been repeated in this report.

15 Provision 3.2.3 falls under Principle 3.2 (determination of management board remuneration) but has been combined in the SEO study with Principle 3.4 (accountability for implementation of the remuneration policy).

2.3.2 Long-term value creation

Principle 1.1 of the Code states that the management board of the company is responsible for ensuring the continuity of the company and its affiliated enterprise. The management board should focus on the creation of long-term value while carefully considering the interests of all stakeholders involved. The Code provides the basis for drawing up a strategy for long-term value creation but leaves the details largely up to the companies. The detailed desk research specifically examined provisions 1.1.3 (last sentence, the role of the supervisory board) and 1.1.4 (accountability of the management board).

Provision 1.1.3 (last sentence): *In the report drawn up by the supervisory board, an account is given of its involvement in the establishment of the strategy, and the way in which it monitors its implementation.*

SEO's study shows that there is a clear divide in how supervisory boards render account for their involvement in the development of the strategy and supervision of its implementation. A distinction can be made between two types of explanations: largely content-oriented or largely process-oriented.

Some of the companies describe the role of the supervisory board based on how the multi-year strategy has been developed or based on the interim evaluation of this strategy. The various underlying themes or pillars are often discussed and the content of the decisions made and the role of the supervisory board in this respect are reflected upon. In many cases, no explicit link is made with long-term value creation.

Some companies opt for an explanation of the process. In that case, the emphasis is often placed on the number of times that the supervisory board has met, whether or not divided into regular meetings and strategy meetings. Subsequently, these companies often provide insight into how the meetings have been prepared and the inputs delivered by the management board, company secretary or the established committees. In this type of explanation, companies usually limit themselves to a summary of the discussed themes and sometimes a note indicating that the supervisory board agrees with the implementation of the strategy.

Furthermore, there are a few companies that only provide a brief confirmation that the supervisory board is involved in developing and supervising the implementation of the strategy but add no further details.

SEO's study shows that there are many shades of grey between these two extremes and that there are also companies that offer explanations that are both content-oriented as well as process-oriented. Based on a random sample and a rough categorisation by type of explanation, it has been established that more than 30% of the annual reports mostly provide a process-oriented explanation of the fact that the supervisory board was involved in the implementation of the strategy and not so much about what this involvement actually entailed.

Provision 1.1.4: *In the management report, the management board should give a more detailed explanation of its view on long-term value creation and the strategy for its realisation, as well as describing which contributions were made to long-term value creation in the past financial year. The management board should report on both the short-term and long-term developments.*

Many of the companies have a multi-faceted vision of long-term value creation. According to the SEO study, companies often present their vision visually. In some cases, companies also show the progress made during the financial year using the same visual presentation.

SEO notes that, in the management report, most companies describe the activities (inputs) of the past financial year in the light of the strategy. A small group of companies makes an effort to also provide insight into the current state of affairs (outputs). These companies formulate financial short-term or medium-term targets that can be reported annually. Other companies use non-financial KPIs or report on the score obtained based on the Transparency Benchmark of the Ministry of Economic Affairs and Climate Policy.

With regard to long-term reporting, companies regularly refer to identified trends or megatrends or the UN Sustainable Development Goals (SDGs), insofar as these are in line with their activities.

View of the Committee

The monitoring study reveals a high rate of compliance with provisions 1.1.3 and 1.1.4 (99.4% and 98.9% respectively). Nevertheless, the Committee emphasises the importance of careful reporting on the application of these provisions and calls on companies to report on long-term value creation not only in terms of the process but also with a focus on the content. In addition, the Committee emphasises the importance of involving the relevant stakeholders in shaping the strategy for long-term value creation, carefully taking their interests into account within this context and providing an explanation about this in the annual report. Although it seems to follow from the high compliance rates and the examples cited by SEO that companies are comfortable with provisions 1.1.3 and 1.1.4, the Committee finds that companies nevertheless seem to struggle with interpreting the concept of long-term value creation and reporting meaningfully on this. The Committee is considering whether it would be desirable to provide further guidance on this subject. In anticipation of this, in Chapter 3, the Committee mentions some examples from annual reports of companies for the 2019 financial year that it considers as best practices.

2.3.3 Internal audit position

Principle 1.3. relates to the holder of the internal audit position, i.e. the internal auditor, who has the task of assessing the design and operation of the internal risk management and control systems, while working under the responsibility of the management board. With respect to this principle, provisions 1.3.5 (reports of findings) and 1.3.6 (absence of an internal audit department) have been examined more closely.

Provision 1.3.5: *The internal auditor should report the audi0t results to the management board and the essence of its audit results to the audit committee and should inform the external auditor. The audit findings of the internal auditor should, at least, include the following:*
i. any flaws in the effectiveness of the internal risk management and control systems;
ii. any findings and observations with a material impact on the risk profile of the company and its affiliated enterprise; and
iii. any failings in the follow-up of recommendations made by the internal auditor.

Provision 1.3.6: *If no internal audit department is present, the supervisory board should assess on an annual basis, partly on the basis of a recommendation issued by the audit committee, whether adequate alternative measures have been taken and it should consider whether it is necessary to set up an internal audit department. The supervisory board should include the conclusions, along with any resulting recommendations and alternative measures, in the report of the supervisory board.*

Provision 1.3.5 does not require any reporting via the annual report. The internal auditor is only expected to report the findings to the management board, audit committee and external auditor. However, if the company chooses not to set up an internal audit function (provision 1.3.6), reporting in the annual report is required. More than 80% of the companies that deviate from the provisions relating to the internal audit function justify this based on the limited size of the company. The communications issued by the supervisory board

regarding the conclusions, possible recommendations and alternative measures taken are generally brief and concise since the intention is only to indicate whether or not the current interpretation of the provisions (without an internal audit function) is adequate.

Various smaller companies also refer to the option of outsourcing the internal audit function or mention whether they have actually done this. The focus groups also revealed that the smaller companies, in particular, generally opt for an alternative interpretation of the internal audit function. They do not feel that the absence of an internal audit function leads to any particular risks. According to them, an external party devotes sufficient time and attention to internal audit tasks and to ensuring that risk management processes remain relevant.

Larger companies emphasise the added value of an internal audit function. They refer to the internal audit function as the third line of defence within the Three Lines of Defence model for risk management and indicate that they prefer to have 'short lines' between, for example, the internal audit function, on the one hand, and the CEO and audit committee, on the other. The presence of an internal audit function can also help reduce costs relating to external auditors and help build expertise within the organisation.

View of the Committee

It is understandable and not uncommon for companies of limited size to opt for an alternative interpretation of the internal audit function. Some small companies lack both an internal audit department and an external auditor. This is undesirable in the opinion of the Committee. As part of the monitoring for the 2020 financial year, the Committee is considering examining how companies without an internal audit function assess the absence of this function in view of the design and operation of the internal risk management and control systems.

2.3.4 Risk management accountability

Principle 1.4 relates to the accountability of the management board for the effectiveness of the structure and operation of the internal risk management and control systems. With respect to this principle, an in-depth study has been conducted into compliance with provisions 1.4.2 (accountability in the management report) and 1.4.3 (statement by the management board).

Provision 1.4.2: *In the management report, the management board should render account for:*

I. *the performance of the risk assessment, with a description of the principal risks facing the company in relation to its risk appetite, where these risks may include strategic, operational, compliance and reporting risks;*
II. *the design and operation of the internal risk management and control systems during the past financial year;*
III. *any major shortcomings in the internal risk management and control systems that have been observed in the financial year, any significant changes made to these systems, any major improvements planned and whether these matters have been discussed with the audit committee and the supervisory board; and*
IV. *the sensitivity of the results of the company to material changes in external circumstances.*

Provision 1.4.3: *The management board should state in the management report, with clear substantiation, that:*

I. *the report provides sufficient insights into any failings in the effectiveness of the internal risk management and control systems;*
II. *the aforementioned systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies;*

III. *based on the current state of affairs, it is justified that the financial reporting is prepared on a going concern basis; and*
IV. *the report states those material risks and uncertainties that are relevant to the expectation of the company's continuity for the period of twelve months after the preparation of the report.*

Provisions 1.4.2 (1.4% substantiated deviation) and 1.4.3 (0.3% substantiated deviation) are both reporting provisions and can be further divided into different sub-provisions. The sub-provisions have been monitored separately in the SEO compliance study. .

Compared to 2018, an increase in the level of non-compliance with the reporting provisions 1.4.2 and 1.4.3 was noted, particularly with regard to some of the sub-provisions. According to the 2018 compliance study, non-compliance with provision 1.4.2 (as a whole) was 0.0% and with provision 1.4.3 (as a whole) 0.3%, while the rates of non-compliance in the 2019 financial year were 1.7% for provision 1.4.2 and 7.8% for provision 1.4.3. If the sub-provisions are subsequently examined, it is noticeable that the increase in non-compliance mainly relates to the following sub-provisions:

- 1.4.2.iii (*accountability for significant failings in the internal risk management and control systems*) – from 0.0% in 2018 to 5.7% in 2019;
- 1.4.3.i (*extent to which the management report provides insight into failings in the operation of the internal risk management and control systems*) – from 1.1% in 2018 to 8.0% in 2019;
- 1.4.3.iii (*going concern statement)* – 0.0% in 2018 to 10.3% in 2019; and
- 1.4.3.iv (*expectation of continuity*) – from 0.0% in 2018 to 8.0% in 2019.

SEO notes in its compliance study that companies usually include a separate 'Risk Management' chapter in the annual report. A number of companies use visual displays or matrices in which - besides the observed risks (provision 1.4.2.i) - the risk appetite and expected sensitivity of the results (1.4.2.iv) are also included. Other companies use a schematic representation to display the design and operation of the internal risk management and control systems (1.4.2.ii).

With regard to provision 1.4.2.iii, the vast majority of companies report that no significant shortcomings in internal risk management and control systems have been identified.

With respect to the reporting based on provision 1.4.3 (the management statement, also referred to as the 'In-control Statement'), the compliance study shows that a large number of the companies tend to stick as closely as possible to the text of the Code (no more, no less). Companies that do not do this often forget to refer to the specific aspects of this provision. The compliance study shows that the sub-provisions 1.4.2.iii (5.7%),[16] 1.4.3.ii (4.6%), 1.4.3.iii (10.3%) and 1.4.3.iv (8%) are the ones that are least complied with.

In the focus groups, companies unanimously indicated that their risk management and control systems are functioning properly. Therefore, the companies experience almost no 'issues' with provisions 1.4.2 and 1.4.3. However, the companies indicate that there is a slight conflict between learning from the past (with the help of evaluations) and the reporting of the findings in the annual report. A great deal of attention is often paid to the choice of words. This seems to stem, in part, from the need to mitigate any possible risks of liability.

In addition, some companies indicate that the provisions overlap with other legal obligations such as Section 5:25c of the Financial Supervision Act and that it took more time to obtain a going concern statement from the external auditor for this financial year.

16 It should be noted in this regard that the Code does not explicitly require reporting if no significant shortcomings in the internal risk management and control systems have been identified. However, most companies do report on this.

View of the Committee

The Committee has found that the increased non-compliance with these provisions mainly occurs among smaller companies (local funds). The discrepancy between the results of the compliance studies for the 2018 and 2019 financial years may be related to the changed study methodology (no survey was conducted, but a detailed desk research study that may have been 'more strict' in assessing the quality of the explanations). The initial outbreak of COVID-19 may also have resulted in smaller companies, in particular, being more cautious in rendering account as stipulated in provision 1.4.2 and in making the statements referred to in provision 1.4.3. It is a cause for concern if non-compliances become systematic in nature. The Committee urges companies to continue to comply with these provisions and intends to pay explicit attention to monitoring compliance with these provisions during the compliance study for the 2020 financial year.

2.3.5 Composition and size

Principle 2.1 prescribes that the management board and the supervisory board should be composed such that the requisite expertise, background, competencies and – in the case of the supervisory board – independence are present for them to carry out their duties properly and that the size of both organs should be geared to this. For this principle, an in-depth study has been conducted into compliance with provisions 2.1.6 (accountability about diversity) and 2.1.7 (independence of the supervisory board).

Provision 2.1.6: *The corporate governance statement should explain the diversity policy and the way that it is implemented in practice, addressing:*

I. *the policy objectives;*
II. *how the policy has been implemented; and*
III. *the results of the policy in the past financial year.*
IV. *if the composition of the management board and the supervisory board diverges from the targets stipulated in the company's diversity policy and/or the statutory target for the male-female ratio, if and to the extent that this is provided under or pursuant to the law, the current state of affairs should be outlined in the corporate governance statement, along with an explanation as to which measures are being taken to attain the intended target, and by when this is likely to be achieved.*

For this provision, SEO reported 10.1% non-compliance and 6.2% substantiated deviation. These percentages were slightly lower (8.4% and 4.9% respectively) in 2018, but the general impression is that this provision scores relatively high in terms of non-compliance and substantiated deviation. With regard to the policy objectives referred to in provision 2.1.6.i, a large group of companies are in line with the statutory target figure of 30% female representation on the management board and supervisory board. More than half of the companies explicitly mention this 30% as a target figure. Some companies have formulated different objectives, for example, a target of at least 20% female management board members.

