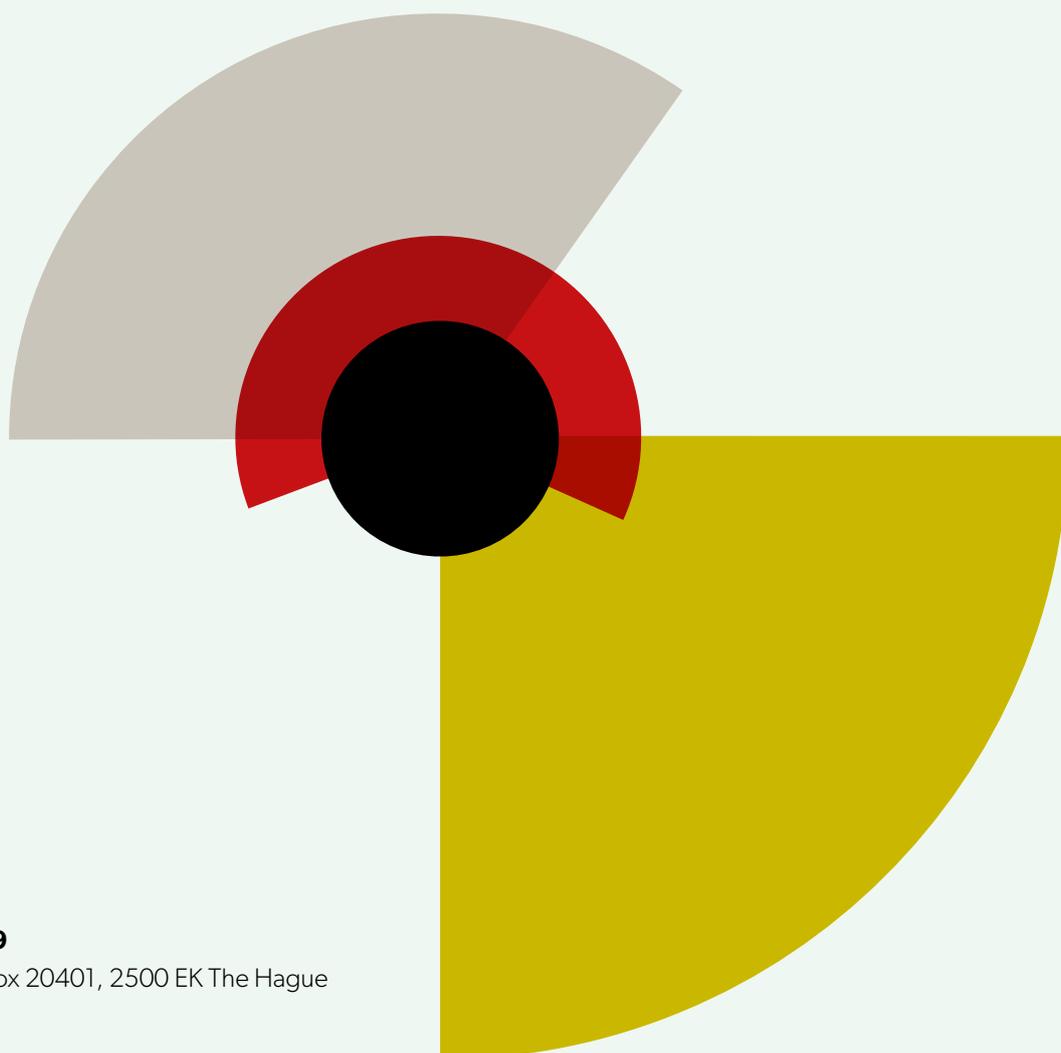


Monitoring Committee

CORPORATE GOVERNANCE CODE

Monitoring Report on the
2018 Financial Year

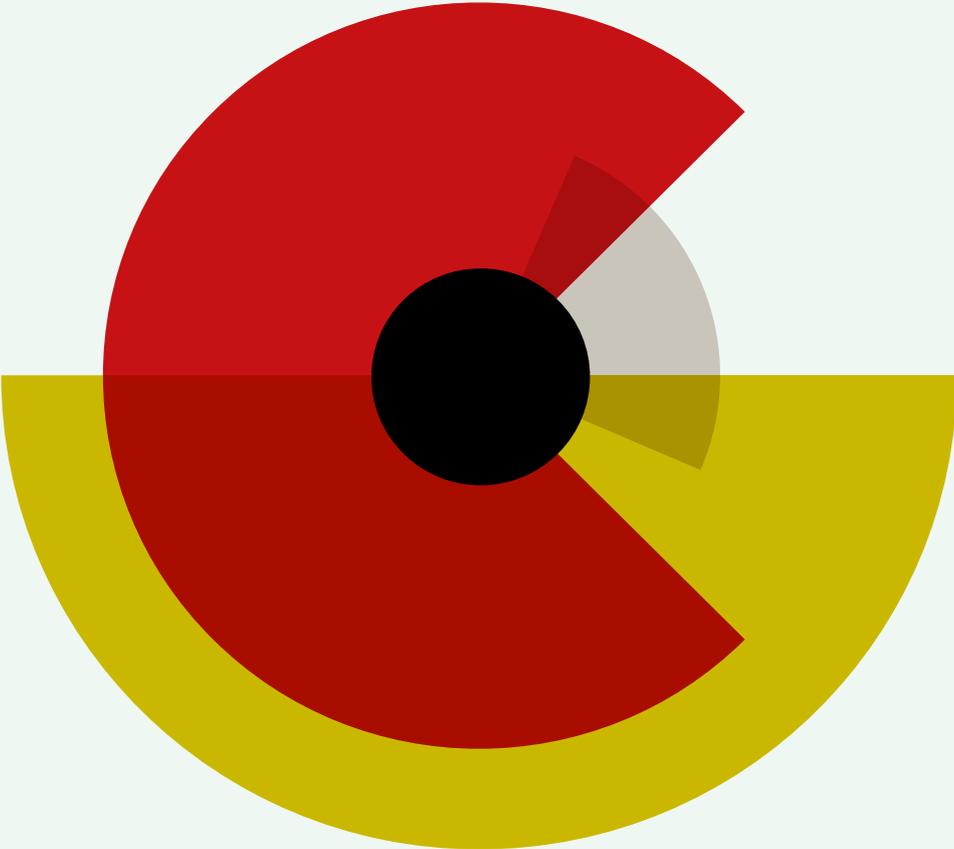
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Monitoring Committee

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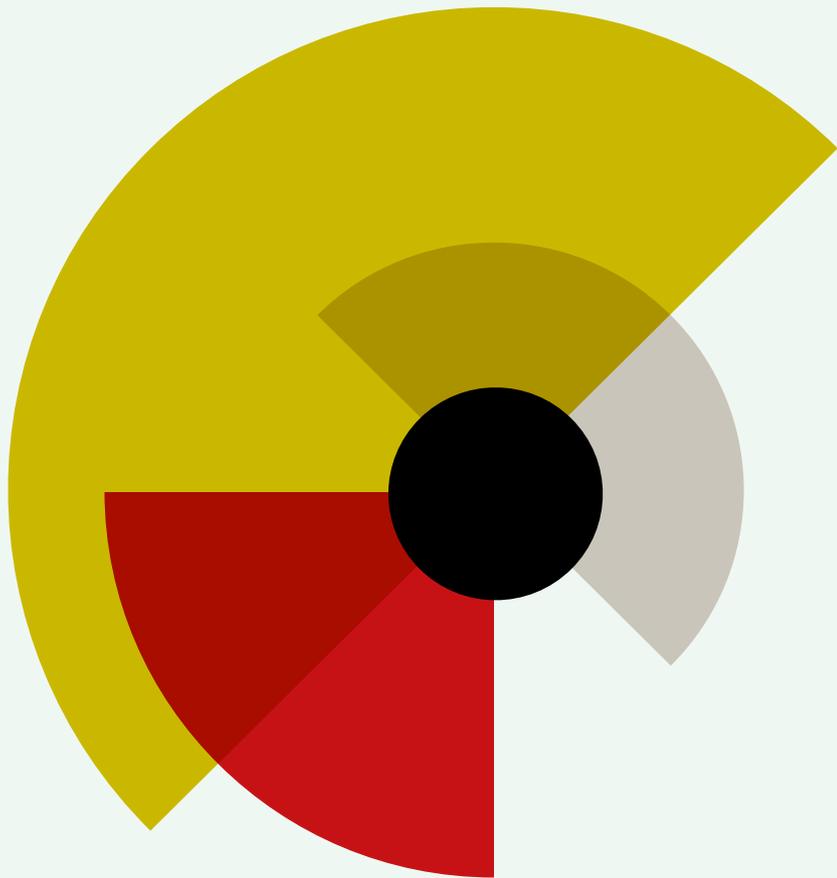
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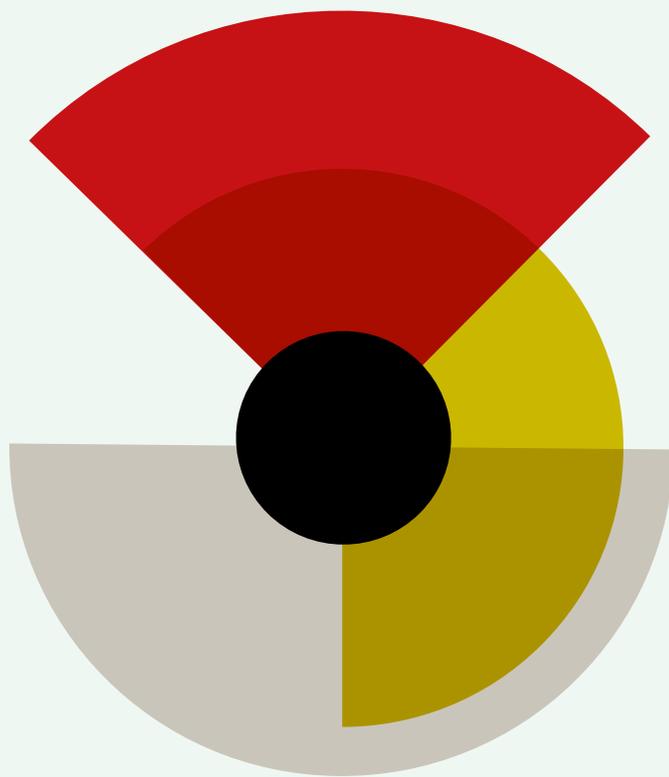
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FOREWORD

The Dutch Corporate Governance Code (hereinafter referred to as: 'the Code') of 2004 was amended in 2008 and 2016. This is the first report on the revised 2016 Code prepared by the fourth Corporate Governance Code Monitoring Committee (hereinafter referred to as: 'the Committee'), which was appointed in January 2019. The Committee consists of three previous Committee members and four new members, including the chair.

