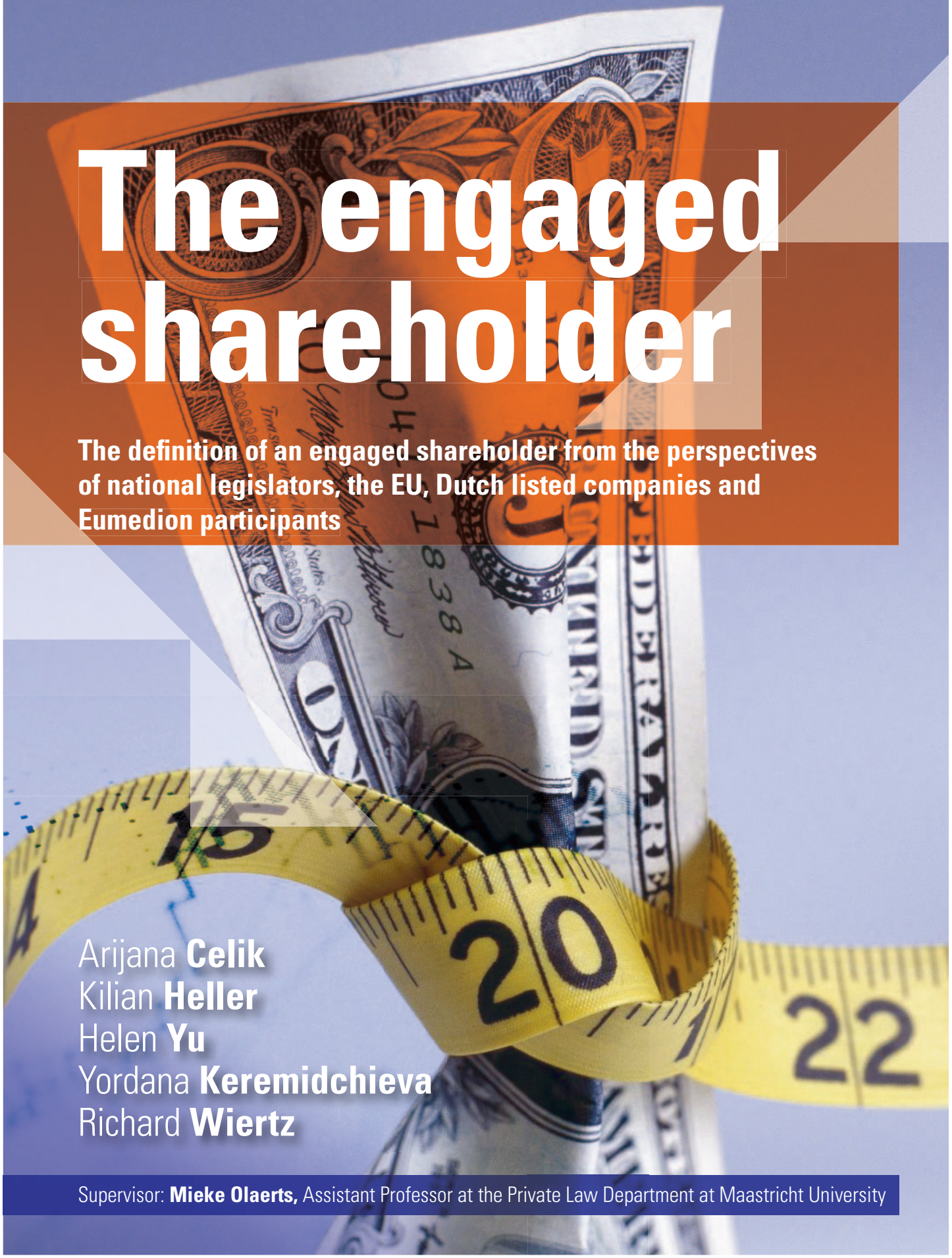
July 25, 2014

EUMEDION
CORPORATE GOVERNANCE FORUM

Maastricht University

The engaged shareholder

The definition of an engaged shareholder from the perspectives of national legislators, the EU, Dutch listed companies and Eumedion participants



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Maastricht University
PREMIUM Student Report

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Acknowledgment

The present benchmark study was undertaken at the request of Eumedion as part of the PREMIUM Programme at Maastricht University. PREMIUM is an honours programme for excellent master's students, which gives them the opportunity to work on a team project requested by an external client. The programme offers UM students a real challenge and strives to prepare them for the demands of the labour market. The clients play an active role in supervising and assessing the students. In that way, they help students develop and prepare themselves for their future career. To guarantee optimal results, the students engaged in PREMIUM projects undergo a selection procedure, and during the assignment they are professionally supervised and coached by trained lecturers and coaches.

The research team would like to express its gratitude to Eumedion for the opportunity to undertake the present research, for their assistance and their confidence in the team.

Executive Summary

Research task

The Benchmark study of the Eumedion best practices on engaged share-ownership is a student research project undertaken under the umbrella of Maastricht University's PREMIUM Programme. The research assignment is constructed by Eumedion and revolves around four parts.

In part one various corporate governance codes for institutional investors are analyzed and compared with the Eumedion best practices for engaged share-ownership. The objective is to find out if the Eumedion best practices are still state of the art.
In part two compliance by Eumedion members with the Eumedion best practices is observed. The goal of part two is to find out which best practices are the most important to Eumedion Members.

Part three is about proposed Directive 2014/213/EU. This Directive amends Directive 2007/36/EC on shareholder rights. The aim of part three is to discern if the Eumedion best practices are in accordance with the provisions of proposed Directive 2014/213/EU.

Part four is about art. IV.3.13 of the Dutch Corporate Governance Code concerning bilateral contacts with shareholders. The objective of part four is to observe how Dutch listed companies comply with art. IV.3.13 of the Dutch Corporate Governance Code in practice and to find out if other corporate governance codes contain provisions that are similar to art. IV.3.13.
In this part corporate governance codes of six influential European markets are examined to find out if the codes have a provision that is similar to art. IV.3.13 of the Dutch Code. Furthermore, compliance of Dutch listed companies with art. IV.3.13 of the Dutch Corporate Governance Code is also examined.

Part 1 - Comparison of the different Stewardship Codes

Corporate governance codes directed at institutional investors show a great degree of convergence. The content of the main principles is more or less the same. Divergences can be found in the details. Some codes are more detailed than others.

The following suggestions can be made in order to bring the Eumedion Code more in line with the other codes:

1. The Eumedion Code could have a more elaborate explanation on how monitoring could take place. Unlike some other codes, the Eumedion Code also does not provide for disclosure requirements with regard to monitoring.
2. The Eumedion Code could use stronger wording to incentivize better disclosure by Eumedion members and to promote transparency.
3. The Eumedion Code could be more elaborate on the subject of shareholder cooperation.
4. Compliance with the Eumedion Code could be stimulated by having an independent monitoring mechanism and body in place to monitor Eumedion members` compliance with the best practices of the Eumedion Code.

Part 2 - Analysis of Member Compliance

The research shows that compliance with the Eumedion Code best practices is possible in practice and that members usually comply with the Eumedion best practices. From the perspective of the Eumedion participants, ESG considerations, exercising shareholder rights, voting, including policies and informed voting, as well as monitoring are important for being an engaged shareholder. More than 85% of the members comply with best practice 9 relating to ESG. This makes best practice 9 on ESG the best practice that investors comply with the most.

Investors are less likely to comply with the principles on conflicts of interest, conflicts with the board, stock lending and voting disclosure. This shows that Eumedion members tend to consider more general matters as important, while paying less attention to specific issues such as stock lending. Moreover, the Eumedion members regard being an active shareholder as significant. This is expressed in detailed reports over past and present engagements with companies through dialogues or voting behavior. The underlying considerations in most of the cases are ESG principles.