With regard to the implementation of the diversity policy (provision 2.1.6.ii), it is striking that many companies primarily report on gender diversity and mostly do so in connection with a job vacancy. In some cases, the engagement of external headhunters is mentioned as an explanation of the implementation of the policy. Some companies define the concept of a diversity policy more broadly. For example, they have diversity programmes, talent or awareness-raising programmes relating to the theme of diversity. Finally, about one-fifth of the companies state that they regard diversity as one of many selection criteria, where diversity need not necessarily be the decisive factor.[17] With regard to provision 2.1.6.iii (the results of the policy), a large majority of companies find it sufficient to indicate the current state of affairs in the area of gender diversity, perhaps

17 However, this does not mean that the remaining 80% of companies regard diversity as a decisive selection criterion. In the annual report, they are often non-committal about the relative importance of different selection criteria.

compared to the state of affairs a year earlier. About 10% of the companies refer to recent appointments as results of the policy.

Companies falling under the 'if' provision at the end of 2.1.6 appear to have some difficulty in implementing this provision. To explain the state of affairs and measures to be taken, the companies concerned often refer back to the existing diversity policy. However, the Code also requires companies to indicate the period of time by which the intended objectives will be achieved. Hardly any company has ventured to do this. In this context, some companies refer to a 'long-term process'.

Almost all the companies that participated in the focus group state that diversity is high on their agenda. However, a distinction is made between employee diversity and diversity among the management board members and supervisory board members of the company. In addition, the companies make a distinction between gender, cultural background, experience and expertise. The diversity policy with regard to cultural background differs between the companies. In some companies, it is high on the agenda, and in others, no active policy has yet been formulated in this area. Various companies also indicate that they have difficulty recruiting female management board members or supervisory board members. According to them, there are simply no or insufficient female candidates applying. This may be because the sector in which the company operates mainly employs men. Other companies indicate that they (i) meet the desired diversity quota, (ii) apply an equal opportunity policy in which gender does not play a role and/or (iii) that there are conservative forces within the management board that prefer to postpone the appointment of a woman.

View of the Committee

Diversity
With respect to accountability about diversity (*state of affairs, what measures have been taken and the period within which the targets will be achieved*), the Committee notes that the compliance rate (*application and substantiated deviation taken together*) is inordinately low. The compliance rate has even fallen slightly compared to 2018 (from 91.6% to 89.9%).
It is worth noting that some companies have a target figure of lower than 30% female representation, that they take diversity into account only in an ad hoc manner in case of vacancies and explicitly indicate that diversity is merely one of many selection criteria and that it need not be the decisive factor. Various companies also seem to have difficulty setting diversity goals that strive for more than just gender diversity.

The Committee expects companies to place the theme of diversity higher on the agenda in a broad sense and to make greater efforts to carefully render account for this. Following the advisory report of the Social and Economic Council (SER) entitled '*Diversity at the top: time to accelerate'* (*Diversiteit in de top: tijd voor versnelling*), legislation is being drafted for setting appropriate and ambitious targets for top and senior management positions in large companies in order to achieve a more balanced male-female ratio and introduce a legal quota for the male-female ratio in the supervisory board of listed companies, under penalty of a null and void appointment. The Committee is considering revising the provisions in the Code regarding diversity. Until the new statutory regulation enters into force, the Committee expects companies to continue to provide meaningful substantiation for deviations from the statutory target that is applicable till 1 January 2020.

Provision 2.1.7: The composition of the supervisory board is such that the members are able to operate independently and critically vis-à-vis one another, the management board, and any particular interests involved. In order to safeguard its independence, the supervisory board is composed in accordance with the following criteria:

I. *any one of the criteria referred to in best practice provision 2.1.8, sections i. to v. inclusive should be applicable to at most one supervisory board member;*
II. *the total number of supervisory board members to whom the criteria referred to in best practice provision 2.1.8 are applicable should account for less than half of the total number of supervisory board members; and*
III. *for each shareholder, or group of affiliated shareholders, who directly or indirectly hold more than ten percent of the shares in the company, there is at most one supervisory board member who can be considered to be affiliated with or representing them as stipulated in best practice provision 2.1.8, sections vi. and vii.*

The compliance rate for this provision is high, i.e. 100%. Of this, 96.3% of the compliance rate relates to assumed application and 3.7% to substantiated deviation.

Companies deviate relatively often from this provision with substantiation. The substantiation provided for deviations can be divided into three categories: (i) deviation because agreements have been made with shareholders about the appointment of one or more supervisory board members, regardless of the independence criteria (approximately 70% of all substantiated deviations); (ii) deviation because one or more non-independent supervisory board members are indispensable to the company, for example, founders or former management board members (approximately 20% of all substantiated deviations); and (iii) deviation as a result of the departure of one or more independent supervisory board members, as a result of which provision 2.1.7 is temporarily not complied with.

Companies with a listing outside the Netherlands deviate relatively more frequently than companies listed in the Netherlands. They mention 'industry practice' as the main reason for this. The compliance results show that companies with a foreign listing, in particular, deviate with substantiation much more often from provisions pertaining to the role and structure of the supervisory board:

› 2.1.7 Independence of the supervisory board (18.3%)
› 2.1.9 Independence of the chairman of the supervisory board (13.3%)
› 2.2.2 Appointment and reappointment periods – supervisory board members (23.3%)
› 3.3.2 Remuneration of supervisory board members (40%)
› 3.3.3 Share ownership of supervisory board members (13.3%)

With regard to the provisions concerning independence (provisions 2.1.7 and 2.1.9), the focus group participants with 'foreign' companies have noted that the Dutch Code is stricter than the codes of other countries. Furthermore, various participants in the focus group indicate that major shareholders simply expect to be represented on the supervisory board and that, in their opinion, this type of major shareholding occurs relatively more often abroad. In addition, participants indicate that, in other systems, an independent vice-chairman is sometimes appointed when the chairman is not formally independent.

Companies with a listing outside the Netherlands deviate with substantiation from provision 2.2.2 (appointment and reappointment terms - supervisory board members) much more often than companies listed in the Netherlands (23.3% versus 4.6%). There is also a cultural difference here: various participants in the focus group with 'foreign' companies mention that their shareholders expect high-performing management board members and supervisory board members to remain longer in office, which is inconsistent with the maximum appointment terms in the Code. Another factor that plays a role here is that the representatives of major shareholders do not give up their place on the supervisory board after eight years (as prescribed by the Code). Some participants also question the appointment for a term of four years (the basic principle followed in the Code). In other countries, it is customary, for example, to reappoint or allow the reappointment of a management board member or supervisory board member every year, without a maximum term of office.

Finally, various participants state that it is quite common in the more Anglo-Saxon-oriented countries that supervisory board members are obliged to own shares or are even rewarded in shares. The reasoning for this is that, in this way, supervisory board members also have some skin in the game. This deviates from the Dutch view of the matter and provisions 3.3.2 and 3.3.3. Nonetheless, foreign companies indicate that they have no issues with the Code, precisely because of the possibility of deviating from provisions with substantiation.

View of the Committee

Independence
It is important for supervisory board members to be able to operate independently and critically with respect to one another, the management board and any particular interests involved. The compliance study shows that companies take the independence of supervisory board members seriously: 100% of the AEX funds, 98.8% of the AMX funds, 96.6% of the AScX funds and 91.0% of the local funds have an independent supervisory board. Of the companies with a listing abroad, 81.7% have an independent supervisory board. In general, provision 2.1.7 - with 96.3% compliance - is a provision that is frequently complied with.

The substantiation provided for deviations from provisions 2.1.7 (independence of the supervisory board) and 2.2.2 (appointment and reappointment terms - supervisory board members) is usually brief and concise and based on the above-mentioned lines of reasoning. For the time being, the Committee does not see any cause for concern about the quality of the substantiation. The substantiation for deviation from provision 3.3.2 (remuneration of supervisory board members) mainly relates to companies listed outside the Netherlands and the remuneration for supervisory board members in equity instruments that is customary in those countries. According to the Committee, this too does not give any cause for concern about the quality of the substantiation.

2.3.6 Appointment, succession and evaluation

Principle 2.1 prescribes that the supervisory board should ensure that a formal and transparent procedure is in place for the appointment and reappointment of management board and supervisory board members, as well as a sound plan for the succession of management board and supervisory board members, with due regard to the diversity policy. The functioning of the management board and the supervisory board as a collective and the functioning of individual members should be evaluated regularly. With respect to this principle, provisions 2.2.1 (appointment and reappointment terms of management board members) and 2.2.8 (accountability for evaluation) have been examined more closely.

Provision 2.2.1: *A management board member is appointed for a maximum period of four years. A member may be reappointed for a term of not more than four years at a time, which reappointment should be prepared in a timely fashion. The diversity objectives from best practice provision 2.1.5 should be considered in the preparation of the appointment or reappointment.*

Companies regularly deviate from this provision with substantiation (in 2019, there was 13.8% substantiated deviation). According to the SEO study, the most frequently cited reasons for this are that companies attach great importance to a long-term relationship with certain management board members (over 60%). In addition, approximately a quarter of the companies that deviate attribute this to contracts concluded before the effective date of the Code. Several companies not listed in the Netherlands indicate that it is not customary abroad to conclude temporary contracts with management board members.

Provision 2.2.8: The supervisory board's report should state:

I. *how the evaluation of the supervisory board, the various committees and the individual supervisory board members has been carried out;*
II. *how the evaluation of the management board and the individual management board members has been carried out; and*
III. *what has been or will be done with the conclusions from the evaluations.*

This provision is deviated from with substantiation by 2.3% of the companies. The non-compliance rate is also high (16.1%); as in 2018, this is the second-least-complied-with provision.

Most companies are quite brief when it comes to the self-evaluation of the supervisory board (provision 2.2.8). For example, it is only indicated that the evaluation has taken place without including any further details or that such an evaluation was not deemed necessary. Other companies describe the process of the evaluation in great detail but they are non-committal about 'what has been or will be done with the conclusions of the evaluations'.

In the focus groups, companies of limited size indicate that the supervisory board did not conduct an evaluation in the 2019 financial year. However, they recognise the value of such an evaluation. The larger companies show a more varied picture. While one company indicates that an evaluation is conducted in order to comply with the Code, another company indicates that the evaluation could be an important means of gaining a better picture of the 'boardroom dynamics'.

Nearly all companies in the focus group agree that reporting on the results of the evaluation that was conducted in a closed session can be complicated. There were also discussions on how concrete the company's reporting should be.

A number of companies indicate that they have used an external party in the past for providing assistance during the evaluation process. Some companies felt that this was of added value.

View of the Committee

With regard to provision 2.2.8, there has notably been a significant increase in non-compliance (from 10.4% in 2018 to 16.1% in 2019), despite a previous appeal from the Committee for improvement on this point. The Committee also observes that the reporting is often process-oriented, while companies are expected to report on this point with a greater focus on content. Regular evaluations with the assistance of external advisers can help improve this. Moreover, it is recommended that explicit attention be paid to the topics of long-term value creation and culture. The Committee, therefore, reiterates its appeal to companies to improve compliance on this point.

2.3.7 Organisation of the supervisory board and reports

Principle 2.3 prescribes that the supervisory board should ensure that it functions effectively and sets up committees to prepare the decisions to be taken by the board. With respect to this principle, provisions 2.3.3 (committees' terms of reference), 2.3.4 (composition of committees), 2.3.10 (company secretary) and 2.3.11 (report of the supervisory board) have been examined in greater detail.

Provision 2.3.3: The supervisory board should draw up terms of reference for the audit committee, the remuneration committee and the selection and appointment committee. The terms of reference should indicate the role and responsibility of the committee concerned, its composition and the manner in which it discharges its duties. The terms of reference should be posted on the company's website.

Provision 2.3.4: The audit committee or the remuneration committee should not be chaired by the chairman of the supervisory board or by a former member of the management board of the company. More than half of the members of the committees should be independent within the meaning of best practice provision 2.1.8.

The rate of substantiated deviations, at 14.9% and 8.0% respectively, is relatively high for both provisions. The vast majority of the cases (more than 80%) involving provision 2.3.3 concerns smaller companies that indicate

that they do not appoint audit, remuneration and/or selection and appointment committees due to the limited size of the company. A number of companies indicate that they make a deviation from provision 2.3.4 since the supervisory board consists of three or four members. However, the Code only prescribes separate committees if the supervisory board consists of more than four members (provision 2.3.2); so, in essence, these cases do not involve a deviation.