In the first year of its term of appointment, the Committee intends to focus mainly on examining the extent to which the new provisions of the updated Code are being complied with. The Committee has instructed SEO Economic Research to carry out the compliance study, along with a number of additional and in-depth studies that are explained in more detail in Chapter 1.

Perhaps not surprisingly, our initial compliance study shows that there continues to be a high level of compliance with the Code. You can read about our findings in Chapter 2.

However, the Code is not set in stone, there appears to be some room for improvement. While the companies that the Committee has studied generally indicate that they are coping well with the Code, there are a number of areas of attention the Committee would like to mention in advance.

The value of the Code as a self-regulatory instrument relies on conscientious compliance and high-quality reporting.

The Code is based on the principle of assumed application, with the underlying concept of legitimate expectations: the 'apply or explain' principle. As a result of the apply or explain principle, only a deviation from the Code without substantiation is considered non-compliance. If the listed company does not explicitly state that it has deviated from a provision on governance conduct, the company is assumed to have complied with this provision (hereinafter referred to as: 'assumed application'). This is not a new issue, but it is all the more pressing now, as about 70% of the Code consists of provisions on conduct with 'soft' standards that are difficult to quantify. The compliance study also reveals that the quality of the answers to the questions posed in the study is sometimes inadequate, as a result of which the conclusions about high compliance rates do not seem to be justified in all cases.

With respect to the most significant changes in the 2016 Code - which mainly relate to long-term value creation, organisational culture, remuneration of management board members, risk management and diversity policy - the general view is that companies embrace the principles but still have many questions about the practical implementation. These questions relate to the lack of definitions, application of open standards and about the usefulness and necessity of certain reports (such as reports on remuneration ratios). In the coming period, the Committee will carry out discussions with the supporting parties about the identified bottlenecks to assess whether further clarification of these provisions might be helpful.

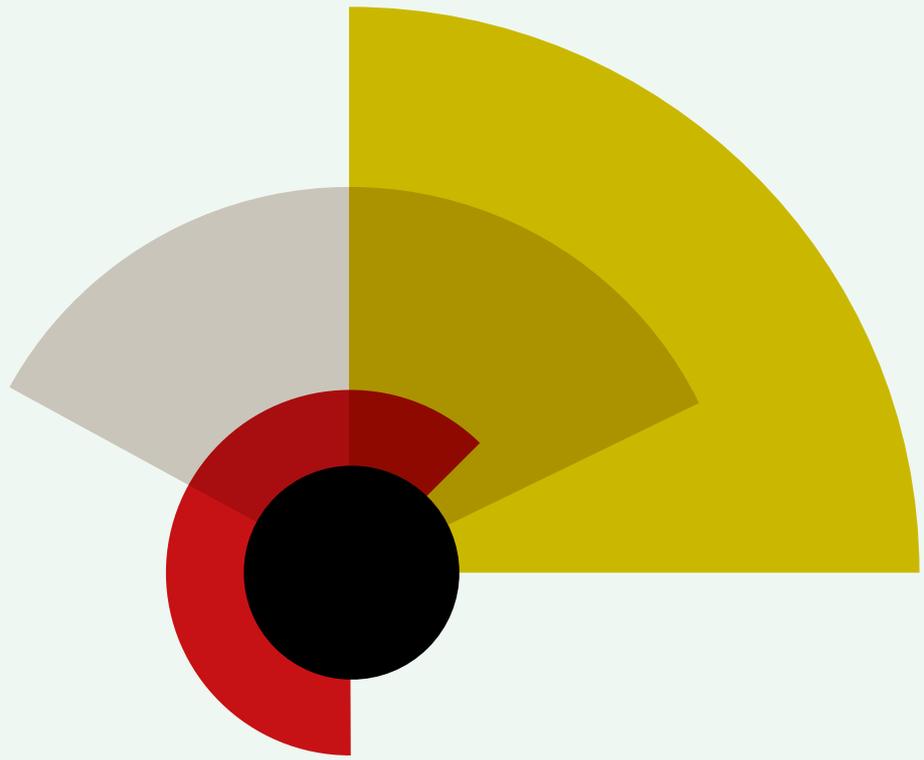
While the updated Code 2016 seems to have been received well, public opinions on good governance are changing rapidly. Expectations are being adjusted upwards every day, and so the question arises as to whether the Code can keep up with the developments in the business world. It is partly for this reason that the Committee will start discussing recommendations with the supporting parties as early as 2020 to further clarify and update the Code. Of course, the Committee is aware of the importance of policy consistency. However, we will weigh this against the need to keep the Code up-to-date and relevant, even if this requires interim adjustments.

Starting out with an open mind and enthusiasm, the Committee intends to continue promoting the usefulness of the Code in the coming years. It is encouraging to see that so many stakeholders have approached the Committee in the meantime to share their ideas and suggestions for better corporate governance. It shows that the Code is still relevant, authoritative and effective.

As always, the Committee is indebted to the researchers and the Committee Secretariat for the support provided. We look forward to a fruitful and intensive collaboration with all stakeholders in the coming years.

Pauline van der Meer Mohr

Chair of the Corporate Governance Code Monitoring Committee



CHAPTER 1

THE CODE AND THE COMMITTEE

1.1 The Dutch Corporate Governance Code

The Dutch Corporate Governance Code (hereinafter referred to as: 'the Code') contains principles and best-practice provisions for good corporate governance. The Code regulates the relationships between the management board, supervisory board and annual general meeting of shareholders. The Code applies to all listed companies.¹ Companies that do not fall within its scope may also voluntarily choose to apply the Code, which a fair number of them do.

Dutch listed companies are required to account for compliance with the Code in the directors' report. Based on the apply or explain principle, companies comply with the Code either by applying the relevant provision unconditionally or explaining why the company deviates from certain provisions of the Code. Dutch institutional investors are obliged to include a statement in their annual report about compliance with the principles and best practice provisions of the Code pertaining to them.²

The Code focuses on parties represented by Eumedion, Euronext, the Federation of Dutch Trade Unions (FNV), the National Federation of Christian Trade Unions in the Netherlands (CNV), the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW). They are jointly referred to as the 'supporting parties' of the Code.

In 2016, the 2008 Code was revised at the request of the supporting parties. The revised Code entered into effect on 1 January 2017 and was legally enshrined on 1 January 2018.³ Dutch listed companies started reporting on their compliance with the revised Code from the 2017 financial year.

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

3 As designated by a general order in council, this is the Code that Dutch listed companies must refer to in their annual report in accordance with Section 2:391(5) of the Dutch Civil Code. See the Decree of 29 August 2017 amending the Decree of 23 December 2004, establishing more detailed provisions for the contents of the annual report (Bulletin of Acts and Decrees 2017, 332).

1.2 Task of the Corporate Governance Code Monitoring Committee

The task of the Corporate Governance Code Monitoring Committee (hereinafter referred to as: 'the Committee') is to promote the current relevance and usefulness of the Code. It performs this task by:

- › identifying gaps or ambiguities in the Code;
- › 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 the above;
- › reviewing, at least once a year, how and to what extent the regulations of the Code are being complied with.

At least once a year, the Committee reports its findings to the Ministers of Economic Affairs and Climate, Finance, and Legal Protection. In this report, the Committee may also provide guidelines for complying with one or more regulations of the Code. The current Committee consists of a chair and six members, all of whom have experience and expertise in the area of corporate governance. Minister Wiebes of Economic Affairs and Climate appointed the Committee on 1 January 2019 for a term of four years. An overview of the composition of the Committee can be found in Appendix 1.

The Committee has included an overview of the national and international developments in Appendix 2.

1.3 Looking back on 2019

Monitoring

Prior to this, the current Code has never been monitored for compliance. In the first year of its term, the Committee decided to only monitor compliance for the 2018 financial year and not include the 2017 financial year. After all, the companies had to be given the time to 'internalise' the revised Code, and the Committee felt that monitoring two financial years at the same time would place an excessive burden on companies. The Committee instructed SEO Economic Research (hereinafter referred to as: 'SEO') to carry out a broad compliance study, to obtain the best possible overview of the situation. In addition, the Committee appreciates the participation of the companies in the compliance study. This has enabled SEO to deliver a thorough compliance study.

On 4 July 2019, the VEUO sent a letter to the Committee sharing its feedback and concerns regarding the compliance study. The Committee informed the companies, by letter to the VEUO, that it appreciated the feedback and intended to respond to it. This feedback has been incorporated in this study immediately insofar as possible, and the companies have, for example, been granted a longer period for answering the survey. Other elements, such as making the survey available in English and the option for companies to allow multiple people to work on the survey document at the same time, will be implemented during the next compliance study.

Other activities

The Committee conducted a substantial number of discussions in 2019 about the current relevance and usefulness of the Code. In addition to discussions with the supporting parties, the Committee also met management board members, regulators and shareholders. Interest groups and other stakeholders have also managed to find their way to the Committee.

Recurring topics both in the discussions and the public debate are those relating to corporate culture, remuneration, the position of employees, diversity, corporate social responsibility and the role of shareholders. In April 2019, the CNV, FNV and VCP sent a letter to the Committee expressing their views on some of the above topics. The Committee has recently exchanged views with the CNV and FNV regarding this during the regular discussion of its monitoring activities.

In May 2019, the Committee spoke to the Committee on the Future of the Accountancy Sector (Commissie Toekomst Accountancysector) in the context of the latter's study on how to bring about a sustainable improvement in the quality of audits.

In the past two years, the House of Representatives has submitted a number of motions on subjects falling within the areas that the Code, and therefore also the Committee, focuses on. In October 2019, the Committee participated in a round-table discussion on long-term value creation at the Standing Committee on Finance (Vaste commissie voor Financiën) in the House of Representatives.

The government brought the following topics to the attention of the Committee:

- › The Minister of Education, Culture and Science, Ms Van Engelshoven, has requested the Committee to make diversity, and particularly the percentage of women in top positions, one of the spearheads of its activities within the context of the Code.⁴
- › The Minister of Economic Affairs and Climate, Mr Wiebes, drew the Committee's attention to the concern within the House of Representatives regarding sexual harassment and the role of appropriate conduct and culture within companies. This is a result of the debate in the House of Representatives of 22 February 2018 on sexual harassment at the workplace and the commitment made by the State Secretary of Social Affairs and Employment on this matter.⁵
- › Minister Wiebes has indicated his support for the van Manen Committee's recommendation that it would be advisable to periodically assess the current relevance and usefulness of the Code.⁶
- › Minister Wiebes submitted to the Committee the motion introduced by Mr Van der Lee (member of the Dutch green political party GroenLinks) that had been adopted by the House of Representatives in February 2019.⁷ This motion includes, firstly, a request to the government to ensure that the Committee focuses its attention on the implementation of long-term value creation and corporate social responsibility; and secondly, a desire for the Corporate Governance Code to be expanded with provisions requiring the management board members or regulators to regularly initiate discussions both within and outside the company on the interpretation of long-term value creation and corporate social responsibility.

