

**CORPORATE GOVERNANCE COMMITTEE
PRIVATE FOUNDATION**

**BELGIAN CORPORATE GOVERNANCE CODE
PUBLIC CONSULTATION**

Your contribution will be highly appreciated.

Please send your responses to the address below before November 30, 2007:

To the attention of the Corporate Governance Committee
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Introduction

The Corporate Governance Committee (hereafter referred to as the 'Committee') is seeking views from listed companies, directors, investors and other stakeholders on their experience with implementing the Belgian Corporate Governance Code (hereafter referred to as the 'Code'). Comments are requested before November 30, 2007.

Context

The current text of the Code was published on December 9, 2004¹. Since January 1, 2005 listed companies are requested to follow the Code's provisions and to publish a Corporate Governance Charter by January 1, 2006 in which their governance structure and policy are described.

Several studies made by the Belgian Governance Institute (BGI) and the Federation of Enterprises in Belgium (FEB-VBO)², as well as the Banking, Finance and Insurance Commission (CBFA)³ have demonstrated that the Code is recognized by Belgian listed companies as the code of reference: they undertake to comply with the provisions, or where applicable, explain why they deviate from it, taking into account their specific features.

Purpose

The main purpose of this public consultation is to determine to what extent the Code contributes to the development of corporate governance practices encouraging entrepreneurship and risk management.

Based on this consultation, as well as an analysis of the observed and expected developments of corporate governance, the Committee intends to draft:

- Possible changes (additions/deletions) to the current text of the Code; and,
- Explanations that can stimulate/simplify a more efficient implementation of the Code's provisions.

Method

Comments are welcome on any aspect of the Code, but the Committee would particularly welcome views and suggestions on the following issues:

- the effectiveness of the Code
- the structure and scope of the Code
- the "comply or explain" approach
- the disclosures on the implementation of the Code

¹ The current text of the Code can be found at

http://www.corporategovernancecommittee.be/en/corporate_governance_code/final_code/default.aspx.

² BGI-VBO/FEB, *Naleving van de Belgische Corporate Governance Code: een stand van zaken*, april 2006, 28 pp./BGI-FEB/VBO, *Respect du Code belge de gouvernance d'entreprise: un état de la question*, avril 2006, 28pp. This report can be found at <http://www.corporategovernancecommittee.be/en/home/>.

³ CBFA, *Vergelijkende studie van de informatie inzake "corporate governance" die door de genoteerde vennootschappen wordt gepubliceerd in het "Corporate Governance Charter"*, December 2006, 28pp./CBFA, *Etude comparative sur les informations en matière de "gouvernance d'entreprise" publiés par les entreprises cotées dans la "Charte de Gouvernance d'Entreprise"*, décembre 2006, 28 pp.

For each of these issues, specific questions are raised. In order to have a clear understanding, all questions contain a detailed explanation. Respondents are invited to reflect on the questions raised, but are free to comment on any other question or matter they would consider important.

ISSUE 1: EFFECTIVENESS OF THE CODE ⁴

1.1 Does the Code support BETTER BOARD PERFORMANCE and LONG TERM VALUE CREATION? ⁵

When reflecting upon this question please consider the following topics: composition of the board, board diversity, board tasks, board committees, organization of the board, board evaluation and the development of charters.

Comments:

1/ As a preliminary comment : this question raises the further question of the definition of 'better board performance' . This is not easy to assess but at least it should mean that through the adoption of adequate governance principles a board increases its effectiveness and efficiency. Good board performance is in itself no guarantee for long-term value creation. Academic studies are not conclusive in this respect. On the other hand, the negative correlation is well-known : bad governance (e.g. lack of internal controls, lack of independency, concentration of power...) can lead to value destruction or even fraudulent behavior).

2/ Good governance depends on finding the right balance between entrepreneurship and control. We are of the opinion that through its principles, provisions and guidelines the Code creates a framework wherein Boards can indeed optimally find the balance between these 2 elements. By creating this framework therefore, the Code (indirectly) supports better board performance.

3/ Fortis considers that the elaborate descriptions of the role, responsibilities and tasks of the board and its committees in the Code contributed to a clear and shared understanding of what is expected of Board members. The shared understanding of roles and responsibilities is further enhanced by the requirement to draft a governance statement. In addition the Board evaluation invites the Board/Board members to regularly question their own functioning and introduce improvements. All these measures taken together in our view indeed enhance the effectiveness and the efficiency of boards.

⁴ *Explanation of issue 1: Cf Code, Preamble, clause 1 and 2*

The Code's main objective is to support long-term value creation by means of promoting good governance practices which can stand the test with international standards.