With regard to the composition of the committees, the most common substantiation for deviations (60%) is that companies are unable to meet the requirement that half the members of each committee must be independent. The remaining companies (40%) state that the chairman of the supervisory board is also chairman of the audit and/or remuneration committee, in view of his or her experience.

Some companies deviate from provision 2.3.10 (company secretary). This is usually due to the limited size of the company.

Provision 2.3.11 has the highest rate of non-compliance in 2019 (20.7% non-compliance). For an in-depth analysis of this low compliance rate with respect to this provision, see Section 2.2.5.

View of the Committee

The Committee has not found anything unusual here. A number of companies indicate that they make a deviation from provision 2.3.4 since the supervisory board consists of three or four members. However, the Code only prescribes separate committees if the supervisory board consists of more than four members (provision 2.3.2); so, in essence, these cases do not involve a deviation.

2.3.8 Culture

In the Code, the concept of culture is linked to long-term value creation. The management board should adopt values that contribute to a culture focused on long-term value creation, thereby paying attention to the strategy and business model, the environment in which the company operates, the existing culture within the company and whether it is desirable to make changes to this (provision 2.5.1). Pursuant to provision 2.5.4, the management board is expected to explain in its management report: (i) the values and how they are incorporated in the company and its affiliated enterprise; and (ii) the effectiveness of and compliance with the code of conduct (as referred to in provision 2.5.2).

According to the compliance study, 100% of the companies comply with provision 2.5.1. In contrast, provision 2.5.4 is complied with to a lesser extent (13.8% non-compliance). Non-compliance with provision 2.5.4 has also increased: from 7.0% in 2018 to 13.8% in 2019. A closer examination of the non-compliance at the level of the sub-provisions shows that the non-compliance with provision 2.5.4.i (explanation in the management report of the values and how they are incorporated) has increased from 5.4% in 2018 to 9.2% in 2019 and that non-compliance with provision 2.5.4.ii (explanation in the management report of the effectiveness of and compliance with the code of conduct) has increased from 8.6% in 2018 to 18.4% in 2019.

Companies render account for their culture in different ways. A random sample from SEO reveals that about 10 to 20% of companies provide a list of values, but the connection between these values and long-term value creation is left virtually undiscussed. This may be because provision 2.5.4 does not explicitly contain the term 'long-term value creation'. Provision 2.5.1, however, refers explicitly to long-term value creation but does not require any reporting in this regard (this is a conduct-related provision). Most of the other companies explicitly link values to their activities and the vision of long-term value creation. In addition, some companies make use of visual representations for this, while other companies provide concrete examples of how values are incorporated within the organisation.

In the focus groups as well, it appeared that companies have different ways of dealing with accountability regarding culture. Some companies offer broad examples such as 'we want to be honest with our customers', while other companies approach this in a structured manner by identifying the organisational culture using a bottom-up strategy. In addition, some companies in the focus groups indicated that they find it difficult to clarify how the culture and activities of the company contribute to long-term value creation. Companies also indicate that they find it difficult to concretely define culture on paper, even when there is a strong awareness of the culture.

View of the Committee

The Committee has found that this best practice provision is being complied with less effectively than before and sees this as a negative development. The explanations assessed show that although the values themselves are usually described, how they are incorporated within the company and its affiliated enterprise is described to a lesser extent. This also applies to the explanation of the effectiveness of and compliance with the code of conduct. In the opinion of the Committee, companies should explicitly focus on creating a culture targeted at creating long-term value. This is in line with the overall process of social development that explicitly looks at the social role of companies and which should not be underestimated. The Committee, therefore, calls on companies to actively focus on this theme in the coming period and to provide an explanation in their 2020 report on: (i) the selected values (*what*); (ii) the reason for selecting these values (*why*) (to be linked to long-term value creation); (iii) how these values are incorporated within the organisation (*how*); (iv) the persons who have been assigned roles and responsibilities for this (*who*); and (v) the effectiveness of and compliance with the code of conduct. In Chapter 3, the Committee mentions some examples that it considers as best practices from annual reports of companies for the 2019 financial year.

2.3.9 Preventing conflicts of interest

Principle 2.7 states that any form of conflict of interest between the company and the members of its management board or supervisory board should be prevented. Adequate measures should be taken to avoid conflicts of interest. The supervisory board is responsible for the decision-making on dealing with conflicts of interest regarding management board members, supervisory board members and majority shareholders in relation to the company. With respect to this principle, Provisions 2.7.2 (terms of reference of the supervisory board), 2.7.4 (accountability regarding transactions - management board members and supervisory board members) and 2.7.5 (accountability for major shareholder transactions) have been examined in more detail.

Provision 2.7.2 asks companies to ensure that the terms of reference of the supervisory board contain rules on dealing with conflicts of interest, including conflicting interests between management board members and supervisory board members, on the one hand, and the company, on the other. The terms of reference should also stipulate which transactions require the approval of the supervisory board. The company should draw up regulations governing ownership of, and transactions in, securities by management or supervisory board members, other than securities issued, by the company.

SEO's study shows that the examined provisions on conflicts of interest in the terms of reference of the supervisory board are very similar to one another. The terms of reference usually start by describing the concept of conflict of interest, often with reference to the relevant provisions in the Dutch Civil Code. Subsequently, they lay down an obligation to report any conflict of interest and define a regulation based on which the other supervisory board members (without a conflict of interest) can determine whether or not there is a conflict of interest. In case of there is such a conflict, the relevant supervisory board member does not participate in the deliberation and decision-making process. A few companies (5.7%) choose to deviate with substantiation from Provision 2.7.2. In these cases, the deviation often occurs because companies prefer not to impose restrictions on the ownership of shares and securities other than those issued by the company. It is argued that this element of provision 2.7.2 would not contribute to the governance of the company, would excessively limit the privacy of

the supervisory board members or that the generally prevailing laws and regulations are sufficient for the matter. Provision 2.7.4 (compliance rate of 99.4%) subsequently requests that all transactions in which there are conflicts of interest should be published in the management report. The vast majority of companies do not publish such transactions. This implies compliance based on the 'comply-or-explain' principle. A small number of companies report that there were no such transactions in the relevant financial year.

According to provision 2.7.5 (compliance rate of 98.9%), all transactions between the company and legal or natural persons who hold at least 10% of the shares in the company should be agreed on terms that are customary in the market. Decisions to enter into transactions with such persons that are of material significance to the company and/or to such persons should require the approval of the supervisory board. Such transactions should be published in the management report, together with a declaration that best practice provision 2.7.5 has been complied with. Only a small number of companies explain this provision. In the majority of these cases, they merely report that there were no transactions with a major shareholder. A few report that such transactions have been agreed on terms that are customary in the market or will be agreed on based these terms should such a transaction occur.

View of the Committee

The substantiation offered for deviating from provision 2.7.2 is generally concise and clear. The high rate of assumed compliance with provisions 2.7.4 and 2.7.5 is in line with the picture emerging from previous years. The implementation of the revised Shareholders' Rights Directive has led to a change in the rules in the Dutch Civil Code with regard to transactions with related parties and the reporting thereof, with effect from 1 December 2019. Partly as a result of this, companies may be faced with a patchwork of laws and regulations when entering into sensitive transactions with related parties (for example, a shareholder holding at least 10% of the shares): the provisions in the Code as discussed here, the conflict of interest regulation in the Dutch Civil Code and the new regulation in the Dutch Civil Code regarding transactions with related parties may all entail obligations for companies, management boards and supervisory boards. Companies should be aware of this. The Committee will consider whether the regulation in the Code needs to be amended in the light of the amended statutory regulation.

2.3.10 Accountability for implementation of the remuneration policy

Principle 3.4 states that, in the remuneration report, the supervisory board should render account of the implementation of the remuneration policy in a transparent manner. The report should be posted on the company's website. With respect to this principle, provisions 3.4.1 (remuneration report), 3.4.2 (agreement of management board member) and 3.2.3 (severance pay) have been examined more closely.[18]

Provision 3.4.1 stipulates that the remuneration committee should prepare the remuneration report. This report should in any event describe, in a transparent manner, in addition to the matters required by law:

I. how the remuneration policy has been implemented in the past financial year;
II. how the implementation of the remuneration policy contributes to long-term value creation;
III. Ithat scenario analyses have been taken into consideration;
IV. the pay ratios within the company and its affiliated enterprise and, if applicable, any changes in these ratios in comparison with the previous financial year;
V. in the event that a management board member receives variable remuneration: how this remuneration contributes to long-term value creation, the measurable performance criteria determined in advance upon which the variable remuneration depends, and the relationship between the remuneration and performance; and
VI. in the event that a current or former management board member receives a severance payment: the reason for this payment.

18 Provision 3.2.3 falls under Principle 3.2 (determination of management board remuneration) but has been combined in this part of the study with Principle 3.4 (accountability for implementation of the remuneration policy).

SEO's study shows that most companies start by providing a broad overview of the various remuneration components in the remuneration report. They often combine this with a table displaying the various management board members on one axis and the various remuneration components on the other axis. In this way, it is immediately clear to the reader how the remuneration policy has been implemented within the company. With regard to the link between remuneration policy and long-term value creation, companies mention attracting and retaining employees as an important perspective to be taken into account.

Specifically with regard to remuneration in shares, companies often speak of aligning the interests of the management board and the interests of shareholders. One way to do this is to reward management board members with shares.

A significant number of companies do not report whether scenario analyses (provision 3.4.1.iii) have been taken into consideration as part of the remuneration policy. A relatively low number of companies, i.e. 75.9%, apply this provision. In addition, 6.9% of the companies deviated from this provision with substantiation. When companies report on this, they often do so in a very concise manner, usually by simply stating that scenario analyses have been taken into consideration. The Code does not require access to these scenario analyses and hence the companies do not provide such access. A few provide visual insight into the effect of different scenarios on the total remuneration.

The non-compliance rate for provision 3.4.1.iv (pay ratios) for the 2019 financial year decreased from 16.1% in 2018 to 6.9% in 2019, combined with a decrease in the rate of substantiated deviations from 5.4% in 2018 to 3.4% in 2019. These lower rates of non-compliance may be due to the implementation of the revised Shareholders' Rights Directive leading to changes in the Dutch Civil Code, as a result of which new requirements have been imposed on the remuneration report (Section 2:135b of the Dutch Civil Code) and there is an increased involvement of auditors in this process.

Most companies do not report the severance payments paid. This implies that former management board members have not received any severance payments and can be assumed as compliance with provision 3.4.1.vi based on the 'comply-or-explain' principle. However, about 10% of the companies report severance payments of former management board members, usually with reference to the contractual conditions agreed on with the management board member. A few companies also indicate that - contrary to provision 3.2.3 - a severance payment of more than one year's salary has been agreed on in the contract of one or more management board members.

Provision 3.4.2 requires companies to provide an overview of the most important elements of the agreement with the management board members for newly appointed management board members. Companies choose to do this in different ways. In some cases, these elements are directly included in the agenda of the general meetings and posted as part of this on the company's website. In other cases, a separate overview is posted on the website. Some companies disclose almost the entire contract of the management board member, while others choose to discuss only the most important elements in a brief overview. In case of some of these companies, all management board members have more or less the same contractual terms. Therefore, these companies sometimes choose to place a document on the website that explains the most important elements of these agreements in a general sense, for the entire management board.

View of the Committee

The general impression of the Committee is that many of the companies are reporting accurately. It is pleased to note that provision 3.4.1.iv (pay ratios) has been complied with more than in previous years. The Committee has observed that companies interpret the concept of pay ratios in this provision in different ways. As a result, it is difficult to compare the pay ratios at different companies. That is why the Committee has decided to provide additional guidance on this matter (see Chapter 3).

The Committee points out that the new legal requirements and the provisions of the Code with regard to the remuneration report deviate from each other on certain points. For example, provision 3.4.1.iii (scenario analyses) does not appear in the new statutory regulation. The Committee encourages companies to ensure that their reporting in the remuneration report is in line with both the legal requirements and the provisions in the Code. When reporting on scenario analyses, the Committee expects companies to not just include a brief statement saying ‹that these have been taken into consideration›, but to provide more insight into the different scenarios that have been considered and their possible outcomes.

No particular issues have emerged with regard to provision 3.4.2 (agreement of management board member). The explanations are concise but do not give cause for concern.

2.3.11 Provision of information

Principle 4.2 states that the management board and the supervisory board should ensure that the general meeting is provided with adequate information. With respect to this principle, provision 4.2.3 (meetings and presentations) was examined in greater detail.

