



GUBERNA

INSTITUUT VOOR BESTUURDERS

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THE CHANGING LANDSCAPE OF CORPORATE GOVERNANCE IN BELGIUM

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Belgian Corporate Governance Codes (1)

▪ Listed companies:

- **Until 2004:** **different** initiatives on the Belgian market (3 main actors in this field: the Federation of Enterprises in Belgium, the CBFA and the Brussels Stock Exchange).
- **2004:** set up of the **CG Committee** to draft a **single** code on CG for Belgian listed companies.
- First “Belgian Corporate Governance Code” was published in **December 2004**. This code was –and still is- based on the ‘**comply or explain**’ principle.
- **2009:** revision of the Belgian CG Code, updated in line with practice, legislation and international standards

Belgian Corporate Governance Codes (2)

- **Code Buysse → Unlisted companies**
 - Initiative of two main Associations of Independent Entrepreneurs (UNIZO & UCM)
 - Published in 2005.
 - “Code Buysse” was internationally the first code for non-listed companies; several countries followed this initiative
 - Code was revised in 2009
 - 2010: **ecoDa** published a **Corporate Governance Guidance and Principles for Unlisted Companies**

- **Recommendations for good governance in Social Profit Organisations: June 2010**

- **Public governance: recommendations for public sector**

Belgian CG Acts 2008 - 2011

- **Law on the Audit Committee (December 2008)**
 - Legal recognition of the Audit Committee
 - Strengthening definition of independent director

- **Law on the reinforcement of CG (April 2010)**
 - Great impact on the CG landscape
 - Royal Decree of June 2010

- **Law on quota (July 2011)**
 - Quota of 1/3 of women in board of directors
 - Transition period of 5 years

Belgian CG Act, April 2010 (LISTED Cies)

- **Scope:**
 - Strengthening governance and financial regulation
 - Implementation of EUR DIR 2006/46/EC

- **Consequences:**
 - Greatly changed the Code's position by interfering in the self-regulation process
 - Several issues became 'hard law' (especially remuneration issues)
 - Leaves companies with rather detailed regulation

- **Royal Decree of June 2010**
 - 'Comply or explain' entrenched into legislation
 - Belgian Corporate Governance Code 2009 = reference Code

Belgian CG Act, April 2010

- **CG Statement**
 - Reference Code
 - Internal control and risk management systems
 - Composition & operation of board (committees)

- **Remuneration Report**
 - Transparency requirements
 - Specific variable remuneration requirements
 - Voted at the AGM

- **Remuneration Committee**
 - Majority independent directors
 - Expertise remuneration policy

The EU Green Paper, more to come?

One formula for everyone?

- All regulation at EU-level should be accompanied by **in depth reflection** on the **goals** to be reached and on the expected **cost-benefit balance** of such new rules
- Firstly attention should be paid to the **better functioning and monitoring** of the **existing** rules and recommendations
- There should be a **critical and regular check** on relevance, effectiveness and compatibility thus **avoiding negative side effects**

GUBERNA's position vs. EU-Green paper

- EU should **abstain** from any governance **regulation** for **unlisted** companies but promote a voluntary approach
- There should be a more distinct attention for shareholder duties
- **Long-term stable shareholding** might be a solution but **countervailing mechanisms** should exist; the role of **independent directors** deserving special attention
- **Mandatory disclosure** on diversity and the promotion of a more balanced gender diversity are better solutions than mandatory rules in this respect
- GUBERNA supports the **promotion** of a **professional approach** as to appointment, induction programmes and continuous education for directors

Comply or explain?

- RiskMetrics Study 2009
 - Deficiencies in corporate governance practices have been highlighted as one of the causes of the late 2000 financial crisis.
 - Wide acceptance of comply or explain but deficiencies (quality of ‘explain’ and insufficient shareholder monitoring)
 - ‘Comply or explain’ regime should be strengthened
- A good explain might be far more relevant than a formal comply
- We should be promoting good explanations that offer the ‘best governance fit’

A glimpse of Belgian practice

- **Study of the FSMA (Financial Service and Market Authority)**
 - Examining CG Statements & new topics of the Code
 - Dec 2010 / Sept 2011

- **GUBERNA & VBO-FEB studies on Code compliance**
 - 2006 / 2008 / 2010
 - Publicly available information & governance practice ‘as such’

- **Study 2011: in search of ‘best fit’**
 - Qualitative variables through (confidential) interviews
 - Focus on ‘substance’ over ‘form’
 - Group I (BEL 20), later Group II (BEL MID, BEL SMALL)
 - Will give us total view on all listed companies
 - In search of ‘best fit’ for the companies

A glimpse of Belgian practice

- **BEL 20 (top 20 companies in Belgium)**

- **CG-Practice in numbers**
 - Size average 13 directors
 - Average 11 non-executive directors (independents included)
 - Average 5 independent directors
 - 10,2% female directors in the board
 - 1/3 is of foreign nationality
 - Board meets 9 times/year, committees 2-6 times/year
 - Term of mandate: 4 years
 - 55% CEO model

“Good corporate governance is about 'intellectual honesty' and not just sticking to rules and regulations.”

“It is clear that good corporate governance makes good sense”

Mervyn King (Chairman Kings' Report)