The following suggestions can be made with regard to the Eumedion Code:

1. Since compliance with the principle on ESG is so high, this best practice can be made stricter.
2. Better compliance can be achieved by obliging Eumedion members to have a specific document on compliance with the Eumedion best practices.

Part 3 - The EU Definition of an Engaged Shareholder

The European definition of an engaged shareholder can be derived from the European Commission's initiative to amend the current Shareholder Rights Directive (2007/36/EC). This amendment proposal addresses the issue of stewardship duties of institutional investors. Upon a close investigation of the Commission's proposal it can be concluded that the proposal for Directive 2014/213/EU is detailed and will provide harmonization of stewardship responsibilities which will lower the costs of complying with different codes. The Proposal will also ensure that there are stewardship standards throughout the European Union. The Proposal will be implemented nationally in hard law, which might encourage investors to comply with their stewardship obligations. The Proposal does not provide for specific information on how compliance with the proposed obligations will be monitored.

The Eumedion best practices already include the majority of requirements and policies introduced by the Commission in its Proposal.

Part 4 - Article IV.3.13 of the Dutch Corporate Governance Code on bilateral contacts, comparison with foreign codes and compliance by Dutch listed companies

The Swedish, English, French, Spanish, German and Belgian Corporate Governance Codes were examined in order to find provisions that are similar to art. IV.3.13 Dutch Corporate Governance Code. Only the Belgian Code contains a provision that is similar to art. IV.3.13. In the English Code dialogue between investors and investee companies is encouraged. The French and German Codes make clear that the General Meeting is the proper moment for communication.

35 Out of 52 companies involved in the research have implemented a policy on bilateral contacts. Companies agree that deviation, annulment and amendment of the policy is possible only with consent of the board. Companies are free to accept or decline invitations from investors to have bilateral contacts and they are also free to initiate contact themselves. Usually the investors initiate bilateral contacts however. The goal of bilateral meetings is to provide information that is already publically disclosed and explain this information. There is a consensus among companies that no price sensitive information is disclosed during bilateral meetings. Most companies have procedures installed in case price sensitive information is inadvertently leaked during these meetings.

Introduction

The Benchmark study of the Eumedion best practices on engaged share-ownership is a student research project undertaken under the umbrella of Maastricht University's PREMIUM Programme. The research was done by a team of five master's students under the guidance of the project mentor – Dr. Mieke Olaerts.

In the past years various codes of conduct for institutional investors have been promulgated for institutional investors such as the Stewardship Code of the United Kingdom, the Code for External Governance of the European Fund and Asset Management Association (EFAMA) and the Eumedion Best Practices for Engaged Share-Ownership. Similar stewardship initiatives have been observed in other countries. In that regard, at the request of Eumedion the research team analyzed these codes and the best practices observed therein. The ultimate goal of the research is to establish the definition of engaged share-ownership from the perspective of the different Stewardship Codes, the European Union, Eumedion members and Dutch listed companies.

Part 1 of the report focuses on the convergence and divergence between the Stewardship Codes and their definitions of an engaged shareholder. We also observe how the Eumedion Code ranks in the light of the findings and what recommendations can be made for possible changes of the code. The second part of the report is directed at the Eumedion participants and their compliance with the Eumedion Code for institutional investors. The objective in this respect is to derive a member perception of an engaged shareholder from the findings. Part 3 focuses on the European Union definition of an engaged shareholder. The European Commission has recently published a proposal to amend the current Shareholder Rights Directive (2007/36/EC). The Proposal is a rather elaborated instrument which also addresses stewardship responsibilities and aims at harmonizing them. Therefore, we examine if the Eumedion Code is still state of the art with respect to the requirements of the European Commission, as well as what the proposed EU legislation would mean for the future of the code. Finally, Part 4 of the study is focused on the analysis of the policy on bilateral contacts as required by the Dutch Corporate Governance Code and the compliance with this policy in practice.

The analyses are based on desk research and comparison at the level of wording of the different self-regulatory or legislative instruments observed. Due to the limited duration of the project, additional literature was not consulted. With respect to Parts 2 and 4 of the report, only publicly available information was examined, without any further investigation whatsoever. The exact methodology and limitations are further explained under the relevant parts.

Part 1

One

Part 1 – Comparison of the different Stewardship Codes

1. Introduction

With respect to institutional shareholders, the concept of "stewardship" is defined as "the process through which institutional shareholders, directors and others seek to influence companies in the direction of long-term, sustainable performance that derives from contributing to human progress and the well-being of the environment and society".[1] Thus, stewardship entails long-termism and a more integrated approach for the well-being of the company in the long run.

The present analysis aims to compare and address the convergence and divergence between the Stewardship Codes (hereinafter "the codes") of Eumedion, the United Kingdom, Japan, Malaysia, Italy, the European Fund and Asset Management Association (hereinafter EFAMA), Switzerland, South Africa, Canada, and Sweden. It focuses on the following aspects: context in which the codes operate, monitoring, disclosure, policies, voting, cooperation, and compliance.

2. Methodology

The first step of the research was to identify the relevant materials – Stewardship Codes and Corporate Governance Codes. Before analyzing the convergence and divergence between the instruments, we identified the criteria that would serve as grounds for comparison. For the purposes of clarity and coherence, we created a matrix including all the elements which would visualize the results of the comparison between the codes. The next step of the research was to identify the similarities and differences and draw conclusions and recommendations for the Eumedion Code.

3. Limitations

For the purpose of this report we have limited our analyses to the following criteria: context, monitoring, disclosure, policies, voting, cooperation, and compliance. Once the criteria were identified, and upon a closer study of the provided codes, it became clear that the instruments for Canada and Sweden do not fully match the established comparators. The two codes are more limited in scope and suggestive in nature. Therefore, these instruments will be discussed in a separate section. Furthermore, the comparison is limited to the study of Stewardship Codes and guidance for institutional investors. To that extent, Corporate Governance Codes were excluded in order to achieve the most accurate and coherent result. Despite this, an overview of the most important provisions and principles found in the Corporate Governance Codes of Australia and Singapore will be addressed in a separate section. It is important to note that the comparison of the different codes has been done at the level of wording. The scope of the research was restricted by the limited duration of the research project which did not allow the consultation of additional academic literature with respect to the meaning and application of the respective country-specific codes.

4. Analysis

4.1 Context

The first layer of the analysis examines the context in which the codes operate. In that way, having a more general overview of the codes may help explain the reasons for divergence and convergence between them. To that end, we look into the nature of the code (whether it is binding or not), the scope of application, the addressees, the relation to the respective country's Corporate Governance Code (if applicable), as well as other factors such as time of adoption and the rationale behind it.

The existence of the Stewardship Codes is a relatively recent phenomenon. Taking into account the adoption dates, it is revealed that most of the Stewardship Codes examined have emerged during the same time period. For instance, the origins of the UK Stewardship Code can be traced back to 2002 with the publication of 'The Responsibilities of Institutional Shareholders and Agents: Statement of Principles' by the Institutional Shareholders Committee (ISC),

[1] Arad Reisberg, 'The Notion of Stewardship from a Company Law Perspective: Re-defined and Re-assessed in Light of the Recent Financial Crisis?', Journal of Financial Crime (2011), 126.

which in 2009 was converted into a code. The same year the Financial Reporting Council (hereinafter the FRC)[2] was invited to take responsibility of the code and in 2010 it published the first version of the UK Stewardship Code. Similar is the case of the "Guidelines for investment fund managers as shareholders" in Sweden which were first introduced in 2002. The difference in this case is that the Guidelines have not been embedded into an official Stewardship code yet. Thus, the majority of the codes date back to the period 2010-2013. The main rationale behind adopting these codes is the financial crisis and the rising criticism back then that institutional shareholders have been inactive with regards to risky business practices in their investee companies, including banks, and failed to duly monitor the risk management practices of the boards. Furthermore, the problem of short-termism among institutional investors was another driver that showed the need of the creation of, and adherence to, Stewardship Codes.[3]

