Carina Müller

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o.Univ.-Prof. Mag. Dr. Dr. h.c. Alfred Wagenhofer

Institut für Unternehmensrechnung und Controlling

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Carina Müller

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1 Introduction

Since various financial scandals, excessive management compensation and the world economic crisis, the topic “Corporate Governance” is widely discussed all over the world.[1] You can find more than 11.700 articles if you search for “corporate governance” at the Financial Times homepage and about 24.500.000 if you search for it in Google. “There is a huge interest in corporate governance these days”, says Ken Wild, global IFRS leader at Deloitte.[2]

It is a complex construct that defines the way how a company is directed and controlled. It therefore covers a lot of different areas and there exists a wide range of rules and recommendations on every topic. This Master Thesis focuses on intern corporate governance. It specializes on the issues board of directors and committees, executive remuneration, and internal control, because those topics attracted most attention in recent years. It describes the conditions in Austria and the Netherlands, and points out differences between these two countries.

Following questions shall be answered:

- How is corporate governance embedded in the Austrian and Dutch institutional framework? How is the enforcement and reporting on the rules?
- Have those two countries translated the Recommendations of the European Commission? Did the EU Recommendations improve comparability and transparency?
- Do companies apply to the rules, and in which extent?

Chapter 2 of the Thesis gives an overall overview of corporate governance. It lists some definitions, and describes the general idea and function. It explains the basic agency model that originates from the separation of ownership and control. Furthermore, it states alternative approaches to the classic financial approach.

Chapter 3 presents the developments in the field of corporate governance in the European area. It explains the beginning of the discussions on corporate governance in the EU, and the emergence of corporate governance codes in the different EU Member

[1] See Tirole (2005), p. 15.

[2] See Financial Times (2007), Introduction.

States. It illustrates the efforts of the European Commission and the European Parliament to improve the corporate governance framework by setting up an EU-wide Action Plan in 2003. This chapter provides information on the content and structure of codes, especially with respect to the comply-or-explain approach, and in the end, it explains the relationship between corporate governance and the financial crisis, and shows the current situation in Austria and the Netherlands.

Chapters 4 and 5 focus on the corporate governance systems in Austria and in the Netherlands. They give a general background on the legal situation in both countries, the emergence of corporate governance codes, bodies dealing with the topic of corporate governance (code drafters, update systems), application of codes, and their content and structure. Moreover, they deal with the issue complex listing situations. Then, they describe in detail the main issues of the codes: composition and functioning of boards and committees, remuneration of management board members, internal control, and statutory auditors. They also give an overview of general developments in the field of boards of directors, and remuneration of management board members.

Chapter 6 evaluates the company practice concerning corporate governance codes in Austria and in the Netherlands. This chapter is based on studies of La Porta, Lopez-de-Silanes, Shleifer, and Vishny (1998), Wójcik (2006), Heidrick & Struggles (2009), and the European Corporate Governance Institute ECGI (2009). In the end, it reports about criticism in both countries.

The last chapter summarizes the whole Master Thesis by citing the most important points, and gives answers to the questions stated above.

2 Conceptual Framework of Corporate Governance

2.1 Definition

There exists no generally accepted definition of corporate governance. This term can be defined in many ways:

According to the Cadbury Report of December 1992, corporate governance is a system to direct and control companies.[3]

Pursuant to the OECD Principles of Corporate Governance, corporate governance deals with the relationships between the management, the board, the shareholders and the stakeholders of a company. It provides a structure for the definition and achievement of their objectives.[4]

In "A survey of corporate governance" Shleifer and Vishny (1997) state that "corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment."[5] It shall offer ways to control managers and get them to return some of the profits to the financiers instead of stealing the supplied capital or investing it in bad projects.[6]

In "Corporate Governance, in: The New Palgrave Dictionary of Economics and the Law" Zingales (1998) defines it as "the complex set of constraints that shape the ex-post bargaining over the quasi-rents generated by a firm."[7] Corporate governance problems arise because of conflicts of interest whenever an outside investor wants to exercise control in another way than the manager of the firm.[8]

This Master Thesis follows the definition according to the OECD Principles of Corporate Governance.

[3] See Cadbury Committee (1992), p. 14.
[4] See OECD (2004), p. 11.
[5] See Shleifer/Vishny (1997), p. 737.
[6] See Shleifer/Vishny (1997), p. 737.
[7] See Zingales (1998), p. 4.
[8] See Zingales (1998), p. 6.

2.2 Classic Financial Approach

"The Modern Corporation and Private Property" from Berle and Means (1932)[9] documents the separation of ownership and control in the beginning of the 1930s in the United States and builds the starting point for the subsequent academic thinking on corporate governance.[10] Coase (1937), Fama and Jensen (1983), and Jensen and Meckling (1976) developed the contractual view of the firm which focuses on the separation of ownership and control and resulting agency problems.[11] The basic agency model comprises two persons: the owner of the company (principal) and the manager (agent). The owner of the company is risk neutral, has monetary goals, and is, because of a diversified portfolio, not highly dependent on the company returns. However, the manager is risk averse and highly dependent on the company´s success.[12]

The manager of a company and the financiers sign a contract to specify the use of the funds, and the division of the returns. These contracts are mostly incomplete because of unforeseeable future developments.[13] Thus, Grossman and Hart (1986) introduced the concept of residual control rights. These control rights are allocated among the financiers and the manager to offer the possibility to make ex-post decisions in unspecified developments.[14] Unfortunately this allocation is very complicated in practice. For instance, a free rider problem appears in most cases where funds from many investors are collected for financing. That is, the investors themselves are small and uninterested to learn about the companies they finance. Hence they are too poorly informed about exercising even the control rights that they have.[15] Downs (1957) describes these free rider problems in his book "An Economic Theory of Democracy".[16]

The problem here is management discretion because managers receive significant control rights over the allocation of investors´ funds. They can expropriate these funds for instance by taking the cash out, transfer pricing, selling the assets, or staying on the job even if they got incompetent or unqualified to run the firm.[17] Inter alia Zingales

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[9] See Berle/Means (1932).

[10] See Tirole (2005), p. 15.

[11] See Coase (1937); Fama/Jensen (1983a, b); Jensen/Meckling (1976).

[12] See Wagenhofer/Ewert (2007), p. 47f.

[13] See Shleifer/Vishny (1997), p. 741; Wagenhofer (2009a), p. 8.

[14] See Grossman/Hart (1986).

[15] See Shleifer/Vishny (1997), p. 741.

[16] See Downs (1957).

[17] See Shleifer/Vishny (1997), p. 742.

(1994) explains how managers expropriate investors´ funds by selling the assets, while Jensen and Ruback (1983) illustrate cases where incompetent or unqualified managers stay on their job.[18] Other examples of authors focusing on the topic of managers expropriating investors´ funds are Baumol (1959), Marris (1964), and Williamson (1964).[19]

One method to avoid conflicts of interest is granting a manager a highly contingent incentive contract, for instance share ownership, stock options, or a threat of dismissal if income is low. This way of lining up the interests of the manager and the investors is very common in practice.[20] According to Ross (1973), Stiglitz (1975), Mirrelees (1976), and Holmstrom (1979), the optimal incentive contract shall be determined by the importance of the manager´s decisions, his risk aversion, and his ex ante capacity to pay for the cash flow ownership.[21] Studies from Murphy (1985), Coughlan and Schmidt (1985), Benston (1985), Kaplan (1994), and Haubrich (1994) verify a positive relationship between managers´ remuneration and their performance.[22]

The common explanation for financing without governance is reputation-building. Inter alia Kreps (1990), Diamond (1989, 1991), and Gomes (1996) state that investors give their money to companies without getting any control rights in exchange because they believe that managers will repay them to establish a reputation as good risks. Managers need this reputation to convince future investors to raise funds for their company.[23] De Long, Shleifer, Summers and Waldmann (1989, 1990) support another theory, the theory of excessive investor optimism.[24]

Agency costs arise because of potential conflicts of interest and asymmetric distribution of information.[25] Mandatory governance rules are required by stock exchanges, legislatures, courts and supervisory authorities. This is necessary to manage the collective action problem that arises from the distribution among shareholders, and to represent the interests of all relevant constituencies.[26]

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[18] See Jensen/Ruback (1983); Zingales (1994).
[19] See Baumol (1959); Marris (1964); Williamson (1964).
[20] See Shleifer/Vishny (1997), p. 744.
[21] See Holmstrom (1979, 1982); Mirrlees (1976); Ross (1973); Stiglitz (1975).
[22] See Benston (1985); Coughlan/Schmidt (1985); Haubrich (1994); Kaplan (1994a, b); Murphy (1985).
[23] See Diamond (1989, 1991); Gomes (1996); Kreps (1990); Shleifer/Vishny (1997), p. 749.
[24] See De Long/Shleifer/Summers/Waldmann (1989, 1990).
[25] See Wagenhofer (2009a), p. 6.
[26] See Becht/Bolton/Roell (2005), p. 11.

2.3 Alternative Approaches

Pursuant to the Stewardship Approach, managers are seen as voluntarily good working in the interests of the company, motivated by issues like challenge and self-realization. Trust, loyalty, acceptance and honor play a more important role than financial incentives. This approach criticizes the negative view of the classic financial approach to managers. It argues that such behavioral assumptions provoke negative results more than ever, according to the rule of the self fulfilling prophecy.[27]

Nippa (2002) states that the current corporate governance system induces a waste of resources because some hidden charges or indirect costs of the corporate governance provisions are not taken into consideration but increases in value are overvalued. He emphasizes that corporate governance is not a guideline of unique provisions for the good of all. It describes the distribution of power between the different groups of interest that are oriented to their self-interest. He thinks that a self-regulation of the system can be achieved through a balance of power between the groups of interest. Moreover, Nippa criticizes the effort of reducing information asymmetries because competitive advantages arise from these asymmetries. The competitive advantages are important for innovation, economic progress and increased prosperity.[28]

Another opponent of the classic corporate governance system is Malik. In his opinion, corporate governance efforts do not only fail all of their targets but they themselves are the reason for failings because they show a wrong approach as best practice. He argues that the thematic orientation should focus on customer value and competitiveness instead of shareholder value and increase in value. He sees the problem of the current corporate governance in the fact that it is a consequence of acute reasons rather than the result of a systematic interpenetration of the factual issues. The provisions should prevent failures but that does not implicate that the right thing is done. Corporate governance should be orientated to the company itself and not to interest groups because today´s institutional ownership structure is characterized by an extremely high sell-through rate. Malik thinks that the supervisory board, that should be instructor, mentor and judge at the same time, is of central significance. It should prevent wrong decisions and affect the best possible use of capital and other resources.[29]

[27] See Nippa (2002), p. 15f.
[28] See Nippa (2002), p. 28-31.
[29] See Malik (2008), p. 9, 15-64.

3 Pan-European Developments in the Field of Corporate Governance

Different governance mechanisms exist among countries due to their traditions, cultures and structural differences, which result in a multiplicity of corporate governance guidelines.[30] However, countries have become integrated and interdependent through economic liberalization, de-regulation, privatization, global trade and capital flow, and cross-border mergers and takeovers. Therefore a governance system is needed that copes with the increasing diversity of competitors, customers, economic and legal environments.[31]

More and more large multinational corporations are adopting best practices of existing corporate governance systems to improve corporate efficiency, competitiveness and to attract long-term foreign capital. Effective corporate governance is important in promoting enterprise and ensuring accountability. It builds market confidence and community support, and enhances strategic focus.[32]

3.1 The Emergence of Corporate Governance Codes in the EU

In the 1990s European corporations´ governance has attracted much attention and called for reforms because of various agency problems. As a result, study groups, for instance the Cadbury and Greenbury Committees in the United Kingdom, the Vienot Committee in France and some institutional investors such as CaIPERS in the United States[33], started the development of best practice codes for director boards.[34]

The Cadbury Report on the Financial Aspects of Corporate Governance from 1992 is a milestone in European corporate governance history. It was released as response to a number of financial scandals in the United Kingdom. It has defined guidelines of best governance practices for listed companies, based on a "comply-or-explain" approach. According to this approach, companies shall refer to the principles of the Cadbury

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[30] See Koch (2005), p. 58; World Bank (1999), Foreword.

[31] See Chi-Kun Ho (2005), p. 212.

[32] See Chi-Kun Ho (2005), p. 212f; Lang (2010), p. 48; World Bank (1999), p. 2f.

[33] See AFG-ASFFI (1998); Cadbury Committee (1992); CalPERS (1997).

[34] See Tirole (2005), p. 15f.

Report, and either adopt them or explain any deviations. This approach was implemented on a purely voluntary basis to guarantee companies´ flexibility.[35]

In the late 1990s many corporate governance guidelines and codes have been published by supra-national agencies (e.g. the Commonwealth Guidelines 1999, the OECD Principles 1999, the World Bank Framework for Implementation 1999), Western European Member States (e.g. the French Vienot Commission´s Recommendations, the German Code 2000), and non-regulatory institutions (e.g. the European Shareholders Association´s Guidelines 2000, the International Corporate Governance Network´s Statement 1999).[36]

In the following years, the interest of the European Union and its Member States in Corporate Governance has increased because of the free movement of goods and capital, increasing acquisition operations, and the stronger competition resulting from globalization and privatization.[37] Moreover, various financial scandals like Vivendi Universal (2002), ABB (2002), Ahold (2003) and Parmalat (2003) raised discussions about reforms of standards for accounting and transparency.[38]

Corporate governance codes play a bigger role in Europe than in the rest of the world.[39] About forty codes relevant to the European Union have been adopted over the last decade, at national or international level.[40] The European Corporate Governance Institute provides a full list of international corporate governance guidelines on its website http://www.ecgi.org.

The following illustration presents at which time the Member States of the European Union adopted their codes:

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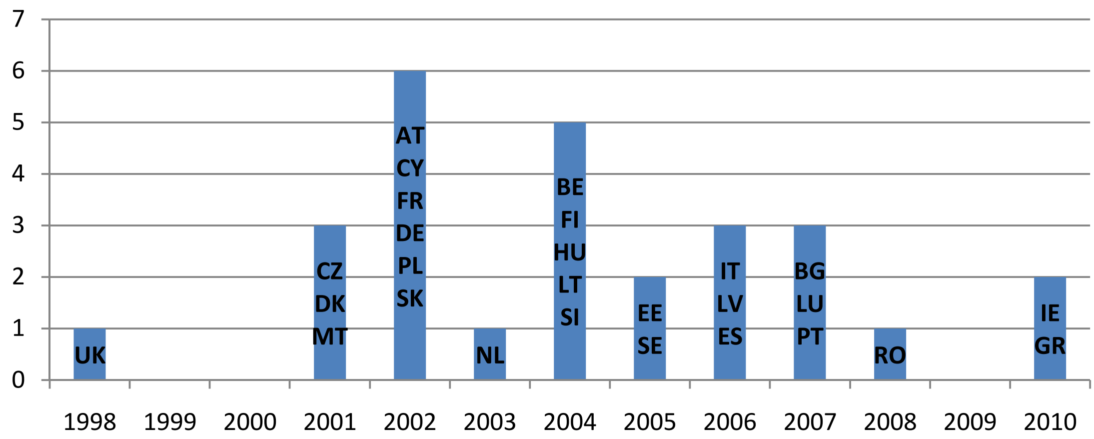
[35] See Cadbury Committee (1992), p. 10f, 13.
[36] See Chi-Kun Ho (2005), p. 212.
[37] See Wagenhofer (2009a), p. 24.
[38] See Rechenburg (2007), p. 27.
[39] See Becht/Bolton/Roell (2005), p. 69.
[40] See European Commission (2003), p. 10.



AT	**Austria**	**EE**	**Estonia**	**IT**	**Italy**	**PT**	**Portugal**
BE	**Belgium**	**ES**	**Spain**	**LT**	**Lithuania**	**RO**	**Romania**
BG	**Bulgaria**	**FI**	**Finland**	**LU**	**Luxembourg**	**SE**	**Sweden**
CY	**Cyprus**	**FR**	**France**	**LV**	**Latvia**	**SI**	**Slovenia**
CZ	**Czech Republic**	**GR**	**Greece**	**MT**	**Malta**	**SK**	**Slovak Republic**
DE	**Germany**	**HU**	**Hungary**	**NL**	**Netherlands**	**UK**	**United Kingdom**
DK	**Denmark**	**IE**	**Ireland**	**PL**	**Poland**		

Figure 1: Adoption of corporate governance codes
(See RiskMetrics Group (2009), p. 23)

3.2 EU-wide Action Plan 2003

In 2002 the High Level Group of Company Law Experts published a report on corporate governance and the modernization of company law[41] which has built the starting point to the current discussions on corporate governance in the EU. The financial scandals, increasing cross-border operations in the European Internal Market, the integration of European capital markets, the continuing development of new information and communication technologies, and the increasing number of Member States to the European Union have been reasons for setting up an EU-wide Action Plan.[42] It got clear that this modern, interconnected industrialized society requires a modernized company law and a dynamic corporate governance framework for an enhancement of the real economy. The European Commission has set up the Action Plan "Modernizing Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward" in May 2003. The following pages refer to this plan:[43]

The aim of the plan is to increase the global efficiency and competitiveness of EU Member States´ companies, and to strengthen shareholder rights as well as third parties protection. The first point is essential to generate employment and long term sustainable

[41] See High Level Group of Company Law Experts (2002).

[42] See IFC (2008), p. 3.

[43] See European Commission (2003), p. 3ff, 8f, 10, 12-17, 23.

growth. The second point is essential to regain the confidence of European investors after corporate governance scandals of the early 2000s.

The actions should be classified based on clear priorities in three phases (short term 2003-2005, medium term 2006-2008, and long term 2009 onwards), expert consultation should be part of the preparation of initiatives at EU level in the area of company law and corporate governance, an public consultation should be organized where suitable in the future, and an European Corporate Governance Forum should be convened once or twice a year with respect to corporate governance. Comments from interested parties on the Action Plan were invited till 31 August 2003.

The four main objectives of this plan are:

- the improvement of corporate governance disclosure,
- the strengthening of shareholders´ rights,
- the modernization of boards of directors, and
- the coordination of corporate governance efforts of the Member States.

3.2.1 The improvement of corporate governance disclosure

Pursuant to the Action-Plan, listed companies have to comprise a corporate governance statement in their annual report or in a separate report that is published together with the annual report.[44] The creation of this statement was regarded by the Commission as a short term priority, to rapidly afford better market pressures. It has to meet some requirements:

- It has to contain a reference to the code that the company is subject to and/or to the code the company voluntarily applies to, and/or information about the corporate governance practices under national law. The code texts and other corporate governance practices have to be publicly available.
- Information on systems of internal control and risk management in relation to the financial reporting process, measures of antitakeover bids, procedures and key powers of shareholder meetings, shareholder rights, and constitution and procedures of administrative, management and supervisory bodies and committees, shall be provided.
- Institutional investors shall disclose their investment policy and their policy of voting rights exercise in companies in which they invest, and the mode how they

[44] See IFC (2008), p. 4.

use these rights at their beneficial holders´ request. These steps should be taken in the medium term because amendments to some existing legal texts are required first.

3.2.2 The strengthening of shareholders´ rights

Some steps have to be taken to strengthen shareholders´ rights in listed companies.[45] In the short term the exercise of some shareholders´ rights across the EU shall be improved (the right to ask questions, to table resolutions, to vote in absentia, to participate in general meetings via electronic means). Therefore specific problems concerning cross-border voting and some other legal difficulties have to be solved, maybe through the development of a framework in a Directive. In the medium term shareholders of listed companies shall have the opportunity to access the relevant information in advance of General Meetings via electronic facilities. In the medium and long term comprehensive information on the various existing shareholders´ rights and the ways of their exercise have to be provided, and facilities shall be developed that are necessary for an effective exercise of these rights.

