

Corporate Governance Code Monitoring Committee

PRESS RELEASE

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Main findings of the 2010 report

- Compliance with the Code by shareholders outside the circle of large institutional investors is limited
- Proxy advisory services have significant influence at general meetings of shareholders in the Netherlands
- The number of female supervisory board members is rising, but remains low (11%)
- Reporting on the functioning of supervisory board members could be improved
- Rules on the maximum term of office and severance pay of management board members are often not applied

Self-regulation works

THE HAGUE – The Corporate Governance Code Monitoring Committee stresses the importance of self-regulation as a basis for corporate governance in the Netherlands. This is written by Jos Streppel, the Committee’s chairman, in the foreword to the report presented today in The Hague to Minister of Finance Jan Kees de Jager and Minister of Public Safety and Justice Ivo Opstelten.

Compliance with the Code in 2009

Shareholders

The survey of compliance with provisions relating to shareholders shows that the Code is only of interest to and known by the large institutional investors. The Monitoring Committee has established that in a large number of cases the result of voting at the general meeting of shareholders is predetermined owing to the large number of proxies issued prior to the meeting. The voting instructions are to a large extent prepared by proxy advisory services. Nor is it often clear to shareholders whether their vote has actually been cast and, if so, whether – in the long chain stretching from the issue of the voting instructions to the actual exercise of the proxy – it has been cast in accordance with the voting instructions.

Composition of supervisory boards

The survey of diversity in the composition of supervisory boards shows that the number of female supervisory board members has risen slightly (to 11%), but that as a percentage of the total number of supervisory board members the increase remains low. The vacancies created by the retirement of supervisory board members have been used only partially to appoint women. Moreover, the rise has been largely confined to the AEX companies. If the 2009 results for gender diversity set the trend, a 30% benchmark for women members will be achieved in the future only by the AEX companies. Other findings are that the average age of supervisory board members has fallen and that the number of supervisory board members of foreign nationality has declined.

Evaluation of the functioning of supervisory board members

The Monitoring Committee sees scope for improvement in the reporting on how the evaluation of the functioning of the supervisory board has been carried out. Approximately 40% of supervisory board members are not reappointed after their first term of office. Although companies give many different reasons for this, it could be an indication that the evaluation and appraisal of supervisory board members is moving in the right direction. This will be studied by the Committee in the year ahead.

Management board

In the case of the best practice provisions relating to the management board, it is noteworthy that the wish to honour existing agreements and/or contracts is often given as a reason for not applying the provisions relating to the maximum term of office and maximum severance pay of management board members. This is an explanation that should shortly cease to apply. This point will therefore be closely studied by the Monitoring Committee next year in relation to appointments made since 1 January 2004, the date on which the Code came into force. The Committee also considers that, in general, the quality of the explanations given for non-application could be improved.

Legislation and self-regulation

The Code is based on self-regulation and has broad support. This is evident, for example, from the high rate of compliance in past years. Keeping the Code up to date and practicable is less of a problem than in the case of legislation as it can be amended more easily and quickly. However, this is possible only as long as the principles of the Code command broad support as generally accepted views on good corporate governance. It is precisely this broad support which is jeopardised if the legislator selects specific best practice provisions from the Code (such as the clawback clause) and converts them into law. Ultimately, this detracts from the willingness of the parties concerned to cooperate in complying with (and modifying) the Code. The Monitoring Committee would like to engage in discussion with the government and parliament about this development, particularly in the light of the underlying principle of the Code that corporate governance is about the *conduct* of parties involved in an undertaking (i.e. management board members, supervisory board members and shareholders). The particular merit of the Code lies in its influence on conduct – influence that can be exerted only if there is sufficient support among those required to comply with the Code. The Monitoring Committee wishes to ensure that corporate governance does not become a box-ticking exercise, in which strict adherence to the letter of the provisions becomes more important than acting in the spirit of the Code.

ASMI ruling

As a result of the ruling of the Supreme Court of 9 July 2010 in the ASMI case, supervisory board members are not obliged to have direct contact with the shareholders or to mediate in the event of a potential dispute between the management board and shareholders. The Monitoring Committee would observe that when carrying out their duties supervisory board members will have to decide on a case-to-case basis whether direct contact with the shareholders or mediation between shareholders and the management board is desirable.

Compliance meetings

In the autumn of 2010 the Monitoring Committee held extensive and fruitful consultations with management board members, supervisory board members, shareholders and auditors about compliance with the Code and keeping the Code up-to-date and practicable. The auditors were requested in this connection to assist companies to comply with the Code by raising the subject of their findings on compliance with the Code. The auditors have indicated that they are willing to play a role in this.

Look ahead

Topics that the Committee will examine in the year ahead (in addition to the evaluation of the functioning of supervisory board members, term of office and severance pay) are diversity in the composition of the supervisory board, shareholdership from an international perspective, the report of the supervisory board and the quality of the explanation given for non-application in general. The Committee will continue to hold compliance meetings with all parties concerned.

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The full report of the Corporate Governance Code Monitoring Committee is enclosed.