4.1.1 The Nature of the Codes

The Stewardship Codes are non-binding (per se). Most codes operate through the "comply or explain" principle. Thus, the principles laid down in the Stewardship Codes are not of mandatory application, but compliance with those principles is required. The signatories that choose not to comply with the rules in the codes should publically explain the reasons behind that. In that regard, the Italian Stewardship Code and the Code of EFAMA offer a more mild approach since those two codes do not provide for the "comply or explain" principle explicitly. The principles in the EFAMA Code are said to be laid down on the foundation of "good judgment rather than prescription." It is further stipulated that "the best approach for many issues depends on the circumstances" (see "Purpose of the Code"). Thus, it leaves more freedom to the signatories to decide whether to adhere to, or to deviate from the principles. Despite that, EFAMA members should demonstrate commitment to the corporate governance standards laid down in the code by public adherence confirmed on their websites or in their annual financial statements. The Italian Stewardship Code has even a vaguer wording in that respect. It provides that signatories are free to decide whether, when and how to adapt to the principles in compliance with the general principle of proportionality. Both codes, however, do not explicitly provide for an "explain" mechanism in case of non-compliance with the principles.

4.1.2 Scope of application and addressees

Being the only cross-border association from the list, EFAMA's Code has a wider scope of application than the other national Stewardship Codes examined for the purpose of this assignment. The general rule is that the codes of the other states are targeted at national institutional investors, but this may be extended to other (foreign) entities as well. The UK Stewardship Code, as well as the Codes of Japan and South Africa have nation-wide application. By contrast, the Codes of Eumedion, Italy, Switzerland, and Malaysia are more limited in their scope of application, as they apply to signatories, or members of the respective associations or organizations that drafted the instruments.

The Eumedion Code, for example, is directed to Eumedion members (Dutch and non-Dutch participants) but could be extended to their asset managers by virtue of Section 1.5 of the Preamble of the code. The UK Stewardship Code applies to institutional investors - asset owners and asset managers, holding equity in UK companies. However, while institutional investors are able to outsource to external service providers some of the activities associated with stewardship, stewardship responsibilities cannot be delegated. The Japanese Code distinguishes two categories of institutional investors - asset owners and asset managers (Point 7, Aims of the Code), and also applies to proxy advisors commissioned by institutional investors (Point 8, Aims of the Code). The primary targets are institutional investors investing in Japanese listed companies. Similarly, the Malaysian and the South African Codes apply to asset managers and asset

[2] The UK Financial and Reporting Council (FRC) is the independent regulator responsible for promoting high quality corporate governance and reporting, *https://www.frc.org.uk/About-the-FRC.aspx* accessed 10 June, 2014.

[3] The Kay Review of UK Equity Markets and Long-Term Decision Making (Final Report) (July 2012) *http://www.ecgi.org/conferences/eu_actionplan2013/documents/kay_review_final_report.pdf* accessed 10 June 2014.

owners, as well as service providers (such as proxy advisors and investment consultants). The Stewardship Code of Italy is aimed at asset managers, but also extends to investment management services. The Swiss Code is not very elaborative on that point, as it is stated that it is targeted at institutional investors and no division is made in that regard.

4.1.3 The Relationship with the country's Corporate Governance code

The Stewardship Codes, while not being mandatory law themselves, are in compliance with the respective national rules and regulations, supplement them, and go beyond the obligations embedded in the respective Corporate Governance Codes. This is the case of the Eumedion Code, as well as the Codes of South Africa, Switzerland, and Malaysia. Similarly, the EFAMA Code is in compliance with the corporate governance laws of the EU Member States. The Japanese Stewardship Code does not mention the relation with the country's Corporate Governance Code. This relation is also not elaborated on in the case of Italy, but it is clarified that the principles are in line with the EFAMA Code for external governance. The importance of stewardship in the United Kingdom is underlined by the fact that an analogy is drawn between the Corporate Governance Code of the country and the Stewardship Code. It is stated that The UK Corporate Governance Code identifies the principles that underlie an effective board, while the UK Stewardship Code sets out the principles of effective stewardship by investors.

4.2 Monitoring

Monitoring by active institutional investors is one of the essential corporate governance mechanisms. It has been argued that stewardship is not limited to the duties that investment managers owe to funds, as well as the trusteeship duties owed by funds to the beneficiaries. In that respect, an institutional investor that monitors is seen as a means to reach a societal goal, since stewardship is seen as a concept encompassing public interest and accountability.

That being said, the UK Stewardship Code requires that institutional investors monitor their investee companies. Such monitoring shall be regularly performed and should be concentrated on issues such as strategy, performance, risk, capital structure, and corporate governance, including culture and remuneration (Principle 1, Guidance). More specifically, institutional investors should be up to date with respect to the company's performance, external and internal developments, the management of the company, company's reporting, as well as adherence of the investee company to the UK Corporate Governance Code. The monitoring should be done through purposeful dialogue, voting in, and attending the general meeting. Such elaborated monitoring obligations are found in the Japanese Stewardship Code as well. The code stipulates that institutional investors need to have in-depth knowledge of the company and business environment (Principle 1 of the Code). Furthermore, they shall monitor governance, strategy, performance, capital structure, risk management, also social and environmental matters (Principle 3 of the Code). Performed on a continuous basis, they can be achieved through a constructive engagement and dialogue with investee companies. In that respect, the guidance is drafted very much in the spirit of the UK Stewardship Code. The monitoring policy of EFAMA is also detailed. It should be focused on concerns about company's strategy and performance, governance or its approach to social and environmental matters. The way to exercise it is through initial discussions, including holding meetings, expressing concerns through the company's advisers, meeting with management. If there is no response, escalating action should be taken, including intervening jointly, issuing of public statements, submitting resolutions at shareholder meetings, and calling an EGM to propose shareholder action. While the Italian, Malaysian, and the South African Codes prescribe monitoring on various aspects (for example – key risk strategy, quality of reporting, performance and value drivers, etc.) it is not elaborated on how often and by what means this should be exercised. The Swiss Code also does not specifically define the monitoring policy.

In the light of these observations, clearly the Stewardship Codes of the UK, EFAMA, and Japan are most detailed when it comes to monitoring. The Eumedion Code also requires Eumedion participants to monitor their Dutch investee companies. In its preamble, the Code recognizes that responsible behavior does not only mean that participants should

cast informed votes, but also engage into monitoring of their investees. Such monitoring may include ongoing dialogue with company boards on matters relating to corporate governance, including environmental and social aspects in the field of risk management, disclosure, remuneration policy, supporting the company in good governance, etc.

The importance of monitoring is also underlined in Best Practice 1 of the Code. The process should comprise of careful scrutiny of the environmental and social policies and the governance structure of the company by Eumedion participants. Assessment should be made of the reasons investees provide for non-compliance with the best practices in the Dutch Corporate Governance Code. Since Best Practice 1 is framed more in general terms compared to the commitment in the Preamble, we recommend that for better compliance, the code elaborates more on what exactly should be monitored in the governance structure, as well as how often this should be performed. It is recommended that the code specifies what activities monitoring could entail, apart from an ongoing dialogue. For instance - voting in, and attending the general meeting. Disclosure of monitoring is also not addressed, and this might be reconsidered for the purposes of greater transparency. For example, the UK Stewardship Code requires public disclosure of policies on discharging the stewardship responsibilities. These stewardship activities also include monitoring of investee companies. The same requirement can be found in the Japanese Stewardship Code under Principle 1 of the code.