Provision 4.2.3 prescribes that meetings and presentations of analysts, presentations to institutional or other investors and press conferences should be announced in advance on the company's website and by means of press releases. Analysts' meetings and presentations to investors should not take place shortly before the publication of the regular financial information. All shareholders should be able to follow these meetings and presentations in real-time, by means of webcasting, telephone or otherwise. After the meetings, the presentations should be posted on the company's website.

SEO's study shows that approximately 15% of all companies indicate that shareholders are sometimes unable to follow the meetings and presentations simultaneously via webcasting, telephone or otherwise. In the case of the AEX funds, there is no substantiated deviation or non-compliance with this provision. This implies an application rate of 100% among these funds. Among the AMX funds, the rate of application is 90.0% and the rate of substantiated deviation is 10% (therefore also 100% compliance). For the AScX funds, the rate of application is 77.3% and the rate of substantiated deviation is 22.7% (therefore also 100% compliance). Among the local funds, the rate of application is 72%, the rate of substantiated deviation is 24.0% and the rate of non-compliance is 4%. For companies with a foreign listing, the rate of application is 86.7% and the rate of substantiated deviation is 13.3% (therefore also 100% compliance).

It is mainly the smaller companies that deviate with substantiation from provision 4.2.3, usually by indicating that it is not yet possible to comply with this provision 'given the size of the company' or because a meeting is preferable to a webcast.

Almost all the companies in the focus groups have organised their general meeting of shareholders in a partially virtual mode. The main reason for this was the COVID-19 pandemic. The experiences were mostly positive. In addition, some companies indicate that the remaining contacts with shareholders are increasingly taking place via digital means. These companies mention that they do not expect digital contacts to completely replace physical meetings, but that this will continue to play a greater role in the future than was the case before the COVID-19 pandemic.

View of the Committee

The results of the in-depth study of provision 4.2.3 (meetings and presentations) do not surprise the Committee. The high application rate among AEX funds matches their professionalism and market capitalisation and has a certain illustrative best-in-class factor. It is understandable that smaller companies are not always able to allow their shareholders to follow meetings and presentations simultaneously via webcasting, telephone or otherwise.

The Committee attaches importance to proper communication between the company and its shareholders. Companies must adopt a flexible attitude in the event of changing circumstances such as COVID-19. Virtual means of communication contribute to good communication with shareholders. The Committee is curious as to whether smaller companies have made any progress in this area in 2020, as a result of the use of virtual communication tools in connection with the COVID-19 pandemic. In the coming year, the Committee is considering paying more attention to communication between companies and shareholders.

2.3.12 Casting votes

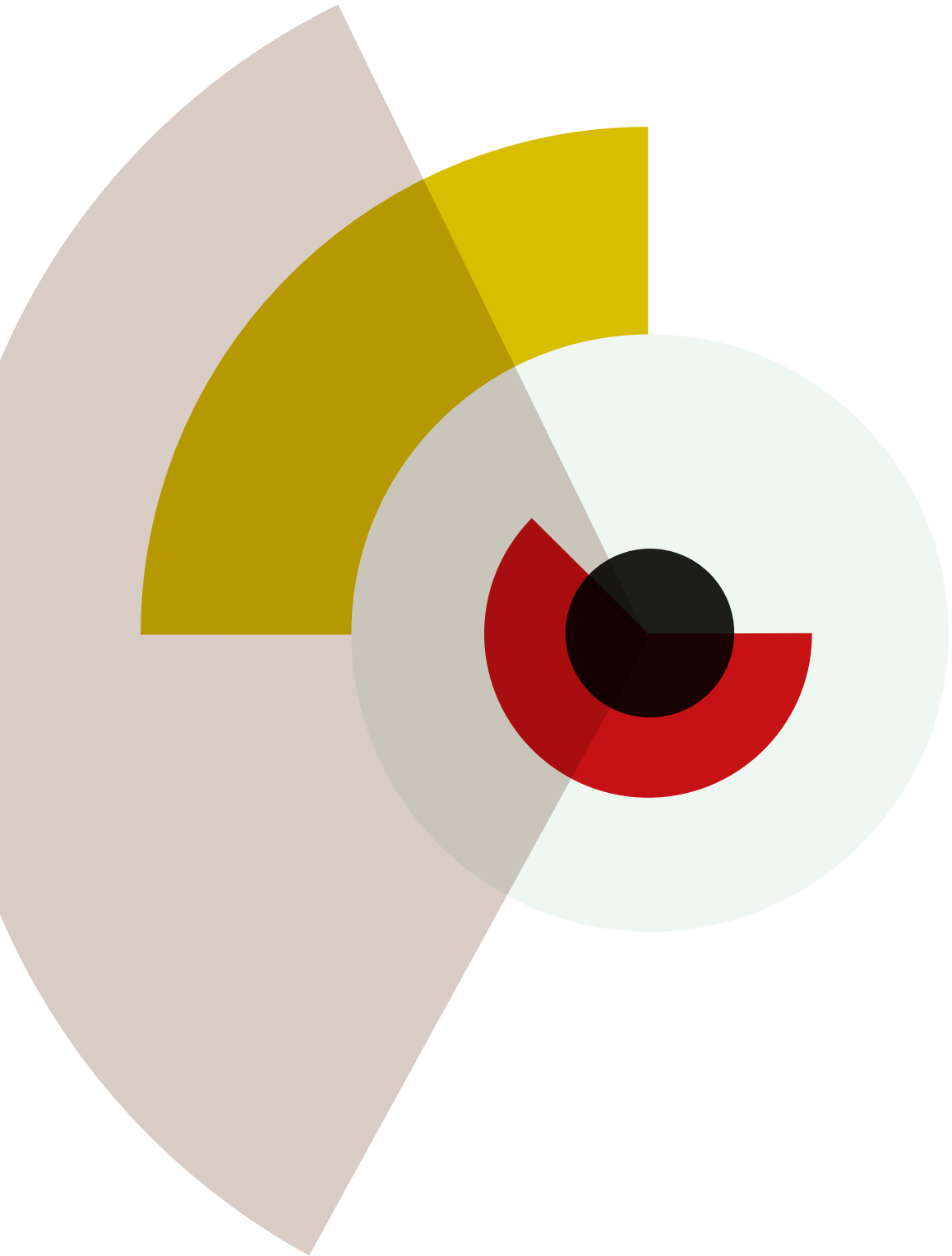
Principle 4.3 states that the participation of as many shareholders as possible in the general meeting's decision-making is in the interest of the company's checks and balances. The company should, in so far as possible, allow shareholders to vote by proxy and communicate with all other shareholders. With respect to this principle, provision 4.3.3 (cancelling the binding nature of nomination or dismissal) was examined in greater detail.

Provision 4.3.3 prescribes that the general meeting of shareholders of a company not having statutory two-tier status (*structuurregime*) may pass a resolution to cancel the binding nature of a nomination for the appointment of a member of the management board or of the supervisory board and/or a resolution to dismiss a member of the management board or of the supervisory board by an absolute majority of the votes cast. It may be stipulated that this majority should represent a given proportion of the issued capital, where this proportion may not exceed one-third of the issued capital. If this proportion of the capital is not represented at the meeting, but an absolute majority of the votes cast is in favour of a resolution to cancel the binding nature of a nomination or to dismiss a board member, a new meeting may be convened at which the resolution may be passed by an absolute majority of the votes cast, regardless of the proportion of the capital represented at the meeting.

Companies deviate from this provision with substantiation, explaining that they rely on criteria other than the absolute majority of the votes and one-third of the issued capital referred to in the Code. Some companies indicate that they do not have the system of a binding nomination under their articles of association.

View of the Committee

A considerable number of companies deviate from this provision with substantiation (21.8%). There are various reasons for this deviation. For example, companies follow the regulation in the Dutch Civil Code (with higher limit values) instead of the regulation in provision 4.3.3 because this is considered to offer protection against external influences and/or is in the interest of continuity. The limit values in provision 4.3.3 are also considered unsuitable due to the low absence rate or the shareholder base. The substantiation examined in the study has not given rise to further comments by the Committee.



CHAPTER 3: GAPS AND AMBIGUITIES, GUIDANCE AND FOCUS AREAS FOR THE NEXT MONITORING PERIOD

3.1 Introduction

Based on discussions with the supporting parties and other stakeholders, the results of the study carried out by SEO and other relevant national and international developments (set out in Appendix 2), the Committee has identified certain gaps and ambiguities in the Code with regard to diversity and long-term value creation. The Committee also feels that it is necessary to provide guidance on the interpretation of the concept of pay ratios as referred to in provision 3.4.1.iv of the Code. In addition, the Committee has identified a number of key focus areas to be taken into consideration during the monitoring of the 2020 financial year.

3.2 Diversity

The Committee asks itself whether the provisions in the Code regarding diversity (2.1.5 and 2.1.6) continue to be sufficiently in line with recent social developments and legislative initiatives in the area of diversity. Following the SER advisory report entitled 'Diversity at the top: time for acceleration', a bill was submitted to the House of Representatives on 4 November 2020 with the aim of creating a more balanced ratio between the number of men and women in top and senior management positions in large public and private limited companies. During the subsequent period, the Committee will assess whether the provisions in the Code regarding diversity need to be revised. To this end, it will not only examine the expected new statutory regulations on gender diversity but also consider introducing a broader interpretation of the concept of diversity in the Code (for example, with respect to the cultural background of employees).

Below, the Committee cites two examples from the annual reports for the 2019 financial year that it considers as best practices. The first example has been selected because, in this example, the concept of diversity was interpreted to mean more than just gender diversity. However, the Committee does not consider the deviation from the gender diversity target as a best practice.

"The diversity targets of the Company with respect to the composition of its Board are:

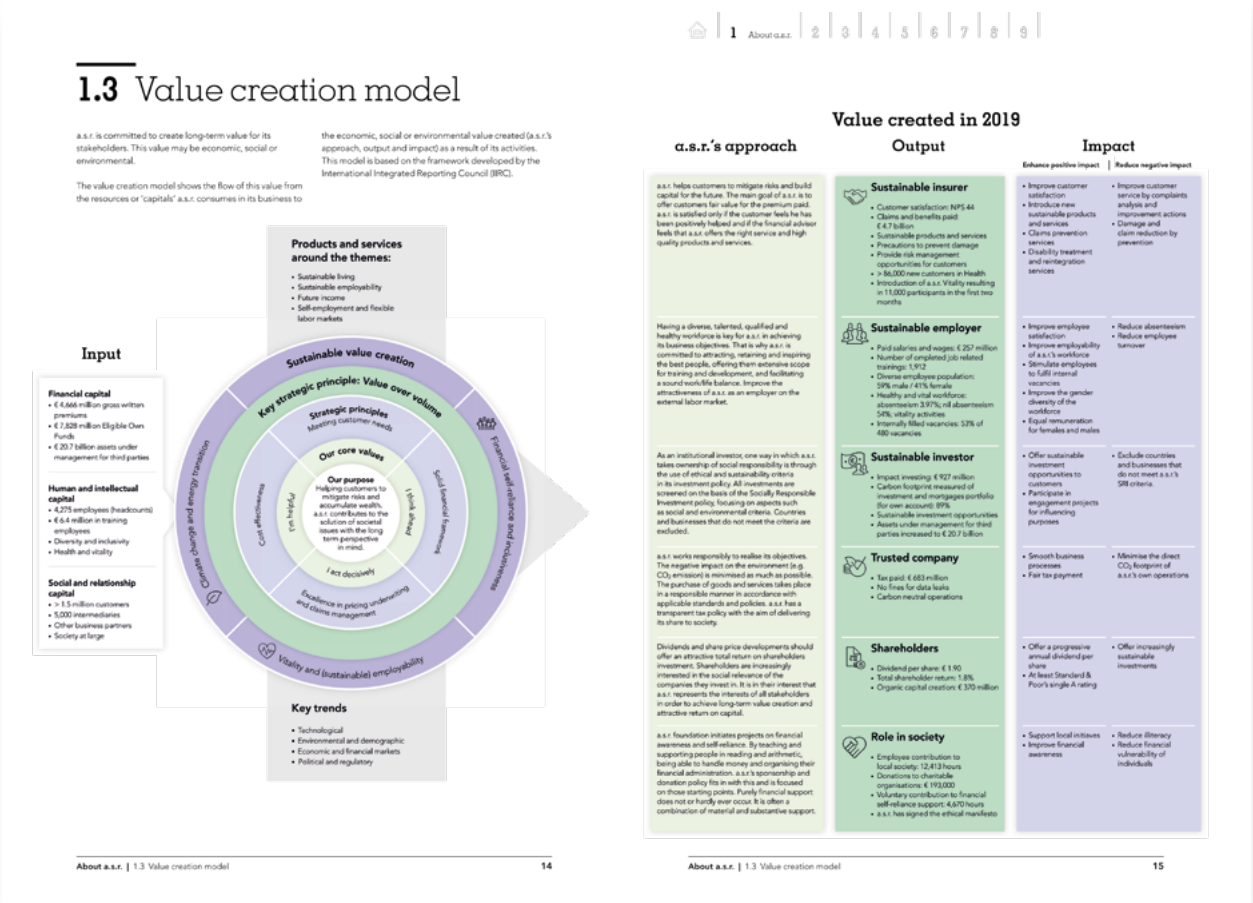
• increasing the (work) experience diversity within the Board such that by 2022 the Board will at least have one member with relevant expertise and knowledge of the advertising market;
• increasing the (work) experience diversity within the Board such that by 2022 the Board will at least have one member with other business experience; and
• increasing the gender diversity within the Board such that by 2027 at least 20% of the Board will consist of women."