⁵ *A vital role in corporate governance is attributed to the board of directors. A company should benefit from an active and effective board. In particular, the extent to which the board is able to realize its objectives and executes its tasks successfully should ultimately create value.*

Furthermore, corporate governance should provide incentives for the board and management to pursue objectives that are in the interest of the company, its shareholders and other stakeholders. This may not only be reflected in increased short term financial results but should also entail sustainable long-term wealth creation.

1.2 Please indicate on the scale below your overall view on the effectiveness of the Code:

Ineffective Very effective

1	2	3	4	5	6	7	8	9	10
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2.1 To what extent do you feel that the principles, provisions and guidelines are sufficiently clear? ⁷

Comments:

1/ The subdivision into 9 principles (pillars of corporate governance) and their respective provisions and guidelines is a well known approach in Corporate Governance Codes. It makes a distinction between highlevel principles and more concrete provisions to comply with, while the guidelines provide further guidance on how to implement or interpret the provisions in the Code. This system is widely used, guarantees adequate flexibility (no box ticking- departure from the code still allowed subject to proper explanation), while simultaneously exerting sufficient pressure to move in the right direction. This approach is highly appreciated.

2/ Principles and most of the provisions are sufficiently clear to opine on compliance or not. The contents of the guidelines is more vague and of differing quality, but this does not hinder correct application of the Code. The same goes for some of the provisions.

E.g. 4.13. 'Special attention should be given to the evaluation of the chairman of the board and the chairmen of the committees'. It is difficult to see what this 'guideline' contributes.

E.g. 7.4. 'Under Belgian law, any director's mandate may be terminated 'ad nutum' without any form of compensation. this seems to address (exclusively?) an international audience which is not aware of Belgian law, but it does not contain

⁶ *Explanation of issue 2: Cf Code, Preamble clause 4 and 8*

Structure: A key feature of the Code is a division between 9 principles and their respective provisions and guidelines. The 9 principles reflect the pillars on which good corporate governance should rest while the provisions and guidelines provide more detailed description how to interpret and implement the principles.

Scope: The Code encompasses (detailed) provisions on highly relevant topics regarding the three main actors in the corporate governance tripod: board of directors, management and shareholders. These provisions are directive and are supposed to be mainly complementary to legal dispositions.

⁷ *Provisions (some of which are further substantiated in the Code's Appendices) are recommendations describing how to apply the principles. Companies are expected to comply with these provisions or explain why, taking into account their specific situation, they do not comply.*

The provisions are supplemented with guidelines, which provide guidance as to how the company should implement or interpret the provisions laid down in the Code. Most guidelines are qualitative and do not lend themselves to assessment in terms of compliance. The obligation to comply or explain does not therefore apply to those guidelines.

Because of their detailed and practical description, provisions and guidelines should guide companies on how to implement the Code taking into account their specificities and on how to adhere to the Code's governance philosophy. To obtain these objectives, provisions and guidelines should be clearly formulated, sufficiently substantiated and regularly updated.

'guidance' as such. To the contrary, as it is a matter of law, no 'comply or explain' is possible .

3/ Sometimes the choice between a Provision and a Guideline seem to be a bit arbitrary.

e.g. why is Provision 4.12. a provision and not a guideline ?

e.g. why is the Guideline following 4.14 not a provision ?

2.2 To what extent does the Code reach the aim to be complementary to the relevant legal dispositions? ⁸

When reflecting upon this question please consider any possible overlap or conflict between the Code and the national or international legal provisions.

Comments:

A choice need to be made : is it opportune to repeat (specific) legislative requirements, or are the legal requirements the starting point, which do not need to be mentioned and for which by definition no comply or explain is possible ? We prefer the second option, whereby the Code should elaborate governance principles based on the existing legal framework, and could also import relevant recommendations (eg. Commission Recommendation on the role of non-executive directors of 15/2/2005) and best practices into the Belgian governance practice. This entails that all repetition of legal requirements should be removed. By doing so the Code can really become a complementary guide for corporate governance which builds (further) on the existing legal rules.

Application of this principle would have a few consequences for the text :

1/ The guideline under 7.4. should be removed.

2/ Principle 8 should be reconsidered based on the (now final) Directive on Shareholders' Rights. It is of course a handicap that this Directive has not yet been implemented into Belgian law (should be done by 3/8/2009).

- Principle 8.1. : first sentence is redundant (cf. art. 4 Directive). The second sentence can be a principle in itself. One can doubt whether the Guideline following this principle is relevant.

- Principle 8.2. : should be brought in line with art. 5 of the Directive (see 5.4.)