3.2.3 The modernization of boards of directors

The main duty of the board of directors is monitoring the management on behalf of shareholders. It is responsible for the definition and approval of major business decisions and corporate strategy.[46] Only the supervisory board as a whole has statutory decision-making authority and is collectively accountable for the decisions taken in its field of competence.[47] In the early 2000s supervisory boards have been criticized for being ineffective. Critics argue, for instance, that they are controlled by, rather than controlling, management, that they lack independence, and that their attention is insufficient.[48] Based on his interviews of executives, M. L. Mace (1971) found a lot of complaints about the director boards´ behavior in “Directors: Myth and Reality”.[49]

The Action Plan states that board of directors has to be modernized in the short term to rebuild confidence[50]:

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[45] See IFC (2008), p. 4.
[46] See Tirole (2005), p. 29f.
[47] See European Commission (2005), p. 52.
[48] See Becht/Bolton/Roell (2005), p. 71; Tirole (2005), p. 30.
[49] See Mace (1971).
[50] See IFC (2008), p. 4.

- Non-executive or supervisory directors who are in the majority independent shall make decisions in listed companies in areas with conflicts of interests between executive directors (i.e. directors´ remuneration, supervision of the audit of company´s accounts). Executive directors are members of the administrative body of a company who are engaged in the daily management of the company. A group consisting mainly of executive directors, but of non-executive directors as well shall identify candidates to fill board vacancies. Moreover specific safeguards have to be adopted to deal with conflicts of interest.[51]
- For committees some minimum standards concerning their creation, composition and role have to be defined, in the first instance for the audit committee.
- At least listed companies shall have the option between a one-tier board structure and a two-tier board structure. The first means a structure with executive and non-executive directors, the second with managing directors and supervisory directors.
- In the area of directors´ remuneration four key items shall be fulfilled for an appropriate regulatory regime: disclosure of remuneration policy and of details regarding remuneration of individual directors in the annual accounts, prior agreement by the shareholder meeting of share and share option schemes in which directors participate, and appropriate recognition in the annual accounts of the costs of such schemes.
- Recommendations to enhance directors´ responsibilities are: confirming the collective responsibility of all board members for financial statements as a matter of EU law, introducing a special investigation right (holding a certain percentage of the share capital shall offer shareholders the right to ask a court or administrative authority to permit a special investigation into the affairs of the company), development of a wrongful trading rule (directors shall be personally accountable for the consequences of the company´s failure, if it is foreseeable that the company cannot continue to pay its debts and they do not either rescue the company and guarantee payment or put it into liquidation), and imposition of directors´ disqualification across the EU as a sanction for misleading statements and other forms of misconduct by directors.

[51] See European Commission (2005), p. 54.

3.2.4 The coordination of corporate governance efforts of the Member States

A comply-or-explain approach shall be introduced on a voluntary basis with a strong involvement of market participants. The European Corporate Governance Forum, consisting of representatives from Member States, European regulators, issuers and investors, and other market participants and academics, has to encourage the coordination and convergence of national codes. This Forum shall meet once or twice a year and is chaired by the Commission.

3.3 Codes Content and Structure

The European Commission decided that no uniform corporate governance code shall be adopted, but that the enforcement mechanism shall be harmonized. Therefore the comply-or-explain approach shall apply.[52] That is, companies have the obligation to explain any deviation from corporate governance codes. With its adoption companies are able to act flexible with respect to their sector- and company-specific requirements, and markets are able to assess the explanations provided.[53]

Some topics, like procedural shareholder rights, general board organization, transparency and auditing, are mostly regulated by law. Other topics, like remuneration and nomination committees, internal control and risk management, are mostly treated in codes and vary between Member States. The distribution between different legal instruments depends on the different legal tradition, ownership structures and other factors in the Member States.[54]

The level of detail of corporate governance codes in the individual Member States is quite diverse. Most codes have guidelines depending on the level of obligation: general principles (commonly mandatory for companies), recommendations (have to be applied by way of comply-or-explain) and suggestions (specify how to apply recommendations, or give examples for best practices).[55]

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[52] See European Commission (2003), p. 11; IFC (2008), p. 5.
[53] See European Commission (2005), p. 51, 52; European Commission (2006), p. 1.
[54] See RiskMetrics Group (2009), p. 11.
[55] See Rechenburg (2007), p. 28.

3.4 Corporate Governance and the Financial Crisis

Corporate Governance failings have not been the only but a significant cause of the recent financial crisis.[56] Boards have exercised neither an adequate internal control and risk management nor an adequate remuneration policy, and shareholders have failed to hold boards to account because of lack of information, lack of motivation, conflicts of interest, or because of lack of rights or incentives to act as responsible owners. Shareholders regulators have failed to respond to markets which were mispricing risk. Banks have operated with too little capital, excessive leverage and too little awareness to liquidity risk. Regulators have failed to require adequate internal control and risk management.[57] The problem was not the lack of adequate corporate governance rules but the failure of their implementation.[58]

There exists a wide range of debates about the role of corporate governance practices in relation to the financial crisis. Bruner (2011), for instance, focuses on excessive leverage and risk-taking as causes of the crisis, and summarizes proposed reforms in the field of corporate governance to address these problems.[59] Bebchuk and Spamann (2010) describe how executive compensation has encouraged excessive risk-taking and how such pay should be reformed.[60] Gordon (2009) explains advisory shareholder votes as a response to shareholder and public dissatisfaction with executive compensation.[61]

The enhancing of governance practices is necessary to restore confidence to markets and avoid future crisis. In November 2008 and March 2009, the International Corporate Governance Network has given statements about the current proposals for global market and regulatory reform addressed to the financial crisis and its consequences. The statements are directed to financial institutions, regulators and policy makers, and institutional shareholders, all those involved in this collective problem.[62]

In July 2009, the Commission proposed further modification of banking regulation. Rules on bank capital and on remuneration in the banking sector shall be strengthened. According to Commission President José Manuel Barroso the two major causes of the

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[56] See Kirkpatrick (2009), p. 2.
[57] See ICGN (2008), p. 1; ICGN (2009), p. 1f.
[58] See Wagenhofer (2009b), p. 206.
[59] See Bruner (2011).
[60] See Bebchuk/Spamann (2010).
[61] See Gordon (2009).
[62] See ICGN (2008), p. 1; ICGN (2009), p. 1f.

crisis have been securitization and remuneration including all the risks linked. Therefore the proposals shall handle the managing of those risks to prevent a repetition of such a crisis. Banks have to hold enough capital to reflect their true risks.[63]

3.5 Current situation in Austria and the Netherlands

In Austria and the Netherlands a mix of public and private regulation applies. Both countries imposed the reference to their corporate governance codes and their application by way of comply-or-explain by law or regulation.[64]

The first Austrian Corporate Governance Code has been in force since October 1, 2002[65], and the first Dutch Corporate Governance Code came in force in 2004.[66] Both codes have already been amended to keep in line with legislation and corporate governance developments.[67]

They contain the most important statutory requirements under the countries´ corporate law, securities law and capital markets law, and under EU recommendations, and the OECD Principles of Corporate Governance. Any overlap between the legislations and the codes is inherent in the codes´ function. A company is not allowed to deviate from a certain provision in the case where this provision corresponds with a statutory rule.[68]

The Austrian Corporate Governance Code applies to Austrian stock listed companies and recommends companies not listed on stock exchanges to voluntarily follow the Code to the extent that the rules are applicable.[69] The Dutch Corporate Governance Code applies to all listed companies that have their registered office in the Netherlands, and to all large companies with a balance sheet value exceeding € 500 million that have their registered office in the Netherlands and whose shares or depositary receipts for shares are traded on a multilateral trading facility or a comparable system.[70]

[63] See European Commission (2009b), p. 1.
[64] See Birkner/Hasenauer (2004, 2005); RiskMetrics Group (2009), p. 24.
[65] See Birkner/Hasenauer (2005).
[66] See De Jong/Röell (2005), p. 474; Van Bekkum/Hijink/Schouten/Winter (2010), p. 4.
[67] See Monitoring Commissie; Wymeersch (2006), p. 7; ÖACG (2010), p. 5, 11.
[68] See Birkner/Hasenauer (2004, 2005); ÖACG (2010), p. 9f; Monitoring Commissie (2008a), p. 6.
[69] See Birkner/Hasenauer (2004); European Commission (2007a), p. 5; Hlawati/Schmidt (2010), p. 957; ÖACG (2010), p. 9.
[70] See Monitoring Commissie (2008a), p. 5.

The main objective of both codes was establishing a system of management and control that is accountable to rebuild confidence after various accounting scandals, to create long-term value and to improve the transparency for all stakeholders.[71]

[71] See Monitoring Commissie (2008a), p. 48; ÖACG (2010), p. 9.

4 The Austrian Corporate Governance Framework

4.1 General Background

4.1.1 The Emergence of a Corporate Governance Code in Austria

In Austria there exists no legal definition of "corporate governance". The Austrian Stock Corporation Act (Aktiengesetz, AktG), the Austrian Limited Liability Company Law (GmbH-Gesetz, GmbHG), the Austrian Stock Exchange Act (Börsegesetz, BörseG), the Austrian Commercial Code (Unternehmensgesetzbuch, UGB), and the Austrian Corporate Governance Code (Österreichischer Corporate Governance Kodex, ÖCGK) are the sources of corporate governance standards.[72]

In 1997, the first provisions related to corporate governance were introduced in the modification of Austrian commercial law. They focused on increased matters the management board has to report to the supervisory board (§ 81 AktG), the management board´s responsibility to establish an internal control system (§ 82 AktG), restrictions on the maximum number of supervisory board mandates per person (§ 86 Sec. 2 AktG), the option to set up board committees (§ 92 Sec. 4 AktG), and the minimum number of supervisory board meetings (§ 94 Sec. 3 AktG). The purpose of this modification was the improvement of the mechanisms to avoid insolvency.[73]

Due to the global discussions about corporate governance during the 2000s, the Austrian Institute of Certified Public Accountants (Institut Österreichischer Wirtschaftsprüfer, IWP) and the Austrian Association for Financial Analysis and Asset Management (Österreichische Vereinigung für Finanzanalyse und Asset Management, ÖVFA) have prepared drafts for an Austrian Code of Corporate Governance. The Austrian Working Group for Corporate Governance (Österreichischer Arbeitskreis für Corporate Governance) drew up the final version of the Code based on these two drafts and involving interest groups through a broad discussion of the issues.[74]

The Austrian Working Group for Corporate Governance consists of representatives of listed companies, investors and other market participants, supported by the Office of the

[72] See RiskMetrics Group (2009a), p. 6.
[73] See BGBl.114/1997.
[74] See ÖACG; ÖACG (2010), p. 5.

Special Government Representative for the Capital Markets (Büro des Regierungsbeauftragten für den Kapitalmarkt). It is no formal body but widely recognized.[75]

The first Austrian Corporate Governance Code has been in force since October 1, 2002.[76] In a majority of the Member States, corporate governance update systems are informal, organized without a defined process or rules. Only in six of them, a formal monitoring system authorizes an institution to conduct the monitoring, and sets up the procedures and frequency of such monitoring.[77] The Austrian Code of Corporate Governance shall be reviewed by the Austrian Working Group for Corporate Governance once a year, and if necessary, amended. It is flexible to adapt to current legal, economic and social situations and business practices. In this way it keeps in line with legislation and corporate governance developments.[78]

The international financial crisis had a large impact on the Austrian capital market. Business strategy in Austria has been focused on the growth opportunities in transitioning economies, for instance Bulgaria, Romania and the Czech Republic. But the banking crisis has temporarily halted investments in those countries.[79] As a result the Code was amended to rebuild the lost confidence of investors. New remuneration rules were set up to influence executive corporate officers´ behavior to make sure they follow the principles of sustainability and long-term orientation, and to avoid unreasonable short-term performance goals and excessive risk tolerance. On January 1, 2010 the fourth version of the Code was introduced.[80]

4.1.2 Content and Structure of the Austrian Code of Corporate Governance

Although Austrian legislation favored self regulation in the field of corporate governance, most of the important corporate governance rules are anyway covered by Austrian company law. [81] A mix of public and private regulation applies. Listing rules refer to the local corporate governance code and the law or securities regulation refers to

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[75] See ÖACG; Wagenhofer (2009b), p. 207.
[76] See Birkner/Hasenauer (2005).
[77] See RiskMetrics Group (2009), p. 11, 54.
[78] See ÖACG (2010), p. 5, 11.
[79] See Heidrick & Struggles (2009), p. 20.
[80] See ÖACG (2010), p. 6.
[81] See Hlawati/Schmidt (2010), p. 957; ÖACG (2010), p. 9.

the comply-or-explain approach.[82] The Austrian Code of Corporate Governance contains the most important statutory requirements under Austrian corporate law, securities law and capital markets law, and under EU recommendations on the issues of supervisory board members, directors´ remuneration and the OECD Principles of Corporate Governance.[83] It primarily applies to Austrian stock listed companies but it also recommends companies not listed on stock exchanges to voluntarily follow the Code to the extent that the rules are applicable.[84]

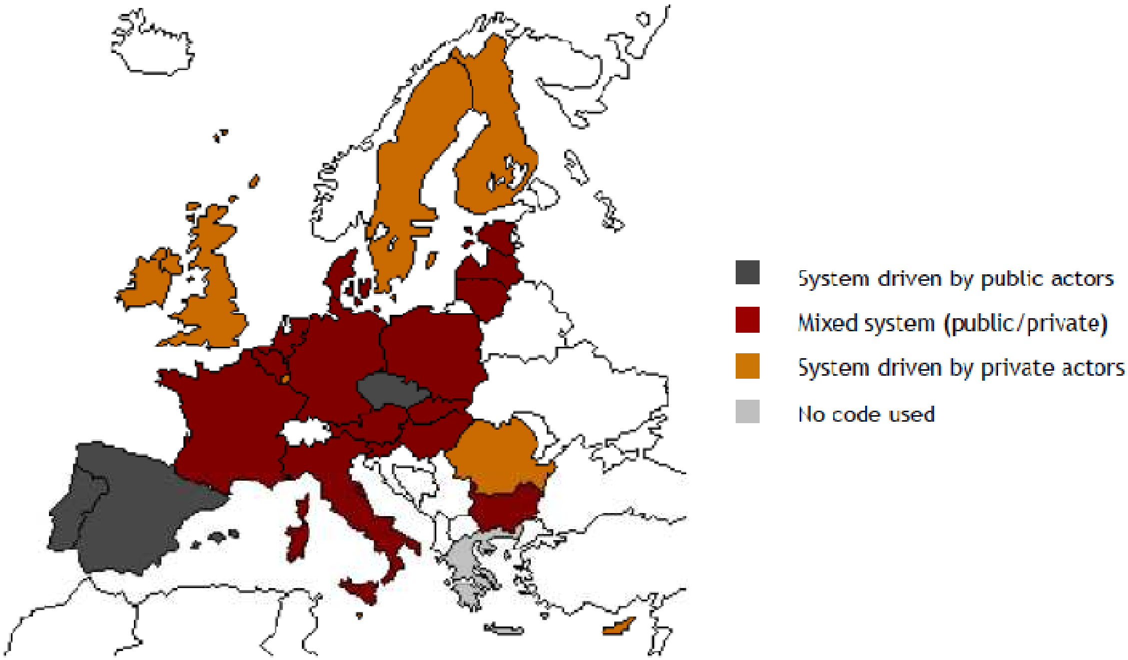

Figure 2: Categorization of corporate governance systems
(RiskMetrics Group (2009), p. 25)

The main objective of the Code is not increasing the degree of compliance by companies but establishing a system of management and control that is accountable. It has the aim to influence the behavior of board members and shareholders, to create long-term value and to improve the transparency for all stakeholders.[85]

The Austrian Business Code Amendment Act 2008 (Unternehmensrechts-Änderungsgesetz, URÄG 2008) brought the transposition of Directive 2006/46/EC. Since then all companies that want to be admitted to the Prime Market of the Vienna Stock Exchange have to adopt the comply-or-explain approach on a mandatory basis. According to § 243b UGB they are required to follow a corporate governance code and

[82] See Birkner/Hasenauer (2004, 2005).

[83] See Birkner/Hasenauer (2004, 2005); ÖACG (2010), p. 9f.

[84] See Birkner/Hasenauer (2004); European Commission (2007a), p. 5; Hlawati/Schmidt (2010), p. 957; ÖACG (2010), p. 9.

[85] See ÖACG (2010), p. 9.

to publish an annual corporate governance report for financial years beginning after 31.12.2008. They have to disclose a declaration of commitment to comply with a Corporate Governance Code containing explanations on any deviations, and publish it on their website. The Stock Exchange reviews the compliance of companies applying the code on a mandatory comply-or-explain basis once a year.[86] It is often criticized that Austrian companies don´t apply to most C-Rules because it is sufficient to just justify the deviations. That is a disadvantage of a soft-law regulation. In praxis explanations of deviations are sometimes not or only badly justified.[87]

The corporate governance report shall include a reference to the code to which the company applies and the relevant information where the code texts are publicly available, explanations and stated reasons of deviations from C-Rules, and explanations of its corporate governance practices in the case that it does not apply to any code. Moreover, this statement shall provide information on the composition and functioning of the management board and of the supervisory board and its committees to improve transparency. In Austria it shall be published as a separate document in addition to the annual report. The Austrian Financial Reporting and Auditing Committee (AFRAC) issued additional guidance for the report on corporate governance.[88]

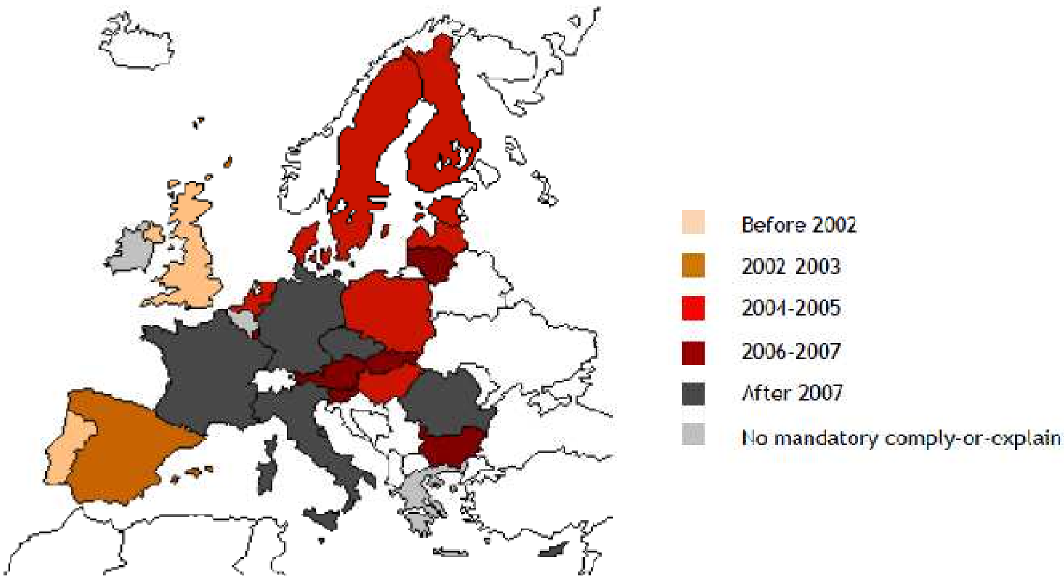

Figure 3: Adoption of a mandatory comply-or-explain scheme
(RiskMetrics Group (2009), p. 28)

[86]See AFRAC (2008), p. 2; Birkner/Inetas (2008), p. 563; Cee Stock Exchange Group (2010a), p. 7, 10; ÖACG (2010), p. 10.

[87]See Wagenhofer (2009b), p. 205f.

[88] See AFRAC (2008); Birkner/Inetas (2008), p. 564; ÖACG (2010), p. 37, 48ff.