The Committee will devote its attention to the above topics in the coming years and, if required, make recommendations for updating the Code.

The Committee held six plenary meetings in 2019.

International relationships

The remit of the Committee explicitly states that it must keep track of international developments in the area of corporate governance. The Committee does this by attending international meetings. The knowledge gained at these meetings helps deepen the Committee's understanding of good corporate governance. In 2019, a meeting of the Six Chairs Group took place in Rome. This is an annual meeting of the chairs of the corporate governance code committees of Germany, France, Italy, Sweden, the United Kingdom and the Netherlands. The last meeting focused on emerging ESG (environment, social and governance) challenges.

The Committee is also part of the European Corporate Governance Codes Network (ECGCN). This informal network, consisting of the secretaries of various corporate governance code committees, focuses on the ex-

4 Letter to Parliament on the growth in the proportion of women at the top of the business sector: Parliamentary Papers II, 2017/18, 30 420, No. 263.

5 Proceedings II 2017/18, No. 56, Item 23.

6 Letter to Parliament containing a response to the van Manen Committee's recommendations concerning the corporate governance system. Parliamentary Papers II, 2018/19, 31083, No 57.

7 Parliamentary Papers II, 2018/19, 32637, No. 353.

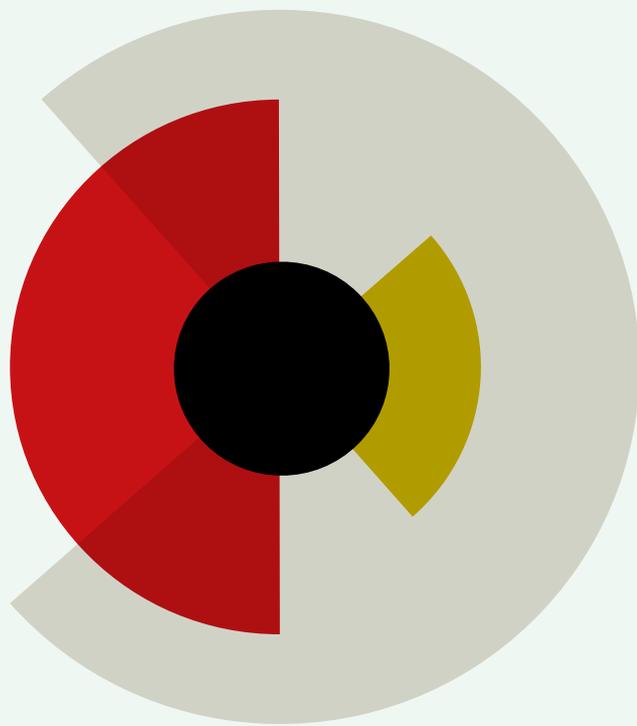
change of experiences and best practices. This network met twice in 2019. The meetings primarily discussed the implementation of the Shareholder Engagement Directive⁸ as part of the national legislation of the countries. In addition, the developments within the European Union and the activities of the European Securities and Markets Authority (ESMA) were also discussed.

1.4 Looking forward to 2020

This initial monitoring of the revised Code has helped identify the necessary focus areas. In the compliance study for the 2019 financial year, the Committee will pay particular attention to the observations it has made in this review. The Committee has found the use of focus groups to be meaningful, and it will therefore make use of such focus groups next year as well. The monitoring of compliance by unlisted companies that have publicly declared compliance with the Code will also be continued next year.

The Committee will organise a number of meetings in 2020 with supporting parties and other stakeholders to exchange views and experiences regarding the Code.

⁸ Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.



CHAPTER 2

COMPLIANCE IN THE 2018 FINANCIAL YEAR

2.1 Introduction

Acting under the instructions of the Committee, SEO has studied the level of compliance with the Code as demonstrated by listed companies in the 2018 financial year. Also, for the first time, the compliance study has focused on compliance with the Code by unlisted organisations that have publicly declared compliance with the Code (hereinafter referred to as: 'unlisted organisations').

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

The Code has been in effect since 1 January 2017 and replaces the 2008 Code. The Code has a different layout from the 2008 Code. The division of the 2008 Code into chapters corresponded to the various organs of the company. Now, the Code is organised thematically, with the provisions grouped by topics or themes (for example: remuneration). In addition, a number of new provisions have been added. These changes make it difficult to compare the compliance scores for the 2018 financial year on a one-to-one basis with those from the compliance monitor of the 2016 financial year, which measured compliance with the 2008 Code. Wherever possible and useful, the Committee has nevertheless attempted to make a comparison.

The compliance study for the 2018 financial year consists of three parts: the actual compliance study carried out via desk research, an in-depth survey and - for the first time - two focus groups whose task is to reflect on the survey results. In the in-depth survey, the Committee decided to highlight the most important changes in the Code: long-term value creation, culture, remuneration of management board members, risk management and diversity. Apart from a few adjustments, SEO used the same methodology as for the compliance study for the 2016 financial year.

In addition to the survey, the researchers spoke to a total of ten listed companies via two focus groups. Two members of the Committee attended both sessions. The purpose of these sessions was to clearly explain the results of the survey and discuss in more detail themes and subjects that were less suitable for inclusion in a survey due to the need for nuance or because of the sensitivity of the subjects. The Committee has found the use of these focus groups to be extremely valuable, both with respect to the further interpretation of the results as well as the relationship with listed companies. In the coming years, such focus groups will also be included as part of the compliance study.

At the request of the Committee, SEO has thoroughly investigated whether there are any interrelationships between provisions in the Code that are complied with less often and specific characteristics of the companies. Although the reported interrelationships relate to correlations (and not to causal relationships), a number of valuable insights can be derived from this (see section 2.2.8). This study also reveals a number of vulnerabilities in the compliance study, based on which certain comments can be made regarding the high percentage of compliance with the Code that was once again reported for this financial year (see section 2.2.3).

The following is an overview of the most important results that emerged from the compliance study carried out by SEO, the insight 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 and an explanation of the methodology and validation of the study, the Committee refers to SEO's report on the study.⁹

2.2 Desk research for compliance in the 2018 financial year

2.2.1 Study populations and response

The study population of the compliance study consists of 93 companies that have their registered offices in the Netherlands and are listed on the Dutch stock exchange. In total, 81 of these 93 listed companies participated in the survey (85% response rate). This response rate is higher than in the previous compliance study (72%). However, the Committee aims for a 100% response rate, and has accordingly enclosed in Appendix 3 a list of the companies that participated in the survey.

This year, for the first time, 15 unlisted organisations were also contacted. Of these, 10 participated in the survey and their responses have also been included in the compliance study (response rate of 67%).

2.2.2 Overall compliance

For the 2018 financial year, SEO reports a 99.0% compliance rate with the Code for the listed companies. Of this, 96.8% consists of the application of the provisions of the Code and 2.2% are substantiated deviations. Non-compliance was found in 1.0% of the cases. In these cases, companies do not apply the provisions and the deviation is not or insufficiently substantiated.

As a result, compliance in the 2018 financial year is fractionally higher than in the 2016 financial year, when the compliance percentage was 98.8%. The number of provisions deviated from with substantiation has remained reasonably consistent: 2.1% in 2016 versus 2.2% in 2018. In this financial year as well, the reporting provisions are not applied (3.3%) more often than the provisions on conduct (0%). On the other hand, provisions on conduct are deviated from with substantiation more frequently, i.e. 2.3% (compared to 1.9% for reporting provisions); see Table 2.1 of the SEO report in this context).

⁹ *Naleving Corporate Governance Code: Meting over boekjaar 2018* [Compliance with the Corporate Governance Code: Measurement for the 2018 financial year], SEO Economic Research, can be consulted via the website of the Committee: www.mccg.nl.

Table 2.1 Compliance with the Code at almost 99% in the 2018 financial year

		Total
Application, of which		96.8%
Assumed application	75.6%	
Substantiated deviation		2.2%
Compliance sub-total		99.0%
Non-compliance		1.0%

Source: SEO Economic Research.

Note: n = 93 listed companies.

The Committee is pleased to note that the level of compliance with the Code, in line with previous reports, remains relatively high. This indicates that listed companies are able to deal with the revised Code properly and are also compliant with it. However, based on the study of the interrelationships between the provisions, a number of comments can be made regarding the high compliance rate.

2.2.3 Comments on high compliance

The compliance study makes a distinction between compliance with provisions on conduct (around 70% of the provisions) and reporting provisions (approximately 30% of the provisions). Compliance with reporting provisions is, by definition, verifiable, because it can be checked whether or not reporting has actually taken place. This does not apply to the conduct-related provisions. As a result of the apply or explain principle, only a deviation from the Code without substantiation is considered as non-compliance. If the listed company does not explicitly state that it has deviated from a provision on conduct, the company is assumed to have complied with this provision (hence, this is an assumed application). It is therefore not surprising that the reporting provisions show a higher percentage of non-compliance (3.3%) than the provisions on conduct (0%).

Hence, a number of caveats can be placed on the high rate of compliance with conduct-related provisions. The desk research shows, for example, that all listed companies comply with Provision on Conduct 2.5.1 (no substantiated deviations), which states that the management board is responsible for determining the values that contribute to a culture focused on long-term value creation and that it must discuss this with the supervisory board. However, the survey shows that, in 7% of the cases, the subject of culture is not discussed within the management board and, in 10% of cases, this subject is not discussed with the supervisory board. In view of this outcome, questions may be raised about the 100% compliance with Provision on Conduct 2.5.1. Something similar occurs in the case of Principle 1.1 'Long-term value creation'. The results of the survey relating to this theme show that, for a number of listed companies, the principle of long-term value creation is only partially embedded within the management board and the supervisory board, which does not tally with the 100% application score noted for Principle 1.1.

These caveats arise due to the apply or explain principle. This is a significant vulnerability since, at present, approximately 70% of the Code consists of provisions on conduct. The result is that a large part of compliance with the Code (75.6%) concerns assumed application (see Table 2.1 above). Due to the incongruities found, the Committee intends to investigate for the coming period whether the study methodology or the reporting of the findings need to be adjusted in any way; for example, by creating a greater focus on assessing the quality of the reasons provided for a substantiated deviation from the provisions. In any case, it is clear that the in-depth survey is an important tool to ensure adequate monitoring. This is why the Committee strives for a 100% response rate and requests that the companies take this into account for the next financial year. Companies that participated in the survey this year are further encouraged to check whether such incongruities exist within their company and to take appropriate action, so that these inconsistencies in reporting do not appear in the next monitoring report.