Furthermore, the Code of EFAMA not only provides for means through which monitoring could be exercised: initial discussions, including holding meetings, expressing concerns through the company's advisers, meeting with management, etc., but it goes one step further than that to require the development of an escalation policy. If there is no response from the company's board, the code provides for an escalation policy - including intervening jointly, issuing of public statements, and submitting resolutions at shareholders' meeting. A clear requirement for an escalation policy can be found in the UK Stewardship Code under Principle 4. For better guidance, the UK Code lists examples of the means by which institutional investors may consider to escalate their action - holding additional meetings with management specifically to discuss concerns; expressing concerns through the company's advisers; meeting with the chairman or other board members; intervening jointly with other institutions on particular issues; submitting resolutions or making a public statement in advance of General Meetings, etc. This is another aspect that Eumedion may reconsider. Although an escalation policy seems to be enshrined into Best Practice 3 of the code, this is not explicitly stipulated in the provision.

4.3 Disclosure

All of the analyzed Stewardship Codes have rules on disclosure. In order to see the main differences between them, this section focuses on five elements, namely: what shall be disclosed, how, when and to whom shall it be disclosed. The last category which is referred to as "others" will deal with elements that are not common to most of the codes with regards to disclosure.

4.3.1 What?

First of all, it should be mentioned that all the codes require the disclosure of the policies concerning the shareholder rights and the extent to which institutional shareholders apply them. This holds true also for policies concerning the conflict of interest, for voting policies and voting activities. The UK Code provides a longer list of what should be disclosed by requiring the disclosure of a policy on collective engagement, proxy voting, stock a lending report to clients and an assurance report to the public. In the Swiss Code, the compliance statement should also be disclosed.

4.3.2 How?

On the question of how it should be disclosed the Eumedion, UK, Japanese, Swiss and Italian Codes state that the disclosure should be made on the website, while the South African and the Malaysian Codes are broader and state that it should be publicly disclosed. An alternative to web disclosure is a statement in the annual report which is found in the Eumedion Code and the UK Stewardship Code provides an alternative of another form accessible. With regards to the EFAMA Code, the disclosure shall be made to clients/investors, so public disclosure is not really expressly stated in the code. Added to the

three main types of disclosure - publicly, on the website and in annual report, in Switzerland, it is also required that it shall be disclosed in a manner as to enable effective review. This wording is only found in the Swiss Code and it seems to stress the importance of the content of the report because the code does not even use the word "report" or "statement" alone, but requires a statement of accountability on the website. Taking this into account we consider that the Swiss Code, by its wording, stresses even more the importance to disclose in a proper way. Moreover, it seems that this formulation could facilitate a dialogue with the institutional investors.

4.3.3 When?

As regards how often the disclosure about the implementation of the principles of the codes by the institutional shareholders should be made, the UK Code states at least annually, and periodically for the clients. The annual review is also found in the Japanese and in the Eumedion Code. The Swiss and the South African Codes mention also annual disclosure but they add at least once a year. This means that they are encouraged to do it more frequently if they have the possibility to do so. The EFAMA Code does not make compulsory the disclosure after a certain period of time; instead disclosure is made upon request. With regards to the Malaysian and the Italian Codes, there is no specific requirement on how often the disclosure should be made.

4.3.4 To whom?

The report on disclosure should be addressed in most of the codes to the public. This holds true for the Eumedion, the UK, the Japanese, the Swiss, the Italian, the Malaysian and the South African Codes. The UK Code also sees the FRC and the clients as addressees of the disclosure report. The Japanese Code also addresses the Financial Service Agency in addition to the public. Malaysia adds the investee companies, beneficiaries and clients as the addressees. The EFAMA Code has a more restricted scope with regard to whom the information should be disclosed, it lists clients and/or investors as addressees.

4.3.5 Others

There is no other element mentioned with regards to disclosure in the Eumedion, the UK, the Italian, the EFAMA and South African Codes. In the Japanese Code it is added that the Financial Service Agency discloses for investors that what has not been disclosed on the website (Point 14 Principles-Based Approach" and "Comply or Explain) and also maintains a clear record of stewardship activities and voting (Principle 6 6-4). In Malaysia if there are outsourced stewardship activities, it should be explained how to ensure the outsourced activities are carried out in line with their own stewardship activities (Principle 1.3).

4.4 Policies

Another important factor to analyze is the policies that have to be enacted by the institutional shareholders according to the various codes. It is well known that the Stewardship Codes have been made to provide guidance to ensure better engagement activities. For that purpose, they provide that certain types of policies have to be made in order to promote these engagement activities.

4.4.1 Shareholder rights

The basis of all the codes is that they require the establishment of a policy on ownership responsibilities and on how shareholders exercise their rights. This is about the engagement activities between the institutional shareholders and the investee company.

4.4.2 Conflicts with the board

The Eumedion Code states that there should be a clear policy for dealing with conflicts with the board (Best practice 3). This is also present in the UK Stewardship Code where there is an explicit policy on managing conflict of interest between the institutional investors and their clients (Principle 2). The Japanese Code provides also a policy with regards to management of conflict (Principle 2). The same holds true for the Italian Code which also establishes guidelines on how to intervene in case of conflict (Principle 3). In the EFAMA Code, the obligation to have policies on conflicts of interest is found in Principle 1. The same is provided for in the Malaysian Code in the second principle. In the Swiss Code, Principle 2 states that obligation as well. The South African Code is more detailed on the issue and requires that a policy should be set up but also requires that implementation of this policy is ensured and the establishment of a processes to monitor compliance with those policies.

In conclusion, all codes have the obligation to have a policy in place in order to settle cases of conflicts of interest.

4.4.3 Voting policies

All the codes analyzed require institutional shareholders to have clear policies concerning their voting rights. However, it should be mentioned that in the Italian Code, this could be implied from the first principle of their code because it is not explicitly stated as a clear and precise principle as in the other codes. The first principle of the Italian Code lays down that institutional shareholders should have a documented policy available to the public on whether, and if so how, they exercise their ownership responsibilities. Thus, one could imagine that voting policy is included as well.

The details concerning voting rights will be emphasized in the next section.

4.5 Voting rights

4.5.1 What should be disclosed?

Institutional shareholders have voting rights, and all the codes analyzed, except the EFAMA Code, require that their voting policies and voting activities are disclosed. Some codes are more detailed, such as the Eumedion Code which also requires the Eumedion participants to publicly disclose at least once in a quarter how they voted the shares in their Dutch investee companies (Best practice 8). Furthermore, when the Eumedion participant casts withhold or are against a vote on a management proposal, they have to explain the reasons for this voting behavior to the company management, either voluntarily or at the request of the company in question (Best practice 7). A similar requirement is found in the Japanese Code which states that if there is a reason not to vote the company can deviate from that voting providing reasons (Principle 5, Guidance 5-3). In the UK Stewardship Code, what is also stressed is that disclosure is required also in situations where proxy voting is used or other advisory services (Principle 6, Guidance, para 4). That requirement is also found in the Japanese and the Malaysian Codes. However, for the later, the institutional shareholders are encouraged to disclose while in the other codes it seems to have more weight because it is stressed that they have to disclose not that they are simply encouraged. With regards to the EFAMA Code, there is a general requirement to disclose shareholders activities but concerning voting rights the code states that particular information reported to institutional holders, including the format in which details of how votes have been cast are presented, should be a matter for agreement between the holders and the IMCs (Investment Management Companies). Nevertheless, it is stated that transparency is important but that disclosure should not be expected when it would be counterproductive. It is also mentioned that IMCs should report on request to their clients/investors details on how they have discharged their responsibilities. This means that disclosure is compulsory but special attention should be made to confidentiality and, thus, the format in which they disclose can be agreed upon between the institutional holders and the IMCs.

All in all, it seems that the Eumedion and the UK Codes are the most detailed on disclosure with regard to voting rights specifically. The main areas where disclosure is mentioned in the codes are those with regards to the different policies and on the voting activities. The only code which really differs is the EFAMA Code which does not provide for a compulsory disclosure, but only upon request of their clients or investors. This code leaves more discretion compared to the others.