The Austrian Code of Corporate Governance is divided into six chapters. These chapters are (I) Preamble, (II) Shareholders and the General Meeting, (III) Cooperation between the Supervisory Board and the Management Board, (IV) Management Board, (V) Supervisory Board, and (VI) Transparency and Auditing.[89]

The current Code includes 33 L-Rules which refer to mandatory legal requirements. They are to be interpreted as a C-Rule for companies not listed on the stock exchange. C-Rules should be applied in the way of comply-or-explain. That is, listed companies shall follow them and explain any deviations. R-Rules add best practices of corporate governance recommended from the European Commission. Companies that do not comply with them are neither required to disclosure nor to explain.[90] The C-Rules and R-Rules amended in the 2010 Code are applicable for financial years beginning after the 31.12.2009.[91]

4.1.3 Complex Listing Situations

The comply-or-explain framework does not contain any rule or recommendation for companies with complex listing situations. Conflicting obligations may arise for companies that are incorporated in one Member State and that shares are listed in one or more other Member States. This may lead to a double application of corporate governance codes or to not one application at all.[92]

To remedy such situations the European Corporate Governance Forum introduced some new rules on March 23rd, 2009. They offer a company the freedom to choose which potentially applicable code it wishes to apply, but it must at least choose one of them. In this way double application or situations where no code is applicable are avoided and shareholders are still fully informed:[93]

- Companies incorporated in the EU have to apply a corporate governance code in either the Member State of its registered seat or the Member State of its primary share listing. Where those Member States are different, the company should choose one of the two codes for application.
- A Member State can just require a company that has either its registered seat or its primary share listing in that Member State, but which applies the corporate

[89] See ÖACG (2010), p. 7.
[90] See AFRAC (2008), p. 3; Hlawati/Schmidt (2010), p. 956; ÖACG (2010), p. 11f.
[91] See ÖACG (2010), p. 6.
[92] See ECGF (2009), p. 1; RiskMetrics Group (2009), p. 29.
[93] See ECGF (2009), p. 2.

governance codes of another Member State, to explain deviations of the actual corporate governance practices from those of the Member State´s corporate governance code.

Austrian stock corporations include exchange-listed European companies registered in Austria (Societas Europea). Companies that are subject to the company law of another EU or EEA Member State and are listed on the Vienna Stock Exchange have to apply a corporate governance code recognized in this economic area and to publish this commitment including a reference to the code on their websites. Companies that are subject to the company law of a non-EU or non-EEA Member State and are listed on the Vienna Stock Exchange have to comply with the Austrian Corporate Governance Code and in this case the non-mandatory L-Rules are interpreted as C-Rules.[94] If those companies are subject to a one-tier system, the C-Rules and R-Rules regarding the management board shall apply to the managing directors and the C-Rules and R-Rules regarding the supervisory board shall apply to the administrative board.[95]

4.2 Main Issues of the Austrian Code of Corporate Governance

The bodies for a company´s management and control, or the people behind them, are the essential instruments for good corporate governance. The requirements for both of them have risen in the past years because the areas of responsibility get more and more complex, and national and international regulation increase.[96]

4.2.1 Composition and Functioning of Boards and Committees

The modernization of boards of directors was one of the four main corporate governance objectives of the Action Plan. Following the European Parliament´s expression of support in its Resolution of 21 April 2004, the Commission adopted a Recommendation in February 2005 to explain the role of boards of directors and committees. The aim of this Recommendation is to propose rules to eliminate and prevent conflicts of interests within boards of executive or managing directors, while promoting the convergence of the national corporate governance codes which exist in the Member States.[97]

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[94] See Cee Stock Exchange Group (2010), p. 8, 12; ÖACG (2010), p. 10.

[95] See ÖACG (2010), p. 9.

[96] See Wagenhofer (2009a), p. 59.

[97] See European Commission (2005), p. 51.

In July 2007 the Commission published a Report on the application of the Commission Recommendation COM 2005/162/EC on boards of directors by 21 of the Member States, including Austria and the Netherlands. It is based on the Member States´ replies to a Commission questionnaire and on the examination of their national corporate governance codes. The main finding of the Report is the fact that most Member States have implemented corporate governance standards following the provisions of the Recommendation and that they have applied the comply-or-explain principle. Independent directors are now present in all Member States but there are still differences in the definition of independence.[98]

As stated above, following the world economic crisis, board effectiveness has been discussed all over the world. Boards have not exercised their duties adequately and shareholders have failed to hold boards accountable. According to the Corporate Governance Report 2009 of Heidrick & Struggles, some actions are necessary to achieve maximum effectiveness:[99]

- Improve board composition and balance
- Sufficient time for supervisory board members to attend to their duties and responsibilities
- Increase international expertise
- Emphasize the value of properly independent directors
- Increase the use of specialized committees
- Improve board meeting dynamics and undertake regular formalized evaluations of board performance

The organization of a listed company under Austrian law is based on three bodies: the general meeting, the supervisory board and the management board.[100] The “two-tier board systems” are the typical board form. They prohibit supervisory board members to become a management board member. [101] The Council Regulation on the Statute for a European Company from October 2004 permits the one-tier system with some restrictions by adopting the corresponding articles of incorporation but up to now this option lacks significance in practice.[102]

[98] See European Commission (2007a), p. 3.
[99] See Heidrick & Struggles (2009), p. 1f.
[100] See ÖACG (2010), p. 58.
[101] See Wagenhofer (2009a), p.60.
[102] See ÖACG (2010), p. 57f.

4.2.1.1 Supervisory board

Supervisory board	
elected by	general meeting
tenure of office	5 years
prematurely termination	possible
minimum number of members	3 (exclusive of employee´s representatives)
maximum number of members	10 (exclusive of employee´s representatives)
function	• establish and monitor management board • approve financial statements, decide on dividend to be distributed • prove corporate governance report
chairperson´s function	• organization of supervisory board • supervisory board meetings • collaboration between supervisory board and management
cooling-off period for CEO	yes
board meetings	at least 4 times and each quarter

Figure 4: General information on the supervisory board
(Author´s design)

According to the Austrian Stock Corporation Law, the supervisory board is elected by the annual general meeting for a five-year period but it may be prematurely terminated by a three-quarter qualified majority (a simple majority may be sufficient by the articles of incorporation). It has to consist of at least three and maximum ten members exclusive of employee´s representatives[103]. One employee´s representative is delegated for every two shareholder´s representatives to the supervisory board.[104]

Pursuant to C-Rule 52 ÖCGK (Austrian Code for Corporate Governance), the general meeting is responsible for a balanced adequate composition of the supervisory board by taking into count the company´s structure and business. Before the election of the board members it has to evaluate their knowledge and experience and no member can be appointed who has been convicted by law for a criminal act. In recent years, the requirements concerning professional qualification and competence, and liability have risen, and the supervisory board activity gets more and more professionalized[105]. New members are obligated to inform themselves of the organization and activities of the company and of the tasks and responsibilities of the board members.[106] Moreover, the promotion of diversity among board members with respect to their international

[103] See Hlawati/Schmidt (2010), p. 958; WKO (2010).
[104] See ÖACG (2010), p. 58, 62f.
[105] See Wagenhofer (2009b), p. 59, 209.
[106] See ÖACG (2010), p. 33.

background, the representation of both genders, and the age structure is recommended.[107]

C-Rule 53 ÖCGK states that the majority of the supervisory board members shall be independent of the company and its management board. Thus, the members shall not have any business or personal relations with the company or its management board to avoid the influence of members´ behavior and material conflicts of interest. The supervisory board is responsible for the definition of independence based on this general clause and its publication in the corporate governance report.[108] Additional guidelines for the definition of criteria to assess supervisory board members´ independency can be found in Annex 1 of the ÖCGK.[109]

C-Rule 54 ÖCGK stipulates that in companies with a free float of more than 20%, the supervisory board has to consist of at least one independent member who is not a shareholder with a stake of more than 10% or who represents such a shareholder´s interest. In companies with a free float over 50%, at least two supervisory board members shall meet these criteria. This members´ names must be stated in the corporate governance report.[110]

According to § 111 Abs 1 AktG, the main responsibility of the supervisory board is monitoring the management´s activities.[111] It autonomously elects and selects management board members and, if intended so, establishes the position of a chairperson of the management board (chief executive, CEO). § 75 AktG defines that the supervisory board is empowered to dismiss board members if good reasons exist. A simple majority is required to make decisions. The supervisory board approves of the annual and consolidated financial statements and decides on the proposed dividend to be distributed. § 96 Abs 1 AktG specifies that it also has to prove the corporate governance report.[112] The supervisory board chairperson´s responsibilities are the organization of the supervisory board, its meetings and its collaboration with the management.[113]

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[107] See Hlawati/Schmidt (2010), p. 958f; ÖACG (2010), p. 29.
[108] See Hlawati/Schmidt (2010), p. 959; ÖACG (2010), p. 33f; WKO (2010).
[109] See ÖACG (2010), p. 46f.
[110] See Hlawati/Schmidt (2010), p. 958; ÖACG (2010), p. 34.
[111] See Wagenhofer (2009a), p. 64; WKO (2010).
[112] See ÖACG (2010), p. 25f.
[113] See ÖACG (2010), p. 63.

In Austria and the Netherlands CEOs can become supervisory board chairman only at the end of a 'cooling-off period' immediately following their term as CEO. Following the European Parliament resolution of 4 July 2006 the Commission decided that there shall be an appropriate interval between those two functions.[114]

Supervisory board meetings shall be appointed on a regular basis, at least four times and each quarter. A regular, frequent contact is essential for effective collaboration (e.g. discussion of the corporate strategy, business development, and risk management).[115]

The supervisory board members´ remuneration is fixed by the general meeting. Pursuant to § 113 Abs 1 AktG, it is calculated considering the responsibilities and scope of work of the members as well as the economic situation of the company.[116] Generally, there are no stock option plans for supervisory board members to avoid a negative impact on its control function because of identical interests. If they are granted in exceptional cases, they must be decided in a detailed way by the general meeting.[117] The amount of compensation is to be reported in the corporate governance report for each individual member.[118]

The company´s size only plays a small role as regards the level of remuneration for supervisory board members because usually, with a bigger size and an increased scope of functions also the number of members increases. On the other hand, the profit situation has an important impact on remuneration.[119]

[114] See European Commission (2007a), p. 6f, 13.
[115] See ÖACG (2010), p. 26, 63; WKO (2010).
[116] See Wagenhofer (2009a), p. 64.
[117] See Ferrarini/Moloney/Ungureanu (2009), p. 45f; Hlawati/Schmidt (2010), p. 962.
[118] See ÖACG (2010), p. 32.
[119] See Wagenhofer (2009a), p. 78.

4.2.1.2 Management board

Management board	
elected and dismissed by	supervisory board
function	• manage the company • provide the supervisory board with information on business developments and risk management • immediately inform the supervisory board´s chairperson of events of major significance

Figure 5: General information on the management board
(Author´s design)

Most issues concerning the management board are regulated by law. As already mentioned, the supervisory board decides on the election of management board members, and on the establishment of the position of a chairperson. In the case of a chairperson´s appointment to the management board, the chairperson has the casting vote. A different procedure may be defined in the articles of incorporation for decisions of the management board in the case of a tie. The appointment of an employees´ representative to the management board is not prescribed in Austrian law.[120]

The term "management" originated in the latin term "manum agere" which means "lead by the hand" and refers to leading and managing the company.[121] Restating the provision of § 70 AktG the ÖCGK makes the management board responsible for managing the company on the basis of the facts and in compliance with applicable laws, and without conflicts of interest by taking into count the interests of all parties involved in the company´s business. The entire management board shall reach fundamental decisions. It is a collective body, that is, all members are equally responsible for managing the company. Commonly in practice, the areas of responsibility are defined for each board member in the internal rules of procedure. In certain cases the collective responsibility shall be indivisible (for instance in business transactions that must be presented to the supervisory board for approval if exceeding a prescribed limit).[122] Furthermore, the management board has to provide the supervisory board with periodically relevant information on business developments and risk management, and shall immediately inform the supervisory board´s chairperson of events of major significance.[123]

[120] See ÖACG (2010), p. 65.
[121] See Wagenhofer (2009a), p.60.
[122] See ÖACG (2010), p. 17-20, 65f.
[123] See Hlawati/Schmidt (2010), p. 959f; ÖACG (2010), p. 15.

Management board members have to be independent just like supervisory board members. Restating § 78 AktG the ÖCGK specifies that management board members shall only be permitted to run a company or assume a mandate on the supervisory board of another company with prior approval of the supervisory board. Also the engagement of management board members in business dealings in the same branch of the company for their own or third parties´ account or the ownership of other companies as a partner with personal liability shall be approved by the supervisory board.[124]

4.2.1.3 Committees

Committees	
function	support supervisory board
chairperson´s function	report periodically to supervisory board

Figure 6: General information on committees
(Author´s design)

C-Rule 39 ÖCGK specifies that board committees shall be established from among the supervisory board´s members depending on the companies´ specific circumstances and the number of supervisory board members. The aim of these committees shall be the improvement of the efficiency of the supervisory board´s work by supporting it in complex issues. The chairperson of each committee shall report periodically to the supervisory board. The committees shall consist of mainly independent members pursuant to C-Rule 53 ÖCGK. The names of the committees´ members, of their chairpersons, the number of meetings and the committees´ activities shall be stated in the corporate governance report.[125]

In Austria all listed companies are obligated to create an audit committee and a remuneration committee.[126] C-Rule 41 ÖCGK stipulates that the supervisory board shall establish a nomination committee too but where the supervisory board consists of not more than six members they may jointly exercise this function.[127]

[124] See ÖACG (2010), p. 20.
[125] See ÖACG (2010), p. 27.
[126] See European Commission (2007a), p. 8, 14.
[127] See ÖACG (2010), p. 28f.

Audit committee	
establishment	obligatory
composition	mainly independent members including 1 financial expert
	chairperson may not be a person who has reasons that impact the independence and unselfconsciousness
function	• monitor financial reporting process • monitor effectiveness of the company´s internal control • propose appointment of an independent auditor for the financial statements to the supervisory board

Figure 7: General information on the audit committee
(Author´s design)

The establishment of an audit committee is required by law since 2005 (GesRÄG 2005, BGBl 2005/59). According to the Austrian Stock Corporation Law, all listed companies and companies whose balance sheet exceeds € 96.25 million and whose sales exceed € 192.5 million must establish an audit committee including at least one financial expert. This expert needs to have sufficient knowledge, experience and an adequate background in finance and accounting. The chairperson may not be a person who has reasons that impact the independence and unselfconsciousness, for instance who in the past three years were member of the management board or management-level staff, or auditor of the company or signer of the auditor´s opinion.[128] The duties of this committee are monitoring the financial reporting process (the preparations for the accounting process, the auditor´s work, the confirmation of the financial statements, the proposals for the profit-distribution, the report of the management board), monitoring the effectiveness of the company´s internal control (internal audit and risk management systems, if given), and proposing an appointment of an independent auditor for the financial statements to the supervisory board.[129]

[128] See Hlawati/Schmidt (2010), p. 962f; ÖACG (2010), p. 28.
[129] See ÖACG (2010), p. 28, 64f.

Remuneration committee	
establishment	obligatory (if supervisory board > 6 members)
composition	mainly independent members including 1 remuneration expert
	chairperson = supervisory board´s chairperson
function	• remuneration of management • management employment contracts

Figure 8: General information on the remuneration committee
(Author´s design)

C-Rule 43 ÖCGK requires the establishment of a remuneration committee if the supervisory board has more than six members, otherwise this function may be assumed jointly by all members.[130] The chairperson of this committee shall always be the supervisory board´s chairperson. At least one member of this committee shall have knowledge and experience in the field of remuneration policy. The compensation committee may be identical with the nomination committee as it deals with the remuneration of management board members and the contents of management board members´ employment contracts.[131]

Nomination committee	
establishment	recommended
function	• appointment and removal of management board members

Figure 9: General information on the nomination committee
(Author´s design)

The nomination committee is responsible to submit proposals to the supervisory board on the appointment and removal of directors in the management board.[132]

4.2.2 Remuneration of Management Board Members

The area of remuneration raises potential conflict of interest for executive directors.[133] There had already been concerns about excessive executive compensation and insufficient link of CEO pay to performance prior to the corporate fraud scandals of 2001-2002 where payments had been awarded without transparency or control but they were muffled by the extraordinary rise in stock prices over the 1990s, a speculative era. Finally, from 2000 the technology bubble burst and there was no longer a justification for the increased CEO pays given the poor company performances.[134]

[130] See Ferrarini/Moloney/Ungureanu (2009), p. 33; ÖACG (2010), p. 29f.
[131] See ÖACG (2010), p. 29f.
[132] See ÖACG (2010), p. 28f.
[133] See European Commission (2007b), p. 2; IFC (2008), p. 7.
[134] See Becht/Bolton/Roell (2005), p. 70.

The biggest scandals have taken place in the U.S.: Enron, Worldcom and Adelphia are the most known examples.[135] Some examples of corporate fraud scandals in Europe are Parmalat, Vivendi and Skandia: Corporate funds in Parmalat have been transferred to the family members of the CEO as “pocket money”, Vivendi has attracted attention through a € 21 million severance package, and Skandia has paid an equivalent of $ 79 million in bonuses without approving it by the board or disclosing to the market.[136]

The big question was what are the true determinants of executive compensation if CEO pay and stock options are not rationalized as incentive-efficient pay anymore? Corporate governance scholars developed a number of competing explanations.[137] According to Bebchuk and Fried (2004), CEO power to set the own pay through captured boards and committees, and failures in corporate governance determine CEO pay.[138] Hermalin (2004) puts forward the hypothesis that the increasing board independence, increasing proportion of extern CEOs, higher forced CEO turnover, and decreasing tenure of CEOs, and thus the absence of a competitive environment with riskier and more demanding jobs during the 1990s were responsible for the increased CEO pay.[139]

There have been calls for a better fitting between management interests and shareholder interests through executive remuneration structures. Long-term incentives in the form of equity-based pay should be supported.[140] The Commission adopted a Recommendation on directors´ remuneration in December 2004. This Recommendation provides for high disclosure-standards and greater shareholder-involvement. It proposes inter alia that companies should disclose their remuneration policy, its structure and performance criteria, and the individual directors´ remuneration packages. As regards shareholder-involvement, the remuneration policy shall be an explicit item on the annual general meeting´s agenda to give shareholders of listed companies adequate control over these matters.[141]

The 2007 Commission Report on the application of the Recommendation shows that most of the recommendations have been applied but the transposition of the

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[135] See Bolton/Scheinkman/Xiong (2005), p. 2.
[136] See European Commission (2007b), p. 2.
[137] See Becht/Bolton/Roell (2005), p. 70f.
[138] See Bebchuk/Fried (2004).
[139] See Hermalin (2004).
[140] See Ferrarini/Moloney/Ungureanu (2009), p. 5.
[141] See European Commission (2004), p. 55f; IFC (2008), p. 7.