Finally, the Committee notes that the answers to the questions in the survey do not always receive the required attention from the companies, to the detriment of the quality of the results. For example, the number of questions answered with 'Don't know' is strikingly high, which means that compliance cannot be checked for these topics. Other examples include: 11% of the companies indicate that they do not know whether the integrated reporting method is being used; four companies state that they do not know whether a variable remuneration has been granted; three report that they do not know whether a takeover bid has been made; and three of them indicate that they do not know whether a company has a participation council or not. Perhaps the most alarming 'Don't know' answers are for the survey question regarding the extent to which a long-term perspective is firmly anchored within the supervisory board and the management board. Two companies state that they are not aware of the extent to which this happens in their company. Based on this, the Committee infers that the survey is not always being completed by the right people and therefore encourages listed companies to pay greater attention for the next report.

2.2.4 Compliance by stock market index

The Amsterdam stock exchange consists of three indexes. The 25 largest equity funds are listed on the AEX, the following 22 on the AMX (mid cap) and the next 25 on the AScX (small cap). The other so-called 'local funds' are listed but not included in an index. Compliance is higher among AEX-listed companies than among companies listed on the other indexes. The rule of thumb seems to be 'the bigger the company, the higher the level of compliance'. This is not unexpected, but it does differ from the findings of the 2016 compliance study, where the mid cap achieved the best compliance score on average. The locally listed companies demonstrate a substantially higher rate of non-compliance than other listed companies. This was also the case in 2016. Although the Committee understands that these companies are much smaller in size, it nevertheless encourages locally listed companies to take the necessary action in this regard.

2.2.5 Compliance at theme-level

The Code has five themes (chapters), each of which consists of a number of principles, which are subsequently elaborated in the form of best-practice provisions. The thematic organisation of the Code shows more clearly than before that non-compliance with the Code is usually concentrated around a number of themes. This is in contrast to the compliance in the 2016 financial year, when the chapter layout of the 2008 Code corresponded to the various organs of the company. At the time, non-compliance seemed to be evenly distributed between these organs, while it is now becoming clear that certain themes require more attention, regardless of the organs of the company. Table 2.2 of SEO report elaborates further on this.

Table 2.2 Lowest percentage of compliance for remuneration policy, composition and size and disclosure

		Application	Substantiated Non-compliance deviation	
3.4	Reporting on remuneration policy	91.4%	3.2%	5.4%
2.1	Composition and size	94.1%	3.6%	2.3%
4.2	Disclosure and explanation	94.5%	3.5%	2.0%
2.5	Culture	98.0%	0.3%	1.7%
2.2	Appointment, succession and evaluation	95.8%	2.7%	1.5%
2.4	Decision-making and functioning	98.2%	0.6%	1.2%
4.1	General meeting	97.9%	1.2%	0.8%
4.4	Certification of shares	98.9%	0.3%	0.8%
2.3	Structure of the supervisory board and report	95.8%	3.5%	0.7%
1.1	Long-term value creation	99.2%	0.2%	0.6%
2.6	Misconduct and irregularities	99.5%	0.0%	0.5%
5.1	One-tier management structure	98.9%	0.7%	0.4%
2.7	Avoiding conflicts of interest	98.8%	1.1%	0.2%
1.3	Internal audit position	91.1%	8.8%	0.1%

Note: n = 93 listed companies.

The study shows that the percentage of compliance is relatively the lowest for the themes of 'Remuneration' and 'Effective management and supervision'. Within the theme of 'Remuneration', Principle 3.4, 'Accountability for remuneration policy', has a particularly high rate of non-compliance (5.4%). Within the theme of 'Effective management and supervision', Principle 2.1 'Composition and size' and Principle 2.5 'Culture' have the lowest rates of compliance, relatively speaking. This is in line with the picture that emerged from the compliance study for the 2016 financial year, where compliance with these themes was also lower than for other themes. It is notable that the relatively low rate of compliance on these themes is not due to the high proportion of reporting provisions.

Incidentally, the observed non-compliance with Principle 3.4 'Accountability for the implementation of the remuneration policy' is expected to end from the monitoring period of the 2020 financial year. Thereafter, pursuant to the bill for the implementation of the Shareholder Engagement Directive, the remuneration policy must be adopted by the general meeting at least once every four years and an annual remuneration report must be presented to the general meeting.¹⁰

¹⁰ Amendment of 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), Parliamentary Papers I, 2018/19, 35 058, A. The bill was adopted by the Senate on 5 November 2019, but the date of entry into force is not yet known (as at mid-November).

2.2.6 Compliance at best-practice provision level

At the level of best-practice provisions, the provisions that companies most frequently complied with in the 2018 financial year are shown in the table below. These are all reporting provisions. The provisions not complied with most often in the 2018 financial year are also shown in the table below.

Table 2.3 Provisions with less than 95% compliance.

		Application	Substantiated Non-compliance deviation	
4.2.2	Policy on bilateral contacts	84.9%	2.2%	12.9%
2.2.8	Reporting on supervisory board evaluation	86.4%	3.2%	10.4%
2.3.11	Supervisory board report	88.2%	3.2%	8.6%
2.1.6	Reporting on diversity	86.7%	4.9%	8.4%
3.4.2	Agreement with management board member	87.1%	5.4%	7.5%
2.5.4	Reporting on culture	92.5%	0.5%	7.0%
2.3.3	Regulations of committees	82.8%	10.8%	6.5%
2.4.4	Supervisory board attendance	91.4%	2.2%	6.5%
3.4.1	Remuneration report	91.1%	3.1%	5.8%
1.1.4	Reporting of the management board	93.5%	1.1%	5.4%

Source: SEO Economic Research.

Note: n = 93 listed companies.

The provision complied with the least (12.9% non-compliance) is Provision 4.2.2, which requires companies to lay down the broad outlines of a policy on bilateral relationships with shareholders and to publish this on the website. This was also the provision with the lowest percentage of compliance (16% non-compliance) in the 2016 financial year.

The Committee emphasises that a policy on bilateral relationships with shareholders and the transparency thereof encourages an active dialogue with shareholders, regardless of the fact that companies are obliged to do this pursuant to laws and regulations. Both nationally (Eumedion's Stewardship Code) and internationally, there are perceptible developments aimed at improving communication between institutional and other shareholders and listed companies. Here, the emphasis lies on responsible and committed share ownership by investors, but proper dialogue is always a two-way street, where listed companies must also make efforts to communicate with shareholders (and other stakeholders).

In the light of this, the Committee intends to study the level of non-compliance with Provision 4.2.2 in more detail in the following period.

The provision with the second-lowest rate of compliance is Provision 2.2.8, which relates to the reporting on the evaluation of the supervisory board. What is striking is that compliance with this provision was higher during the 2016 financial year. This can be explained by the fact that the current Code (in contrast to the 2008 Code) also requires companies to report on what is done with the conclusions of these evaluations. The Committee calls for improvement on this point.

There is a relatively low rate of compliance with provisions relating to the reporting by the supervisory board (cf. Provision 2.3.11). A relatively low rate of compliance is also observed for Provisions 2.1.6, (reporting on diversity), 2.5.4 (reporting on culture), 2.4.4 (reporting on the attendance of supervisory board members at meetings), 2.3.3 (availability of regulations for committees of the supervisory board). A number of these provisions (e.g. regulations for committees) are traditionally the provisions with lower rates of compliance. Some of these provisions have been modified (e.g. reporting on diversity) or are entirely new (e.g. reporting on culture).

Provisions regarding the reporting on management board remuneration also showed relatively low rates of compliance in previous years. In this context, the provision that especially stands out is the one concerning the remuneration report, where the supervisory board reports on the implementation of the remuneration policy (Provision 3.4.1 in the 2016 Code and Provision II.2.13 in the earlier Code). This provision saw the lowest rate of compliance in 2015 and occupied second place in 2016, with a non-compliance rate of nearly 11%. The rate of non-compliance has improved considerably (5.8%), which is probably because the requirements have been simplified (the previous Code had 10 more detailed sub-provisions and the 2016 Code only has 6 much shorter provisions). Nevertheless, the simplification of the best-practice provision has not yet led to a higher level of compliance with all the sub-provisions: listed companies are still not reporting clearly on the scenario analyses they have taken into account (non-compliance of 19.4%), and 21.3% of these companies do not provide insight into the remuneration ratios within the company and its affiliated enterprise (where 15.5% also do not offer detailed substantiation for the deviation). However, Provision 3.4.2 is much more detailed compared to the 2008 Code. This may be the reason for the considerable increase in the rate of non-compliance from 4.2% to 7.5% in comparison to the 2016 financial year.

The Committee notes that a number of provisions with the lowest rates of compliance relate to new elements of the Code, for example, Provision 1.1.4 'Reporting on long-term value creation' (5.4% non-compliance), Provision 2.5.4 'Reporting on culture' (7.0% non-compliance), Provision 2.1.6 'Reporting on diversity' (8.4% non-compliance) and Provision 3.4.1 'Reporting on remuneration policy in remuneration report' which includes the remuneration ratio (5.8% non-compliance). Here, too, the local funds demonstrate, relatively speaking, the highest rate of non-compliance (for the provisions mentioned in this paragraph, the rates of non-compliance are 13.3%, 20.0%, 22.0% and 15.7%, respectively).

2.2.7 Substantiated deviation from provisions

The provisions that are most frequently deviated from with substantiation are listed in Table 2.4.

Table 2.4 Provisions with more than 5% substantiated deviation.

Provision	Application	Substantiated Non-compliance deviation
4.2.3 Meetings and presentations	78.5%	21.5% 0.0%
2.2.1 Appointment and term of office of management board members	81.7%	18.3% 0.0%
4.3.3 Binding nature of nomination or dismissal	83.9%	16.1% 0.0%
3.2.3 Severance payments for management board members	86.0%	14.0% 0.0%
1.3.1 Appointment and dismissal of internal auditor	88.2%	11.8% 0.0%
2.3.3 Regulations of committees	82.8%	10.8% 6.5%
2.3.4 Composition of committees	88.2%	10.8% 1.1%
1.3.3 Internal audit position work plan	89.2%	10.8% 0.0%
2.3.10 Company secretary	90.1%	9.9% 0.0%
1.3.2 Internal audit position assessment	90.3%	9.7% 0.0%
1.3.4 Internal audit position tasks	90.3%	9.7% 0.0%
1.3.5 Reporting on the internal audit position	90.3%	9.7% 0.0%
2.1.7 Independence of the supervisory board	91.4%	8.6% 0.0%
1.3 Internal audit position	92.5%	7.5% 0.0%

Source: SEO Economic Research. Note: n = 93 listed companies. n = 93 beursgenoteerde vennootschappen.