4.5.2. Securities lending

Some codes address situations when securities are borrowed. This is not mentioned in the Italian, the EFAMA and the South African Codes. However, the Eumedion has an entire principle on it and states that the Eumedion participants should not borrow shares solely for the purpose of exercising voting rights on these shares. They should consider recalling their lent stock before the voting registration date for the relevant general meeting of the relevant Dutch investee company, if the agenda for this general meeting contains one or more controversial subjects (Best practice 10). A similar approach is taken in the Swiss Code which states that securities lending should be avoided or suspended when there are controversial issues on the agenda (Principle 3, Guidance, para 5). Furthermore, the securities are to be recalled before exercising participation rights (Principle 1, Guidance,

para 3). In the UK, Japan and Malaysia, the code requires disclosure of policies regarding stock lending. In the UK Stewardship Code, the approach to stock-lending and recalling of lent stock shall be disclosed (Principle 6, Guidance, para 5). The Japanese Code only mentions securities lending in a footnote and states that a policy on stock lending shall also be included if applicable (Principle 5, footnote 7). Finally, in the Malaysian Code, they also have to disclose the approach to stock lending and situations of recalling lent stock to exercise vote (Principle 6.8).

4.5.3 Environmental and Social Governance

One of the aims behind the enactment of the Stewardship Codes was to ensure better environmental and social governance. In that context, it is relevant to see in which codes this ESG, which has to be taken into account, is mentioned. When analyzing the codes, one can notice that ESG is not mentioned in the Italian, Swiss and the EFAMA Codes while the Eumedion, Japanese, Malaysian and South African Codes provide that ESG has to be taken into account with regards to monitoring and exercising shareholder rights.

4.5.4 Others

With regards to the Malaysian Code, it is provided that the institutional shareholders should work with other relevant parties to remove barriers to voting under applicable laws and regulations (Principle 6.7). This principle seems to be related to cooperation, which will be discussed in the following section. However, it is noteworthy that the Malaysian code mentions this form of cooperation specifically only in relation to voting as such.

4.6 Cooperation

Cooperation, collaboration, or collective action is another aspect that is emphasized by the Stewardship Codes. With the exception of the Japanese Code, all other instruments have provisions on that aspect. The UK Stewardship Code, for example, prescribes collective action "where appropriate" (see Principle 5). Collective action is seen as the most appropriate means of engagement in certain situations - for example, when there is a threat of significant corporate or wider economic stress, or where there is a risk of significant losses. Institutional investors under the UK Stewardship umbrella should create and disclose policies on collective engagement, where they need to explain the situations in which they are willing to engage collectively. Collective action is addressed and articulated in the Malaysian Code as well. Such action should be taken, similarly to the UK, if there are issues affecting the basic shareholder rights, governance or when the institutional shareholders are faced with risks which threaten to destroy significant shareholder value (see Principle 7). Investors should, of course, be alerted that such actions should not undermine market efficiency and fairness. On the contrary – it should promote good governance such as nomination of directors to the board, AGM-related matters and disclosure practices. A policy on collective engagement or constructive dialogue should be in place, but disclosure is not required. EFAMA stresses that collective action is required in situations of significant corporate or wider economic stress or when the risks posed threaten the ability of the company to continue having regard to applicable rules on acting in concert (see Principle 4). Exercising of collective action should be in compliance with market regulations and in harmony with investors' own policies on conflict of interest and insider information. There are, however, no requirements to maintain a policy on that and to disclose it. Similarly, the South African Code provides for collective action, which aims at promoting good governance and the code. This should be done "where appropriate" which leaves discretion to the investors, but the groups with which such action could be taken are various, unlike the other codes examined for the purpose of this assignment – it includes other shareholders, service providers, regulators, investee companies and ultimate beneficiaries. An obligation to disclose is not provided for. While the Codes of Italy and Switzerland envisage collective action, they are not really detailed as to when and what should be subject to such action.

The Eumedion Code encourages its participants to enter into a dialogue with Dutch listed companies and to do so collectively where appropriate (Best practice 4). Such collective engagement should be done in conformity with the participants' policies on conflicts of interest and insider information. The code, however, does not envisage disclosure. In the light of the analysis of the cooperation policy, several conclusions could be drawn. The Stewardship Codes

of the United Kingdom, Malaysia and EFAMA have most elaborated provisions on collective action. While the Eumedion Code provides for collective action, it does not specify in which circumstances and for what reasons this action should be taken. Moreover, phrases like "where appropriate" leave a lot of freedom to the institutional shareholders and rely on their good judgment to consider such type of engagement appropriate. We do not imply that the code should be prescriptive because it does not have such a binding force. However, by drafting more detailed provisions, Eumedion will give greater guidance to its participants and further encourage their engagement in promoting good governance.

4.7 Compliance

All of the codes examined in the current report have established a compliance mechanism to commit their members to abide by the principles of good governance. Most of the codes operate through the "comply or explain" principle (6 out of 8). Thus, the principles laid down in the Stewardship Codes are not obligatory, but compliance with those principles is nevertheless required. The signatories that choose not to comply with the rules in the codes should publically explain the reasons behind that. In that regard, the Italian Stewardship Code and the Code of EFAMA offer a more liberal approach since those two codes do not provide for the "comply or explain" principle unless there are good reasons for deviation. The principles in the EFAMA Code are said to be laid down on the foundation of "good judgment rather than prescription". It is further stipulated that the "best approach for many issues depends on the circumstances" (see "Purpose of the Code"). Thus, it leaves more freedom to the signatories to decide whether to adhere to, or to deviate from the principles. Despite that, EFAMA members should demonstrate commitment to the corporate governance standards laid down in the code by public adherence confirmed on their websites or in their annual financial statements. The Italian Stewardship Code has a vaguer wording in that respect. It provides that signatories are free to decide whether, when and how to adapt to the principles in compliance with the general principle of proportionality.

With the exception of Italy, all codes advise on how compliance should be done and there is great convergence between the codes in that respect. Most practices ask for annual policy statements, annual reports, or annual accountability statements. This is the case, for example, in the Code of Switzerland, the United Kingdom, Malaysia, and Japan. Convergence is ascertained with respect to disclosure of compliance with the codes and principles of good governance. For the sake of transparency, most of the codes require public disclosure done in the investors' annual reports or on its website. In the case of Italy, it does not become clear from the wording of the principle whether reporting should be made accessible to the public. Similarly, the EFAMA Code requires reporting on the exercise of ownership rights and voting activities and maintaining a policy on external governance disclosure. It is written in the recommendations that the EFAMA members should report on request of their clients or investors, but it is not further elaborated on the means and ways of disclosure of such reporting, as well as the frequency.

With regards to compliance monitoring and enforcement, not all of the examined codes provide a clear mechanism for that. In the case of Eumedion, the secretariat is the body which needs to annually monitor the compliance of Eumedion participants with the best practice on the basis of information including the published reports on the application of the best practices (Preamble 1.9). In the case of the UK Stewardship Code, the body entrusted with this function is the FRC, and in Malaysia - the Minority Shareholder Watchdog Group (MSWG). The other codes, however, do not designate such a body or mechanism. In the case of Japan, Italy, and Switzerland, the codes are silent on whether or not a body should be established for the sake of compliance oversight – those codes only stipulate when/how often the Stewardship Codes need to be reviewed. EFAMA, on the other hand, only provides that clients or investors may request a report with respect to details on discharging responsibilities.

In that respect, we also looked at the Corporate Governance Codes of the respective countries to see whether they refer to stewardship and, possibly, if they strengthen the effect of the Stewardship Codes. With respect to the United Kingdom, the FRC is the

body that monitors the Corporate Governance Code, as well as the UK Stewardship Code. The UK Corporate Governance Code provides that the impact of shareholders' monitoring needs to be enhanced through a greater cooperation between the boards of the listed companies and their shareholders. In that respect, the binding force of the UK Stewardship Code is somewhat fostered, since it is stated in the Corporate Governance Code that the Stewardship Code, providing "good practice for investors, should be seen as a companion piece to the [Corporate Governance] Code".[4] The example of the UK is the only one which illustrates such a connection between the Corporate Governance Code and the Stewardship Code. This is rooted in the fact that the two codes are drafted and monitored by the same body – the FRC. The Stewardship Codes of the other countries examined for the purpose of this assignment have been drafted after the issuance, and/or revision, of the respective Corporate Governance Codes of the countries.