Recommendations into the Member States´ regimes has been achieved only in part. It is based on the replies of 21 Member States to a Commission questionnaire and on the examination of their national corporate governance codes. Most Member States have introduced detailed disclosure concerning individual executives´ remuneration, a significant number on a mandatory basis. Regrettably, disclosure of the remuneration policy and the provisions on voting possibility of shareholders on remuneration policy has not been applied in the majority of Member States. The shareholder approval of share-based incentive schemes has met with a high level of acceptance in most Member States. But the level of application and way of implementation of each provision vary in Member States which causes different disclosure of executive remuneration across the EU.[142]

With the 2007-2009 financial crisis, executive remuneration earned a lot of attention because deficient executive compensation structures have been linked to excessive risk-taking by banks and financial institutions. These structures have created incentives for executives to take excessive risks and they have earned large payments in reward for activities that seemed profit making at the time but subsequently proved harmful to the company.[143]

According to a study of Hay Group, in Europe the median CEO total salary and incentives in 2007 was € 5.020.000, with a median base salary of € 1.300.000. This study is based on the disclosure of the largest 50 European companies by market capitalization. The typical CEO remuneration is composed as follows:[144]

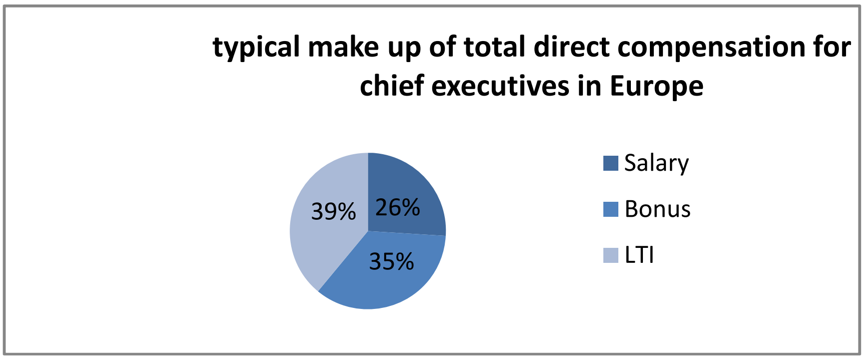

Figure 10: Chief executive´s package
(See Hay Group (2008), p. 5)

Another problem has been the Commission´s self-regulatory, market-based approach, based on non-binding recommendations. In practice, most provisions have been

[142] See European Commission (2007b), p. 3f.
[143] See FSA (2009), p. 79f.
[144] See Hay Group (2008), p. 3f.

transposed on the comply-or-explain basis rather than through public legislation, and as a result, convergence of regulations was not achieved.[145]

Therefore, the Commission adopted an amended Recommendation on the Remuneration of Directors in April 2009 because remuneration structures have become more complex. Applying to the recommendations should avoid focus on short-term performance, excessive risk-taking by financial institutions and excessive remuneration without justifications by performance.[146] The Commission has also advocated the emerging stakeholder value analysis, to which remuneration shall fit management interests with the interests of counterparties, auditors, analysts, customers and the public interest.[147]

The "say on pay" mechanism, which was introduced in the 2004 Recommendation and describes stronger shareholder voice and the engagement of shareholders in the remuneration process, has not really supported effective remuneration governance. Unfortunately, sensitive shareholders that depend on the public opinion may obstruct the ability of boards to adopt effective remuneration policies. For instance, after the corporate accounting scandals and after the beginning of the financial crisis in 2007, general opinion turned against equity and option-based remuneration.[148]

The size of management boards has declined in the last three decades, increasing the respective scope of work and thus the degree of responsibility for each individual member. This development is normally compensated with higher remuneration.[149]

4.2.2.1 The legal framework

According to § 87 AktG, in Austria the remuneration of management board members depends on the members´ tasks, their degree of responsibility, the achievement of company´s performance targets, and the size and economic situation of the company. Furthermore, remuneration policies have to be consistent with effective risk management.[150] Size and profit situation of the company have the largest impact on the level of compensation. Also ownership structure and affiliation with a stock market segment play an important role, whereas affiliation with a branch and function – as well as person-related criteria only have a small impact on the level of remuneration. The

[145] See Ferrarini/Moloney/Ungureanu (2009), p. 6f.
[146] See European Commission (2009a), p. 28.
[147] See Ferrarini/Moloney/Ungureanu (2009), p. 5.
[148] See Ferrarini/Moloney/Ungureanu (2009), p. 16, 18.
[149] See Wagenhofer (2009a), p. 66f.
[150] See ÖACG (2010), p. 21; Wagenhofer (2009a), p. 64.

most important function-related factor is the hierarchical rank: Usually, the chairperson receives around 50% more than a regular member of the board, and the representative chairperson receives 10-20% more.[151]

	management board	**supervisory board**
remuneration	§ 87 AktG: depends on responsibilities, scope of work, and the size and economic situation of the company	§ 113 AktG: depends on responsibilities, scope of work, and the size and economic situation of the company
responsibility	supervisory board	general meeting

Figure 11: Management board remuneration versus supervisory board remuneration (See Wagenhofer (2009a), p. 64)

Pursuant to C-Rule 27 of the ÖCGK, the compensation consists of a fixed salary and a long-term, performance-linked component which shall also contain non-financial criteria. Measureable performance criteria shall be fixed in advance. A maximum limit shall be set up for the fixed remuneration components.[152] The performance-based remuneration structure shall attract, retain and motivate CEOs to reflect the interest of shareholders (especially in companies with dispersed ownership structures where agency costs are high).[153]

An effective remuneration contract is regarded as a remedy for the agency costs of dispersed ownership. It may protect minority shareholders against power-abuses by controlling shareholders. On the other hand, executive remuneration can be abused by conflicted directors for generating agency cost through providing an opaque device for extracting benefits from the firm. They could adopt weak performance targets, award share options which reward wider market gains and reset performance targets where they are not met.[154]

4.2.2.2 The Total Compensation Approach

The "Total Compensation Approach" emphasizes the total value of the several remuneration components. These components are: annual base salary, variable remuneration (short-term incentive, long-term incentive) and additional remuneration (pension schemes, benefits like housing, insurance, and company cars), and they have to be compatible. The total compensation system has too meet some requirements in order

[151] See Wagenhofer (2009a), p. 65f.
[152] See ÖACG (2010), p. 21.
[153] See Ferrarini/Moloney/Ungureanu (2009), p. 3f.
[154] See Ferrarini/Moloney/Ungureanu (2009), p. 15.

to guarantee good corporate governance: correct proportionality with respect to the particular market and the position chosen in this market, market conformity, sustainability (minimum 3-5 years), value creation, and securing the long-term success of the company.[155]

The annual base salary is a fixed amount that is paid each month in identical rates. It represents the biggest share of the total remuneration and forms the basic insurance for managers.[156]

Short-term variable remuneration is performance-related and usually paid annually retrospectively. It is widely used for management compensation. Typical forms are annual cash bonuses.[157] Long-term variable remuneration focuses on sustainable value creation, and typical forms are equity grants.[158] Some examples of variable remuneration components are:[159]

- Annual bonus plans: remuneration components related to the short-term performance over a one-year span.
- Stock option plans: long-term related components, the beneficiary has the right to purchase a share at a pre-defined price after more than one year.
- Performance/conditional share plans: long-term performance related, shares are granted or vested to the beneficiary if pre-defined results are achieved.
- Deferral plans with matching elements: related to short-term performance, components are invested in company shares which can be matched after a pre-defined period longer than one year.
- Matching plans: long-term components, the beneficiary has invested in shares which can be matched after a pre-determined period.
- Phantom share plans: related to long-term performance and feature the same operating mode like a performance share plan but the transaction is carried out in cash rather than in shares.
- Phantom stock option plans: long-term performance related with the same operating mode like a stock option plan but the transaction is carried out in cash rather than in shares.

[155] See Wagenhofer (2009a), p. 67ff.
[156] See Hay Group (2008), p. 6; Wagenhofer (2009a), p. 69.
[157] See Hay Group (2008), p. 8; Wagenhofer (2009a), p. 70.
[158] See Hay Group (2008), p. 8, 11.
[159] See RiskMetrics Group (2009b), p. 16f.

4.2.2.3 Disclosure

According to Austrian law, disclosure of only the total remuneration of supervisors and managers is mandatory. It is just recommended without comply or explain to disclose remuneration for each individual management board member in the annual report.[160]

But disclosure policy must be relevant and effective. It must be published in a clear manner and easy understandable. Providing more details about remuneration structures does not really mean that there is an enhancement. Using disclosure in an effective way creates some benefits, such as stronger shareholder monitoring, better board discipline, increased board accountability to the shareholders, and mitigation of the risks of board capture.[161]

§ 239 Section 1 Figure 4 of the Austrian Commercial Code specifies that the total remuneration of the management board for a business year has to be reported in the notes to the financial statements unless an exemption subject to § 241 Section 4 of the Austrian Commercial Code exists. Moreover, Section 239 para 1 lit 5 of the Austrian Commercial Code requires that the number and distribution of stock options granted to management board members, and the exercise prices and the respective estimated values at the time they are issued and upon exercise are reported in the notes to the financial statements[162].

C-Rule 31 of the Austrian Corporate Governance Code states that the fixed and variable performance-linked remuneration components shall be disclosed for each individual management board member in the corporate governance report. C-Rule 30 ÖCGK lists additional information on the management board members´ remuneration that the corporate governance report shall include:[163]

- The components of variable remuneration (especially the performance criteria pursuant to C-Rule 27 ÖCGK); the methods to determine the fulfillment of the performance criteria; the maximum-limits for the variable remuneration; the shares held in the own company according to C-Rule 28 ÖCGK; any major changes in comparison to the previous year.
- The ratio of fixed to variable components of the total remuneration.

[160] See European Commission (2007b), p. 9, 13.
[161] See Ferrarini/Moloney/Ungureanu (2009), p. 14f.
[162] See ÖACG (2010), p. 23.
[163] See ÖACG (2010), p. 23f, 50f.

- The company´s retirement principles and conditions.
- The principles of eligibility and claims in the event of termination of the function.
- The existence of a directors´ and officers´ insurance if the costs are borne by the company.

In cases where a stock option program or a program for the preferential transfer of stocks is proposed for management board members, the parameters for the stock option scheme shall be defined in advance and shall be linked to the goal of achieving sustainable value creation by the company. Retroactively changing criteria shall be avoided. The enterprise has to disclose and explain all changes. It has to define blocking periods (management board members shall hold an appropriate share-volume in the own company for the duration of stock option programs, at the latest until the end of their function on the board), exercise periods (a waiting period of at least three years has to be fixed) and the timeframe for exercising stock options. The general meeting is responsible for decisions relating to stock option schemes.[164]

The majority of Member States have implemented the recommendation of prior shareholder approval of share-based remuneration schemes, most of them on a mandatory basis but with little detail of the contents of the shareholder approval. Austria and the Netherlands have implemented it on a mandatory legislative basis.[165]

4.2.3 Internal Control

In its 1998 Communication on the statutory audit in the EU, the Commission proposed the creation of a Committee on Auditing which should develop further action in cooperation with the accounting profession and Member States because of lack of a harmonized approach to this topic. In November 2000 the Commission published a Recommendation proposing minimum requirements for the statutory audit, and in May 2002 a Recommendation on Statutory Auditors´ Independence. In September 2004 the Commission adopted a Communication on preventing financial and corporate malpractice that includes initiatives regarding internal control and responsibility of board members.[166]

The objective of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts is the harmonization of statutory audit requirements. It proposes

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[164] See ÖACG (2010), p. 22f.

[165] See European Commission (2007b), p. 7, 16.

[166] See Directive 2006/43/EC, p. 87; Directive 2006/46/EC, p. 1.

some requirements to enhance internal control systems, to minimize risks and improve the quality of financial reporting.[167]

The aim of Directive 2006/46/EC on annual accounts and consolidated accounts is facilitating cross-border investments and improving EU-wide comparability in financial statements and reports through enhanced disclosures. Since these goals cannot be sufficiently achieved by the Member States, the Community may adopt measures to achieve them at Community level. Member States shall therefore draw up and publish their own tables to illustrate the correlation between the Directive and the transposition measures.[168]

The idea of internal control and risk management is not to eliminate risks but to manage them in an efficient way, and cost and benefit of additional requirements should balance each other out.[169]

Austrian company law does not provide rules for the internal control process. § 82 AktG and § 22 GmbHG only stipulate that the management board is responsible for the establishment of an adequate system of internal controls. Moreover, C-Rule 18 of the Austrian Corporate Governance Code states that companies, depending on their size, have to establish a separate staff unit for internal auditing that reports to the management board, or to mandate a competent institution for this issue. At least once a year, a report on the auditing plan is to be set up for the audit committee.[170]

4.2.4 Statutory Auditors

The provisions of Directive 2006/43/EC on statutory auditors have been transposed into Austrian law by the URÄG 2008. According to Section 270 para 1 of the Austrian Commercial Code, shareholders have to propose the appointment of statutory auditors at the annual general meeting to the supervisory board. Section 93 para 1 and Section 92 para 4a of the Austrian Stock Corporation Act impose that statutory auditors are obligated to attend all meetings of the audit committee.

The ÖCGK restates the provisions set out in the Austrian Commercial Code: Auditors must meet the criteria of independence. L-Rule 78 ÖCGK, for instance, specifies that no reasons for exclusion or self-consciousness shall exist, and any additional business

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[167] See Directive 2006/43/EC, p. 87; ECGF (2006), p. 1.

[168] See Directive 2006/46/EC, p. 3.

[169] See ECGF (2006), p. 2f.

[170] See ÖACG (2010), p. 18.

relationships between auditors and the company to be audited, such as consulting contracts, shall not influence their economic independence. The principal auditors of the consolidated financial statements are not allowed to perform a function of a corporate body or management position in the company for two years after signing the audit opinion. L-Rule 79 ÖCGK requires auditors to immediately inform the supervisory board´s chairperson and audit committee´s chairpersons of any potential reasons for exclusion or self-consciousness that have arisen in the course of the audit unless they are immediately eliminated.[171]

L-Rule 80 ÖCGK defines that before their appointment auditors must confirm in a declaration their license to audit stock corporations, that no reasons for exclusion exist, they shall categorize services of total revenues received in the past business year from the company, report on the participation in a statutory quality assurance system, explain all circumstances that could give rise to a cause for self-consciousness, and measures that ensure an independent audit.[172]

[171] See ÖACG (2010), p. 43.
[172] See ÖACG (2010), p. 43f.

5 The Dutch Corporate Governance Framework

5.1 General Background

5.1.1 The Emergence of a Corporate Governance Code in the Netherlands

In June 1997, the first Dutch Corporate Governance Committee (Peters Committee) published the "Corporate Governance in the Netherlands; the Forty Recommendations" report which includes 40 recommendations on corporate governance practices. It was created following a public debate about defensive measures against takeovers.[173]

According to the Dutch corporate law system´s background, companies´ boards should be stakeholder rather than shareholder orientated.[174] The system is more based on instruments that completely separate ownership and control than on increasing the influence of large owners. In most Dutch companies there did not exist any notable shareholders as ownership is dispersed and thus their influence was limited.[175]

But the Forty Recommendations report was herald of the restoration of the position of shareholders.[176] It formed the point of departure for the activities of the second Committee (Tabaksblat Committee) chaired by Mr. Morris Tabaksblat. This Committee was installed on March 10, 2003 and consisted of representatives of listed companies, shareholder associations, and independent governance experts. It drafted the first Dutch Corporate Governance Code on December 9, 2003 which came in force in 2004.[177] The main objective of the code was rebuilding the confidence in the private sector after various accounting scandals (e.g the misleading financial statements of Royal Dutch Ahold, and the oil reserves statements of Royal Dutch Shell). Thus provisions were set up to improve accountability and transparency.[178]

On December 6, 2004 the third Committee (Frijns Committee) was installed. In the period 2005-2008 it has published yearly evaluation reports on the compliance by listed companies with the Code, in which it has made recommendations regarding internal

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[173] See Gugler (2001), p. 165; Van Bekkum/Hijink/Schouten/Winter (2010), p. 3.
[174] See Cziraki/De Goeij/Renneboog (2011), p. 10; De Jong/Röell (2005), p. 473.
[175] See Schnyder (2008), p. 11.
[176] See Van Bekkum/Hijink/Schouten/Winter (2010), p. 3.
[177] See De Jong/Röell (2005), p. 474; Van Bekkum/Hijink/Schouten/Winter (2010), p. 4.
[178] See Monitoring Commissie (2008a), p. 48.

control and risk management, remuneration policy and diversity in the supervisory board´s composition. Moreover, it has issued consultations and surveys, and on May 30, 2007 it published its Advisory Report on the relationship between company and shareholder and on the scope of the 2003 Code.[179]

The Dutch Corporate Governance Code Monitoring Committee has the obligation to evaluate and adapt the code to national and international developments, if necessary, but there exists no predetermined frequency for these procedures.[180] On December 10, 2008 the 2003 version of the Dutch Corporate Governance Code was revised at the request of special interest groups at the invitation of the Minister of Finance and the Minister for Economic Affairs. Those interest groups were the National Federation of Christian Trade Unions in the Netherlands CNV, the Federation of Dutch Trade Unions FNV, the NYSE Euronext (promotes corporate governance codes to improve transparency and integrity in the financial markets but the code is not imposed as part of the listing rules), the Netherlands Centre of Executive and Supervisory Directors NCD, Eumedion, the Association of Stockholders VEB, the Association of Securities-Issuing Companies VEUO, and the Confederation of Netherlands Industry and Employers VNO-NCW.[181]

The revision of the code was necessary because of diverse developments at national and international level in legislation, corporate governance codes and the market. Important changes in legislation affected Book 2 of the Netherlands Civil Code, parts of the Financial Supervision Act (Wet op het financieel toezicht) and the Financial Reporting (Supervision) Act (Wet toezicht financiële verslaggeving). The Enterprise Division of the Amsterdam Court of Appeal and the Supreme Court of the Netherlands issued significant rules regarding the relationship between the companies´ stakeholders because of cases of conflicts of interest between the management board (and supervisory board) and shareholders caused from the increased influence through mergers and acquisitions since 2004. A big volume of large Dutch listed companies´ shares is held by foreign shareholders. Moreover, there were various discussions about adding new topics to the Code, for instance diversity / position of women and corporate social responsibility. A lot of criticism has focused on the levels of executive remuneration.[182]

[179] See RiskMetrics Group (2009a), p. 257f.
[180] See Monitoring Commissie; Wymeersch (2006), p. 7.
[181] See Monitoring Commissie (2008a), p. 5; Monitoring Commissie (2008b), p. 1.
[182] See Monitoring Commissie (2008a), p. 47.

Thus, the most important changes to the 2003 Code relate to the subjects:[183]

- risk management,
- remuneration of directors,
- shareholder responsibility,
- diversity in the composition of the supervisory board,
- corporate social responsibility,
- the role of the management board and the supervisory board in takeover situations,
- response period regarding shareholder´s request to place an item on the general meeting´s agenda, and
- providing of information to the general meeting.

The new 2008 Code entered into force from the financial year starting on or after January 1, 2009.

On July 2, 2009 the Minister of Finance, the Minister of Justice and the Minister of Economic Affairs established a new Dutch Corporate Governance Code Monitoring Committee in the Netherlands, chaired by Jos Streppel.[184] The functions of the Committee are ensuring a practicable, updated Dutch Corporate Governance Code by monitoring the operation and implementation of the Code, monitoring national and international developments in corporate governance to promote the use and content of the Code, indicating whether there is any indistinctness in the Code, and monitoring compliance by Dutch listed companies and institutional investors.[185] On December 14, 2009 it published its first report on compliance with the 2003 Corporate Governance Code in 2008. The results of this report show that the number of explanations of code deviations have remained nearly the same compared to the previous year. AEX has highly applied the provisions on internal risk management and on executive pay, except the provisions on executive ownership of securities and maximum severance pay, and many AEX companies have already anticipated the 2008 Code.[186]

[183] See Monitoring Commissie (2008b), p. 1

[184] See Monitoring Commissie (2009a), p. 1; Monitoring Commissie (2009b), p. 3.

[185] See Monitoring Commissie (2009b), p. 3; Wymeersch (2006), p. 7.

[186] See Monitoring Commissie (2009b), p. 1f.