The provision with the most detailed explanation (Provision 4.2.3) outlines the ways in which shareholders can follow meetings and presentations in real time. As in previous years, companies explain in detail the methods they offer or do not offer for this. The provisions relating to the maximum term of appointment and office of management board members (Provision 2.2.1) and the binding nature of nominations or dismissals (Provision 4.3.3.) have also been deviated from with substantiation relatively often both in 2018 and in previous years. Just as in the 2016 financial year, there is often a substantiated deviation from the maximum severance payment for a management board member (14.0% in 2018). AEX funds in particular often deviate with substantiation from the maximum severance payment. The monitoring study offers no insight into the reason for this substantiated deviation; therefore, in the following period, the Committee intends to also examine the quality of the justification provided.

Finally, companies regularly opt for an alternative interpretation of the internal audit position. All the provisions and sub-provisions relating to the internal audit position are at the top of the list in terms of having the most detailed explanations; the only exception to this is Provision 1.3.6. It is not surprising that the local funds deviate with substantiation more often than the larger listed companies (on average, there is a substantiated deviation in about a quarter of the cases, without any non-compliance, whereas this is never the case with AEX funds (100% compliance) and the substantiated deviation for AMX and AScX remains below 9.1% and 4.5%, respectively). Based on this, the Committee concludes that the local funds have made particular efforts with respect to reporting on the internal audit position.

2.2.8 Correlation between compliance with provisions and characteristics of companies

At the request of the Committee, SEO carried out an in-depth study of possible interrelationships between non-compliance with the provisions and specific characteristics of the listed companies. Although the detected links involve correlations (and therefore do not yet demonstrate causality), they nevertheless offer the following insights:

- › Companies with a supervisory board of at least four supervisory directors appear to comply better with the principles relating to culture and reporting on remuneration policy. On the contrary, they are less compliant with the principle relating to the certification of shares.
- › If a company does not fulfil its own diversity objective, this is evident not only in their compliance with the composition and size (of the management board and supervisory board), but also in their compliance with the themes of culture, reporting on remuneration policy, decision-making and functioning.
- › There is a positive correlation between having an executive committee and compliance on themes such as culture and reporting on remuneration policy.
- › Similarly, there is a positive correlation between having a participation body and compliance on themes such as culture and reporting on remuneration, as is compliance with provisions relating to the composition and size of the management board and supervisory board.
- › Finally, there appears to be a positive correlation between remunerating management board members in shares and compliance on a number of fronts, while this does not apply in the case of variable remuneration.

Finally, it is striking that only certain themes 'respond' to differences in company characteristics. In particular, the themes of culture, reporting on remuneration policy, the general meeting and certification of shares seem to vary depending on the specific characteristics of the company. A possible explanation for this is a composition effect (larger companies and organisations are more likely to have an executive committee and they also pay more attention to culture). An alternative interpretation is that these themes are simply 'difficult' themes within the Code, which is why the results for these vary more widely. The Committee will pay further attention to this in its subsequent studies.

2.2.9 Unlisted organisations

The study conducted among the 10 unlisted organisations reveals that, on average, their level of compliance with the Code is higher than that of listed companies (where the level of compliance is higher than that of the locally listed companies, but less than the AEX, mid cap and small cap companies). It should be noted that the unlisted organisations are more comparable, in terms of their legal form and size, with AEX-listed companies than with smaller companies.

Themes on which unlisted organisations have a higher average rate of compliance with the Code than listed companies include the composition and size of the management board, appointment, succession and evaluation and culture. It is possible that the higher average level of compliance is because of the relatively small sample size of unlisted organisations, which may imply a selection effect (because only the 'best' unlisted organisations will commit to the Code).

Furthermore, the compliance behaviour differs from that of listed companies with respect to a number of logical as well as notable principles. Some logical principles relate to the relationship with shareholders and the certification of shares. The relationship between unlisted organisations and their shareholders is different, as a result of which many provisions relating to this theme do not apply, and unlisted organisations often deviate from these provisions with substantiation. The same applies to Principle 2.8 regarding takeovers. What is striking is that unlisted organisations deviate less often from the principles relating to internal audit, the role, structure, evaluation, composition and size of the management and supervisory boards, and the remuneration of management board members.

2.3 In-depth study of the most important changes

2.3.1 Introduction

For this financial year, the most important changes made to the 2016 Code have been highlighted via the in-depth survey and focus groups:

- › Long-term value creation
- › Culture
- › Remuneration of management board members
- › Risk management
- › Diversity 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 must focus on the creation of long-term value and carefully balance the interests of all stakeholders involved. Subsequently, the Code provides the basis for drawing up a strategy for long-term value creation but leaves the interpretation of this largely up to the companies.

The Committee is interested in finding out how the respondents have interpreted and operationalised the concept of 'long-term value creation' within the company. Almost all the companies indicate that the objective of long-term value creation is to create as much value as possible for the shareholder, society, customer and employee. Nearly all the companies also indicate that the long-term perspective is largely or fully embedded in most business units. This applies even more strongly to the management board and supervisory board.

The focus groups have shown that the companies are happy with the emphasis placed by the Code on long-term value creation. This helps in developing a concrete vision for the company and acts as a sort of reminder

for continuing to discuss the topic internally. Companies are pleased that the Code has left the interpretation of long-term value creation largely open, so that they can interpret this functionally and tailored to the specific context of the company.

The companies were also asked about the relative importance of a number of aspects in the company's vision of long-term value creation. Listed companies consider the achievement of operational and financial objectives and safeguarding the interests of stakeholders as the most important aspects in the company's vision of long-term value creation. They attach relatively less importance to aspects such as the remuneration policy, combating corruption and bribery, human rights and working conditions. The focus groups have revealed that companies view these latter aspects as a fundamental part of doing business. The companies consider it self-evident that laws and regulations are complied with and therefore do not regard this as part of the vision of long-term value creation.

The companies also state that, in practice, they do not face too many problems in balancing the interests of different stakeholders, because these are often in line with one another. Nevertheless, a number of companies indicated that shareholders sometimes tend to focus on the short term. This makes it more complex to balance the interests of other stakeholders. This outcome seems to be supported by the results for the unlisted organisations, which appear to attach relatively more importance to the interests of stakeholders and relatively less importance to operational and financial objectives (also see section 2.3.7) in their vision of long-term value creation.

Finally, all the organisations were asked whether they report in their annual report or on the website on how their activities have contributed to the seventeen Sustainable Development Goals (SDGs). The results show that half of the listed companies report on the SDGs. The Committee requests that companies answer this question seriously (six companies indicate that they do not know whether the SDGs are being reported).

2.3.3 Culture

Principle 2.5 of the 2016 Code states that the management board is responsible for creating a culture aimed at long-term value creation for the company. In the Code, 'culture' is defined as the norms and values that serve as an implicit and explicit guide for actions and resulting behaviours. Although the Code addresses the theme of culture, it does not prescribe exactly what the culture is or should be.

Both the compliance study and the focus groups show that the listed companies generally have a proper understanding of the importance of culture. Company culture usually starts at the top. Leading by example has been identified by the organisations as the most important way of paying attention to culture. The management board determines the core values of the company. These are then further promoted via programmes for shaping corporate culture, appraisal and performance interviews and the remuneration policy. The focus group participants are enthusiastic about the position assigned to culture in the revised Code. This provides the necessary urgency for bringing the subject to the attention of the board. Participants in the focus groups also indicate that, more than before, supervisory directors have started to regard culture as part of their supervisory duties.

Culture is a new and important theme in the Code. The Committee is satisfied to note that listed companies are on the right track with regard to culture, although there is still a lot of room for improvement. It is clear that elements that are important for culture have not yet been implemented to the same extent by all the respondents. First of all, it is striking that, according to the SEO survey, the topic of culture is not discussed in the management board in 7% of the cases, and it is not discussed in the supervisory board in 10% of the cases. It is difficult to see how culture can be inspired 'from above' and how exemplary conduct can occur if the topic of culture is not discussed within the management or supervisory board. Furthermore, only 41% of listed companies indicate that they have a programme for shaping corporate culture, 65% discuss culture in

appraisal and performance reviews, 62% discuss it as part of diversity objectives and only 38% discuss it in relation to the remuneration policy.

The above is inconsistent with what the Committee expects from listed companies. Culture is, first and foremost, a matter for the management board. Hence, discussing this within the management and supervisory boards is an essential and indispensable requirement. The Committee expects the management board to steer the implementation and promotion of culture at all levels of the company and expects the supervisory board to adequately monitor this.

2.3.4 Remuneration of management board members

Principle 3.1 of the Code states that the remuneration policy of management board members is aimed at ensuring long-term value creation for the company and should take into account the company's internal remuneration ratios. The Code allows the listed companies the freedom to determine the remuneration ratios for themselves and the way in which these are reported.

The organisations were asked whether the revised Code was a reason for changing the remuneration policy of the company. Eight percent of the companies indicated that this was the case for them. These companies place a greater emphasis on long-term objectives. This low percentage is nuanced by the focus group participants who indicate that, though they have modified the remuneration policy, the revised Code was not the immediate reason for this, since their remuneration policy was already in line with the revised Code.

The focus groups reveal that there is a unanimous need for a clear definition of internal remuneration ratios (Provisions 3.1.2(iii) and 3.4.1(iv)). The participants have advised the Committee to align this definition to an existing and widely supported international definition. Based on the focus groups, it also appears that the participants disagree about the usefulness and necessity of reporting on a remuneration ratio.

According to the Committee, the survey shows that listed companies apply different criteria in the absence of a clear definition, as a result of which it is not possible to report on the results. The Committee also notes that approximately one third of the listed companies do not report on the remuneration ratios at all. Partly based on the feedback received and partly in light of international developments and relevant European legislation, the Committee intends to come up with a recommendation for an unambiguous measurement method.

Finally, the companies were asked how they deal with long-term performance criteria when determining short-term annual remuneration. Most organisations indicate that the short-term objectives are aligned with the long-term objectives. Therefore, the short-term annual remuneration paid automatically reflect the achievement of long-term objectives. Other organisations indicate that their remuneration policy distinguishes between the performance criteria used to determine short-term annual remuneration and those used to determine long-term remuneration. Some organisations also state that they do not make use of short-term variable remuneration or only do this to a limited extent. Finally, companies mention the use of holdback and clawback schemes. Holdback means that previously awarded variable remuneration are not paid out in whole or in part. Clawback offers the possibility to recover previously paid out remuneration.