- Principle 8.4. & 8.5. : should be reconsidered based on the royal decree detailing the requirements of the law of 5 May 2007 (inter alia art. 14-15)

⁸ *Legislation and regulations set a standard reference framework for companies. For some governance matters, legal provisions are rather limited and/or formulated in a general way. The (detailed) provisions of the Code serve as a complement and provide a practical guidance for the implementation of good governance.*

- 8.7. & 8.8.: are redundant (and incomplete) as the disclosure of information relevant for the shareholders' meeting will mandatory have to be made public through the internet.

- 8.9. : shall probably also become redundant depending on the implementation in Belgian company law of art. 6.2. of the Directive.

3/ Principle 9 should be brought in line with Directive 2006/46/EC modifying the 4th and 7th Directive. This Directive should be transposed in Belgian law by 5/9/2008.

4/The Commission could envisage re-evaluating whether it is useful to maintain 2 sets of criteria of independence : one for the Code and one for the purpose of art. 524 Code on Companies. Furthermore, one could consider to supplement the following text on the profile of an independent director : "The independent director undertakes (a) to maintain in all circumstances his independence of analysis, decision and action, (b) not to seek or accept any unreasonable advantages that could be considered as compromising his independence, and (c) to clearly express his opposition in the event that he finds that a decision of the (supervisory) board may harm the company. When the (supervisory) board has made decisions about which an independent nonexecutive or supervisory director has serious reservations, he should draw all the appropriate consequences from this. If he were to resign, he should explain his reasons in a letter to the board or the audit committee, and, where appropriate, to any relevant body external to the company". (This text is taken from the EC Commission Recommendation of 15/2/2005).

2 minor modifications :

5/ 2/ Appendix A - 2.3./1. : the notion "executive or managing director" should be replaced by "executive director"(2 times : first and seventh bullet).

6/ Appendix F 9.1./1. : "related" should be replaced by "affiliated".

2.3 To what extent do you consider the Code to be complete? ⁹

a. Topics not sufficiently treated?

1/ Principle 3.7. : the Directive 2003/6 has in the meantime been implemented into Belgian law. We would propose to integrate Appendix B fully into the main body of the Code.

2/ As clarifying the roles and responsibilities of the key players is at the heart of any governance code, we consider that the question 'who is responsible for the governance of the governance' should also be dealt with. In this respect, it seems useful to recommend that the Board is to clearly attribute the responsibility for the governance tasks/responsibilities with one or more board member(s). In the same context, to the extent applicable, the role of the Company Secretary in assisting the responsible Board member should ideally be brought in line with best practice. (e.g; UK combined code : under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required.)

3/ The Commission might consider to devote more explicit attention to the guidance on internal control/internal control statement, taking into account on the one hand international developments in this area and on the other hand the specific Belgian context.

b. Topics that are missing?

1/ Over the last couple of years, quite some legislative emphasis has been given to the information the company should give towards the shareholders and regulators (cf. Directive on Shareholders' Rights ; Transparency legislation ; Directive modifying the 4th and 7th directive ;). This seems to indicate that overtime the 'duty to inform' has become an important part of the governance of a company.

The Code, insofar as this information disclosure is concerned, indicates in its two final Principles on the one hand that specific disclosure should be made to the shareholders, and on the other hand that the General Meetings of Shareholders should be used to communicate with shareholders. Thus, the Code clearly values the importance of information disclosure. However, when describing the role of the Board (Principle 1) or the role of the Executive Management (principle 6), no (specific) mention is made of this 'the duty to inform'.

In view of the increasing importance of the disclosure to be done by a listed company it would be useful to discuss whether this should not be listed as a specific obligation for the Executive Management and hence also a point of attention for the oversight by the Board.

⁹ *In line with international practices, the Code covers a broad set of governance topics which are considered to be of utmost importance. Nevertheless, some topics might need further clarification or have been overlooked.*

2/ It is vital for any organisation that sufficient controls are in place to make sure that it functions as an 'open system'. The Belgian code does not seem to put forward any specific guidance that could contribute to ensuring that the board gets the outside-in view? One could think of guidance on permanent dialogue with shareholders or on attributing the responsibility for communicating the views of shareholders to the Board as a whole with one specific Board member (cfr. UK Combined Code) as is the case under the UK Combined Code.

3/ Finally, a topic which is not present yet and which might warrant further attention, is the guidance re. the attention the Board should be paying to stakeholder interests, rather than shareholder interests only.

c. Topics that need additional provisions or guidelines?

1/ as regards disclosures on executive remuneration, additional guidance would be welcome. e.g. on what is meant by 'indirect benefits' (where does one draw the line, e.g. travel expenses ?)