5.1.2 Content and Structure of the Dutch Corporate Governance Code

The Dutch Corporate Governance Code includes principles and best practice provisions that regulate relations between the persons involved in a company (including members of the management board and supervisory board) and shareholders.[187] Relations between the company and its employees are not regulated here but employees´ interests shall be taken into account when the interests of all stakeholders are weighed in connection with compliance with the code. The Preamble of the Code states that the principles are up-to-date, reflecting the national and international best practices in the field of corporate governance, and enjoy wide support. They create a set of general standards of good corporate governance and there is no categorization of the importance of the principles in the code because all principles are considered equally essential.[188]

The main objective of the Dutch Corporate Governance Code is to influence the behavior of management and supervisory board members and shareholders in advance to ensure the continuity of the company, create long-term value and avoid conflicts of interest (building shareholder and stakeholder confidence). Real discussion between the different organs within the company is fundamental. Therefore the supervisory board shall set up a form of structured consultation to offer the possibility to exchange information and act as point of contact for third parties.[189]

A Memorandum of Change has been added to the bill for the amendment of the structure regime (this bill entered into force on October 1, 2004), and created a statutory basis for the code by means of the comply-or-explain principle. According to Article 2:391, paragraph 5, of the Netherlands Civil Code, since January 1, 2004 listed companies have been obligated to state in their annual report their compliance with the principles and best practice provisions of the code and justify any deviations (see Figure 3: Adoption of a mandatory comply-or-explain scheme).[190]

Section 5:86 of the Financial Supervision Act obligates Dutch institutional investors from January 1, 2007 to include in their annual report or on their websites a compliance report with the provisions applicable to them. Shareholders have the right to call the boards to account for compliance with the code.[191] Since the transposition of EU

[187] See Van Bekkum/Hijink/Schouten/Winter (2010), p. 4.
[188] See Monitoring Commissie (2008a), p. 5f.
[189] See Monitoring Commissie (2008a), p. 48; Monitoring Commissie (2008b), p. 1.
[190] See Monitoring Commissie (2008a), p. 8; RiskMetrics Group (2009a), p. 256f, 267.
[191] See Monitoring Commissie (2008a), p. 8.

Directive 2006/46/EC listed companies have been obligated to publish a corporate governance statement beginning with the financial years starting on or after April 1, 2008, in which they have to provide certain information:[192]

- information on the application of all corporate governance practices within the company additionally to the 2008 Code and information on voluntarily compliance with other (foreign) governance codes,
- a description of the internal control and risk management systems of the company,
- the functioning and authority of the shareholders´ meeting and shareholders´ rights and exercise of these rights,
- the boards´ and committees´ composition and functioning, and
- information that must be provided according to Article 10, first paragraph, points c, d, f, h and i of the EU Takeover Directive 2004/25/EC of the European Parliament and the Council of 21 April 2004.

In Figure 2: Categorization of corporate governance systems you can see that the Netherlands, like Austria, imposed the reference to the code and its application by way of comply-or-explain by law or regulation.[193] The Dutch Corporate Governance Code is an instrument of self-regulation which is based on the existing Dutch and European legislation and case law on corporate governance governing the external and internal relationships of listed companies. Any overlap between the legislation and the code is inherent in the code´s function and need not necessarily cause amendments to the code, also because the provisions may supplement the statutory provisions. A company is not allowed to deviate from a certain provision in the case where this provision corresponds with a statutory rule.[194]

The Dutch Corporate Governance Code applies to all companies that have their registered office (statutaire zetel) in the Netherlands and whose shares or depositary receipts for shares are listed on a stock-exchange (Dutch stock exchange NYSE Euronext or any other foreign government-recognized stock exchange), and to all large companies with a balance sheet value exceeding € 500 million that have their registered office in the Netherlands and whose shares or depositary receipts for shares are traded on a multilateral trading facility or a comparable system. The code does not apply to

[192] See Directive 2006/46/EC, p. 4f.
[193] See RiskMetrics Group (2009), p. 24.
[194] See Monitoring Commissie (2008a), p. 6.

investment companies that are a manager within the meaning of article 1:1 of the Financial Supervision Act (Wet op het financieel toezicht, Wft).[195]

The Code includes a preamble, the principles, the best practices provisions and an explanation of certain terms used in the code, and consists of five chapters. These chapters are (I) compliance with and enforcement of the code, (II) the management board, (III) the supervisory board, (IV) the shareholders and the general meeting of shareholders, and (V) the audit of the financial reporting and the position of the internal audit function and the external auditor.[196]

5.1.3 Complex Listing Situations

The differing legal bases for the codes and for the application of the comply-or-explain approach may lead to conflicting obligations for companies that are incorporated in one Member State and that shares are listed in other Member States. For example companies incorporated in the Netherlands are obligated by company law to comply with the code, regardless of where the shares of the company are listed. In other cases, for example in the UK, this obligation is laid down in securities listing rules. Companies with a primary listing on the stock exchange in that Member State have to comply with the code of that State, regardless of where the company has been incorporated. As a result, a company incorporated in the Netherlands with its primary listing in the UK is subject to the Dutch Corporate Governance Code as well as the UK Code. On the other hand, a company incorporated in the UK with its primary listing in the Netherlands is neither subject to the UK Code nor to the Dutch Code.[197]

As stated above in chapter 4.1.3, the European Corporate Governance Forum introduced rules to remedy such situations.

5.2 Main Issues of the Dutch Corporate Governance Code

5.2.1 Composition and Functioning of Boards and Committees

According to the DCC, a separate supervisory board is to be established alongside the management board. As already mentioned above, this “two-tier board structure” is also

[195] See Monitoring Commissie (2008a), p. 5.
[196] See Monitoring Commissie (2008a), p. 8.
[197] See ECGF (2009), p. 1.

common in Austria.[198] The management board has the function of weighing up the different interests with respect to the strategy of the company, the supervisory board is obligated to oversee this process, and they are both accountable to the general meeting for the performance of their function.[199] This system already applied to VOC, the first listed company in the world, incorporated in 1602, that established a form of a supervisory board in 1923 as result of shareholder pressure to improve the company´s governance.[200]

In the Netherlands, the two-tier board structure is only mandatory for companies to which the "structure regime" applies. It was introduced in 1971 to balance the major stakeholders´ interests for the benefit of the company as a whole[201], and applies to companies that have met the following 3 conditions during a three year period:[202]

- a subscribed capital in excess of € 11.4 million,
- the establishment of a works council by the company or a dependent company (through the works council, employees have the right of nominating candidates for one-third of the supervisory board members), and
- at least 100 employees employed in the Netherlands by the relevant company and its dependent companies.

The structure regime does not apply to most large listed companies.[203] Chapter III.8 of the Dutch Corporate Governance Code includes some specific provisions for those companies with a one-tier structure.[204] In November 2008 the bill to amend Book 2 of the Netherlands Civil Code in connection with the adjustment of the rules governing management and supervision in public and private limited companies (Parliamentary Papers II 2008/09, 31 763, no. 2) was presented from the government to the Lower House of Dutch Parliament. This bill includes rules for one-tier board structures. Actually, Unilever N.V. is the only large listed company that has adopted this kind of board structure.[205]

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[198] See Gugler (2001), p. 158.
[199] See Monitoring Commissie (2008a), p. 6, 11.
[200] See De Jong/Röell (2005), p. 468; Van Bekkum/Hijink/Schouten/Winter (2010), p. 6.
[201] See Schnyder (2008), p. 11.
[202] See Cziraki/De Goeij/Renneboog (2011), p. 11f.
[203] See Van Bekkum/Hijink/Schouten/Winter (2010), p. 6.
[204] See Monitoring Commissie (2008a), p. 28f.
[205] See Van Bekkum/Hijink/Schouten/Winter (2010), p. 6.

5.2.1.1 Supervisory board

Supervisory board	
elected by	• supervisory board (structure regime) • general meeting (mitigated regime)
tenure of office	3 x 4years
prematurely termination	possible
minimum number of members	3
maximum number of members	usually 9
function	• monitor and support management board • monitor general company´s affairs and business • determine executive remuneration
chairperson´s function	• ensure the board´s and its committees´ functioning • ensure orderly conduct of the general meeting • main contact for the management board and for shareholders
cooling-off period for CEO	yes

Figure 12: General information on the supervisory board
(Author´s design)

In the case where a company is subject to the structure regime, the supervisory board has the statutory rights for its own board members appointment and dismissal[206], and to approve important resolutions of the management board as listed in article 2:164 par. 1 of the DCC. Article 2:158 of the DCC provides detailed rules on the nomination. An absolute majority of the votes representing at least one third of the company´s issued share capital gives the general meeting the power to waive the nomination of the supervisory board (in this case the supervisory board has to present a new nomination), and to dismiss the whole supervisory board.[207]

The so-called mitigated regime applies if a foreign entity holds more than 50 % of a Dutch subsidiary´s shares. In this case a supervisory board along with a system of co-optation is required. The general meeting of shareholders instead of the supervisory board holds the function of appointment and dismissal of management board members, and the approval of annual accounts.[208]

The Corporate Governance Code restricts the supervisory board directors´ tenure to maximum three four-year terms.[209]

[206] See Becht/Bolton/Roell (2005), p. 46; Cziraki/De Goeij/Renneboog (2011), p. 12.
[207] See Van Bekkum/Hijink/Schouten/Winter (2010), p. 7f.
[208] See Cziraki/De Goeij/Renneboog (2011), p. 12; Gugler (2001), p. 159.
[209] See Monitoring Commissie (2008a), p. 22.

Pursuant to Article 2:140 DCC, only natural persons can be appointed for the supervisory board. Article 2:160 DCC specifies that persons employed by the company, by a dependent company, and by an employees´ organization customarily involved in the establishment of the terms of employment of the company or dependent company, may not become supervisory board members of a company subject to the structure regime. The company´s articles may set up requirements which potential supervisory board members must meet and thus restrict the number of persons eligible for appointment. According to article 2:142 par. 1 DCC, these requirements may be set aside by a resolution of the general meeting passed with a two-thirds majority of the votes cast representing more than one half of the issued capital.

The 2008 Code brought the additional obligation for the supervisory board to aim for a diverse board composition regarding factors as gender and age, stated in Principle III.3.[210] The minimum size of supervisory boards is set at three members, and usually it does not exceed nine.[211]

The main duty of the supervisory board is to supervise the management board´s policies, the general company´s affairs and business, and to support the management board by rendering advice. It shall act in the interest of all stakeholders.[212] It is responsible to supervise the achievement of the company objectives, the corporate strategy, risk management and internal control systems, the financial reporting process, compliance with legislation, the relationship between company and shareholders, and relevant corporate social responsibility issues. Moreover, it determines the executive remuneration.[213]

Principle III.4 of the code stipulates that the supervisory board´s chairman´s function is to ensure the board´s and its committees´ functioning, the orderly conduct of the general meeting, and to act on behalf of the supervisory board as the main contact for the management board and for shareholders. BPPs III.4.1 through III.4.4 provide more precisely provisions on the chairman´s function, persons that are eligible for appointment, the company secretary, and the vice-chairman of the supervisory board.[214]

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[210] See Monitoring Commissie (2008a), p. 22.
[211] See Van Bekkum/Hijink/Schouten/Winter (2010), p. 7.
[212] See Monitoring Commissie (2008a), p. 19; Weil, Gotshal & Manges (2002), p. 44.
[213] See Van Bekkum/Hijink/Schouten/Winter (2010), p. 8.
[214] See Monitoring Commissie (2008a), p. 23f.

Principle III.7 defines that the general meeting is responsible for the determination of the supervisory board´s remuneration. The remuneration shall be independent of the company´s results. According to BPPs III.7.1 through III.7.3, the granting of any shares and/or rights to shares is not allowed. Any shares held by a supervisory board member in the company are long-term investments, and the granting of personal loans, guarantees or the like is not allowed unless after approval of the supervisory board.[215]

5.2.1.2 Management board

Management board	
elected and dismissed by	general meeting
function	• manage the company • discuss internal control and risk management systems with the supervisory board and the audit committee • consult the supervisory board on all important company matters

Figure 13: General information on the management board
(Author´s design)

The management board represents the company vis-á-vis third parties. Pursuant to the DCC, the general meeting of shareholders has the right to appoint and dismiss management board members. The DCC does not provide requirements that potential management board members have to fulfill but the company´s articles may restrict the circle of persons eligible for appointment by imposing requirements. Article 2:132 par. 2 of the DCC says that the general meeting adopted by two-thirds of the votes cast representing more than one half of the issued capital may set aside these requirements.[216]

The management board´s function is to manage the company by taking into count its day-to-day business and the interest of all parties involved with the company, by developing strategy and policy, all within the boundaries set by the law and the articles of association of the company. It shall discuss internal control and risk management systems with the supervisory board and the audit committee, and consult the supervisory board on all important matters of the company. Certain management board members may be responsible for certain specific management task and should always perform their tasks in good conscience.[217]

[215] See Monitoring Commissie (2008a), p. 28.
[216] See RiskMetrics Group (2009a), p. 264.
[217] See Monitoring Commissie (2008a), p. 11f; Monitoring Commissie (2008b), p. 3.

BPPs II.1.1 through II.1.11 provide rules on the tenure of management board members´ office, elements that it shall submit to the supervisory board for approval, guidance for an internal control and risk management system, elements the board has to include in the annual report, the eligibility of potential members, a response time on shareholders´ intentions, and proceedings in the event of a takeover bid.[218]

The provisions of the code regarding the management board are also applicable to the executive management board members of companies with a one-tier system, except management tasks that cannot be delegated.[219]

5.2.1.3 Committees

Committees	
function	support supervisory board
chairperson´s function	report periodically to supervisory board

Figure 14: General information on committees
(Author´s design)

Legal provisions exist only for the audit committee but Principle III.5 of the code states that the supervisory board shall appoint from among its members an audit, remuneration and nomination committee, if it consists of more than four members. These committees shall assist the supervisory board through preparing the decision-making. The supervisory board has to state in its report if the duties of the committees have been efficiently carried out in the financial year. BPPs III.5.4 through III.5.9 apply to audit committees, BPPs III.5.10 through III.5.13 apply to remuneration committees, and BPP III.5.14 applies to nomination committees. The supervisory board´s chairperson or a former management board member may not chair the audit and remuneration committee.[220]

[218] See Monitoring Commissie (2008a), p. 12f.
[219] See RiskMetrics Group (2009a), p. 263.
[220] See Monitoring Commissie (2008a), p. 24ff.

Audit committee	
establishment	obligatory
composition	at least 1 independent member
	chairperson may not be the supervisory board´s chairperson
function	• propose appointment of an external auditor for the financial statements to the supervisory board • monitor management board´s activities on internal control and risk management, and on the financial reporting process

Figure 15: General information on the audit committee
(Author´s design)

On August 8, 2008 the Decree of 26 July 2008 implementing Article 41 of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of financial statements and consolidated financial statements, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Bulletin of Acts and Decrees 2008, 323) entered into force. According to this Decree, an audit committee shall be established.[221] This committee shall consist of supervisory board members or of the non-executive members of a one-tier board, with at least one of them being independent. Moreover, it must follow specific principles of the Dutch Corporate Governance Code. The audit committee advises the supervisory board on the nomination of the external auditor and on the remuneration and the assignment of non-audit activities to the external auditor.[222] Principle V.4 specifies the external auditor has to report the findings on his audit of the annual financial statements. The audit committee is obligated to monitor the management board´s activities, including the operation of internal control and risk management systems, the provision of financial information by the company, compliance with recommendations and observations of internal and external auditors, the function of the internal audit department, the policy of the company on tax planning, the relations with the external auditor, the financing of the company, and the applications of information and communication technology.[223]

5.2.1.4 Independency of directors

As already mentioned above, the management board is responsible for managing the company without conflicts of interest, and by taking into count the interests of all parties involved in the company´s business. The supervisory board has to approve decisions to enter into transactions that would cause conflicts of interest that are

[221] See Monitoring Commissie (2008a), p. 6; Van Bekkum/Hijink/Schouten/Winter (2010), p. 9.
[222] See RiskMetrics Group (2009a), p. 264, 266f.
[223] See Monitoring Commissie (2008a), p. 36f.

materially significant to the company and the relevant management board member. BPPs II.3.1 through II.3.4 provide rules that have to be followed by management board members in order to avoid conflicts of interest. BPPs III.6.1 through III.6.7 provide provisions that supervisory board members have to follow in order to avoid conflicts of interest.[224]

Principle III.2 stipulates that supervisory board members shall perform their tasks critically and independently of one another, the management board and any particular interests. According to BPP III.2.1, all supervisory board members, with the exception of maximum one person, shall be independent. Pursuant to BPP III.2.2, a supervisory board member is not independent if the member itself, his or her life companion or child has been management board member of the company in the five years prior to the appointment, receives personal financial remuneration from the company or associated company, other than for the work as a supervisory board member, has had a significant business relationship with the company or associated company in the year prior to the appointment, holds at least ten percent of the company´s shares, is management or supervisory board member of a legal entity that holds at least ten percent of the company´s shares (unless this entity is a member of the same group as the company), and has temporarily managed the company during the previous twelve months because of management board members´ absence or disability to perform their tasks.[225]

Principle III.3 specifies that the supervisory board members shall be elected according to their knowledge and experience, taking into count diversity in factors as gender and age. They shall be reappointed only after careful consideration. Supervisory boards have to prepare a profile of their size and composition, to provide that at least one member is a financial expert with appropriate knowledge and experience, that after their appointment, all members follow an induction program, a maximum number of five supervisory boards of which an individual may be a member, a maximum time of appointment of three 4-year terms, and the establishment of a retirement schedule.[226]

5.2.2 Remuneration of Management Board Members

According to the study "How chief executives are paid" of Hay Group (2008), Royal Dutch Shell was the largest European company by market capitalization for which

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[224] See Monitoring Commissie (2008a), p. 17f, 26ff.
[225] See Monitoring Commissie (2008a), p. 20f.
[226] See Monitoring Commissie (2008a), p. 22f.

executive compensation data were disclosed in 2007. In this year chief executive J. van der Veer received a total direct compensation of € 6.610.000. That is the fourth highest CEO compensation of the ten largest companies from Europe.[227]

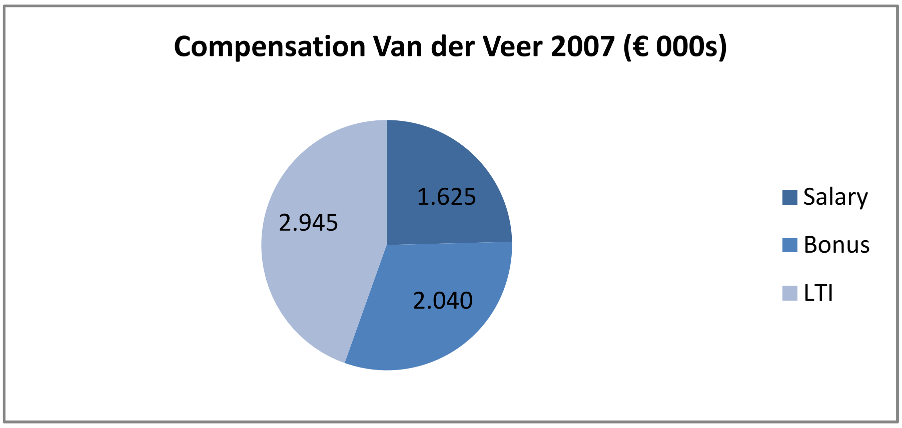

Figure 16: Composition of Van der Veer´s compensation in 2007
(See Hay Group (2008), p. 5)

5.2.2.1 The legal framework

The Dutch Civil Code provides basic rules regarding the remuneration of the management board members. Pursuant to Article 2:135 of the DCC, the management remuneration policy shall be determined by the supervisory board within a policy adopted by the general meeting. Separate management board members´ remuneration shall be determined by the general meeting in accordance with the management remuneration policy (or another competent corporate body designated by the articles of association of the company).[228]

Chapter II.2 of the Dutch Corporate Governance Code provides principles concerning the amount, composition, determination and disclosure of management board members' remuneration.[229] In the 2008 Code, there are some changes of the 2003 Code´s rules concerning the remuneration of management board members. They have been amended, expanded, and new BPPs have been established.[230]