2.3.5 Risk management, particularly in relation to new technologies and changes in business models

Principle 1.1 of the Code states that the management board must focus on long-term value creation and draw up a strategy for this, where it also pays attention to the opportunities and risks for the company. The explanatory notes to the Code state that long-term value creation requires companies to be aware of and anticipate developments in new technologies and changes in business models. The impact of technological developments must also be included in the internal risk management and control systems (Principle 1.2) and

there must be sufficient expertise available in this area within the management and supervisory boards.¹¹

The survey shows that, after achieving operational and financial objectives and representing the interests of stakeholders, listed companies consider new business models and technological innovation as the next most important aspects in their vision of long-term value creation. The companies were further asked about the risks that were included in the risk profile of the company and about the relative importance of these risks. The companies report that financial and operational risks are the two most important components of the company risk profile. The risk of disruption due to new technologies is relatively less important. Regarding the question about how the management board and supervisory board devote attention to the opportunities and risks involved in the development of new technologies and changes in business models, the respondents indicate that this (i) is part of the fixed agenda of the management board, supervisory board and management team and that (ii) a responsible director or, for example, a Chief Innovation & Technology Officer regularly attends the management board meetings. In the focus groups, the companies indicated that new technologies as well as cyber risks are mainly considered operational risks. Therefore, the management and supervisory boards deal with these types of risk the same way as they deal with other operational risks.

The listed companies were asked to indicate the extent of expertise available in this area among their management and supervisory board members. It is noteworthy that most of the listed companies report that supervisory board and management board members of the company claim to have a very high level of expertise in risk management and new business models. They report having relatively less expertise in the area of cyber security.

The Committee has the impression that some of the companies overestimate their own knowledge and expertise in these areas while, on the other hand, they underestimate the risks of disruption due to new technologies. After all, overestimating one's own knowledge and expertise is quite a common phenomenon.¹² The same applies to the underestimation of the impact of new technologies in the longer term. The Committee recommends that companies do not treat these components as operational risks, but as risks that have an impact on their long-term value creation strategy.

Finally, the listed companies were asked whether they are using the integrated reporting method. About half of the listed companies (51%) indicated that they are currently using this method of reporting. The Committee values this reporting method because it presents the annual accounts from a broader perspective (often described as the Environmental, Social & Governance (ESG) perspective). The Committee urges the companies using this method of reporting to embed the theme of long-term value creation within this method for their subsequent reports.

2.3.6 Diversity

Provision 2.1.5 states that the supervisory board is responsible for drawing up a diversity policy for the composition of the management board, supervisory board and any executive committee, which should outline concrete objectives and take into consideration relevant aspects such as nationality, age, gender, educational background and professional experience. Provision 2.1.6 states that the company must report if the composition of the management board and supervisory board deviates from the statutory target figures.

Just as in the 2016 financial year, experience, expertise and gender continue to be the most frequently mentioned aspects that the surveyed companies use as the basis for their diversity policies. For listed companies,

11 The explanatory notes to Best Practice Provision 2.1.4 relating to expertise explicitly state that there must be sufficient expertise available within both the management board and supervisory board to identify, in a timely manner, the opportunities and risks possibly associated with innovations in business models and technologies.

12 Dieteren, J., Groenewegen, J. and S. Hardeman (2018) 'Goed management doet ertoe, maar wat doet ertoe voor goed management?' [Good management matters, but what matters for good management?] Rabobank Economic Report (6 November 2018).

nationality and ethnic background are mentioned less frequently than in the compliance survey for the 2016 financial year (11.4% versus 15% in the 2016 report, where it should be noted that the previous study only asked questions about the importance of nationality and not about the ethnic background). The Committee emphasises that diversity is more than just gender diversity. Aspects such as age, nationality and ethnic background are also important for guaranteeing a diverse composition of the management and supervisory boards.

Based on the compliance report, it can be concluded that awareness regarding the importance of diversity and the need to actively manage this seems to be on the rise. Of the listed companies, 83% state that they have taken measures in the past two years to improve diversity at the top, i.e. in the management board, supervisory board and any executive committee, and 95.1% indicate that they have a diversity policy. However, the reporting on this policy and its results is often incomplete. The reporting on the statutory target figures is, in general, qualitatively better than the reporting on other aspects of the diversity policy.

With respect to Provision 2.1.6 (reporting on the statutory male-female target figure), the Committee notes that, from 1 January 2020 onwards, a gap may arise in the regulations, because the statutory provision on target figures is scheduled to lapse on that date. The Committee assumes that the recent advisory report of the Social and Economic Council (SER)¹³ will be transposed into legislation, to prevent this gap from arising. However, if a temporary gap arises, the Committee assumes that the companies will at least continue to report the deviations from the current target figure in the 2019 financial year.

In this context, the Committee notes that there has been an increase in public support for more far-reaching diversity measures in recent years. The SER's recommendation to introduce a gender diversity quota for supervisory boards is also widely supported. Supporting parties such as Eumedion, VNO NCW and the trade union movement have insisted on quicker action and visible results. For the investors, diversity expectations will be included in the investment policy. Against this backdrop, the Committee plans to make further suggestions in the next compliance report for a meaningful improvement in diversity at the top. For this, the Committee will also consult other sources besides the results of its own compliance study.

2.3.7 Unlisted organisations

The 10 unlisted organisations that completed the survey were asked about their reasons for following the Code. Most of the unlisted organisations indicate that they endorse the objectives and content of the Code as a guideline for good corporate governance. They argue that the principles contained in the Code are widely supported general perceptions regarding good corporate governance. These principles provide organisations with the appropriate tools to regulate relationships between the management board, supervisory board and shareholders. Organisations also mention the fact that they want to set a good example as leading players in the market or that shareholders expect the organisation to adhere to the Code.

The unlisted organisations indicate that they are coping well with the Code, partly thanks to the apply or explain principle. In certain cases, the Code is not fully applicable, such as the provisions relating to remuneration in shares, certification of shares and relationships with institutional investors. In addition, the principles from the Code are not always applicable to legal forms other than a public limited company.

The survey shows that unlisted organisations do not have a fundamentally different view of the Code compared to the listed companies. This is also apparent from the higher average compliance scores of unlisted organisations, see section 2.2.9. Nevertheless, the Committee has observed a number of notable differences. The Committee finds it notable that unlisted organisations seem to be taking more freedom to broaden the scope of long-term value creation. When implementing long-term value creation, unlisted organisations attach more

¹³ SER, SER advisory report entitled '*Diversiteit in de top, tijd voor versnelling*' [Diversity at the top, time to move up a gear] (September 2019), can be consulted at <https://www.ser.nl>.

importance to the interests of stakeholders, the environment and circularity (and relatively less importance to operational and financial objectives) than listed companies. In terms of diversity, unlisted organisations attach more importance to gender, age and ethnic background (and less to competencies, experience and expertise). They also make more frequent use of programmes for shaping corporate culture than listed companies and culture is more often part of employee satisfaction surveys in unlisted organisations. Finally, they more commonly report using the integrated reporting method, and unlisted organisations are also more concerned about cyber risks than listed companies.

From this, the Committee infers that, compared to listed companies, unlisted organisations probably face less pressure from the market while determining their long-term value creation strategy and wonders whether the fact that a company is listed prompts it to take a more short-term perspective.

2.3.8 Key focus areas for the next monitoring period

The Committee is pleased to note that the compliance study shows that listed companies are generally able to cope well with the revised Code and that they are also complying with it. However, the monitoring study has prompted the Committee to investigate whether the study methodology and reporting need to be adjusted in any way by, for example, by placing more emphasis on assessing the quality of the reasons provided for a substantiated deviation from the provisions. Moreover, it is clear that the in-depth survey is an essential tool for ensuring a proper monitoring process, which is why the Committee calls for 100% participation from the companies, with greater attention paid to the quality of the answers. The Committee has observed that the bottlenecks in relation to compliance with the Code mainly occur with local companies, and it has therefore decided to organise a specific focus group in the coming year to identify these bottlenecks and possible solutions. The Committee will make a recommendation in the coming period for a clear-cut method of measuring the internal remuneration ratio. The key focus areas of the Committee in the coming period are the themes of long-term value creation, culture, policy on bilateral relationships with shareholders, remuneration and diversity. With respect to long-term value creation, the Committee sees it as a positive development that more than half of the companies are by now using the integrated reporting method. The Committee urges companies to firmly embed the theme of long-term value creation in this reporting method for their subsequent reports. Finally, it recommends that companies do not treat new technologies and cyber risks as operational risks but as risks that have an impact on their long-term value creation strategy.

APPENDIX 1: COMPOSITION OF THE **CORPORATE GOVERNANCE CODE MONITORING COMMITTEE**

Chair

Ms P.F.M. van der Meer Mohr

Vice-Chair, Supervisory Board, DSM NV

Chair, Supervisory Board, EY Nederland LLP

Non-Executive Director, HSBC Holdings plc

Non-Executive Director, Mylan NV

Chair, Supervisory Board, Nederlands Dans Theater

Member, Capital Market Committee (Commissie Kapitaalmarkt), AFM

Member, Selection Committee (Selectiecommissie), Supreme Court of the Netherlands

Observers

Ms N. ten Kate

Ministry of Justice and Security, Department of Legislation and Legal Affairs

Mr M. Rookhuijzen

Ministry of Finance, Financial Markets Department

Secretariaat

Ms C.M. Molkenboer

Ministry of Economic Affairs and Climate Policy, Enterprise Department

Ms R. Kitaman

Ministry of Economic Affairs and Climate Policy, Enterprise Department

Members

Prof. B.E. Baarsma

Chair, Management Board, Rabobank Amsterdam

Professor, Applied Economics, University of Amsterdam

Chair, De Nederlandsche Bank

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

Mr P.J. Gortzak

Head of Policy, Strategy and Policy Group, APG

Member, Supervisory Board, CFK

Member, Supervisory Board, Nationaal Register

Mr S. Hepkema

Chair, Supervisory Board, Wavin NV

Member, Supervisory Board, SBM Offshore NV

Member, Supervisory Board, Koninklijke VolkerWessels NV

Member, Management Board, VEUO

Chair, Nationale Stichting de Nieuwe Kerk

Mr D.R. Hooft Graafland RA

Vice-Chair, Supervisory Board, Wolters Kluwer NV

Member, Supervisory Board, Koninklijke Ahold Delhaize NV

Member, Supervisory Board, Koninklijke FrieslandCampina NV

Member, Supervisory Board, Lucas Bols NV

Chair, Management Board, Stichting African Parks Foundation

Chair, Management Board, Carré Foundation

Chair, The National Committee for 4 and 5 May

Prof. E.M.L. Moerel

Professor, Global ICT Law, Tilburg University

Senior of Counsel, Morrison & Foerster (Berlin)

Member, Dutch Cyber Security Council

Member, Governance of Quality Registrations Committee (Commissie Governance van Kwaliteitsregistraties)

Chair, Supervisory Board, Mauritshuis

Mr R.M.S.M. Munsters MiF

Member, Supervisory Board, UnibailRodamcoWestfield SE

Non-executive Director, Moody's Europe

Member, Supervisory Board, PGGM Vermogensbeheer

Member, Supervisory Board, Boijmans van Beuningen Museum

APPENDIX 2

RELEVANT NATIONAL AND INTERNATIONAL DEVELOPMENTS

National developments

Further modernisation of laws applicable to public limited companies

The Minister for Legal Protection is working further on modernising corporate law¹⁴ with the following initiatives: the Shareholder Long-Term Engagement Act (Wet langetermijnbetrokkenheid aandeelhouders)¹⁵, the bill for a reflection period for listed companies¹⁶, an analysis of a broader range of protection measures, the adjustment and recovery of the remuneration of management board members, the Conversion of Bearer Shares Act (Wet omzetting aandelen aan toonder) and a further modernisation of the laws applicable to public limited companies.