"To ensure a balanced composition in terms of nationality / cultural background, our aim is not to have more than 50% of the members of our Supervisory Board or Executive Committee drawn from a single nationality"

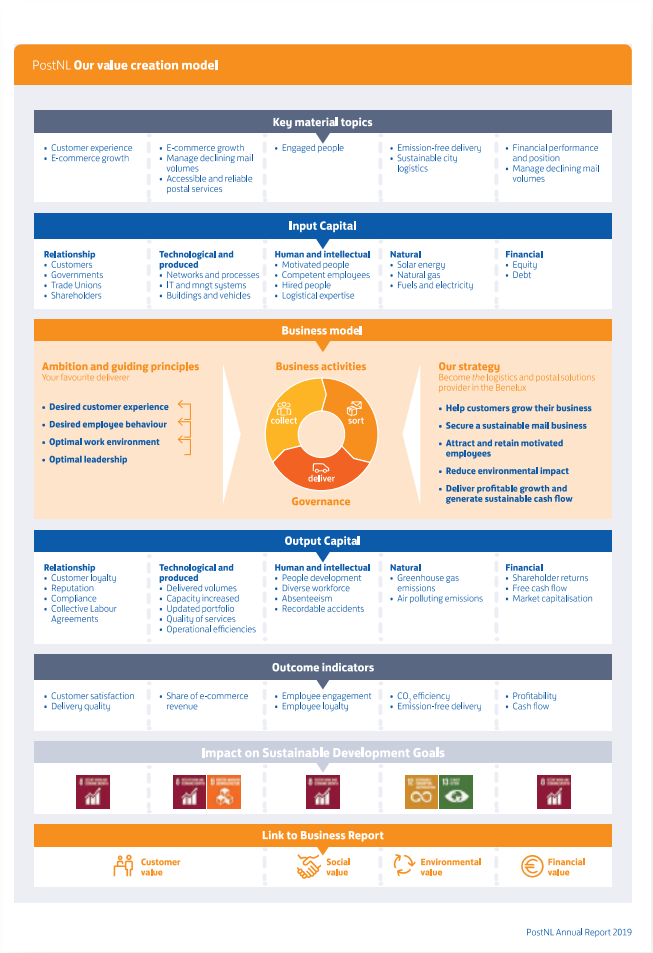
Source: Annual Reports of Altice (2019) and Koninklijke DSM (2019)

3.3 Long-term value creation

The Committee emphasises the importance of careful reporting when applying the provisions relating to long-term value creation and appeals to companies to report on long-term value creation not only in terms of process but also with a focus on content. Integrated reporting can be helpful in this regard. In the next monitoring period, the Committee will consider whether further guidance is needed on this subject. In anticipation of this, the Committee cites some examples from annual reports of companies for the 2019 financial year that it considers as best practices.



Source: ASR Annual Report



Source: PostNL Annual Report (2019)

Source: Randstad Annual Report (2019)

3.4 Dialogue with stakeholders

SEO's study reveals a 100% rate of compliance with the principles relating to dialogue with stakeholders and some of the related best practice provisions (e.g. 1.1.1.v). Since this relates to assumed compliance, the Committee has reservations about the high compliance rate. The Committee considers it very important that companies clearly indicate how and which stakeholders are involved and how the interests of these stakeholders are taken into consideration. That is why the Committee is looking into how it can gain more insight into this aspect. In anticipation of this, the Committee provides an example below of what it considers a best practice.

Note 2. From stakeholder engagement to materiality

Together with our stakeholders, we define the material societal, environmental and economic topics for our company. In 2019, we conducted a full materiality assessment. For the methodology used, details on the materiality process and changes since our last report, reference is made to our website: https://www.vopak.com/sustainability/stakeholder-engagement.

The table below summarizes the expectations and interests of our stakeholders and the topics that they regard as key topics. It should be noted that this reflects the overall outcome per stakeholder group from our stakeholder engagement. Expectations, interests and key topics vary for each individual stakeholder.

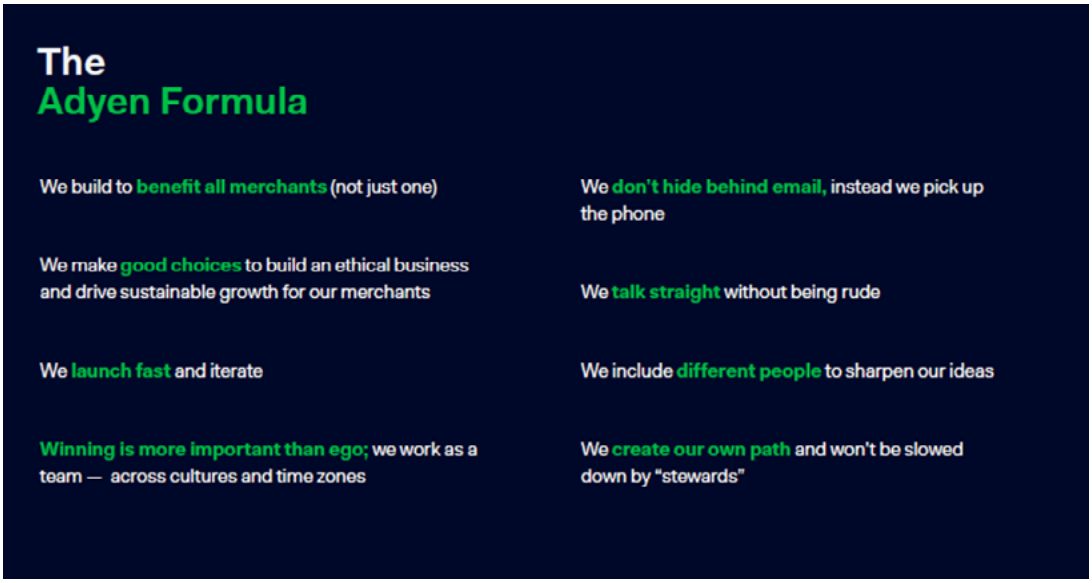
Our response to the overall key topics and concerns of our stakeholders is embedded in the notes to the topics in this Sustainability section.

Stakeholder group	Expectations	Key topics	How we engage them
Youth	To be relevant in the future, young people deem it important that a company as Vopak acts responsible in its environmental and societal behavior.	• Air quality: VOC and other air emissions • Greenhouse gas emissions • Soil and groundwater pollution • Water pollution	• Vopak WeConnect projects • Face-to-face meetings • Information on our website and social media channels
Customers	Increasingly put sustainability high on their agenda and require Vopak, as an important link in their supply chain, to at least align its sustainability policy with theirs.	• Business ethics and integrity • Applications of best practices • Occupational health and safety • Process safety	• Face-to-face meetings • Calls, emails, conferences • Net Promoter Score (NPS) survey to measure customer satisfaction • Internal & external audits
Business partners	Looking for long-term relationships to realize growth based on mutual trust and value creation.	• Application of best practices • Process safety • Customer acceptance and continuation	• Face-to-face meetings • Calls, emails, conferences • Internal & external audits
Authorities & governmental organizations	Respect (stricter) regulations, control and perform safely.	• Business ethics and integrity • Nuisance • Air quality: VOC and other air emissions • GHG emissions	• Face-to-face meetings • Written contacts • Information on our website • Open houses & site visits • Participation in public hearings & conferences
Financial and capital markets	Increasingly take a long-term appreciative view of companies that aim for sustainable profitability.	• Financial performance • Business ethics and integrity • Customer acceptance and continuation	• Presentations, webcasts, roadshows with analysts and investors at least every quarter • Individual meetings • Capital Markets Day • General Meeting of Shareholders
Neighbors and local communities	Increasingly require Vopak to engage with them to address issues such as stench and odors.	• Air quality: VOC and other air emissions • Business ethics and integrity	• Face-to-face meetings • Written contacts • Information on our websites and social media channels • Open houses & site visits • Participation in public hearings & conferences • Vopak WeConnect projects
NGOs	NGOs expect Vopak to be a responsible, transparent, cooperative and trustworthy partner.	• Air quality: VOC and other air emissions • Business ethics and integrity • Process safety • Water pollution	• Face-to-face meetings • Written communications • Information on our websites and social media channels • Open houses & site visits • Participation in public hearings & conferences • Vopak WeConnect projects
Suppliers	Suppliers of assets value long-term relationships. Suppliers of services (e.g. contractors) expect a safe and healthy workspace and fair treatment.	• Supplier acceptance and continuation • Customer acceptance and continuation • Financial performance	• Face-to-face meetings • Quarterly calls with Tier 1 and Tier 2 suppliers • Contracts • Site visits • Supplier visits
Employees	Value a company that cares, helps to develop their talents and offers training programs to develop the full potential of every individual.	• Process safety • Financial performance • Occupational health and safety	• Daily work relationships • Training and human resources cycles • Biennial employee engagement survey
Senior management	Determines the overall long-term strategy on our 'License to Operate' and our expansion plans and ensures continued value creation for stakeholders.	• Process safety • Business ethics and integrity	• Ongoing internal dialogues • LEAD program

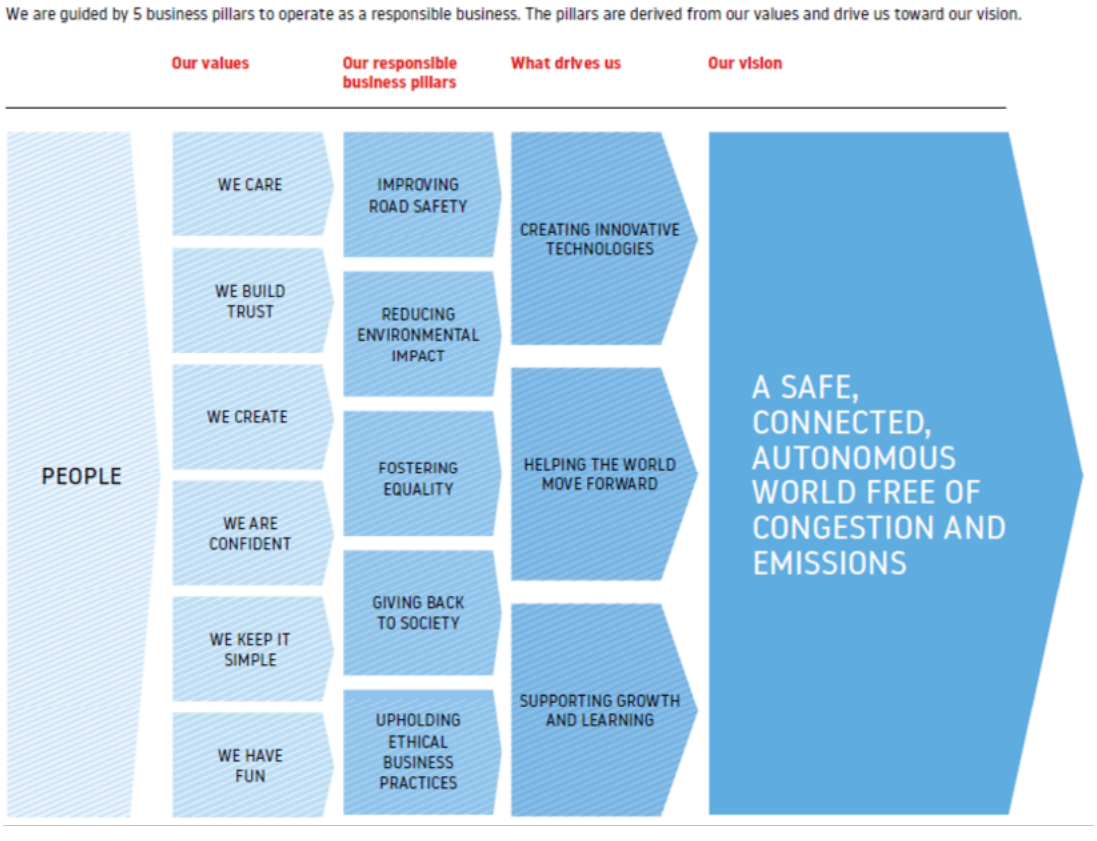
Source: VOPAK Annual Report (2019)

3.5 Culture

Based on SEO's compliance study, the Committee has observed that various companies appear to struggle with accountability regarding culture. Although values are usually described, it is less clear how these are incorporated within the company. This also applies to the explanation of the effectiveness of and compliance with the code of conduct. The Committee emphasises the importance of creating a culture focused on long-term value creation and careful reporting with regard to this. With reference to the appeal made to companies under the heading 'View of the Committee' in Section 2.3.8, the Committee mentions two examples from annual reports for the 2019 financial year that it considers best practices.