With respect to compliance, the Eumedion Code is in line with the best practices observed in the other codes. There is a monitoring mechanism in place, and there is an obligation to annually report on compliance – through providing a statement on the institutional investors' website or in their annual reports containing a description of how the best practices have been applied. The compliance with the code of the Eumedion participants is done by the Eumedion's secretariat. However, we consider it more appropriate if there would be an independent monitoring system. This would enhance the legitimacy of the code.

4.8 Stewardship in Canada and Sweden

The Canadian Principles for Governance, Monitoring, Voting and Shareholder Engagement from 2010 and the 2012 Swedish Guidelines for investment fund managers as shareholders are both voluntary instruments. The former encourages institutional investors to carefully consider the principles provided therein in relation to their investments. The Canadian Principles were adopted by the Canadian Coalition for Good Governance (CCGG) and apply to institutional investors. In the case of Sweden, the Guidelines were drafted by the Swedish Investment Fund Association, one of the initiators of the Swedish Code of Corporate Governance, and apply to fund managers. They are said to implement the EFAMA Code.

With respect to the different stewardship policies and commitments, both codes are only suggestive and provide scarce guidance and recommendations. For example, while both instruments provide for monitoring of investee companies, guidance as to how and in what situations/ for what purposes this should be done, is limited. Sweden envisages monitoring mainly for the purpose of identification of the need to enter into dialogue, but no criteria are given with respect to the circumstances that would lead to the dialogue. The Canadian Principles are slightly more detailed and suggest that monitoring may be focused on corporate board structure and control, attaining company's objectives, while minimizing unintended risks and maximizing shareholder value, identifying problems at an early stage to minimize any loss of shareholder value, etc. The way to exercise that monitoring power is through examination of annual reports or attending company's meetings, for example. However, both instruments are silent on the frequency and disclosure of monitoring activities.

When it comes to disclosure, the Swedish Guidelines are very general, and require public disclosure of corporate governance policies, which may include – but that is left at the discretion of the fund managers – policies on voting, monitoring, insider information, etc. Public disclosure for the CCGG members is required only for voting policies and engagement. Further than that, collective engagement is something that both instruments require. While Sweden only vaguely sets the circumstances regarding the instances in which cooperation would be helpful – where appropriate and in the common interest of the unit, Canada recommends it in case of significant governance concerns or when new laws and policies are being developed. Finally, neither of the instruments provides anything on compliance.

[4] UK Corporate Governance Code 2012, Preface, *https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf* accessed 10 June, 2014.

To sum up, from a simple observation of the structure of the two instruments, it appears that the Canadian Principles are better structured, than the Swedish Guidelines. The former enlists the main policies and activities that an engaged shareholder should incorporate and exercise. The Swedish Guidelines are more vaguely structured and only suggestive. It is stated that they incorporate the EFAMA Code, but the Guidelines are not as elaborative and detailed, as the principle prescribed by EFAMA.

4.9 Corporate Governance in Australia and Singapore

The Corporate Governance Code of Singapore provides some guidelines regarding engagement. These are very general and concern all shareholders, not institutional shareholders in particular. Principle 15 of the Corporate Governance Code (CGC) of Singapore states that the companies should actively engage their shareholders and put in place an investor relations policy to promote regular, effective and fair communication with shareholders. This principle includes also five guidelines in order to promote shareholder engagement. However, this principle and the guidelines do not impose obligations directed towards institutional shareholders. Instead, the obligations are directed towards the company. However, at the end of the CGC of Singapore, there is a statement (which does not form part of the CGC) which his titled "The role of shareholders in engaging with the companies they invest". It is clear from this statement that the drafters of the code were aware of the fact that shareholder input on governance matters is useful to strengthen the overall environment for good governance policies and practices but also to convey shareholder expectations to the board. The drafters acknowledge the existence of different types of shareholders and hold the view that where appropriate, specific shareholder groups and their associations are encouraged to consider adopting international best practices. Initiatives by relevant industry associations or organizations to develop guidelines on their roles as shareholders of listed companies are welcomed. It is arguable that this could be applied to institutional shareholders and that they are encouraged to have some policies in place with regards to their relation with the board of the company they invest in. Nevertheless, as mentioned previously, this statement does not form part of the CGC. Furthermore, after further research, no information on recent initiatives to create a Stewardship Code in Singapore was found. This may suggest that there is no need felt to draft such an instrument at present time.

One would expect that Australia, being part of the Commonwealth and representing a large market, would have introduced a Stewardship Code mirroring the one of the United Kingdom. However, such has not been identified. The only relevant information found is on the ASX Corporate Governance Council Principles and Recommendations ("Principles and Recommendations") which were introduced in 2003. A substantially re-written second edition was released in 2007 and then, a third edition in March 2014. The Council itself was convened in August 2002. It brings together various business, shareholder and industry groups, each offering valuable insights and expertise on governance issues from the perspective of their particular stakeholders. Its primary work has been the development of the Principles and Recommendations. These Principles and Recommendations are not specifically directed to institutional investors but to all companies listed on the Australian stock market. Nevertheless, Recommendation 6.2 provides that a listed entity should design and implement an investor relations program to facilitate effective two-way communication with investors. In addition, it is added that for larger entities, it is likely to involve a detailed program of scheduled and ad hoc interactions with institutional investors, private investors, sell-side and buy-side analysts and the financial media. Furthermore, Recommendation 7.4 states that a listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks. It had been added in the comment below the Recommendation that listed entities will be aware of the increasing calls globally for the business community to address matters of economic, environment and social sustainability and the increasing demand from investors, especially institutional investors, for greater transparency on these matters, so that they can properly assess investment risk.

5. Conclusion

As can be seen from the analyses above, there is great convergence between the different codes. All of them provide for the same policies and activities that active shareholders should implement and abide by. The main differences are observed at the level of wording and detail; some of the codes (such as the UK Stewardship Code) are more detailed and provide greater guidance to their participants. In that respect, several conclusions and recommendations can be suggested to Eumedion.

1. With respect to monitoring, it is observed that the monitoring policy provided for in the Eumedion Code is not as detailed and elaborated as, for example, in the case of the United Kingdom, EFAMA or Japan. For better compliance, it is recommended that the code elaborates more on what exactly should be monitored in the governance structure, as well as how often this should be performed. Disclosure of monitoring is also not addressed, and this might be reconsidered for the purposes of greater transparency. For example, the UK and the Japanese Codes provide for public disclosure of policies on monitoring of investee companies. Furthermore, we advise Eumedion, following the example of EFAMA and the United Kingdom, to establish an explicit escalation policy, which although currently enshrined in the code, should be more detailed, definitive and unequivocal.

2. Regarding disclosure, the Eumedion Code stands well compared to the other codes as it is detailed and concise. However, one element that should be underlined is related to the wording of how the disclosure should be made. For instance, the Swiss Code requires that disclosure to be amenable to review. While we consider this to be a too strong obligation for which the Eumedion Code does not have the legal force to impose it on the members, Eumedion could consider a stronger wording in order for the institutional shareholder to have more incentive to disclose.

3. Then, when looking at the policies, we can see that the Eumedion code, as the other codes, has best practices on shareholder rights as well as best practices on dealing with the conflict of interests that may arise. Again, the Eumedion Code provides clear guidance to the institutional shareholders.