Remuneration shall be that high that qualified and expert managers can be recruited and retained. Pay differentials within the company must be considered in the overall determination of remuneration and an appropriate ratio of variable to fixed remuneration shall be established. Variable remuneration shall be based on previously

[227] See Hay Group (2008), p. 5.
[228] See Ferrarini/Moloney/Ungureanu (2009), p. 39; Van Bekkum/Hijink/Schouten/Winter (2010), p. 12.
[229] See Monitoring Commissie (2008a), p. 14.
[230] See Monitoring Commissie (2008b), p. 2.

determined, assessable and influenceable long-term objectives, while taking care of relevant non-financial indicators as well as the company´s risk profile. The remuneration structure shall be simple and transparent, and such that management board members are motivated not to act in their own interest but in those of the company, and it shall not reward failing board members upon terminating their employment. It shall take into count the results, the share price performance and other relevant indicators related to the company´s long-term value creation. A management board member´s amount of remuneration on termination of his employment may not exceed one year´s salary, unless this would be manifestly unreasonable in certain cases.[231] The control of the management board remuneration is to be improved. Therefore the supervisory board is obligated to make scenario analyses, test the reasonableness and the so-called claw-back clauses.[232]

BPPs II.2.1 through II.2.9 focus on options to acquire shares granted to management board members, shares granted to them without financial consideration, ownership of securities other than securities issued by the company and transactions in them, the maximum remuneration in the case of a dismissal and the granting of loans and personal guarantees.[233]

The Dutch Code includes a clawback provision (BBP II.2.11) that permits the supervisory board to recover from management board members any variable remuneration which was awarded on the basis of incorrect data.[234]

Only about a third of the Member States, including the Netherlands and excluding Austria, follow the recommendation of shareholders´ vote on the remuneration policy. In the Netherlands the requirement of shareholders´ ex ante vote on remuneration policy is both in legislation and in the code.[235]

5.2.2.2 Disclosure

As regards the determination and disclosure of the remuneration, the Netherlands require a detailed individual disclosure of information on share-incentive schemes, for

[231] See Monitoring Commissie (2008a), p. 14.
[232] See RiskMetrics Group (2009a), p. 261.
[233] See Monitoring Commissie (2008a), p. 14f.
[234] See Ferrarini/Moloney/Ungureanu (2009), p. 57; Monitoring Commissie (2008a), p. 16.
[235] See European Commission (2007b), p. 6, 11f.

instance number of share options granted, exercised, and unexercised.[236] Principle II.2 states that the remuneration committee proposes a remuneration policy, the general meeting of shareholders adopts a scope of it, and then the supervisory board has to determine the remuneration of the individual management board members based on these designs. The supervisory board´s report shall contain principal points of the remuneration report drawn up by the remuneration committee. They shall give a transparent, clear and understandable overview of the remuneration policy, and describe the full remuneration of the individual management board members, broken down in its components. BPPs II.2.10 through II.2.15 specify the content of the remuneration report of the supervisory board, and the ways of disclosure.[237]

More than two thirds of the Member States, including the Netherlands, endorsed the recommendation on the disclosure of individual executive and supervisory board members´ remuneration, most of them by law on a mandatory basis. In the Netherlands details of publication (at least salary, bonuses, termination payment, share or share options and pension benefits) are required on a mandatory legislative basis and recommended on a comply-or-explain basis as regards supervisory board members. For them only details of the amount of remuneration, bonus and share-based remuneration have to be published.[238]

5.2.3 Internal Control

Internal control process issues are not regulated by Dutch law but the Dutch Corporate Governance Code provides extensive provisions on it. Principle II.1 and BPP II.1.4 deal with the management board´s responsibility for determining the risk profile and the risk management based in it.[239] Pursuant to BPP II.1.4, the management board shall provide in the annual report a description of main risks related to the company´s strategy, a description of the design and effectiveness of the internal control and risk management systems for the key risks during the financial year, and a description of any discovered significant failings in those systems in the financial year, any major changes made to these systems and any important improvements planned, and a confirmation that these issues have been discussed with the audit committee and the supervisory board.[240] As

[236] See European Commission (2007b), p. 10, 14.
[237] See Monitoring Commissie (2008a), p. 15ff.
[238] See European Commission (2007b), p. 6, 13f.
[239] See Monitoring Commissie (2008a), p. 12.
[240] See Monitoring Commissie (2008a), p. 12; Van Bekkum/Hijink/Schouten/Winter (2010), p. 10.

regards financial reporting risks, BPP II.1.5 provides that the management board should state and provide substantiation in the annual report, that the internal risk management and control systems provide an adequate assurance, that there are no errors of material importance contained in the financial reporting, and that these systems worked properly in the appropriate financial year.[241] Chapter V.3 and chapter V.4 of the code deal with further provisions on internal audit.[242]

5.2.4 Statutory Auditors

Most issues regarding the appointment and mission of statutory auditors are regulated by the DCC. Article 2:393 of the DCC states that the general meeting shall give instructions to an auditor on the statutory audit of the company´s annual accounts. If the general meeting does not give instructions, the supervisory board, or the management board shall get the right to do so. There is no restriction of the appointment to any limited list of candidates but the potential auditors must be registered accountants or certain accountant-administrative consultants. The external auditor may be appointed for any length of tenure, and termination is permitted only if good reasons therefore exist. Besides, Art. 24 AFSA prohibits a statutory audit for an audit firm to be conducted by one and the same external auditor for more than seven consecutive financial years.

The external auditor has to prove the compatibility of the annual report with the financial accounts, the inclusion of information on internal control and risk management systems, the information set out in Article 10, first paragraph, points c, d, f, h and i of the Takeover Directive and other statements. The issues related to the corporate governance statement are also functions of the audit. On June 28, 2008 the Bulletin of Acts and Decrees 2008, 243 amending the Accountants' Supervision Act and Book 2 of the DCC, entered into force. It states that the instruction to the auditor may only be withdrawn for good reason. The auditor may ask to be heard at the general meeting in which it made a decision on the proposed withdrawal of the instruction.[243]

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[241] See Monitoring Commissie (2008a), p. 12f.

[242] See Monitoring Commissie (2008a), p. 35ff.

[243] See Monitoring Commissie (2008a), p. 35f; Van Bekkum/Hijink/Schouten/Winter (2010), p. 28f.

6 Corporate Governance Rating: Austria versus the Netherlands

Compared internationally, the assessment of the Austrian Corporate Governance is quite bad. Already La Porta, Lopez-de-Silanes, Shleifer, and Vishny (1998, 2006) find in their studies “Law and Finance” and “What Works in Securities Laws?” that it partly shows clear deficits.[244] The “Comparative Study of Corporate Governance Codes Relevant to the European Union and its Member States” of Weil, Gotshal & Manges points out similar findings, and strengthen the idea of developing an Austrian Corporate Governance Code.[245] A lot of points need to be changed to achieve better corporate governance in Austria. Overall corporate governance does not enjoy the attention it ought to.[246]

The Netherlands are a small country with large financial centers and disproportionately large institutional holdings. Compared internationally, the country shows a high quality of corporate governance. The Dutch government seeks to impose greater accountability on Dutch companies. It recommends the reporting of boards on the steps they are taking to manage and report risk. Remuneration, transparency and risk management are major issues in the Netherlands.[247]

6.1 Corporate Governance Rating according to La Porta, Lopez-de-Silanes, Shleifer, and Vishny (1998)

The corporate governance rating of La Porta, Lopez-de-Silanes, Shleifer, and Vishny is based on a sample of 49 countries from Europe, North and South America, Africa, Asia, and Australia. Countries are included if they had at least five domestic nonfinancial publicly traded firms with no government ownership in 1993 (based on the WorldScope sample of 15.900 firms from 33 countries and the Moody´s International sample of 15.100 firms from 92 countries apart of the U.S.). Attention is restricted to countries

[244] See La Porta/Lopez-de-Silanes/Shleifer/Vishny (1998); La Porta/Lopez-de-Silanes/Shleifer (2006).
[245] See Wagenhofer (2009b), p. 205.
[246] See Heidrick & Struggles (2009), p. 20.
[247] See Becht/Bolton/Roell (2005), p. 5; Heidrick & Struggles (2009), p. 34.

that have publicly traded firms, and at least five nonfinancial private firms are essential for construction of ownership data.[248]

The study analyzes the corporate governance standards in the sample countries, in particular shareholder-rights, creditor-rights and enforcement.

6.1.1 Shareholder-Rights

As regards shareholder rights, the study examines if the following investor protections are in the law:[249]

a. one share – one vote: ordinary shares carry one vote per share, or the law prohibits the existence of both multiple-voting and nonvoting ordinary shares and firms are not allowed to set a maximum number of votes per shareholder irrespective of the number of shares owned
b. proxy by mail allowed: shareholders are allowed to mail their proxy vote to the firm
c. shares not blocked before meeting: firms are not allowed to require that shareholders deposit their shares prior to a general meeting
d. cumulative voting/proportional representation: shareholders are allowed to cast all their votes for one candidate standing for the director board election (cumulative voting), or a mechanism of proportional representation in the board is allowed by which minority interests may name a proportional number of directors to the board
e. oppressed minority: minority shareholders (shareholders who own 10% of share capital or less) are granted either a judicial venue to challenge the management decisions or the right to step out of the company by requiring the company to purchase their shares when they object to fundamental changes
f. preemptive right to new issues: shareholders is granted the first opportunity to buy new issues of stock
g. percentage of share capital to call an extraordinary shareholder meeting: minimum percentage to call for an extraordinary shareholders´ meeting
h. antidirector rights: this index aggregates the shareholder rights b, c, d, e, f, and as regards g the minimum percentage is less than or equal to 10% (sample median), the index ranges from zero to six

[248] See La Porta/Lopez-de-Silanes/Shleifer/Vishny (1998), p. 1117.
[249] See La Porta/Lopez-de-Silanes/Shleifer/Vishny (1998), p. 1122f, 1130.

i. mandatory dividend: percentage of net income that the law requires firms to distribute as dividends among ordinary stockholders

	a	b	c	d	e	f	g	h	i
A	0	0	0	0	0	1	0,05	2	0,00
NL	0	0	0	0	0	1	0,10	2	0,00

Figure 17: Shareholder rights (1 = shareholder protection is in the law)
(See La Porta/Lopez-de-Silanes/Shleifer/Vishny (1998), p. 1130f)

This figure illustrates that both countries, Austria and the Netherlands, have little legal protections to shareholders. Only the preemptive right to new issues, and the percentage of share capital to call an extraordinary shareholder meeting are covered by Austrian and Dutch law.

6.1.2 Creditor Rights

This chapter shows if the following creditor protections are in the law:[250]

a. No automatic stay on assets: the reorganization procedure does not impose an automatic stay on the firm assets on filing the reorganization petition
b. Secured creditors first paid: secured creditors are ranked first in the distribution of the proceeds that result from the disposition of the assets of a bankrupt firm
c. Restrictions for going into reorganization: reorganization procedure imposes restrictions to file for reorganization
d. Management does not stay in reorganization: an official is appointed by the court or by the creditors for the operation of the business during reorganization, or the debtor does not keep the administration of its property pending the resolution of the reorganization process
e. Creditor rights: this index aggregates the creditor rights a, b, c and d, it ranges from zero to four
f. Legal reserve required as a percentage of capital: minimum percentage of total share capital mandated to avoid the dissolution of an existing firm

	a	b	c	d	e	f
A	1	1	1	0	3	0,10
NL	0	1	1	0	2	0,00

Figure 18: Creditor rights (1 = creditor protection is in the law)
(See La Porta/Lopez-de-Silanes/Shleifer/Vishny (1998), p. 1136f)

Austria offers creditors stronger legal protection against managers than the Netherlands. The only protection that Austrian law does not include is “the management does not

[250] See La Porta/Lopez-de-Silanes/Shleifer/Vishny (1998), p. 1123f, 1136.

stay in reorganization", while the Netherlands do not include "no automatic stay on assets" and "legal reserve required as a percentage of capital" too.

6.1.3 Enforcement

The study also examines the enforcement mechanisms and accounting standards of the sample countries:[251]

a. Efficiency of judicial system: scale from zero to 10, the lower the scores, the lower the efficiency levels
b. Rule of law: scale from zero to 10, lower scores for less tradition for law and order
c. Corruption: scale from zero to 10, the lower the scores, the higher the levels of corruption
d. Risk of expropriation: scale from zero to 10, the lower the scores, the higher the risks
e. Risk of contract repudiation: scale from zero to 10, the lower the scores, the higher the risks
f. Rating on accounting standards: index that examines and rates companies´ 1990 annual reports on their inclusion or omission of 90 items in the categories general information, income statements, balance sheets, funds flow statement, accounting standards, stock data, and special items, the companies represent a cross section of various industry groups

	a	b	c	d	e	f
A	9,50	10,00	8,57	9,69	9,60	54
NL	10,00	10,00	10,00	9,98	9,35	64

Figure 19: Enforcement
(See La Porta/Lopez-de-Silanes/Shleifer/Vishny (1998), p. 1142f)

In law enforcement, the Netherlands are one of the countries on top, with Austria close behind. The Netherlands have the best possible scores in the areas efficiency of judicial system, rule of law, and corruption, and the almost best possible scores in the area of risks. Austria shows very good scores too, a little below the best possible scores as regards the efficiency of judicial system, corruption, and risks. With quality of accounting, the Dutch examination is quite above the median while the Austrian examination is below it.[252]

[251] See La Porta/Lopez-de-Silanes/Shleifer/Vishny (1998), p. 1124f, 1142.
[252] See La Porta/Lopez-de-Silanes/Shleifer/Vishny (1998), p. 1142f.

6.2 Corporate Governance Rating according to Wójcik (2006)

Wójcik (2006) addresses in his study the developments in corporate governance, with a focus on convergence.[253] He uses proprietary data on corporate governance ratings of the largest companies in Europe in 2004 provided by Deminor Rating SA. This corporate governance rating agency is headquartered in Brussels with offices in major European cities. It rates the corporate governance practice of companies based on four categories:[254]

a. shareholders´ rights and duties
b. takeover defenses
c. disclosure
d. board structure and functioning

Each category consists of subcategories, based on over 300 criteria. Deminor uses publicly available information (corporate websites, stock exchange announcements, press articles, etc.). A company scores between zero and 10 point in each category, and their sum gives the total corporate governance score. On the basis of the scores, Deminor determines a rating from one to five for each category.[255]

The sample companies are constituents of the FTSE Eurotop 300 index, which consists of the largest 300 European companies according to market capitalization.[256] In 2004 the ratings cover 296 companies[257], including 2 from Austria and 21 of the Netherlands.[258]

	a	b	c	d	Total
A	6.7	2.6	6.0	3.8	19.1
NL	5.5	3.8	8.1	6.6	22.6

Figure 20: Corporate governance ratings in 2004 (median values)
(See Wójcik (2006), p. 648)

The Austrian sample companies show extremely low scores for the categories “takeover defenses” and “board structure and functioning”. The scores for the categories “shareholders´ rights and duties” and “disclosure” are with 6.7 and 6.0 at least above the middle score. In the Netherlands the score is lowest for the category “takeover

[253] Wójcik (2006), p. 641.
[254] Wójcik (2006), p. 645.
[255] Wójcik (2006), p. 645.
[256] FTSE.
[257] Wójcik (2006), p. 646.
[258] Wójcik (2006), p. 648.

defenses". The Dutch sample companies rate highly in the category "disclosure" with a score of 8.1, and o.k. in the category "board structure and functioning" with 6.6. "Shareholders´ rights and duties" is the only category in which the Netherlands rate worse than Austria. In total, the rating of the Dutch sample companies is better than the Austrian one, with a score of 22.6 versus 19.1.

6.3 Corporate Governance Rating according to Heidrick & Struggles (2009)

In the 2009 corporate governance rating of Heidrick & Struggles Austria´s corporate governance system concerning supervisory boards and their committees is rated as the worst one among 13 EU Member States, with 36% on a scale of 100%. However, the Dutch corporate governance system is rated as the second best one with 71%. The European average rating is 56%.[259]

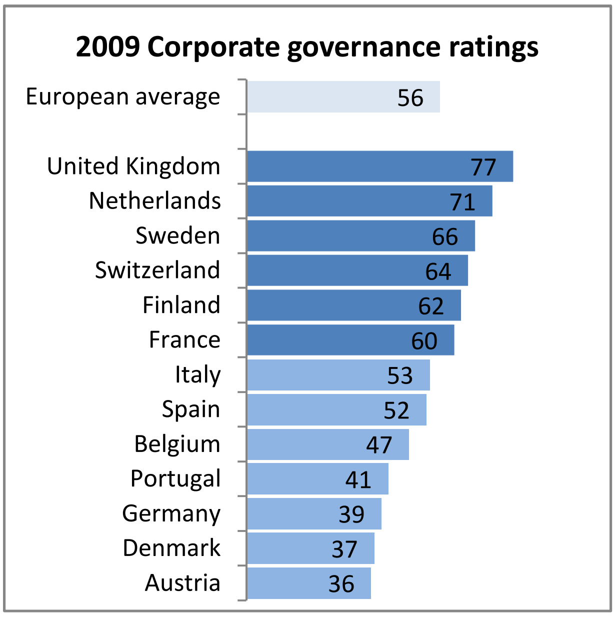

Figure 21: 2009 Corporate governance ratings
(See Heidrick & Struggles (2009), p. 2)

This rating includes the top 371 European companies based on the reference stock exchange (ATX in Austria, AEX in the Netherlands). The data collection is based on published information such as annual reports. Each company in the sample was rated individually on 41 weighted criteria that focus on transparency (disclosure levels of information about directors, remuneration and committees), composition of the board

[259] See Heidrick & Struggles (2009), p. 2.

(board independence, diversity, composition of committees), and working style of the board (availability, committee structure and board evaluation).[260]

The ATX (Austrian Traded Index) is the stock index of Wiener Börse, and consists of the 20 biggest listed companies in Austria. It is the most widely used indicator of the Austrian stock market. The AEX (Amsterdam Exchange Index) is the most important stock index in the Netherlands. It includes the 25 most actively traded shares listed on Euronext Amsterdam.[261]

The Austrian and Dutch sample companies are listed in the following figure:[262]

[260] See Heidrick & Struggles (2009), p. 2f, 5.
[261] See Cee Stock Exchange Group (2010b); NYSE Euronext (2011).
[262] See Heidrick & Struggles (2009), p. 46f.