2/ the speed of technological evolution has led to video and teleconferencing becoming commonplace in boardrooms also, whereas the text of the Code nowhere hints at this new reality. We consider it useful to make explicit that 'meetings' of the board are not necessarily 'physical' meetings, but could - in exceptional circumstances - take the form of video or teleconference meetings, the ultimate goal being to allow each and every board member to contribute as much as possible to the meeting.

3/ The provisions on the Audit Committee should be brought in line with recent (legislative) developments.

2.4 Does the Code give sufficient attention to the role of the shareholder and the function(ing) of the shareholders' meeting? ¹⁰

When reflecting upon this question please pay attention to the role of the shareholder as well as the role of the shareholders' meeting and whether they are sufficiently documented.

Comments:

1/ As the Code describes principles, provisions and guidelines to be applied by the company, it is impossible to impose obligations on the shareholder. (cf. wording of 8.12 and 8.13 ; Of course by law the shareholder will have certain

¹⁰ Cf Code, Principle 8

Shareholder structures are one of the most discriminating and determining factors in corporate governance. Belgium, as some other European countries, is characterised by concentrated ownership. Therefore, special attention in the Code is given to a company's relationship with his shareholders.

obligations, e.g. obligations to disclose the size of its participation when exceeding a certain threshold).

2/ In general, considering the above, the Code gives sufficient attention to the role of the shareholder. Insofar as the (convening of and) functioning of the GSM is concerned, it is clear that the Code needs to be updated taking into account the Directive on Shareholders' Rights (cf. supra). and the functioning of the GSM.

2.5 Please indicate on the scale below your overall view on the structure and the scope of the Code:

Incomplete										Very complete
	1	2	3	4	5	6	7	8	9	10
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3.1 Does the 'comply or explain' option offer sufficient flexibility for the corporate governance of listed companies? ¹²

Comments:

1/ Yes, due to the 'comply or explain' system the Code has a high degree of built-in flexibility, enabling it to be adapted to each company's varying size, activities and culture. The 'comply or explain' system allows to depart from the provisions when their specificities so justify, subject to providing adequate explanation.

3.2 What could or should be added to the Code's recommendations to better mitigate the risk of box-ticking? ¹³

Comments:

1/ In the preamble to the Code, as well as the communication around the Code, it would be useful to repeat that good governance starts with a true and healthy 'governance culture' that should be embedded in the company. The tone of such culture is set at the top.

2/ The UK combined code offers an interesting example of a disclosure statement in two parts in relation to the code. The first part is in fact a free format part in which the company has a free hand to explain its governance policies in the light of the principles, including any special circumstances applying to the company. While the second part is closer to the different (specific) requirements of the UK Combined Code. In Belgium, the 'Governance charter' required by the Code could be more clearly positioned as serving the same purpose as the 'first part' referred to above.

¹¹ *Explanation of issue 3: Cf Code, Preamble clause 4*

The Committee has opted for a flexible approach based on a 'comply or explain' system. This implies that companies can either comply with a Code's provision or deviate from it but explain why they do not follow the specific provision.

¹² *The 'comply or explain' system should allow the taking into account of companies' specificities, such as size, shareholding structure, activities, exposure to risks and management structure. The final objective is to tailor governance structures and processes to the specific needs of companies. In this respect, a strict and rigid application of a detailed set of rules would violate this objective.*

¹³ *The risk of the 'comply or explain' system is that companies and investors give priority to formal compliance with the provisions over a substantial adherence or assessment of the governance principles laid down in the Code. This phenomenon is referred to as 'box ticking'.*

3.3 Is the compliance with and the deviation from the Code sufficiently monitored?¹⁴

When reflecting upon this question please consider the monitoring role of the shareholders and/or the role of the Corporate Governance Committee or other monitoring systems.

Comments:

The Code is based on self-regulation : the disclosure on compliance or justification is (at present) purely voluntary, the Code has been created by the private sector , and each (listed) company wanting to apply the Code will do so through a 'comply or explain' disclosure.

Monitoring should primarily be done through the market (and shareholders), with also a monitoring role by the CBFA. We fully support this approach. Indeed, as shareholders and the market are the first concerned by corporate governance requirements, and in view of the sometimes qualitative nature of corporate governance requirements, we feel that monitoring through sanctions (with for example penalties and remedies) would not be appropriate. Furthermore, it should be mentioned in this respect that in advance of and during the (E)GSM companies receive a lot of questions on corporate governance issues from both shareholders as well as other stakeholders. In addition, governance is regularly scrutinized in view of research or rating reports that are published internationally and that target a shareholder audience(such as testaankoop in Belgium or Rematch on behalf of the Dutch CGC in the Netherlands). We therefore consider that the market mechanism works as these signals provide adequate incentive to carefully consider governance disclosures and review/update them from time to time.