4. On the voting rights, the Eumedion Code is also very extensive because it states what should be disclosed, and the institutional shareholders are really pushed to disclose their voting activities once in a quarter, which is frequent. A further examination of the voting rights of the shareholders revealed that the Eumedion Code as well as the UK Code are the most detailed ones on disclosure. Moreover, we consider that the Eumedion Code has taken much account of policies concerning stock-lending compared to other codes which are overall not detailed on it, except for the Swiss Code, which is closely linked to the Eumedion Code on this matter. Surprisingly, not many codes emphasize the environmental and social governance, while the Eumedion Code does take this into account.

5. With respect to cooperation, while the Eumedion Code provides for collective action, it does not specify in which circumstances and for what reasons this action should be taken. Moreover, phrases like “where appropriate” leave a lot of freedom to the institutional shareholders and rely on their good judgment to consider the appropriate type of engagement. We do not imply that the code should be prescriptive. However, by drafting more detailed provisions, Eumedion will give greater guidance to its participants and further encourage their engagement in promoting good governance.

6. With respect to compliance with the code, Eumedion is in line with the best practices observed in the other codes. There is a monitoring mechanism in place, and there is an obligation to annually report on compliance. However, the designated body overseeing compliance is the Eumedion’s secretariat. If the ultimate goal is for the code to become a national Stewardship Code, it is recommended that a more independent monitoring mechanism and body is put in place.

Part 2

Two

Part 2 – Analysis of Member Compliance

1. Introduction

The second part of the Eumedion research project is directed at the Eumedion members and their compliance with the Eumedion Code for institutional investors. In this part of the report the Eumedion members` compliance with the best practices of the Eumedion Code is observed and analyzed. The main objective of the research is to establish an evaluation of the compliance and derive from these findings the members` perception of what constitutes an engaged shareholder.

The Eumedion Code promotes engaged and responsible share-ownership and was adopted in 2011. The code is addressed at all 71 Eumedion members and other institutional investors that want to comply with it. As laid down in point 1.3 of the Code, the best practices are not binding, yet "not free of obligation either". This paragraph requires disclosure on the website or in the annual report of at least the information on best practices 2, 5, 6, and 8, or an explanation to be given when these best practices are not complied with. Additionally, descriptions about how compliance with the best practices is achieved should be made available in those documents. We start our analysis in this report on the basis of the abovementioned best practices.

The remainder of this chapter is structured as follows: In the first section, the methodology is explained. Limitations that we have to acknowledge are described in the second section, highlighting possible flaws or limited access to proper data. The third section comprises of a detailed analysis of each practice and what has been perceived by the members to be the optimal way of complying. The last two sections of this chapter provide conclusions regarding compliance with the code in general, our opinion about what Eumedion members consider as being an engaged shareholder and further suggestions.

2. Methodology

The research includes almost all Eumedion members. The relevant compliance data found on the basis of publicly available information for each member was included in compliance matrices. The matrices contain data on the source of the data and state whether or not a member complies with the best practice. In case there was no data available or in case a company only partially complies with a best practice, the member was considered as not complying with the best practice in the matrices.

In order to be able to formulate general conclusions, a group of 15 Eumedion members who comply with a best practice were taken as a basis for further research into the way in which members comply. Only 15 participants with the highest degree of compliance were taken for the analysis of each best practice, since the compliance by the other participants was either equal or less. In this chapter the way in which Eumedion members comply with the best practices is described. In addition, the percentages of compliance for each practice as well as the overall compliance were calculated in order to quantify our findings. Finally, conclusions are drawn from the research findings and suggestions for amendment of the Eumedion Code are made.

3. Limitations

Throughout the information-gathering phase and during the analysis there were limitations that should be taken into consideration when reading this report. First, only publicly available information was used in the analysis

Second, the disclosure requirement set out in the Eumedion Code in 1.3 only explicitly mentions best practices 2, 5, 6 and 8 to be found either on the website or in the annual report. Given this background, it is likely that although compliance with certain best practices was not found, those are nevertheless complied with but not made available to the public. This could have an impact on the overall outcome, yet it can also be considered as a future advice for the Eumedion members to disclose more on their websites.

Finally, there are a few Eumedion members who are either in liquidation, have only recently become a member or who have recently renounced their membership. Those members were left out of the research, totaling the number of members analyzed to 68 Eumedion members.

4. Analysis

In this section member compliance with the Eumedion best practices is described. First, each best practice of the Eumedion Code is mentioned, followed by a description of how Eumedion members comply with that Practice.

Best Practice 1 – Monitoring

Eumedion participants monitor their Dutch investee companies

Eumedion members agree that good stewardship is in the interest of the investors and investee companies. A few investors even speak of stewardship responsibilities in this respect. The goal of good stewardship is to create long-term value in companies, which in turn creates value for the ultimate beneficiaries of institutional investors.

Monitoring is critical in order to promote good stewardship, and nearly all Eumedion participants monitor their investee companies. Some companies monitor all their investee companies continuously. Failing companies are monitored most.

When monitoring, investors look at a wide range of aspects with regard to the investee company. These are financial, environmental, social and corporate governance ("ESG") aspects. When researching financial aspects, Eumedion members look at long-term and short-term performance, risk management, strategy and the financial structure of the investee company.

Aside from financial aspects, Eumedion members also research the corporate governance of investee companies. Many Eumedion members also have an elaborate policy on ESG, as ESG is an important aspect when monitoring investee companies.

Eumedion members are generally vague when it comes to the monitoring process. Some members have a team of stewardship experts who do the monitoring. They rely on the information they receive from investee companies, outside research, bilateral meetings with companies or own research.

Best Practice 2 – Shareholder Rights

Eumedion participants have clear policies with regard to the exercise of their shareholders' rights

Considering the previous compliance analysis, the exercise of shareholder rights is among the most complied with. Eumedion members that comply with this practice perceive the active exercise of shareholder rights as essential and important in almost all cases. A statement on the website or the relevant document often underlines this importance. Eumedion members often comply with the best practice on exercise of shareholder rights. The members either state that they actively exercise shareholder rights or extensively list what they do.

The first fact mentioned by all of the sample members is the active exercise of voting rights at all or almost all General Meetings of the companies invested in. Some members additionally mention that they are actively engaged in proposals for shareholder resolutions and try to put matters of interest on the agenda of the respective general meeting. In all the cases a voting policy is followed and where presence at the meeting is not possible many of the members use the possibility of proxy voting. Few of the members even mentioned that they are keen on speaking at the annual General Meetings when necessary.

Another point that all of the reviewed members have implemented are policies on engagement and dialogue. Most often a detailed report on how the dialogue and engagement is conducted was referred to. ESG factors were mentioned many times in relation to engagement policies.

In relation to the active exercise of the shareholder rights, Eumedion members often refer to existing corporate governance policies, highlighting the intention of promoting good corporate governance. Investors update their policies on the exercise of shareholder rights regularly.

All in all the active exercise of shareholder rights is considered to play a vital role in terms of engaged share-ownership and is in the overall research often complied with.

Best Practice 3 – Disagreements with the Board

Eumedion participants have clear policies for dealing with situations in which it does not prove possible to convince the board of the Dutch investee company of their stances and differences of opinion between the board of the investee company in question and the shareholders remain unsolved

About half of the Eumedion members have clear policies for dealing with situations in which it is not possible to convince the board of their stances. Members agree that when convincing the board, the ultimate beneficiary's best interest must be served. When engaging, the financial past, risk structure, corporate governance and ESG are taken into consideration.

When dealing with investee company boards, participants start their engagement activities by sending letters and having bilateral meetings with investee companies. If those measures prove ineffective, participants start talking to other stakeholders of investee companies about convincing the board. When collective action is ineffective, participants start questioning the investee company board in public, for example by speaking at the General Meeting of shareholders or by putting items on the agenda. Finally, shares may be sold. A few Eumedion members stress that trust and good long-term relations are essential when trying to convince an investee company board.