Austria	**The Netherlands**
Andritz	AEGON
Boehler Uddeholm	Ahold
Bwin	Akzo Nobel
Erste Bank	Arcelor Mittal (with France)
Flughafen Wien	ASML Holding
Intercell	Corporate Express
Meyr Melnhof	DSM
OMV	Fortis (with Belgium)
Österreichische Post	Hagemeyer
Palfinger	Heineken
Raiffeisen Bank International	ING
RHI	KPN
Schoeller Bleckmann	Philips
Strabag	Randstad
Telekom Austria	Royal Dutch Shell
Verbund	Reed Elsevier (with UK)
Voestalpine	SBM Offshore
Wienerberger	TNT
Zumtobel	TomTom
	Unibail-Rodamco (with France)
	Unilever (with UK)
	Vedior
	Wolter Kluwer

Figure 22: Sample companies from Austria and the Netherlands (Heidrick & Struggles (2009), p. 46f)

The banking crisis has exposed the insufficient governance exercised by Austrian boards. Chairpersons are obligated to bring the necessary expertise onto their boards. Many non-executives have been appointed to represent shareholders and other external interest groups, and boards sometimes lack true independence, which has resulted in calls for greater shareholder activism and tougher regulation. Confidence has been eroded in Austria because of inefficient board compositions, the lack of independent committee chairpersons, the infrequency of board meetings, and the holding of too many simultaneous positions by both chairpersons and directors.[263]

In comparison, Dutch boards are highly accountable to shareholders. The Netherlands have excellent standards and strict rules of corporate governance but the board

[263] See Heidrick & Struggles (2009), p. 20.

composition, its evaluation mechanisms and committees are untested in the uncertain time of recession in 2008.[264]

6.3.1 Board composition

As the two-tier board structure is common in Austria and the Netherlands, by law the roles of the CEO and chairperson are split in both countries. This command and control mindset deters excessive risk-taking but equally prevents directors of being deep engaged in management practices and having a thorough understanding of the businesses they supervise. Just 10% of chairpersons in Austria, and 9% in the Netherlands are the former CEOs of their company. As a result, supervisory boards are more independent and accountable.[265]

The average number of directors per board is 10,8 in Austrian and 8,9 in Dutch companies. The European median is 11,8. Opinions are still divided regarding the advantages and disadvantages of large or small boards. Advocates of large boards argue that they allow considerable scope for the representation of diverse interests; those of small boards argue that they are more effective thanks to the ease of debate among a smaller number of people.[266]

Austria has the youngest boards in Europe with an average age of 55,9 years whereas the Netherlands have the oldest boards with an average age of 62,4 years (European average at 59 years). This may bring the advantage that Dutch directors have a lot of valuable experience but on the other hand they may be less open to new ideas than younger directors.[267]

6.3.2 Board diversity

International diversity, diversity of functional expertise, and gender diversity are necessary in today´s complex global markets. The more diverse boards are the more likely they are to generate innovative and creative thinking, a better stakeholder representation, and sustainable performance.[268]

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[264] See Heidrick & Struggles (2009), p. 34.

[265] See Heidrick & Struggles (2009), p. 7f, 11, 20, 34; Wagenhofer (2009b), p. 208; Weil, Gotshal & Manges (2002), p. 6.

[266] See Heidrick & Struggles (2009), p. 11f.

[267] See Heidrick & Struggles (2009), p. 15, 20, 34.

[268] See Heidrick & Struggles (2009), p. 12; Hlawati/Schmidt (2010), p. 958f.

International diversity in Austria is low, there are only 12% of non-national directors on Austrian boards with an over representation of German nationals. This percentage is low by European standards and interesting given the stated strategy to expand into Central and Eastern Europe how few directors there are from those countries.[269]

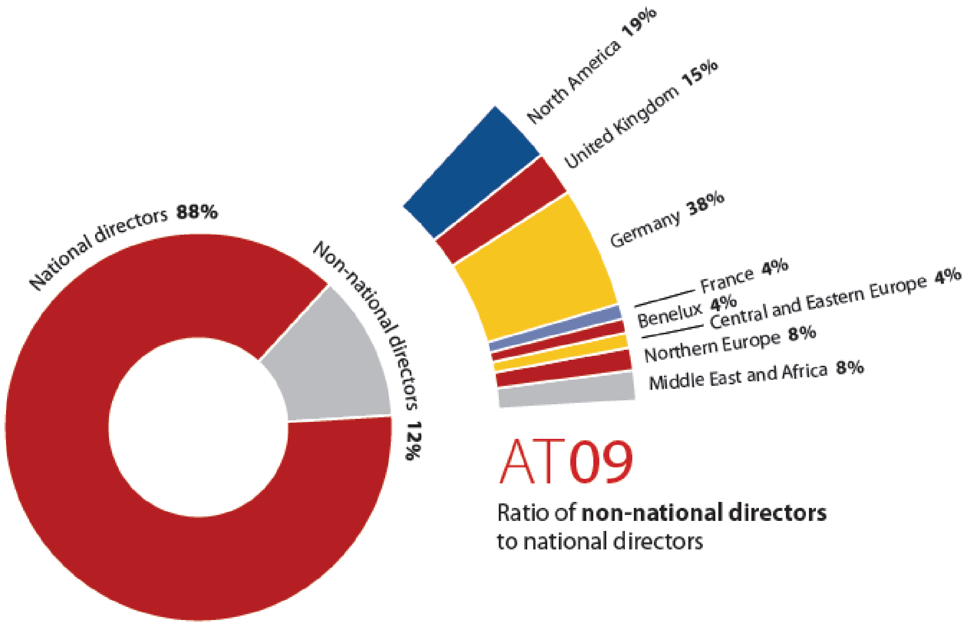

Figure 23: Ratio of non-national directors to national directors in Austria (Heidrick & Struggles (2009), p. 21)

The percentage of non-nationals on Dutch boards is at 54% the highest in Europe. But functional diversity is not so high: one-third of audit committees have no active or former CEO, 70% of boards have no director with a marketing and sales profile, directors lack of financial expertise, strong IT and risk management skills.[270]

[269] See Heidrick & Struggles (2009), p. 13, 20.

[270] See Heidrick & Struggles (2009), p. 13f, 34.

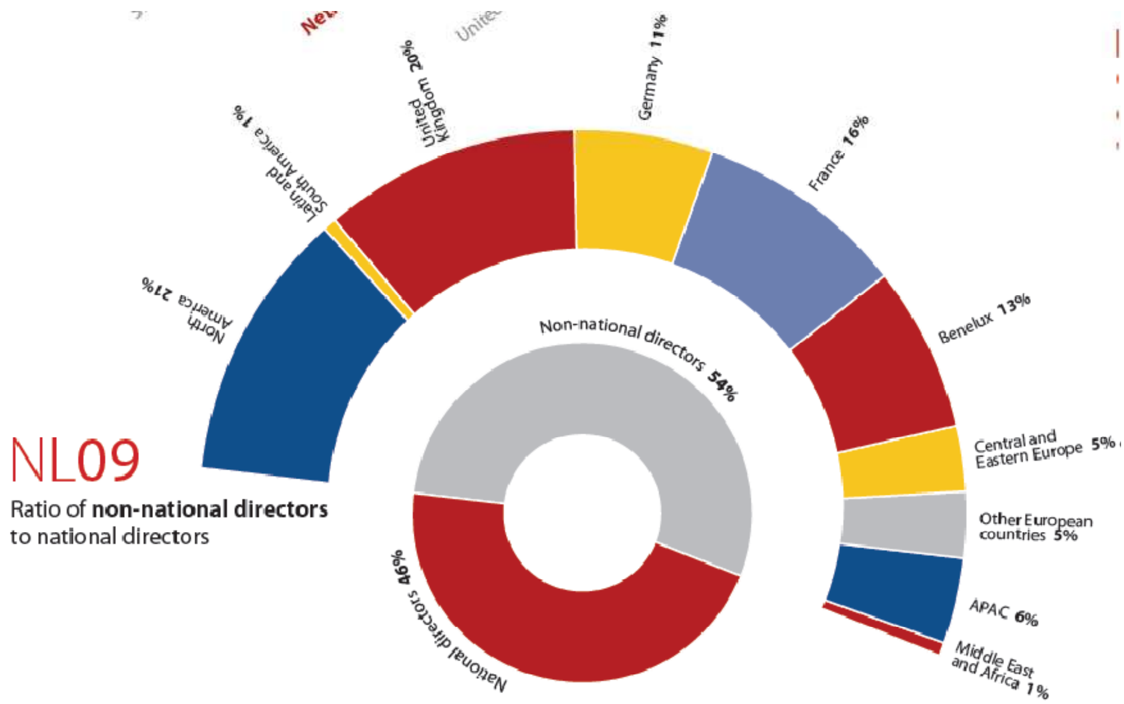

Figure 24: Ratio of non-national directors to national directors in the Netherlands (Heidrick & Struggles (2009), p. 21)

The number of women on European boards has increased by 12 – 22% but the European average is still low at 10%. Gender diversity in Austria is low at 6%, and at 13% in the Netherlands. 65% of ATX boards and 30% of AEX boards do not have even one woman on the board. The European average is 31%.[271]

6.3.3 Length of tenure

Austria has very stable boards. The directors´ tenure of office is at 4,2 years the third highest in Europe. This contributes to board ineffectiveness, and allows less flexibility for adjusting board composition to reflect changing priorities. The Netherlands have an average length of appointment of 3,6 years which is also above the European median at 3,1 years.[272]

6.3.4 Frequency of board meetings

The average number of board meetings in Austria is 5,6 times a year which is the lowest one in Europe. The frequency of board meetings in the Netherlands has increased to 9,3 meetings per year, meeting the European average of 9,6. This reflects the growing involvement of boards. Also the number of committee meetings in Dutch companies has

[271] See Heidrick & Struggles (2009), p. 14f.

[272] See Heidrick & Struggles (2009), p. 7f, 20.

increased for 13%. Attendance of board meetings is slightly above average at 93% even though the boards are highly international.[273]

6.3.5 Committees

95% of Austrian companies establish an audit committee, and 85% a remuneration committee, half of which hold a combined remuneration and nomination brief. 2,7 is the average number of committees per company in Austria. In the Netherlands companies have by law and audit and a remuneration committee. The average number of committees per company in the Netherlands is 3, equal to the European average. Full independent audit committees have become a standard in the Netherlands whereas independent directors represent only 25% of members in Austria. Some Austrian committees do not even include a single independent member. In Dutch companies, 39% combine remuneration and nomination committees which is far higher than the European average but this practice is declining. Strategy committees are not a European norm but they are present in a lot of Austrian companies (higher than European average), and in 17% of Dutch companies.[274]

6.3.6 Board evaluations

The number of board evaluations in Europe has increased significantly; the actual average is 75%. Board evaluation is a standard process in the Netherlands. 91% of companies have carried out an evaluation in the last two years and transparency is good. In Austria, 40% of the boards now conduct an evaluation, mostly based on a self-evaluation model. In Europe, disclosure about the evaluation process is low, apart from the individual evaluation of directors in half o the cases. 81% of Dutch companies disclose information on the evaluation leader who is mostly the non-executive chairperson. External consultants are rarely involved.[275]

6.3.7 Remuneration

During the last ten years, the average remuneration of directors in Europe has gone up by 164% to € 83.500. Austrian companies show the lowest director remuneration in Europe. The extremely low average remuneration of € 25.000 needs to be raised if Austrian companies should attract more diverse and talented non-executives. In the

[273] See Heidrick & Struggles (2009), p. 6, 20, 34; ÖACG (2010), p. 26.
[274] See Heidrick & Struggles (2009), p. 9f, 20, 34; ÖACG (2010), p. 28, 64.
[275] See Heidrick & Struggles (2009), p. 18, 20, 34.

Netherlands, the average director remuneration is at € 67.000 also under the European median although it has doubled in ten years and risen significantly in the last two years. Increasing responsibilities and the extra time spent in board meetings and committees result in a similar situation like in Austria: non-executive remuneration needs to be raised if Dutch companies should attract new talents and maintain the high quality and commitment of existing directors.[276]

Remuneration structures in Austria and the Netherlands are not complex. The fixed basic fee represents 86% of the total fee in Austria, and 92% of the total in the Netherlands. The European average of the fixed basic remuneration is at 83%.[277]

6.4 Corporate Governance Rating according to the European Corporate Governance Institute ECGI (2009)

The European Corporate Governance Institute provides an empirical analysis on directors´ pay in Europe. The sample consists of Europe´s largest 300 listed firms by market capitalization, situated in 16 European countries, including Austria (7 companies) and the Netherlands (14 companies). The data collection is based on the annual financial statements or corporate governance reports for the financial year ending December 2007 or March 2008, thus just before the financial crisis.[278]

The analysis covers 23 criteria that are further classified in three categories:

- governance (existence and composition of remuneration committee),
- remuneration policy (remuneration statement, terms of contracts, preparatory and decision-making process, remuneration policy information), and
- individual disclosure (including emoluments and share-incentive schemes).[279]

[276] See Heidrick & Struggles (2009), p. 16, 20, 34.
[277] See Heidrick & Struggles (2009), p. 16f.
[278] See Ferrarini/Moloney/Ungureanu (2009), p. 57.
[279] See Ferrarini/Moloney/Ungureanu (2009), p. 57f.

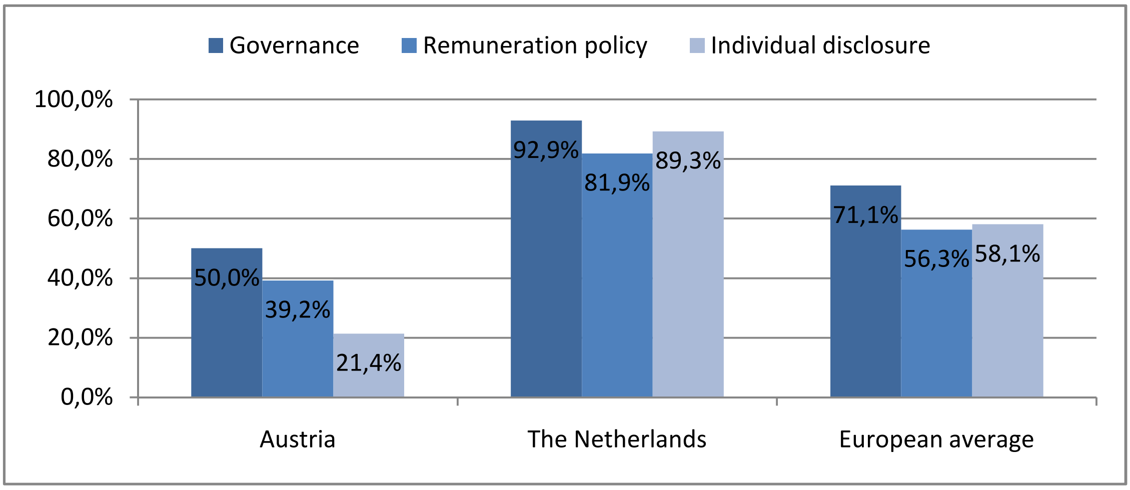

Figure 25: Company compliance with criteria in the 3 main categories
(See ECGI (2009), p. 86, 89)

The overall evaluation of Dutch companies is very good (above the EU median) whereas the Austrian evaluation is very bad (below the EU median).

The criterion "remuneration committee" is already discussed above in section 5.1.5. Remuneration committees are to be found at all Dutch companies in the sample (either separate or joined with nomination committee) and most of them comply with the composition requirements. Austria is one of the countries with the lowest number of companies with present remuneration committees and only a few of them are composed according the requirements.[280]

The Austrian remuneration policy is assessed quiet bad at 39,2%. Less than 30% of Austrian firms provide information on termination payments, they have the lowest conformity levels, and little information on the role of the general meeting of shareholders in the remuneration process is provided. But Austrian companies relate to the companies that rate highest in the criteria "alignment of remuneration with performance". In comparison, the Dutch remuneration policy is assessed good at 81,9%. More than 70% of Dutch companies provide some disclosure on termination payments, only UK and Dutch firms achieve a higher than 50% conformity with the criterion "remuneration statement", most Dutch companies consolidate all information relating to the terms of contracts in the remuneration statement, most of them disclose information on the process for setting-up remuneration, and like Austrian companies, they rate high in the criteria "alignment of remuneration with performance".[281]

[280] See Ferrarini/Moloney/Ungureanu (2009), p. 60.

[281] See Ferrarini/Moloney/Ungureanu (2009), p. 63ff, 67.

The category “individual disclosure” is assessed even worse in Austria at 21,4%. Companies still deviate from the rule and provide explanations for the deviations pursuant to the comply-or-explain approach. The Netherlands show a high level of disclosure practices. About 71% of Dutch companies disclose individual remuneration for the previous year. The majority of Dutch companies provide disclosure on all information required in the category individual disclosure.[282]

6.5 Criticism

The big problem with new corporate governance laws, especially with soft law, is that they open new loopholes.[283] Corporate governance codes focus increasingly on questions of detail in the field of the managements´ duties and its supervision, and forget about their main function: offer a regulation framework for the scopes of all stakeholders of the company, and increase the shareholders´ interest in the internal legal structure of the company.[284]

Weber (2010) argues that “Ein Kodex unterm Arm macht noch keinen guten Unternehmensführer” [285], which means that a code on its own is not enough for a good corporate governance. Simply the following of certain rules does not automatically lead to good corporate governance. A lot of other points are essential as well.[286]

[282] See Ferrarini/Moloney/Ungureanu (2009), p. 68ff, 74.
[283] See Weber (2010), p. 70.
[284] See Weber (2010), p. 69f.
[285] Weber (2010), p. 71.
[286] See Weber (2010), p. 74.

7 Conclusion

There exists no generally accepted definition of corporate governance but it can be defined as a system to direct and control companies by dealing with the relationships between the management, the supervisory board, the shareholders and the stakeholders of a company. The separation of ownership and control, and conflicts of interest build the basis for the academic thinking on corporate governance.

The development of best practice codes for director boards in Europe started in the 1990s because of various agency problems. The Cadbury Report from 1992 was the first set of best governance practice guidelines addressing the comply-or-explain approach. Financial scandals, increasing cross-border operations in the European Internal Market, the integration of European capital markets, the continuing development of new information and communication technologies, and the increasing number of Member States to the EU made the European Commission to set up an EU-wide Action Plan to modernize company law and enhance corporate governance in the EU in 2003. The four main objectives of this plan were the improvement of corporate governance disclosure, the strengthening of shareholders´ rights, the modernization of boards of directors, and the coordination of corporate governance efforts of the Member States. In the following years, the Commission adopted various Recommendations on boards of directors and committees, on the remuneration of directors, and on internal control.

Corporate governance failings have been a significant cause of the world economic crisis because proposed rules have not been implemented. Boards have not exercised an adequate internal control and risk management, and no adequate remuneration policy, shareholders have failed to hold boards accountable, shareholders regulators have failed to respond markets with mispricing risk, and banks have operated with too little capital, excessive leverage and too little awareness to liquidity risk. Therefore the Commission developed further rules on corporate governance or amended existing rules to enhance governance practices, and proposed further modification of banking regulation, to restore confidence to markets, and to avoid future crisis.

The distribution between different legal instruments in the EU Member States depends on the respective legal tradition, ownership structure and other country-specific factors. In both countries, Austria and the Netherlands, there applies a mix of public and private regulation. Listing rules refer to the local corporate governance code and the law or securities regulation refers to the comply-or-explain approach.

The AktG, GmbHG, BörseG, UGB, and the ÖCGK are the sources of Austrian corporate governance standards. The Austrian Working Group for Corporate Governance drafted the first Austrian Corporate Governance Code in 2002. It got reviewed and amended several times because of national and international developments, especially because of the financial crisis, and in January 2010, the fourth code version was introduced. The code contains the most important statutory requirements under Austrian corporate law, securities law and capital markets law, and under EU recommendations, and the OECD Principles of Corporate Governance. The Dutch Code is also based on the existing Dutch and European legislation and case law on corporate governance governing the external and internal relationships of listed companies. Consequently, any overlap between the legislation and the code is inherent in the code´s function and need not necessarily cause amendments to the code.

Since the transposition of EU Directive 2006/46/EC in Austrian law, the code applies to Austrian stock listed companies on a mandatory comply-or-explain basis. Already since 2004, the Dutch Code applies mandatorily in the way of comply-or-explain to all Dutch stock listed companies, and to all large companies with a balance sheet value exceeding € 500 million that have their registered office in the Netherlands and whose shares or depositary receipts for shares are traded on a multilateral trading facility or a comparable system. The comply-or-explain approach, according to which companies have to apply with corporate governance codes or to explain any deviations, enjoys wide support. The European Commission argues that it enables a flexible acting for companies with respect to their sector- and company-specific requirements, and the possibility for markets to assess the explanations provided. Unfortunately, the majority of Austrian companies does not apply to most C-Rules because it is sufficient to just justify the deviations, and the majority does not even justify deviations or does in it an insufficient way. This is a disadvantage of the self-regulation-system.

The main objective of both codes is the establishment of an accountable system of management and control by influencing the behavior of board members and shareholders to avoid conflicts of interest and improve the transparency of all stakeholders, ensure the continuity of the company, and creating long-term value.