Shareholder Long-Term Engagement Act

The European Shareholder Engagement Directive, which entered into force in 2017, aims to further increase the involvement of shareholders in the corporate governance of listed companies and to promote transparency between listed companies and investors.¹⁷ The Shareholder Engagement Directive will be transposed into national regulations via the Shareholder Long-Term Engagement Act. The legislator has tried to adhere as closely as possible to existing legislation and self-regulation as well as with the text of the articles of the Directive. The Act provides for the following additional provisions:

The remuneration policy must be adopted by the general meeting at least once every four years. The remuneration policy should contribute to the company's strategy, long-term interests and sustainability. The works council has the right to be consulted regarding the proposal for the remuneration policy.

- › The remuneration policy must be accompanied by an explanation of how the policy has taken into account the identity, mission and values of the company and its affiliated enterprise, the internal remuneration ratios of the company and its affiliated enterprise and the aspect of social support.
- › Approval of the remuneration policy requires a majority of at least 75% of the votes cast at the general meeting of shareholders, unless the articles of association specify a lower majority.
- › Listed companies are required to submit an annual remuneration report to the general meeting.
- › In addition to information on the annual changes in the remuneration of individual management board members over a period of at least five financial years, the remuneration report must also contain information on the evolution in the company's performance and the average remuneration of company employees other than the management board members during this period. This information must be presented collectively in a way that allows for comparisons.
- › Companies will be required to obtain the approval of supervisory board for material transactions with affiliated parties and will also be required to make these transactions public.
- › Institutional investors and asset managers will be required to make their policy concerning shareholder engagement public (hereinafter referred to as: 'engagement policy'). Voting advisers must comply with transparency rules and a code of conduct.

14 Parliamentary Papers II, 2017/2018, 29 752, No. 12

15 Jointly with the Minister of Finance.

16 Jointly with the Minister of Economic Affairs and Climate and the Minister of Finance.

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

- › For listed companies, the possibility of identifying shareholders in cross-border situations will be improved. Furthermore, parties in the custody chain will be required to facilitate information exchange between the listed company and the shareholder, and to facilitate the exercise of shareholder rights.

The obligations arising from this Act go beyond the provisions of the Code and also partly overlap with the rules laid down in the Code in this regard. The Act was passed in the Senate on 5 November 2019 and will come into effect on 1 December 2019. This means that the implementation period of the Directive has been exceeded (10 June 2019). Apart from the Netherlands, other countries such as Germany and Belgium have also been unsuccessful in implementing the Directive in their national legislation in time.

Bill for reflection period for listed companies

In 2017, a series of striking attempts to take over Dutch listed companies sparked a debate on hostile takeovers and anti-takeover measures. In the coalition agreement presented on 10 October 2017, the government announced a statutory reflection period of a maximum of 250 days. The reflection period is available to a listed company faced with proposals at the general meeting of shareholders for a fundamental change of strategy or hostile takeovers. The underlying idea is that, in the event of a takeover attempt or a proposal from shareholders to adjust the strategy, the management board must have enough time to assess these plans and ensure that other stakeholders (e.g. employees) are also on-board with these plans.

The bill for a reflection period for listed companies is primarily intended to codify the management board's responsibility for managing the company, which includes determining the company's policy and strategy. Secondly, the management board has the opportunity to request a reflection period in case of an impending dismissal as a result of not meeting shareholders' wishes regarding the strategy or in case of an impending, perhaps hostile, takeover. Invoking the reflection period means that the authority of the general meeting to suspend or dismiss members of the management board or supervisory board is suspended for a maximum of 250 days. Laying down a reflection time by law may have consequences for the provision relating to response time contained in the Code.

At the time of writing, it is not known when this bill will be submitted to the House of Representatives.

Stricter reporting obligation for shareholders

The government intends to introduce a more stringent reporting obligation for shareholders of listed companies by amending the Financial Supervision Act. This decision stems from the coalition agreement. After the amendment, shareholders will be obliged to make themselves known to the public if they hold a 2% stake, instead of the current 3% limit. In this way, companies and other shareholders will have a better view of the shareholder base, which should promote transparency with respect to the shareholders and their intentions. At the time of writing, it is not known when this bill will be submitted to the House of Representatives.

Bill for further remuneration measures in the financial sector

This bill proposes to tighten the rules for remuneration in financial companies by amending the Financial Supervision Act. The measures are aimed at preventing perverse remuneration incentives in the financial sector and promoting public support for and confidence in the financial sector as a whole. These measures are in addition to the remuneration measures that are already in effect.

The first measure introduces an obligation to retain the shares that are part of the fixed remuneration for a period of five years. A second measure has been proposed that financial enterprises be obliged to account, in their remuneration policy, for the relationship between remuneration and the company's social position and how this is determined. The third measure limits the option of financial companies to deviate from the bonus cap for employees not covered by the Collective Labour Agreement. It is also not yet known when this bill will be submitted to the House of Representatives.

Works Councils Act concerning the works council's powers with respect to the remuneration of management board members

Since 2019, large companies (at least 100 employees) have been required to organise an annual meeting between the management board and the works council to discuss the evolution of the remuneration ratios. The amendment of the Works Councils Act (*Wet op de ondernemingsraad*) is aimed at encouraging more discussion and transparency with respect to executive remuneration and differences in remuneration within the company.¹⁸

Diversity

Under the Management and Supervision (Public and Private Companies) Act (*Wet bestuur en toezicht*), large companies are required to ensure that at least 30% of the seats in their management and supervisory boards are held by women. If the target figure is not achieved, the company must explain this in its director's report. This regulation is of a temporary nature and will lapse on 1 January 2020. The government has announced that it will evaluate the situation in 2019, and is prepared to take firm measures if companies have not made insufficient progress in this area.¹⁹ The government is expected to announce the intended measures before the end of the year.

Eumedion's Stewardship Code

In 2018, Eumedion presented, via the Stewardship Code, a new version of its best practices for engaged shareholdership as defined in 2011.²⁰ The Stewardship Code came into effect on 1 January 2019. Drawn up by Eumedion for the benefit of its members, it focuses on pension funds, life insurers and asset managers that hold shares in Dutch listed companies.

The Stewardship Code calls on participants to be responsible shareholders. Institutional investors and asset managers should have a publicly available engagement policy, they should engage in dialogue with the companies in which they invest, collaborate with other shareholders and make their voting policy public. The Stewardship Code is in line with the responsibilities assigned to shareholders with respect to transparency regarding the engagement policy and voting policy, as laid down in the Shareholder Engagement Directive. The Stewardship Code is not binding and is also based on the apply or explain principle.

18 Act of 15 June 2018 amending the Works Councils Act with respect to the powers of the works council in the matter of the remuneration of management board members (Bulletin of Acts and Decrees 2018, 221), Bulletin of Acts and Decrees 2018, 426.

19 Parliamentary Papers II, 2017/18, 30 420, No. 263.

20 Eumedion, Dutch Stewardship Code, can be consulted at <https://www.eumedion.nl/nl/public/kennisbank/best-practices/2018-07-nederlandse-stewardship-code-nl-versie.pdf>

International developments

EU guidelines for the presentation of the remuneration report

In the context of its Shareholder Engagement Directive, the European Commission is preparing non-binding guidelines for a more standardised presentation of the remuneration reports of European listed companies. The purpose of the guidelines is to provide clear information about and improve the comparability of the remuneration of individual management board members. The guidelines are intended to provide guidance on how to report on annual changes in the remuneration of each individual management board member, the performance of the company and the average full-time remuneration of employees other than management board members for the five most recent financial years at the minimum. The European Commission has announced its intention to publish the guidelines soon.

Action Plan for Sustainable Finance

Sustainability and a transition to a low-carbon, more energy-efficient and circular economy are crucial elements for the European Union to ensure that the EU retains its competitive position in the long term. Sustainable financing plays an important role in this. The European Commission presented the Action Plan for Sustainable Finance in March 2018.²¹ This Action Plan includes a package of measures aimed at promoting sustainable corporate governance, reducing short-term thinking on capital markets, and linking funding and sustainability objectives. As part of this Action Plan, the Commission has requested various European supervisory authorities such as the European Security and Markets Authority (ESMA), European Banking Authority (EBA) and European Insurance and Occupational Pensions Authority (EIOPA) to collect information and provide advice on the excessive short-term pressure of capital markets on companies.²² A report is expected by the end of 2019.

Developments in neighbouring countries

Germany

The German corporate governance code committee drafted its revised corporate governance code in 2019.²³ This code will only enter into effect after the Shareholder Engagement Directive has been transposed into German legislation, which is expected to happen this year. The provisions have been modified and published in anticipation of the implementation.

The German code retains its emphasis on transparency. The introduction to the revised code underlines the social responsibility of companies and their management bodies, the importance of social and environmental factors for the success of the company and the need to take both risks and opportunities into consideration in the strategy. This responsibility also implies that the general public's acceptance of the remuneration of management board members must be taken into account. The Shareholder Engagement Directive has resulted in an adjustment and expansion of the provisions in the German code with respect to remuneration and the related policy. For example, a specific adjustment made is an improved definition of the independence criterion in relation to the supervisory board (Aufsichtsrat).