Source: Adyen Annual Report (2019)



Source: TomTom Annual Report (2019)

3.6 Pay ratios

Best practice provision 3.4.1.iv stipulates that information about the pay ratios within the company and its affiliated enterprise should form part of the remuneration report. The explanation for this provision in the Code (Section 2.3.10) states that companies should explain the relationship between the remuneration of the management board members and a representative reference group to be determined by the company and it should also explain whether there are any changes in this relationship compared to the previous financial year.

The Committee has observed that there are differences in how companies interpret the concept of pay ratios, as referred to in provision 3.4.1.iv This makes it difficult to make a comparison between the companies, which has therefore prompted the Committee to make the following recommendation for a more unambiguous interpretation of this term.

The concept of pay ratios, as referred to in provision 3.4.1.iv of the Code, is understood to mean the ratio between (i) **the total annual remuneration of the CEO** *and (ii)* **the average annual remuneration of the employees** *of the company and group companies whose financial data is consolidated by the company, where:*

- *total annual remuneration of the CEO includes all the remuneration components (such as fixed remuneration, variable cash remuneration (bonus), the share-based part of the remuneration, social contributions, pension, expense allowance, etc.) included in the consolidated annual accounts on an IFRS basis;*
- *the average annual remuneration of the employees is determined by dividing the total wage costs in the financial year (as included in the consolidated annual accounts on an IFRS basis) by the average number of FTEs during the financial year; in addition, the hiring of external employees is taken into account pro-rata, insofar as they are hired for at least three months during the financial year; and*
- *value of the share-based component of the remuneration is determined at the time of assignment in accordance with the applicable rules under IFRS.*

The Committee calls on companies to include the above information in remuneration reports starting from the financial year beginning on or after 1 January 2021. In addition to the basic amount of information expected based on the aforementioned interpretation of the concept of pay ratios as referred to in provision 3.4.1.iv, companies may provide additional information about other relevant pay ratios (e.g. the pay ratio for other management board members (in addition to the CEO), pay ratios broken down by the main regions where the company is active and/or pay ratios for certain reference groups of employees).

In addition, when complying with provision 3.4.1.ii of the Code (*the remuneration report should in any event describe, in a transparent manner, how the implementation of the remuneration policy contributes to long-term value creation*), the Committee calls on companies to also report on how the total remuneration of management board members is consistent with the remuneration policy and contributes to the long-term performance of the company. For example, the company should explain the extent to which the total remuneration of management board members is in accordance with the targets set based on the remuneration policy for promoting the long-term performance and sustainable actions of the company and the achievement of those targets. The period for which the allocated shares must be held by management board members and the other requirements applicable to the long-term ownership of shares should also be explained, where applicable.

The Committee expects the European Commission to issue its final *Guidelines on the standardised presentation of the remuneration report under Directive 2007/36/EC, as amended by Directive (EU) 2017/828, as regards the encouragement of long-term shareholder engagement* shortly. These final guidelines were intended to be published during 2020 but their publication has been delayed due to COVID-19. In the event of any discrepancy between the above recommendations and the final guidelines, the Committee expects companies to comply with the final guidelines.

3.7 Focus areas for the next monitoring period

The Committee has selected the following areas to focus on in the coming year:

- Gaining a deeper understanding of the following themes via work meetings with the supporting parties: long-term value creation, stakeholder dialogue, the role of shareholders and diversity
- Quality of the explanations and substantiation for deviations since the Committee believes that this is essential for a meaningful monitoring process
- Exploring possibilities for further refinement of the study methodology
- Ensuring that companies with only a listing abroad participate to a greater degree in the compliance study
- Examining the quality of the reports of the supervisory board and those of its committees

APPENDIX 1:

COMPOSITION OF THE CORPORATE GOVERNANCE CODE MONITORING COMMITTEE

Chairman

Mevrouw mr. P.F.M. van der Meer Mohr

Vice-Chairman, Supervisory Board, DSM NV

Chairman, Supervisory Board, EY Nederland LLP

Non-executive Director, HSBC Holdings plc

Non-executive Director, Mylan NV

Chairman, Supervisory Board, Nederlands Dans Theater

Member, AFM Capital Market Committee

Member, selection committee of the Supreme Court of the Netherlands

Observers

Ms N. ten Kate

Ministry of Justice and Security, Legislation and Legal Affairs Department

Mr L.D. Brouwer

Ministry of Finance, Financial Markets Department

Secretariat

Ms R.J.G. Kitaman

Ministry of Economic Affairs and Climate Policy, Enterprise Directorate

Ms S.M. de Mik

Ministry of Economic Affairs and Climate Policy, Enterprise Directorate

External legal advice

Mr O.M. Buma

NautaDutilh

Members

Prof. B.E. Baarsma

Board Chairman, Rabobank Amsterdam

Professor of Applied Economics, University of Amsterdam

Bank Council Chairman, De Nederlandsche Bank

Member, Dutch Committee for Entrepreneurship and Financing (Nederlands Comité voorOndernemerschap en Financiering)

Mr P.J. Gortzak

Policy Head, Group Strategy and Policy, APG

Member, Supervisory Board, CFK

Member, Supervisory Board, Nationaal Register

Mr. S. Hepkema

Chairman, Supervisory Board, Wavin NV

Member, Supervisory Board, SBM Offshore NV

Member, Management Board, VEUO

Senior Advisor, Bain Capital Private Equity

Mr. D.R. Hooft Graafland RA

Member, Supervisory Board, Koninklijke Ahold Delhaize NV

Member, Supervisory Board, Koninklijke FrieslandCampina NV

Member, Supervisory Board, Lucas Bols NV

Board Chairman, Stichting African Parks Foundation

Board Chairman, Carré Fonds

Prof. E.M.L. Moerel

Professor, Global ICT Law, Tilburg University

Senior Of Counsel, Morrison & Foerster (Berlin)

Member, Cyber Security Council

Member, Governance Committee for Quality Registrations (Commissie Governance van

Kwaliteitsregistraties)

Chairman, Supervisory Board, Mauritshuis

Member, Supervisory Board, SIDN

Mr. R.M.S.M. Munsters MiF

Member, Supervisory Board, UnibailRodamcoWestfield SE

Non-executive Director, Moody's Europe

Member, Supervisory Board, PGGM Vermogensbeheer

APPENDIX 2:

RELEVANT NATIONAL AND INTERNATIONAL DEVELOPMENTS

National developments

Bill concerning Further Remuneration Measures for Financial Institutions (Wetsvoorstel nadere beloningsmaatregelen financiële ondernemingen)

The Bill seeks to tighten the remuneration rules applicable to financial institutions as outlined in the Financial Supervision Act.[19] The measures are aimed at preventing perverse incentives associated with remuneration in the financial sector and promoting public support for and confidence in the financial sector as a whole. The Bill contains the following additional measures:

- Employees and management board members of financial institutions whose fixed remuneration consists of shares and similar financial instruments may only sell them after five years.
- When determining their remuneration policy, financial institutions must pay greater attention to their social position by involving stakeholders, in advance, in formulating remuneration proposals, and they must render account for their policy.
- The option of deviating from the bonus ceiling for personnel not covered by a collective labour agreement will be restricted. In addition, the Bill contains some more technical changes to the remuneration rules outlined in the Financial Supervision Act.

The Bill was submitted to the House of Representatives by the Minister of Finance on 2 July 2020 and is currently being discussed in the House of Representatives. The note on the report on the Bill was published on 14 October 2020.[20]

Bill concerning Invocation of Reflection Period by the Management Board of a Listed Company (Wetsvoorstel inroepen bedenktijd door bestuur van beursvennootschap)

The Bill aims to give the management board of a listed company more time and freedom to identify and consider the interests of the company and its stakeholders so that policies can be determined with the due care and prudence in the event of, for example, an imminent takeover, whether hostile or otherwise.[21] Firstly, the Bill strives to codify the fact that the management board is charged with the management of the company, which includes determining the policy and strategy of the company. Secondly, the management board will be given the option to invoke a period of reflection in the event of an imminent dismissal on account of failure to respond to the ideas of shareholders regarding the strategy or in the event of an imminent takeover. Invoking the reflection period means that the authority of the general meeting to suspend or dismiss management board members or supervisory board members will be suspended for a maximum of 250 days. The Bill contains various safeguards to prevent improper use of the reflection period, taking into account the possible effects on the investment climate. Stipulating a reflection period by law may have consequences for the provision regarding the response time as outlined in the Code.

19 Explanatory Memorandum, Parliamentary Papers II, 2019/2020, 35 514 No. 3.

20 Parliamentary Papers II, 2019/2020, 35 514 No. 1.

21 Explanatory Memorandum, Parliamentary Papers II, 2019/2020, 35 367 No. 3.

The Bill, along with six amendments, was adopted by the House of Representatives on 8 September 2020.[22] The amendments seek to legally counteract an unreasonable accumulation of protective measures and to clarify the different times at which the various grounds for invoking a legal reflection period will take effect. The Bill is currently being debated in the Senate. The preliminary inquiry by the Senate Committee on Justice and Security was held on 29 September 2020. The preliminary report was published on 27 October 2020.

Balanced Male-Female Ratio Bill (Voorstel van wet inzake evenwichtige man/vrouwverhouding)

The Bill contains rules to create a more balanced ratio between the number of men and women in top positions in large companies.[23] The statutory regulation to increase male-female diversity at the top levels of the Dutch business community stems from the SER advisory report entitled 'Diversity at the top: time to accelerate'. Dutch listed companies will be required to ensure that at least one-third of the number of members on the supervisory board are men and another one-third are women. Any new appointment that is not in line with this distribution will be void. In addition, large public limited companies and private companies (approximately 5000 companies) will be required to formulate appropriate and ambitious target figures for the supervisory board, management board and senior management. These large companies must draw up a plan indicating how the target figure will be achieved and must be transparent about the process, efforts and results. Following the announced measures, large companies will be required to report in their management report regarding their progress in achieving the target figures and their plans on how to achieve them. They will also be obliged to report on this to the SER. This constitutes an extension of the diversity reporting requirements already imposed on listed companies by law and the Code. The Balanced Male-Female Ratio Bill was submitted to the House of Representatives on 4 November 2020.[24]

Private Member's Bill for the Equal Pay (Men and Women) Act (Initiatiefwetsvoorstel Wet gelijke beloning van vrouwen en mannen)

In 2018, a number of Members of Parliament had submitted a private member's bill for consultation intended for amending the Equal Treatment (Men and Women) Act (*Wet gelijke behandeling mannen en vrouwen*) in connection with the introduction of a certificate as proof that men and women receive equal pay for work of equal value (Equal Pay (Men and Women) Act).[25] Employers with at least 250 employees must obtain a certificate that shows that the organisation pays equal pay for equal work. In addition, every employer with more than 50 employees must provide information in the management report on the extent of differences in pay between male and female employees. In case of unequal pay, this must be explained and clarified in the management report. At the same time, the management report must also indicate how these differences in pay will be reduced. The private member's bill was submitted to the House of Representatives on 7 March 2019.[26] In response to the advice of the Council of State, an amended bill was submitted on 5 October 2020.

22 Voting on Bill concerning Invocation of Reflection Period by the Management Board of a Listed Company, Proceedings II, 2019/20, No. 98 Item 17.

23 Bill, Parliamentary Papers II, 2020/21, 35 628 No. 2.

24 Parliamentary Papers II, 2020/21, 35 628 No. 1.

25 Parliamentary Papers II, 2018/19, 35 157 No. 2.

26 Parliamentary Papers II, 2018/19, 35 157 No. 1.

Bill for the Financial Markets (Amendment) Act (Wetsvoorstel Wijzigingswet financiële markten) 2021

Submitted for consultation on 23 December 2019, this Bill contains amendments relating to the Financial Supervision Act and other legislation concerning financial markets.[27] The Bill is part of an annual review cycle that, in principle, takes into consideration all national laws and regulations relating to financial markets. The Bill brings the pay-related information from the remuneration report of listed companies, as prescribed in Section 2:135b(3) of the Dutch Civil Code, under the supervision of the Dutch Authority for the Financial Markets (AFM) as exercised under the Financial Supervision Act. This Bill has been drawn up in response to a legislative amendment[28] under which listed companies are obliged to include a remuneration report containing information about the remuneration of management board members and supervisory board members. As a consequence of the implementation Act for the amended European Shareholder Rights Directive, the supervision of this detailed remuneration information as exercised by the AFM under the Financial Supervision Act is expected to lapse. On 7 November, the Bill for the Financial Markets (Amendment) Act 2022 was published for consultation.

