

Monitoring committee issues final report looking ahead to new Corporate Governance Code

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The Dutch Monitoring Committee Corporate Governance Code, chaired by Jaap van Manen, has concluded its four-year term by publishing its fourth and final report. In this final document, the committee reviews its activities and discusses current corporate governance issues which will require closer attention in the future. A particular highlight was the publication of the new Dutch Corporate Governance Code in 2016, replacing the 2008 Code. As listed companies need to report on compliance with the new 2016 Code from 1 January 2018, the committee's final report contains the outcome of a survey among listed companies preparing for compliance with the new Code. As for current corporate governance issues, the committee recommends in the report that particular attention must be paid to the role of the shareholder. As a guiding governance principle, the committee emphasises the importance of dialogue between the shareholder and the company.

The [final report](#) also touches on compliance by Dutch listed companies with the 2008 Code in the 2016 financial year. As follows from the [monitoring study](#) (link in Dutch only), the compliance rate is high; nearly 99%, slightly higher than in the 2015 financial year, which had an average compliance rate of 97%.

Anticipating the new 2016 Code

In their annual reporting for the 2017 financial year, listed companies need to comply with the new [2016 Code](#). In the monitoring report, a survey of listed companies anticipating the new Code was conducted. Companies indicated that, with the exception of diversity, they are experiencing little to no difficulty in adapting to the new elements of the Code. With regard to the theme of diversity, roughly two-thirds of the companies use diversity targets for management board members, in accordance with the 2016 Code. One-quarter of the companies (all listed on the AEX or AMX), which indicated that they do not currently use diversity targets, indicated that they plan to set such targets in 2017.

One of the questions in the survey relates to the executive committee. Of the 68 companies surveyed, 24 state they have an executive committee. The Van Manen Committee observes that in companies with an executive committee, the distance between the supervisory board and the management layer can be too great to allow effective supervision of the actual management of the company. The Van Manen Committee concludes from the survey that although companies take account of the need to arrange supervision of the executive committee, the extent to which that supervision is ensured is unclear.

The committee's final document also addresses the issue of pay ratios in the context of the new 2016 Code. Companies have to take account of pay ratios in the company in their remuneration report and account for them in the management report. The committee acknowledges that identifying ratios is not a simple exercise; as such, companies have the scope to apply a variety of criteria. The committee mentions that "not so much the publication of a particular ratio, but causing companies to reflect on and be aware of pay ratios" is important. The committee considers it desirable for companies to be aware of the consequences of their remuneration policy for the overall pay structure. Shareholders must be able to understand which elements played a part in the choices made, and why those choices are relevant to the company.

Shareholders

The 2016 Code has not materially changed the provisions in respect of the general meeting of shareholders. To get a better view of the role shareholders could play with regard to a company's long-term value creation, the Van Manen Committee commissioned a [study](#) into the long-term engagement of shareholders of Dutch listed companies. The study reveals a number of barriers to the pursuit of long-term value creation, such as the length of the investment chain and the monthly benchmarking. Furthermore, it concludes there is a trade-off between ownership concentration on the one hand, and takeover defences and liquidity on the other hand; companies with block holders are less protected by takeover defences and have lower liquidity. The committee noted that the study is a survey among Dutch investors, although more than 80% of the investors in Dutch listed companies are foreign-based. Hedge funds were also not included in the survey.

The committee stresses the importance of having shareholders who are actively engaged with the company in which they are investing. This could be achieved through active participation in the general meeting of shareholders, and by entering into dialogue with the company. This will require an active approach from the shareholder and an open attitude from the company.

Hostile takeovers and anti-takeover measures

The Van Manen Committee welcomes the debate on options available to listed companies in the Netherlands during hostile takeovers or undesirable actions of shareholders. The committee finds it important to analyse whether the current anti-takeover measures under the articles of association are effective before considering additional ones. For takeover situations, it emphasises that dialogue between parties plays an important part.

With this final document, the Van Manen Committee's term has come to an end. In its report, the committee provides guidance for listed companies on different corporate governance issues and on preparing for the new 2016 Code. It also includes considerations for the new monitoring committee, which is expected to be installed in the near future.