21 European Commission, Action Plan: Financing Sustainable Growth (COM) 2018 97 final, dated 8/3/2018, can be consulted at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0097&from=EN>

22 ESMA, ESMA consults on short-termism in financial markets, can be consulted at <https://www.esma.europa.eu/press-news/esma-news/esma-consults-short-termism-in-financial-markets>

23 Regierungskommission Deutscher Corporate Governance Kodex, Vindplaats Deutscher Corporate Governance Kodex, can be consulted at <https://dcgk.de/files/dcgk/usercontent/en/Consultations/2019/Code%202019/190522%20GCGC%202019.pdf>

France

The French corporate governance code for large and medium-sized companies (AFEP-MEDEF Code) has been amended for the third time in five years.²⁴ The employers' organisations Association Française des Entreprises Privées (AFEP) and Mouvement des Entreprises de France (MEDEF) aim to modify the AFEP-MEDEF Code once every two years, making the French corporate governance Code one of the most demanding codes in the world. The new, amended code consolidates the role of the management board in promoting long-term value creation and the focus on ESG factors. Specific additions to the code are: promoting shareholder consultation with the management board; upholding the code of ethics to be followed by management board members with regard to conflicts of interest; increasing the number of management board members who represent the employees; and introducing a requirement to implement an anti-discrimination and diversity policy, specifically to ensure a proportional distribution of men and women (and not only at the level of the management board).

United Kingdom

The United Kingdom (UK) has revamped its corporate governance code in 2018 to promote transparency and integrity.²⁵ The UK Corporate Governance Code 2018 is shorter and sharper, more principle-based and with fewer provisions. British listed companies must promote the long-term sustainable success of the company, generate value for shareholders and contribute to the wider society. More specifically, management board members of British listed companies are expected to provide more information in the director's report on how they have taken the interests of employees and other stakeholders into account in their management decisions. Other adjustments relate to the improvement of the dialogue with shareholders.

In addition to the UK Corporate Governance Code 2018, there is also the UK Stewardship Code 2020. This revised version of the earlier Stewardship Code 2012 entered into effect in October 2019.²⁶ The Stewardship Code focuses on asset managers, institutional investors and voting offices. It contains principles to promote engagement with the companies in which they invest. Investors must prepare an engagement policy and report on how they integrate the engagement policy into the investment strategy. The revised Stewardship Code lays particular emphasis on the ESG factors. For example, investors must demonstrate how they have integrated climate change into their investment approach and engagement policy. The Stewardship Code is based on a comply or explain system and compliance is on a voluntary basis.

Belgium

In 2019, Belgium modified its corporate governance code to the new 'Code 2020'.²⁷ An important reason for the modification is the entry into effect of the new Belgian Companies Code in 2020. This new code offers Belgian companies the opportunity to implement a dual management model.

Overall, the Committee has made Code 2020 easier to use. It reinforces the importance of sustainable value creation, with an explicit emphasis on a long-term perspective, responsible conduct at all levels of the company and a greater focus on stakeholder interests. This is also reflected in changes in the remuneration policy: for example, members of the executive management are required to hold a minimum number of shares during their term of office. Another specifically amended provision in Code 2020 encourages the board to evaluate whether the company might benefit from entering into a so-called 'relationship agreement' with important or controlling shareholders.

24 AFEP, AFEP-MEDEF Code, can be consulted at <https://afep.com/wp-content/uploads/2018/06/Afep-Medef-Code-revision-June-2018-ENG.pdf>

25 FRC, UK Corporate Governance Code 2018, can be consulted at <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.PDF>.

26 FRC, UK Stewardship Code 2020, can be consulted at https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Final2.pdf

27 Corporate Governance Committee (*Commissie Corporate Governance*), Belgian Corporate Governance Code 2020, can be consulted at https://www.corporategovernancecommittee.be/sites/default/files/generated/files/page/belgische_corporate_governance_code_2020.pdf.

Other countries

Italy modified its corporate governance code in 2018.²⁸ The primary aim was to include a provision that requires at least one-third of the management bodies of listed companies to be made up of women. A similar provision is laid down by law, but this law will lapse from 2020 onwards.

In the United States, 181 CEOs of American listed companies, including those of Amazon, Apple, Goldman Sachs, Exxon Mobile, Boeing and JP Morgan, recently signed a statement prepared by the Business Roundtable, a lobbying group for American business.²⁹ This statement argues that the interests of shareholders should no longer prevail over the interests of other stakeholders such as customers, employees, suppliers and local communities.

International organisations

The OECD has updated its Corporate Governance Factbook³⁰ in 2019. This Factbook provides an overview of important corporate governance topics (such as management and supervision, remuneration, institutional investors, transactions with affiliated parties, appointments, and risk management) and the way in which different countries have elaborated these topics via legislation, regulation and codes.

The European Fund and Asset Management Association (EFAMA), which is the European organisation of asset managers, published its Stewardship Code on 1 June 2019.³¹ The earlier Code for External Governance adopted in 2011 has been converted into the Stewardship Code. The Stewardship Code sets out guidelines for stewardship activities, which include the monitoring of the listed companies in which the asset managers invest, conducting an ongoing dialogue with these companies and voting at the general meeting of shareholders.

28 Borsa Italiana, Codice di Autodisciplina, can be consulted at <https://www.borsaitaliana.it/comitato-corporate-governance/codice/codiceeng2018.en.pdf>.

29 Business Roundtable, Statement on the Purpose of a Corporation, can be consulted at <https://opportunity.businessroundtable.org/wp-content/uploads/2019/09/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures-1.pdf>.

30 OECD, OECD Corporate Governance Factbook - 2019, can be consulted at www.oecd.org.

31 EFAMA, EFAMA Stewardship Code, can be consulted at https://www.efama.org/Publications/Public/Corporate_Governance/EFAMA%20Stewardship%20Code.pdf.

APPENDIX 3

SAMPLE POPULATION

Company/organisation	Part of the compliance study	Participated in the survey	Index
Aalberts NV	✓	✓	AEX
Aegon NV	✓	✓	AEX
Akzo Nobel NV	✓	✓	AEX
Heineken NV	✓	✓	AEX
IMCD NV	✓	✓	AEX
Koninklijke Ahold Delhaize NV	✓	✓	AEX
ASR Nederland NV	✓	✓	AEX
Koninklijke DSM NV	✓	✓	AEX
ABN AMRO Group NV	✓	✓	AEX
ASML Holding NV	✓	✓	AEX
Koninklijke KPN NV	✓	✓	AEX
Koninklijke Vopak NV	✓	✓	AEX
NN Group NV	✓	✓	AEX
Koninklijke Philips NV	✓	✓	AEX
Adyen	✓	✓	AEX
ING Groep NV	✓	✓	AEX
Randstad Holding NV	✓	✓	AEX
Unilever NV	✓	✓	AEX
Wolters Kluwer NV	✓	✓	AEX
Altice NV	✓		AMX
AMG Advanced Metallurgical Group NV	✓	✓	AMX
BE Semiconductor Industries NV	✓	✓	AMX
Koninklijke Boskalis Westminster NV	✓	✓	AMX
Corbion NV	✓	✓	AMX
Eurocommercial Properties NV	✓	✓	AMX
Fugro NV	✓	✓	AMX
Flow Traders NV	✓	✓	AMX
Arcadis NV	✓	✓	AMX
ASM International NV	✓	✓	AMX
Post NL NV	✓	✓	AMX
Koninklijke BAM Groep NV	✓	✓	AMX
OCI NV	✓	✓	AMX

SBM Offshore NV	✓	✓	AMX
TKH Group NV	✓	✓	AMX
Basic-Fit NV	✓	✓	AMX
GrandVision NV	✓	✓	AMX
Intertrust NV	✓	✓	AMX
Signify	✓	✓	AMX
Takeaway.com NV	✓	✓	AMX
TomTom NV	✓	✓	AMX
Wereldhave NV	✓		AMX
Accell Group NV	✓	✓	AScX
Alfen NV	✓	✓	AScX
Brunel International NV	✓	✓	AScX
Binckbank NV	✓	✓	AScX
Esperite NV*			AScX
Heijmans NV	✓	✓	AScX
KAS BANK NV	✓	✓	AScX
Amsterdam Commodities NV	✓	✓	AScX
Van Lanschot Kempen NV	✓	✓	AScX
Kendrion NV	✓		AScX
Kiadis Pharma NV	✓	✓	AScX
NV Nederlandse Apparatenfabriek NEDAP	✓	✓	AScX
NIBC holding NV	✓	✓	AScX
NSI NV	✓		AScX
Pharming Group NV	✓		AScX
Sif Holding NV	✓	✓	AScX
Vastned Retail NV	✓	✓	AScX
ForFarmers NV	✓	✓	AScX
Koninklijke Wessanen NV	✓	✓	AScX
Lucas Bols NV	✓	✓	AScX
Ordina NV	✓	✓	AScX
Sligro Food Group NV	✓	✓	AScX
VolkerWessels NV	✓	✓	AScX
AFC Ajax NV	✓	✓	Local
Alumexx NV	✓	✓	Local
AND International Publishers NV	✓	✓	Local
Avantium NV	✓	✓	Local
Batenburg Techniek NV	✓		Local

Bever Holding NV	✓	✓	Local
Core Laboratories NV	✓		Local
Ctac NV	✓	✓	Local
Curetis NV	✓	✓	Local
Dutch Star Comp One NV	✓	✓	Local
Envipco NV	✓	✓	Local
Holland Colours NV	✓	✓	Local
Hydratec Industries NV	✓	✓	Local
ICT Group NV	✓	✓	Local
IEX Group NV	✓		Local
DPA Group NV	✓	✓	Local
Ease2pay NV	✓	✓	Local
Kardan NV	✓	✓	Local
Koninklijke Brill NV	✓	✓	Local
MKB NedSense NV	✓	✓	Local
Neways Electronics International NV	✓	✓	Local
Novisource NV	✓		Local
Oranjewoud NV*			Local
RoodMicrotec NV	✓		Local
Stern Groep NV	✓		Local
TIE Kinetix NV	✓	✓	Local
Value8 NV	✓	✓	Local
Beter Bed Holding NV	✓	✓	Local
DGB Group NV	✓	✓	Local
Koninklijke Delftsch Aardewerk Fabriek NV	✓	✓	Local
SnowWorld NV	✓	✓	Lokaal
De Volksbank	✓	✓	Unlisted
Koninklijke FrieslandCampina NV	✓	✓	Unlisted
Havenbedrijf Rotterdam NV	✓	✓	Unlisted
LyondellBasell Industries NV	✓	✓	Unlisted
NS NV	✓	✓	Unlisted
PWC NL	✓	✓	Unlisted
Rabobank	✓	✓	Unlisted
Royal Schiphol Group NV	✓	✓	Unlisted
Royal HaskoningDHV	✓	✓	Unlisted
Alliander NV	✓	✓	Unlisted

Source: SEO Economic Research

* Company did not publish an annual report on time (as on 1 July 2019) and therefore could not be included in the compliance study