Encouragement of Shareholder Engagement (Implementation of EU Directive) Act (Wet implementatie EU richtlijn bevordering aandeelhoudersbetrokkenheid)

This Act implements various amendments to the European Shareholder Rights Directive aimed at encouraging the long-term engagement of shareholders and promoting transparency between listed companies and investors. The Directive has been partly implemented via the Dutch Civil Code and partly via the Financial Supervision Act and the Securities (Bank Giro Transactions) Act. The relevant section implemented via the Dutch Civil Code pertains to the remuneration policy and remuneration report of listed companies as well as significant transactions with related parties such as management board members or shareholders. The part implemented via the Financial Supervision Act and the Securities (Bank Giro Transactions) Act pertains to the rules for shareholder engagement applicable to institutional investors, asset managers and proxy advisers. The obligations arising from this Act go further than the provisions of the Code and also partly overlap with the provisions in the Code. The Act came into force on 1 December 2019. The provisions concerning the identification of shareholders, exchange of information with shareholders and facilitation of the voting or other rights entered into force on 3 September 2020.29 This is due to the entry into effect of a European Implementing Regulation30 on 3 September 2020 that contains harmonised procedural provisions and minimum requirements on these subjects.

Stricter notification obligation for shareholders

The government intends to tighten the notification obligation for shareholders of listed companies via an amendment to the Financial Supervision Act. This intention stems from the coalition agreement. The purpose of the measure is to transfer the influence from certain activist shareholders who are mainly focused on the short term to shareholders and other stakeholders who have an interest in long-term value creation. Shareholders with a stake of 2% will soon have to identify themselves. The current limit lies at 3%. In this way,

27 The Bank Act 1998 (*Bankwet*), Financial Markets (BES Islands) Act (*Wet financiële markten BES, Wfm BES*), Pensions Act (*Pensioenwet, Pw*), Occupational Pension Scheme (Obligatory Membership) Act (*Wet verplichte beroepspensioenregeling, Wvb*), Trust Offices (Supervision) Act 2018 (*Wet toezicht trustkantoren, Wtt 2018*), Financial Reporting (Supervision) Act (*Wet toezicht financiële verslaglegging, Wtfv*), Accountants Regulatory Bodies (Disciplinary Law) Act (*Wet tuchtrechtspraak accountants, Wtra*), the Bankruptcy Act (*Faillissementswet, Fw*), as well as Book 2 and Book 7 of the Dutch Civil Code.

28 Act of 6 November 2019 amending Book 2 of the Dutch Civil Code, the Financial Supervision Act and the Securities (Bank Giro Transactions) Act (*Wet giraal effectenverkeer*) implementing Directive 2017/828/EU of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJEU 2017, L 132).

29 Decree of 25 November 2019 determining the date of entry into force of the Act of 6 November 2019 amending Book 2 of the Dutch Civil Code, the Financial Supervision Act and the Securities (Bank Giro Transactions) Act implementing Directive 2017/828/EU of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJEU 2017, L 132) (Bulletin of Acts and Decrees 2019, 423).

30 Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholder rights.

companies and other shareholders will have a better idea of the shareholder base, which should promote transparency regarding shareholders and their intentions. At the time of writing, it is not known when this Bill will be submitted to the House of Representatives.

Eumedion Stewardship Code

In 2018, Eumedion presented a new version of its 2011 best practices for engaged share ownership in the form of the Stewardship Code.[31] In effect from 1 January 2019, the Stewardship Code focuses on pension funds, life insurers and asset managers that hold shares in Dutch listed companies and it has been drawn up by Eumedion for the benefit of its members. The participants are expected to adhere to the Stewardship Code from the 2019 financial year onwards. A progress report on the implementation of the Stewardship Code was published in December 2019.[32] The report shows that most of the participants surveyed are already referring to the Code and providing information on shareholder engagement or other activities carried out in accordance with the provisions of the Stewardship Code. In its annual report for 2019, Eumedion announced that it will publish a full monitoring report regarding the compliance with the Stewardship Code by the end of 2020.

The Sneller and Slootweg motion

On 1 October 2020, two members of the House of Representatives, Sneller and Slootweg, tabled a motion.[33] In this motion, Sneller and Slootweg observe that the Netherlands has a rich tradition in the area of corporate governance, where the management boards of companies are expected to take into consideration, in a balanced manner, a broader range of economic and social interests that affect all stakeholders. However, they indicate that there is doubt regarding the extent to which this actually occurs in practice and that it is clear that the current laws and regulations do not meet the needs. Various proposals have been made for anchoring this form of governance better via laws offering different compliance options, such as making companies responsible for weighing all the interests against one another or making it obligatory for management board members to verify whether the company is conducting itself as a responsible enterprise. Sneller and Slootweg request the government to examine how this form of governance, in which the interests of all stakeholders are taken into account in a balanced way, can be anchored in the law and otherwise encouraged, and they call on the government to present the results of this study to the House by the first quarter of 2021. The motion was passed on 6 October 2020 and the government has indicated, on behalf of the Minister for Legal Protection, that it will implement the motion.

The Nijboer motions

On 8 September 2020, a motion by House of Representatives member Nijboer was passed in which the House requests the government to investigate the possibility of reintroducing the so-called 'cream-off scheme' (*afroomregeling*) in mergers and acquisitions.[34] For this, the House of Representatives took into consideration the fact that the previously applicable statutory 'cream-off scheme' (the obligation to deduct any increase in the value in the event of a merger or acquisition from the remuneration of a management board member) disappeared from the law in 2017, while it remains undesirable for management board members of a company to have a financial interest in case of a merger or acquisition. On 8 September 2020, the House of Representatives also passed a second motion by Member Nijboer where he requested the government to formulate proposals for discouraging quarterly reporting and encouraging loyalty shares.[35] However, a majority of the members of the House of Representatives still think that short-term interests could gain the

31 Eumedion, Dutch Stewardship Code, available at https://www.eumedion.nl/nl/public/kennisbank/best-practices/2018-07-nederlandse-stewardship-code-nl-versie.pdf.

32 Eumedion, Implementation Progress Report 2019 (December 2019), available at https://www.eumedion.nl/clientdata/215/media/clientimages/Dutch-Stewardship-Code-Implementation-Progress-Report-2019.pdf?v= 200827172648.

33 Motion by Members Sneller and Slootweg, Parliamentary Papers II, 2020/21, 35 570-IX No. 13.

34 Motion by Member Nijboer c.s., Parliamentary Papers II, 2019/20, 35 367 No. 16.

35 Motion by Member Nijboer c.s., Parliamentary Papers II, 2019/20, 35 367 No. 17.

upper hand in listed companies. On 3 September 2020, the Minister of Legal Protection advised against both motions during the plenary parliamentary debate on the bill for a statutory reflection period. Therefore, it is not yet known whether the government will implement the motions.

International developments

Developments in the European Union

Study on the impact of artificial intelligence

Under the instructions of the European Commission, a study is being conducted on the chances that the use of artificial intelligence (AI) will necessitate changes in European corporate law and the risks related to this.[36] The study examines the extent to which companies, shareholders, creditors and other stakeholders use AI for performing certain corporate governance tasks and for meeting obligations under corporate law and whether there are legal provisions that limit the possibilities of AI.

Sustainable Finance Action Plan

Sustainability and the transition to a low-carbon, more fuel-efficient and circular economy are key elements for the European Union to ensure that the EU remains competitive in the long term. Sustainable finance plays an important role in this process. The European Commission presented the Sustainable Finance Action Plan in March 2018.[37] The plan is intended as support for the European Green Deal that seeks to solve the problems relating to climate and the environment.[38] The action plan contains a package of measures, aimed at promoting sustainable corporate governance, reducing short-term thinking with regard to capital markets and establishing a link between finance and sustainability goals. In the context of this action plan, the Commission has asked the European supervisory authorities (ESAs), i.e. the European Security and Markets Authority (ESMA), European Banking Authority (EBA) and European Insurance and Occupational Pensions Authority (EIOPA), to collect information and advise it on the excessive short-term pressure of capital markets on companies. The ESAs presented their results on 18 December 2019 and provided recommendations to the Commission.[39] According to ESMA, plans should be made to encourage better disclosure of Environmental, Social & Governance (ESG) factors and the involvement of institutional investors. EBA's recommendations relate to the provision of relevant information by banks and companies and designing incentives to encourage banks to include long-term forecasts in their business operations. In addition, the DG has launched two studies on corporate governance that is more conducive to sustainable investments. The 'Study on Due Diligence Requirements through the Supply Chain' examines whether it is necessary to oblige management boards to develop and publish a sustainability strategy with appropriate due diligence requirements throughout the supply chain and measurable sustainability targets.[40] The 'Study on Directors' Duties and Sustainable Corporate Governance' examines whether it is necessary to clarify the rules based on which management board members are expected to act in the long-term interest of the company.[41]

Sustainable corporate governance

The above studies conclude that companies in the EU are excessively focused on achieving short-term

36 European Commission, The relevance and impact of artificial intelligence for company law and corporate governance, available at https://emeia.ey-vx.com/4429/82548/landing-pages/2019-reference-letter-ai.pdf.

37 European Commission, Action Plan: Financing Sustainable Growth COM (2018) 97 (8 March 2018).

38 European Commission, The European Green Deal COM (2019) 640, (11 December 2019).

39 EBA, EBA Report on Undue Short-Term Pressure from the Financial Sector on Corporations (18 December 2019), available at https://eba.europa.eu/sites/default/documents/files/document_library/Final%20EBA%20report%20on%20undue%20short-term%20pressures%20from%20the%20financial%20sector%20v2_0.pdf; ESMA, Report on Undue Short-Term Pressure on Corporations (18 December 2019), available at https://www.esma.europa.eu/sites/default/files/library/esma30-22-762_report_on_undue_short-term_pressure_on_corporations_from_the_financial_sector.pdf; EIOPA, Potential Undue Short-Term Pressure from Financial Markets on Corporates: an examination of European insurance and occupational pension sectors, available at https://www.eiopa.europa.eu/sites/default/files/publications/reports/eiopa-bos-19-537_report_on_investigation_undue_short_term_pressure.pdf.

40 European Commission, Study on Due Diligence Requirements through the Supply Chain (January 2020), available at https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/ language-en.

41 European Commission, Study on Directors' Duties and Sustainable Corporate Governance (July 2020), available at https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en/format-PDF/source-152419304.

benefits for shareholders. As a result, less attention is paid to long-term sustainability interests. That is why the European Commission is working on developing a legislative initiative to improve the EU regulatory framework for corporate law and corporate governance. [42] The initiative aims to embed sustainability more deeply within the corporate governance framework so that the long-term interests of the management board, shareholders, stakeholders and society are more aligned with one another. From July to October, everyone was able to give their feedback on the initial initiative. The Committee has taken advantage of this opportunity by providing its feedback.[43] A proposal for a directive is expected in the second quarter of 2021.

Revision of the Non-Financial Reporting Directive

The European Commission is working on a revised version of the European Non-Financial Reporting Directive.[44] The Commission intends to amend the requirements in the Directive regarding the disclosure of non-financial information to ensure that investors, civil society and other stakeholders have access to the information they need, without imposing undue reporting obligations on companies. The period of consultation took place from February to June this year. The revised proposal will be presented in the first quarter of 2021. In this context, the International Financial Reporting Standards (IFRS) Foundation will hold a consultation on sustainability reporting until the end of this year that will focus on the question of who should draw up a global standard for non-financial information.

ESMA lowers the notification thresholds of net short positions due to COVID-19

After consultation in the context of ESMA, European stock market regulators have decided, in the light of developments on the European securities markets due to the COVID-19 pandemic, to lower the notification threshold of net short positions to 0.1%. The measure took effect on 17 March 2020 for a period of three months and has been extended several times since then. It is currently valid until 17 December 2020 and may be extended further after that.[45] To date, the AFM sees no reason to take measures against short selling. It closely monitors the situation on the trading platforms being operated in the Netherlands, in collaboration with European regulators. According to the AFM, financial markets are responding to economic developments but are functioning properly at present. If necessary, the AFM and ESMA can act quickly and take the necessary measures. The AFM and ESMA have the authority to take measures with regard to short selling. The last time that short selling was banned in the Netherlands was during the financial crisis in 2008. However, the Spanish, Italian and Belgian regulators, respectively the CNMV, Consob and the FSMA, have taken measures against this.[46] The effects of these measures have proved to be limited and have brought little calm to volatile markets. When a ban on short selling was imposed and in the days after, strong price fluctuations were visible on the trading platforms in these countries. These ran almost parallel to, for example, the prices in the Netherlands, where no ban on short selling had been imposed.