The topics treated in the codes and the level of detail in the individual Member States vary. The Austrian and the Dutch Code of Corporate Governance both contain rules and recommendations on the issues composition and functioning of boards and committees, remuneration of management board members, internal control, and statutory auditors.

The Austrian code shows a guideline on the level of obligation: L-Rules refer to mandatory legal requirements, C-Rules refer to the comply-or-explain system, and R-Rules add best practices of corporate governance recommended from the European Commission. The principles of the Dutch Corporate Governance Code are all considered equally essential thus there is no categorization of their importance.

Different to Austria, Dutch companies have been stakeholder rather than shareholder orientated. But the development of corporate governance recommendations and codes since 1997 has supported the restoration of the shareholders´ position. The Dutch Corporate Governance Code Monitoring Committee drafted the first Dutch Corporate Governance Code in 2003 including provisions to improve accountability and transparency to rebuild confidence in the private sector after various accounting scandals (e.g. Royal Dutch Ahold, and Royal Dutch Shell). In 2008, an amended code was introduced, adapted to national and international developments, inter alia the increased influence on the relationship between the interest groups involved in the company through mergers and acquisitions in the Netherlands since 2004, excessive executive remuneration, and the request of adding new topics to the code. The Dutch Corporate Governance Monitoring Commission´s reports on compliance with the code show that Dutch listed companies highly apply the provisions.

Compared internationally, Austria shows a low quality of corporate governance whereas the assessment of the Dutch one is very good. Austria is marked by inefficient board compositions, the lack of independent committee chairpersons, the infrequency of board meetings, and the holding of too many simultaneous positions by both chairpersons and directors. The Netherlands are marked by highly accountable boards, excellent standards and strict rules of corporate governance.

Corporate governance needs more attention in Austria. A lot of points need to be changed to achieve better corporate governance. For instance, the establishment of an institution for an ongoing monitoring and evaluation of the code, the institutionalization and professionalization of the Austrian Working Group for Corporate Governance, and the possibility for the supervisory board of directly and independent from the management board getting information from the company, could be first useful steps.

8 Bibliography

AFG-ASFFI: Recommendations on Corporate Governance, French Vienot Commission on Corporate Governance, 1998.

Austrian Financial Reporting and Auditing Committee AFRAC: Stellungnahme “Corporate Governance-Bericht gemäß § 243b UGB”, Wien 2008.

Baumol, W.: Business Behavior, Value and Growth, New York 1959.

Bebchuk, L. A./Fried, J. M.: Pay without Performance, The Unfulfilled Promise of Executive Compensation, Harvard University Press 2004.

Bebchuk, L. A./Spamann, H.: Regulating Bankers´ Pay, Georgetown Law Journal, Vol. 98, No. 2, pp. 247-287, 2010.

Becht, M./Bolton, P./Röell, A.: Corporate Governance and Control, ECGI, Finance Working Paper No. 002/2002, updated August 2005.

Benston, G. J.: The Self-Serving Management Hypothesis: Some Evidence, Journal of Accounting & Economics Vol. 7, No. 1 – 3, pp. 67 – 84, 1985.

Berle, A. A./Means, G. C.: The Modern Corporation & Private Property, New York 1932.

BGBl.114/1997: Bundesgesetzblatt für die Republik Österreich, 114. Bundesgesetz: Insolvenzrechtsänderungsgesetz 1997 – IRÄG 1997, Wien 1997.

Birkner, A./Inetas, H.: Verpflichtender Corporate Governance Bericht, Österreichisches Recht der Wirtschaft, RdW 9/2008 Artikel-Nr. 532, pp. 563-565, 2008.

Birkner, A./Hasenauer, C.: Austria, Supplement – The IFLR Guide to Corporate Governance 2004, available at: http://www.iflr.com/Article/2026559/Search/Austria.html?OrderType=1&Keywords=Birkner+Hasenauer, 14.06.2011.

Birkner, A./Hasenauer, C.: Austria, Supplement – The 2005 Guide to Corporate Governance, 2005, available at: http://www.iflr.com/Article/1984718/Search/Austria.html?OrderType=1&Keywords=Birkner+Hasenauer, 14.06.2011.

Bolton, P./Scheinkman, J./Xiong, W.: Pay for Short-Term Performance: Executive Compensation in Speculative Markets, ECGI, Finance Working Paper No. 79/2005.

Bruner, C. M.: Corporate Governance Reform in a Time of Crisis, Journal of Corporation Law, Vol. 36, No. 2, p. 309, 2011.

Cadbury Committee: The Financial Aspects of Corporate Governance, 1992.

CalPERS: Corporate Governance Principles and Guidelines, California Public Employees´ Retirement System, Sacraments, CA, USA 1997, revised 1999.

Cee Stock Exchange Group: Rules Prime Market, Wien 2010a, available at: http://en.wienerborse.at/static/cms/sites/wbag/media/en/pdf/marketplace_products/regelwerk_primemarket.pdf, 25.4.2011.

Cee Stock Exchange Group: ATX – Austrian Traded Index, Wien 2010b, available at: http://www.indices.cc/static/cms/sites/indices/media/de/pdf/download/profiles/profil-atx.pdf, 26.4.2011.

Chi-Kun Ho: Corporate Governance and Corporate Competitiveness: an international analysis, in: Corporate Governance: An International Review, Vol. 13, No. 2, pp. 211 – 253, Oxford and Malden 2005.

Coase, R.: The Nature of the Firm, Economica Vol. 4, No. 16, pp. 386 – 405, 1937.

Coughlan, A. T./Schmidt, R. M.: Executive Compensation, Management Turnover, and Firm Performance: An Empirical Investigation, Journal of Accounting and Economics Vol. 7, No. 1 – 3, pp. 43 – 66, 1985.

Cziraki, P./De Goeij, P./Renneboog, L.: Insider Trading, Option Exercises and Private Benefits of Control, Tilburg 2011.

De Jong, A./Röell, A.: Financing and Control in The Netherlands, In: Morck, R.: A History of Corporate Governance around the World, pp. 467-506, Chicago: University of Chicago Press 2005.

De Long, B. J./Shleifer, A./Summers, L. H./Waldmann, R. J.: The Size and Incidence of the Losses from Noise Trading, Journal of Finance No. 44, Vo. 3, pp. 681 – 696, 1989.

De Long, B. J./Shleifer, A./Summers, L. H./Waldmann, R. J.: Noise Trader Risk in Financial Markets, Journal of Political Economy No. 98, Vo. 4, pp. 703 – 738, 1990.

Diamond, D. W.: Reputation Acquisition in Debt Markets, Journal of Political Economy Vol. 97, No. 4, pp. 828 – 862, 1989.

Diamond, D. W.: Debt Maturity Structure and Liquidity Risk, Quarterly Journal of Economics 106, pp. 1027 – 1054, 1991.

Downs, A.: An Economic Theory of Democracy, New York 1957.

European Commission: COM (2003) 284 final: Communication from the Commission to the Council and the European Parliament, Modernizing Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward 2003.

European Commission: COM 2004/913/EC: Commission Recommendation 2004/913/EC fostering an appropriate regime for the remuneration of directors of listed companies, the Official Journal of the European Union of 29 December 2004, L385/55 – L385/59.

European Commission: COM 2005/162/EC: Commission Recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board, the Official Journal of the European Union of 25 February 2005, L52/51 – L52/63.

European Commission: IP/06/269: Corporate Governance: European Forum clarifies “Comply or Explain” Principle and issues Annual Report, Brussels 2006.

European Commission: SEC (2007) 1021: Commission Staff Working Document, Report on the application by the Member States of the EU of the Commission Recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board 2007a.

European Commission: SEC (2007) 1022: Commission Staff Working Document, Report on the application by the Member States of the EU of the Commission Recommendation on directors´ remuneration 2007b.

European Commission: COM 2009/385/EC: Commission Recommendation 2009/385/EC complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies, the Official Journal of the European Union of 15 May 2009a, L120/28 – L120/31.

European Commission: IP/09/1120: Commission proposes further Revision of Banking Regulation to strengthen Rules on Bank Capital and on Remuneration in the Banking Sector, Brussels 2009b.

European Corporate Governance Forum ECGF: Statement of the European Corporate Governance Forum on Risk Management and Internal Control 2006, available at: http://ec.europa.eu/internal_market/company/docs/ecgforum/statement_internal_control_en.pdf, 11.11.2010.

European Corporate Governance Forum ECGF: Statement of the European Corporate Governance Forum on Cross-border issues of Corporate Governance Codes 2009, available at: http://ec.europa.eu/internal_market/company/docs/ecgforum/ecgf-crossborder_en.pdf, 25.10.2010.

European Parliament and Council of the European Union: Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, the Official Journal of the European Union of 9 June 2006.

European Parliament and Council of the European Union: Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, the Official Journal of the European Union of 16 August 2006, L224/1 – L224/7.

Fama, E./Jensen, M. C.: Separation of Ownership and Control, Journal of Law and Economics 26, pp. 301 – 325, 1983a.

Fama, E./Jensen, M. C.: Agency problems and residuals Claims, Journal of Law and Economics 26, pp. 327 – 349, 1983b.

Ferrarini, G./Moloney, N./Ungureanu, M. C.: Understanding Directors´ Pay in Europe: A Comparative and Empirical Analysis, ECGI, Law Working Paper No. 126/2009.

Financial Services Authority FSA: The Turner Review: A regulatory response to the global banking crisis, London 2009.

Financial Times: Robert Bruce: Introduction, October 12th 2007, available at: http://www.ft.com/intl/cms/s/0/80ed4914-77e3-11dc-8e4c-0000779fd2ac.html, 10.06.2011.

FTSE: www.ftse.com, 20.06.2011.

Gomes, A.: Dynamics of Stock Prices, Manager Ownership, and Private Benefits of Control, Manuscript, Harvard University 1996.

Gordon, J. N.: ´Say on Pay´: Cautionary Notes on the UK Experience and the Case for Shareholder Opt-In, ECGI, Law Working Paper No. 11/2009.

Grossman, S. J./Hart, O. D.: The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration, Journal of Political Economy Vol. 94, No. 4, pp. 691 – 719, 1986.

Gugler, K.: Corporate Governance and Economic Performance, Oxford University Press 2001.

Haubrich, J.: Risk Aversion, Performance Pay, and the Principal-Agent Problem, Journal of Political Economy Vol. 102, No. 21, pp. 258 – 276, 1994.

Hay Group: How chief executives are paid: Rewards in the largest companies in Europe and the US, 2008.

Heidrick & Struggles: Corporate Governance Report 2009: Boards in turbulent times, 2009.

Hermalin, B. E.: Trends in Corporate Governance, The Journal of Finance, Manuscript 1306, 2004.

High Level Group of Company Law Experts: Report on a Regulatory Framework for Company Law in Europe, Brussels 2002.

Hlawati, E./Schmidt, C.: Besonderheiten des Aufsichtsrats in der börsenotierten Gesellschaft, in: Kalss, S./Kunz, P.: Handbuch für den Aufsichtsrat, Wien, pp. 953 – 988, 2010.

Holmstrom, B.: Moral Hazard and Observability, Bell Journal of Economics Vol. 10, No. 1, pp. 74 – 91, 1979.

Holmstrom, B.: Managerial Incentive Problems: A dynamic Perspective, in: Essays in Economics and Management in Honor of Lars Wahlbeck, Swedish School of Economics, pp. 210 – 235, Helsinki 1982.

International Corporate Governance Network ICGN: Statement on the Global Financial Crisis, 10 November 2008, available at: http://www.iasplus.com/resource/0811icgn.pdf, 21.11.2010.

International Corporate Governance Network ICGN: Second Statement on the Global Financial Crisis, 23 March 2009, available at: http://www.icgn.org/files/icgn_main/pdfs/news/icgn_statement_on_the_financial_crisis_23_march_09.pdf, 20.11.2010.

International Finance Corporation IFC: The EU Approach to Corporate Governance: Essentials and Recent Developments, Washington 2008.

Jensen, M. C./Meckling, W. H.: Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure, Journal of Financial Economics Vol. 3, No. 4, pp. 305 – 360, 1976.

Jensen, M. C./Ruback, R. S.: The Market for Corporate Control: The Scientific Evidence, Journal of Financial Economics Vol. 11, pp. 5 – 50, 1983.

Kaplan, S. N.: Top Executives, Turnover, and Firm Performance in Germany, Journal of Law, Economics, and Organization Vol. 10, No. 1, pp. 142 – 159, 1994a.

Kaplan, S. N.: Top Executive Rewards and Firm Performance: A Comparison of Japan and the United States, Journal of Political Economy Vol. 102, No. 3, pp. 510 – 546, 1994b.

Kirkpatrick, G.: The Corporate Governance Lessons from the Financial Crisis, OECD Steering Group on Corporate Governance, 2009, available at: http://www.oecd.org/dataoecd/32/1/42229620.pdf, 13.06.2011.

Koch, Björn: Corporate Governance in Deutschland und der EU – auf dem Weg zu einem einheitlichen und funktionalen System?, Masterarbeit, Norderstedt Deutschland 2005.

Kreps, D.: Corporate Culture and Economic Theory, in: Perspectives on Positive Political Economy ed. J. Alt and K. Shepsle, University Press, Cambridge 1990.

Lang, P.: Einheitliche Corporate Governance-Grundsätze für die Europäische Aktiengesellschaft, Berlin 2010.

La Porta, R./Lopez-de-Silanes, F./Shleifer, A.: Law and Finance, Journal of Political Economy, Vol. 106, No. 6, pp. 1113 – 1155, Chicago 1998.

La Porta, R./Lopez-de-Silanes, F./Shleifer, A.: What Works in Securities Laws?, The Journal of Finance Vol. LXI, No. 1, 2006.

Mace, Miles L.: Directors: Myth and Reality, Boston 1971.

Malik, F.: Die richtige Corporate Governance – Mit wirksamer Unternehmensaufsicht Komplexität meistern, Frankfurt 2008.

Marris, R.: The Economic Theory of Managerial Capitalism, Free Press of Glencoe, Illinois 1964.

Mirrlees, J. A.: The Optimal Structure of Incentives and Authority within an Organization, Bell Journal of Economics Vol. 7, pp. 105 – 131, 1976.

Monitoring Commissie: http://www.commissiecorporategovernance.nl/home.html; and at: http://www.commissiecorporategovernance.nl/Information%20in%20English, 23.11.2010.

Monitoring Commissie: Dutch Corporate Governance Code, Principles of good corporate governance and best practice provisions, 2008a.

Monitoring Commissie: Press Release on Dutch Corporate Governance Code 2008b, available at: http://commissiecorporategovernance.nl/page/downloads/Persbericht_DEC-2008__uk_.pdf, 13.1.2011.

Monitoring Commissie: Executive Summary of the Monitoring Report 2009a, available at: www.commissiecorporategovernance.nl/.../monitoring_report_2009_summary.doc, 13.1.2011.

Monitoring Commissie: Press Release: New Corporate Governance Code Monitoring Committee presents work schedule 2009b, available at:

www.commissiecorporategovernance.nl/.../press_release_December_2009.doc, 13.1.2011.

Murphy, K. J.: Corporate Performance and Managerial Remuneration: An Empirical Analysis, Journal of Accounting and Economics Vol. 7, No. 1 – 3, pp. 11 – 42, 1985.

Nippa, M.: Alternative Konzepte für eine effiziente Corporate Governance: Von Trugbildern, Machtansprüchen und vernachlässigten Ideen, in: Nippa, Michael/Petzold, Kerstin/Kürsten, Wolfgang: Corporate Governance – Herausforderungen und Lösungsansätze, Heidelberg 2002.

NYSE Euronext: AEX, available at: http://www.euronext.com/fic/000/048/501/485012.pdf, 26.4.2011.

Organization for Economic Cooperation and Development OECD: Principles of Corporate Governance, 2004.

Österreichischer Arbeitskreis für Corporate Governance ÖACG: http://www.corporate-governance.at/, 22.11.2010.

Österreichischer Arbeitskreis für Corporate Governance ÖACG: Austrian Code of Corporate Governance as amended in January 2010.

Rechenburg, J.: Auswirkungen von Regulierungen der Corporate Governance auf das Controlling unter besonderer Berücksichtigung des Sarbanes-Oxley Act, Diplomarbeit, Dresden 2007.

RiskMetrics Group and subcontractors BUSINESSEUROPE, ecoDa, Landwell & Associés: Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States, 2009, available at: http://ec.europa.eu/internal_market/company/ecgforum/studies_en.htm, 03.12.2010.

RiskMetrics Group and subcontractors BUSINESSEUROPE, ecoDa, Landwell & Associés: Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States, Appendix 1, Detailed Legal Analysis, 2009a.

RiskMetrics Group and subcontractors BUSINESSEUROPE, ecoDa, Landwell & Associés: Study on Monitoring and Enforcement Practices in Corporate

Governance in the Member States, Appendix 3, Detailed Methodology and Templates, 2009b.

Ross, S.: The Economic Theory of Agency: The Principal´s Problem, American Economic Review Vol. 63, No. 2, pp. 134 – 139, 1973.

Schnyder, G.: Revisting the Party Paradox of Finance Capitalism: Evidence from Switzerland, Sweden and the Netherlands, Working Paper Np.372, Centre for Business Research, University of Cambridge 2008.

Shleifer, A./Vishny, R.: A survey of corporate governance, Journal of Finance Vol. 52, pp. 737 – 783, 1997.

Stiglitz, J. E.: Incentives, Risk, and Information: Notes Toward a Theory of Hierarchy, Bell Journal of Economics Vol. 6, No. 2, pp. 552 – 579, 1975.

Tirole, J.: The Theory of Corporate Finance, Princeton University Press 2005.

Van Bekkum, J./Hijink, S./Schouten, M. C./Winter, J. W.: Corporate Governance in the Netherlands, International Congress on Comparative Law, Washington 2010.

Wagenhofer, A./Ewert, R.: Externe Unternehmensrechnung, Berlin 2007.

Wagenhofer, A.: Controlling und Corporate Governance-Anforderungen: Konzepte, Maßnahmen, Umsetzungen, Berlin 2009a.

Wagenhofer, A.: Rechnungslegung und Corporate Governance, in: Kapitalmarkt und Kapitalmarktrecht in Österreich: Status quo und Entwicklungsmöglichkeiten, Wien 2009b.

Weber, J.: Perspektiven der Corporate Governance in der nächsten Dekade, in : Wagenhofer, A./Brandt, W.: Perspektiven der Finanzberichterstattung und der Corporate Governance, 64. Deutscher Betriebswirtschafter-Tag, Düsseldorf 2010.

Weil, Gotshal & Manges: Comparative Study of Corporate Governance Codes Relevant to the European Union and Its Member States, on behalf of the European Commission, Internal Market Directorate General, 2002.

Williamson, O. E.: The Economics of Discretionary Behavior: Managerial Objectives in a Theory of the Firm, Prentice Hall Press, New York 1964.

Wirtschaftskammer Österreich (WKO), Siegrid Grashäftl: Corporate Governance-Grundsätze, Grundsätze für den Aufsichtsrat, 2010, available at:

http://portal.wko.at/wk/format_detail.wk?angid=1&stid=555487&dstid=9138, 29.01.2011.

Wójcik, D.: Convergence in corporate governance: evidence from Europe and the challenge for economic geography, Journal of Economic Geography 6, pp. 639 – 660, 2006.

World Bank: Overview of Corporate Governance: A Framework for Implementation, 1999.

Wymeersch, E.: Corporate Governance Codes and their Implementation, Working Paper Series, WP 2006-10, Financial Law Institute, Universiteit Gent 2006.

Zingales, L.: The Value of the Voting Right: A Study of the Milan Stock Exchange Experience, Review of Financial Studies Vol. 7, No. 1, pp. 125 – 148, 1994.

Zingales, L.: Corporate Governance, in: The New Palgrave Dictionary of Economics and the Law, New York 1998.