It should be noted also that, once the Directive 2006/46 (14 June 2006) will be transposed into Belgian law (by September 2008), each listed company will mandatorily have to indicate what Corporate Governance Code it wants to apply. A Belgian listed company choosing the Belgian CG Code will have the obligation to disclose based on a 'comply or explain' disclosure. As such the CG disclosure for the companies that opt for the Belgian CG as reference code receives a legal basis that should give further credibility to the CG Code.

3.4 Please indicate on the scale below your overall view on the 'comply or explain' approach:

Ineffective										Very effective
	1	2	3	4	5	6	7	8	9	10
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

¹⁴ The 'comply or explain' system offers great flexibility to companies but entails monitoring by external parties. Different parties can be authorized to monitor the information yielded by the "comply or explain" system.

4.1 To what extent is the relationship between the corporate governance charter and corporate governance chapter (annual report) adequate?

Comments:

1/ The Belgian Code is to our knowledge the only one to recommend this specific type of double disclosure (along the lines : structural vs factual information). We feel it is superior as it is easy to understand for shareholders and other stakeholders (they have all structural governance information in a single, very accessible document which is updated as needed) and easy to manage for the company itself.

4.2 Is the cost of complying with the disclosure recommendations proportionate to the benefits of such disclosure? ¹⁶

Comments:

It is difficult to estimate the benefits of compliance (see also our answer with regard to question 1.1.). The effort to describe a company's governance ensures special attention to this subject within the company itself and invariably brings to light some points of improvement, which we believe will bring about virtuous change in the company, in terms of enhanced efficiency and focus. Also the proper demarcation between the role of the different corporate bodies within the company, and the respective rights and obligations increases the accountability of each of the corporate bodies and the individuals involved. All of the above has undeniable impact on a company's bottom-line. Simultaneously, the increased disclosures increase the transparency towards stakeholders (consumers, regulators,..) and shareholders and therefore their trust, with a positive impact on market appreciation of the company's business, c.q. the price of its stock. These benefits are hard to measure.

We consider moreover that the benefits are permanent and growing over time and therefore certainly outweigh the direct costs of compliance.

¹⁵ *Explanation of issue 4: Cf Code, Preamble clause 5 and Principle 9 and Appendix F*

Disclosure, leading to transparency, is an essential ingredient of the Code. Disclosure is crucial to allow outside monitoring by different market parties. The information disclosed should be relevant to shareholders and other stakeholders. Hence the Codes' provisions aim at putting in place a high level of transparency concerning companies' corporate governance.

¹⁶ *Transparency is obtained through disclosure in two different documents; the Corporate Governance Charter, posted on a company's website, and the Corporate Governance Chapter in the annual report. Developing these documents as well as the regularly update imply a cost. However, companies should benefit from enhanced transparency by attracting capital at lower cost and by building sustainable relationships with their stakeholders.*

Clearly however, there is also a 'hidden' cost in relation to the Code. As the Code describes standards of what good corporate governance is, these standards would serve as yardstick for the (potential) liability of a director when assessing whether or not a director has exercised reasonable care in managing the company (duty of care). As such, the corporate governance provisions can serve as a benchmark when a court has to judge on a liability claim. This might - in the extreme - contribute to an undue emphasis on liability risks in the board.

4.3 Please indicate on the scale below your overall view on the structure and content of the disclosures required by the Code:

Inadequate									Very adequate	
1	2	3	4	5	6	7	8	9	10	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ADDITIONAL COMMENTS AND SUGGESTIONS

5.1 Do you have any other comment or suggestion on the Code you would like to make to the Committee?

Comments:

1/ Considering the convergence of themes and principles of the codes of governance, hasn't the time come to reach out towards the corporate governance commissions of other countries and create an overview, for each of the main topics, of where the codes converge and where they diverge ? such initiative would greatly enhance the perception of solid governance of European companies and would create better insight towards the analysts communities.

Information in relation to the identity of the respondent:

NAME:	Loos	INGRID
PROFILE/FUNCTION: (CEO, Director, investor...)	Company Secretary	
ORGANISATION:	Fortis	
OTHER INFORMATION:	The Fortis response includes the comments and reflects the views of an internal working group.	

“Unless otherwise stated, responses will be regarded as being on the public record. Respondents should indicate specifically whether their responses should be treated as confidential (standard disclaimers in responses received by e-mail will be disregarded for this purpose)”

Thank you for your cooperation!