European Commission launches 'Gender Equality Strategy'

On 5 March 2020, the European Commission presented its strategy for ensuring equality between men and

42 European Commission, Sustainable Corporate Governance Initiative, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance.

43 Available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-/F583943.

44 European Commission, Initiative for non-financial reporting by large companies, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12129-Revision-of-Non -Financial-Reporting-Directive.

45 ESMA Decision of 16 September 2020 renewing the temporary requirement to natural or legal persons who have net short positions to lower the notification thresholds of net short positions in relation to the issued share capital of companies whose shares are admitted to trading on a regulated market to notify the competent authorities above a certain threshold in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council.

46 CNMV, 'The CNMV bans temporarily short sales on 69 shares listed on the Spanish stock exchanges' (12 March 2019), available at https://www.cnmv.es/portal/verDoc.axd?t={ca1ed0f3-097f-4f08-ab07-e24bcf508e42};CONSOB, Press release: 'Consob adopts a temporary ban on short selling on many Italian shares', available at http://www.consob.it/documents/46180/46181/PRESS_RELEASE_20200312-2.pdf/96447844-56c4-4831-806a-3b54022655a0; FSMA, announcement, available at https://www.fsma.be/en/news/short-selling.

women in Europe. [47] The European Commission wants to oblige all European listed companies to ensure, as soon as possible, that at least 40% of their supervisory board members or non-executive management board members are women. For this, the European Council of Ministers is urged to adopt, without delay, a proposal for a directive to be published in 2021 on this subject.

Developments in the surrounding countries

Germany

The revised German Corporate Governance Code entered into force on 20 March 2020. The most significant changes include: 1) the introduction of principles for providing information about important legal requirements for responsible governance, 2) the specification of the independence requirement with regard to shareholders' representatives on the supervisory board, including a list of criteria to identify the circumstances under which a shareholder's representative in the supervisory board can no longer be regarded as independent and 3) a reformulation of the recommendations regarding the remuneration of the management board.

France

One of the adjustments to the Afep-Medef Code is that listed companies must publish a diversity policy with regard to the management board. This must include the objectives, the measures to be taken by the company to achieve the objectives and the results of the past financial year. In addition to the adjustments in the Afep-Medef Code, a legislative proposal is also being prepared. However, this has been postponed due to the current situation relating to COVID-19.

Spain

The Spanish financial regulator amended its corporate governance code for listed companies *Código de Buen Gobierno de sociedades cotizadas* on 7 July 2020.[48] A number of aspects of the code have been amended. Firstly, the structure of the code has been adjusted: a chapter on principles has been added in the new code. Recommendations have been linked to the principles. Secondly, a few recommendations have been removed from the code because they have now been laid down in law. Thirdly, new recommendations have been introduced with regard to corporate social responsibility.

United Kingdom

The UK Corporate Governance Code was renewed in 2018 and is valid from the financial year starting on or after 1 January 2019. A new component in the English annual reports is the so-called Section 172(1) Statement. This is a result of an amendment to the Companies Act 2006 and the UK Corporate Governance Code 2018. Under Section 172, management board members must act in the best interest of the company and are expected to pay due consideration to the long-term consequences, interests of employees, relationships with buyers, customers and others, impact on society and the environment, maintenance of the good reputation of the company and a fair treatment of the various shareholders. A new addition is the obligation to make a statement on how the management board members have taken into account the various interests involved. The UK Code is in line with the Companies Act 2006 and stipulates in provision 5 that the management board must (i) understand the interests of other key stakeholders and (ii) explain in the annual report how those interests and the subjects referred to in Section 172 of the Companies Act 2006 have been taken into account in the management board's decision-making process. The Financial Reporting Council (FRC) published its monitoring report on 9 January 2020.[49]

47 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the European Committee of the Regions, A Union of Equality: Gender Equality Strategy 2020-2025 (5 March 2020) COM (2020) 152.

48 Comisión Nacional del Mercado de Valores, Good Governance Code of Listed Companies (Revised June 2020) <https://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/CBG_2020_ENen.PDF>.

49 Financial Reporting Council, Annual Review of the UK Corporate Governance Code (January 2020), available at https://www.frc.org.uk/getattachment/53799a2d-824e-4e15-9325-33eb6a30f063/Annual-Review-of-the-UK-Corporate-Governance-Code,-Jan-2020_Final-Corrected.pdf.

Developments in other countries

USA

The American technology exchange NASDAQ is working on a far-reaching initiative on diversity requirements for the management boards of companies listed on the NASDAQ. In future, at least one woman must be included on the management board. Furthermore, at least one position on the management board must also be occupied by someone from a minority group such as, for example, the transgender community.

Japan

Japan adopted the second version of the Japan Stewardship Code on 24 March 2020. The revised code calls on institutional investors that invest in Japanese listed companies to provide better explanations of voting behaviour. They are also advised to enter into a dialogue with non-executive management board members of Japanese companies. The revised code contains a new principle that calls on proxy voting agencies to make their process for drawing up voting advice more transparent. In addition, they have been asked to clarify how they inform Japanese listed companies about the draft voting recommendations. The revised Japanese Stewardship Code entered into force on 24 September 2020.

Canada

From 1 January 2020, companies that are subject to the Canada Business Corporations Act (CBCA) are required to provide shareholders with information about the company's policies and practices relating to diversity on the management board and among the senior management. This applies not only to gender diversity but also other to specific personal characteristics besides gender, such as in the case of employees with a disability or a specific cultural background. [50]

50 Statutes of Canada 2018, An Act to amend the Canada Business Corporations Act, Canada Cooperatives Act, Canada Not- for-profit Corporations Act and the Competition Act, available at https://www.parl.ca/DocumentViewer/en/42-1/bill/C-25/royal-assent.

APPENDIX 3:

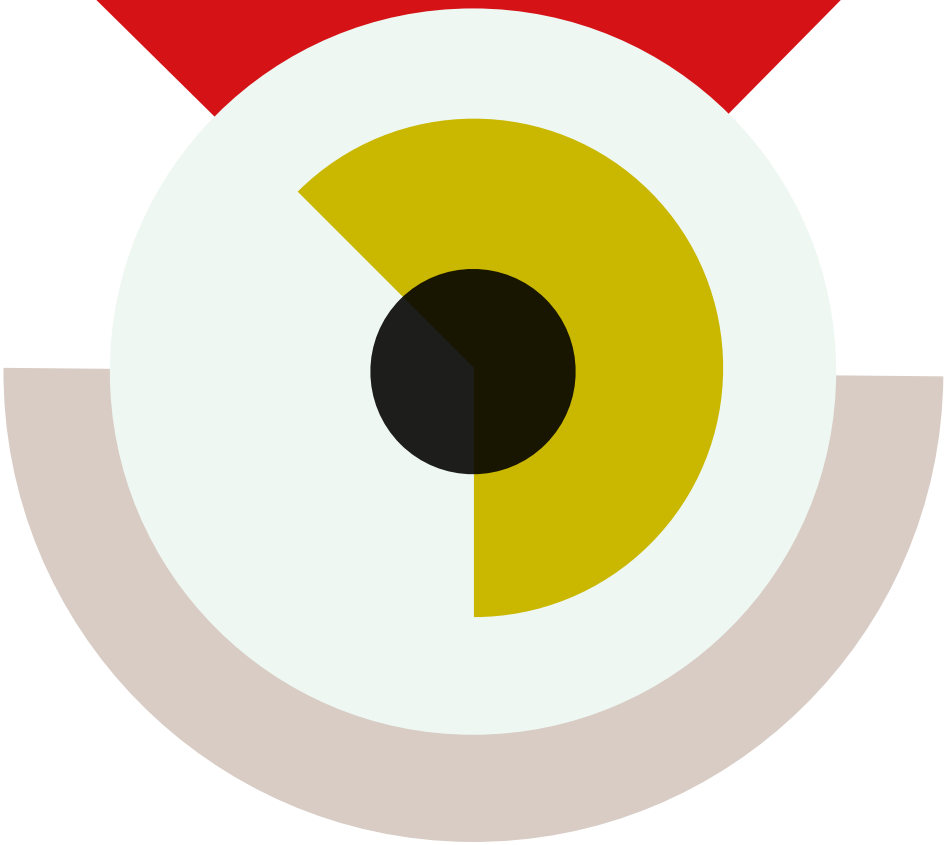
STUDY POPULATION

Company	Index
ABN AMRO Bank N.V.	AEX
Adyen N.V.	AEX
Aegon N.V.	AEX
Akzo Nobel N.V.	AEX
ASM International N.V.	AEX
ASML Holding N.V.	AEX
ASR Nederland N.V.	AEX
Heineken N.V.	AEX
IMCD N.V.	AEX
ING Group N.V.	AEX
Just Eat Takeaway.com N.V.	AEX
Koninklijke Ahold Delhaize N.V.	AEX
Koninklijke DSM N.V.	AEX
Koninklijke KPN N.V.	AEX
Koninklijke Philips N.V.	AEX
NN Group N.V.	AEX
Prosus N.V.	AEX
Randstad Holding N.V.	AEX
Unilever N.V.	AEX
Wolters Kluwer N.V.	AEX
Aalberts N.V.	AMX
Arcadis N.V.	AMX
Basic-Fit N.V.	AMX
BE Semiconductor Industries N.V.	AMX
Corbion N.V.	AMX
Eurocommercial Properties N.V.	AMX
Flow Traders N.V.	AMX
Fugro N.V.	AMX
GrandVision N.V.	AMX
Intertrust N.V.	AMX
Koninklijke Vopak N.V.	AMX
Koninklijke BAM Groep N.V.	AMX
Koninklijke Boskalis Westminster N.V.	AMX
NSI N.V.	AMX
OCI N.V.	AMX
Pharming Group N.V.	AMX
PostNL N.V.	AMX

SBM Offshore N.V.	AMX
Signify N.V.	AMX
TKH Group N.V.	AMX
Accell Group N.V.	ASX
AFC Ajax N.V.	ASX
Alfen N.V.	ASX
AMG Advanced Metallurgical Group N.V.	ASX
Amsterdam Commodities N.V.	ASX
Avantium N.V.	ASX
Brunel International N.V.	ASX
ForFarmers N.V.	ASX
Heijmans N.V.	ASX
ICT Group N.V.	ASX
Kendrion N.V.	ASX
Lucas Bols N.V.	ASX
Nederlandse Apparatenfabriek NEDAP N.V.	ASX
Neways Electronics International N.V.	ASX
NIBC Holding N.V.	ASX
Ordina N.V.	ASX
Sif Holding N.V.	ASX
Sligro Food Group N.V.	ASX
TomTom N.V.	ASX
Van Lanschot Kempen N.V.	ASX
Vastned Retail N.V.	ASX
Wereldhave N.V.	ASX
Aercap Holding N.V.	Foreign listing
Airbus N.V.	Foreign listing
Cimpress N.V.	Foreign listing
CNH Industrial N.V.	Foreign listing
Digi_Communications N.V.	Foreign listing
DP Eurasia N.V.	Foreign listing
Exor N.V.	Foreign listing
Ferrari N.V.	Foreign listing
Fiat Chrystler Automobiles N.V.	Foreign listing
Merus N.V.	Foreign listing
Mylan N.V.	Foreign listing
NXP Semiconductors N.V.	Foreign listing
Steinhoff N.V.	Foreign listing
Trivago N.V.	Foreign listing
X5 Retail Group N.V.	Foreign listing
Altice N.V.	Local
Alumexx N.V.	Local
AND International Publishers N.V.	Local

Beter Bed Holding N.V.	Local
CM.com N.V.[51]	Local
Core Laboratories N.V.	Local
Ctact N.V.	Local
DPA Group N.V.	Local
Ease2pay N.V.	Local
Envipco N.V.	Local
Fastned N.V.	Local
Holland Colours N.V.	Local
Hydratec Industries N.V.	Local
Kardan N.V.	Local
Kiadis Pharma N.V.	Local
Koninklijke Brill N.V.	Local
Koninklijke Delftsch Aardewerkfabriek N.V.	Local
MKB Nedsense N.V.	Local
Novisource N.V.	Local
Oranjewoud N.V.	Local
RoodMicrotec N.V.	Local
Snowworld N.V.	Local
Stern Groep N.V.	Local
TIE Kinetix N.V.	Local
Value8 N.V.	Local

51 CM.com became listed on the stock exchange in February 2020. This means that CM.com did not fall within the scope of the Code in the 2019 financial year. CM.com was accidentally included in this monitoring study by SEO. This has no consequences for the general conclusions in this report. CM.com states in its annual report for 2019 that it adheres to the Code, although it was not obliged to do so in that year.



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