Disputes between participants and investee companies usually arise from different views on financial issues, corporate governance and ESG. Social and ethical issues can also give rise to different views.

Some Eumedion members have procedures to make sure that disputes with the investee company board are handled in a good manner. These procedures are described below. A few members keep track of all their engagement activities and issue reports on these activities. A few members also report all engagement activities that proved successful. Several Eumedion members have a voting database in which all votes casted by them at General Meetings are stored.

Best Practice 4 – Cooperation with other Investors

Eumedion participants are willing to deal collectively with other Eumedion participants and other investors where appropriate

The fourth principle mainly focuses on collective actions of the institutional investors, including Eumedion members and their cooperation with other institutional investors. Most of the 68 members state that they cooperate with other institutional investors where appropriate and consistent with applicable legal constraints.

Collective action is taken at an industry level, including areas such as strategy, risk, board representation, shareholder rights, remuneration, and corporate responsibility and ESG issues.

Some members mention that they are not likely to work together publicly but rather act in silent diplomacy. Members also seek to act collectively by using the platform provided by organizations, such as Eumedion, PRI and ICGN.

Eumedion provides a platform for collective engagement for their members.[5] A "lead investor" is assigned by the group of Eumedion participants who are holding shares in the particular company for each of 30 largest Dutch listed companies. The "lead investor" will monitor the company and lead the collaborative meetings. The Eumedion secretariat drafts analyses of the listed company and scans which can be the starting point of the dialogues. Other Eumedion members holding shares in that particular company are "Opt-in-Member" if they join the dialogue led by the lead investor. The lead investor is responsible for ongoing monitoring of the company and leading the collaborative dialogue meetings with the company. In principle, she is also expected to physically attend each AGM and EGM of the company. The lead investor should be prepared to

[5] Letter on Comments on the consultation document "Improving Engagement Practices by Companies and Institutional Investors' of the Institute of chartered Secretaries and Administrators (ICSA)", November 30, 2012.

actively participate in the debate at the AGM. Eumedion expects to have two meetings with each of the companies once a year, including one before the AGM and one where ongoing issues are discussed. In addition, the Eumedion secretariat drafts the minutes of every meeting and circulates them to the lead investor and the Opt-in-Members.

Best Practice 5 – Conflicts of Interest

Institutional investors may have other business relations with Dutch investee companies apart from the shareholder relationship alone. Eumedion participants take steps to mitigate conflicts of interest arising from these different roles. Eumedion participants have clear and robust procedures in place for the action to be taken in the event that divergent or conflicting interests arise. The procedures are publicly disclosed. Material conflicts of interest will be disclosed to the institutional clients affected.

Best practice 5 is one of the principles that is least complied with by Eumedion participants. Nevertheless, some members have clear and robust procedures in place for action to be taken when conflicts of interest arise. When such conflicts arise, the member chooses to make sure that the interests of the ultimate beneficiaries and the long-term interest of the investee companies are served.

Sometimes Eumedion members prohibit their employees from trading in company securities when the member is engaging with the investee company or when the employee has a personal connection with the company. Some members choose to let other proxy voting companies vote for them in accordance with their own voting policy and the investment agreement between the participant and the investee company when conflicts of interest arise.

Another way to deflect bad decisions as a result of conflicting interests is to disclose engagement reports and to prevent fund managers from obtaining price sensitive information.

Best Practice 6 – Voting Policy

Eumedion participants have a clear policy on voting and publicly disclose this policy. Eumedion participants report at least once per year on the implementation of their voting policy.

Based on the public information available, most of the 68 Eumedion participants state clearly that they have a voting policy and publicly disclose it on their website. This best practice is based on provision IV. 4.1 and 4.2 of the Dutch Corporate Governance Code. It requires that institutional investors annually publish their policy on voting for shares in listed companies and report annually on their website or in their annual report how they have implemented their voting policy.

By exercising their voting rights, the members normally vote by using an electronic platform or under the service of a proxy-voting agency. Some of the votes are done electronically in advance of the annual General Meetings. The members also state that if they are the majority shareholders in a company, if the agenda is of particular interest or if the investee company is in the Netherlands, they shall assign a representative to be present at the meeting.

If the investor invests in different regions, the voting policy is normally drafted for each region, taking into account the local market standards and best practices. Many members state clearly that their voting policies include consideration on ESG issues. The voting policy normally also includes issues on management of the company, optimizing shareholder return, and other related issues.

When the members have a voting policy, normally they state the existence of this policy on their website or in the annual report, which make them fully compliant with this best practice. Nonetheless, not many participants state clearly that they will annually review and update the voting policy.

Many of the annual reports have a part describing how the company voted during the reporting year, and this can be seen as reporting on the implementation of their voting policy.

Best Practice 7 – Informed Voting

Eumedion participants cast informed votes on all the shares they hold in Dutch companies at the general meeting of these investee companies. In the event that the Eumedion participant casts, withholds or is against a vote on a management proposal, the Eumedion participant will explain the reasons for this voting behavior to the company management, either voluntarily or on the request of the company in question.

Not many members provide explicit information on casting informed votes. Many companies have information on monitoring, engagement, voting policies. If a Eumedion member monitors their investee companies, then it can be reasoned that they also cast informed votes. A few members disclose how they gather information on investee companies. They can have a team of stewardship experts who get information from companies, outside researchers, meetings with companies or they can use own research and knowledge. Moreover, when voting against management proposals, many participants explain why they vote against.

Best Practice 8 – Voting Disclosure

Eumedion participants publicly disclose at least once in a quarter how they voted the shares in Dutch investee companies.

This best practice corresponds with Dutch Corporate Governance Code best practice IV. 4.3 which requires institutional investors to report on their website about their voting records at least once a quarter. More than half of the 68 Eumedion participants comply with this best practice. Some members prefer disclosure only to clients and not publicly on each item they voted on based on the agenda of the annual general meetings. One member says that there are three concerns regarding public disclosure. First, this has the risk of disclosing confidential client information. Second, it may cause external influences on voting. Third, public disclosure may increase costs.

Eumedion members who are asset managers vote based on the instruction of the asset owner and the asset managers' voting policy. The asset managers will then publish how the voting has taken place for each fund separately.

There are basically two ways of disclosing Eumedion participants' voting records. Some asset manager participants have a proxy voting search record through which ordinary people can search the voting record by name of the investee company or by date. The record contains the time of the meetings they voted in, whether they voted in favor of, against, or abstained for each item on the agenda. Some members only disclose the voting records based on a percentage of meetings attended and of how they voted on specific subjects. A number of members take it a step further step by including the reasons for abstaining votes. Some disclose explanations of why they abstained from voting to the public, while others only explain the reasons to their clients.

The frequency of disclosing voting records differs among participants. Some participants follow the guidance and disclose voting records quarterly according to best practice 8. Some on the other hand take a further step by disclosing soon after the votes are cast.

Best Practice 9 – ESG

Eumedion participants take aspects relating to environmental and social policy and to governance into account in their policies on the exercise of their shareholder rights, which may include entering into dialogue with listed companies and other engagement activities

The consideration of environmental and social governance comprises the flagship of our previously conducted compliance analysis. Over 85% of the 68 Eumedion members implemented policies and procedures that reflect considerations for ESG factors in their exercise of investments.

Eumedion participants take many different aspects into account on ESG. The most mentioned considerations are:

- Environmental aspects in general;
- Labour issues and more in particular often child labour;
- Violations of human rights;

- Trade of controversial weapons including cluster bombs, biological and chemical weapons as well as nuclear weapons;
- Corruption and bribery; Health.

Some of the members mention further areas such as animal welfare and gambling. Additionally, almost all of the members abide by either the United Nations Principles of Responsible Investment or the United Nations Global Compact or both. This shows the high value that is placed on the inclusion of principles and policies that support good ESG.

Based on their ESG policies many members include a form of dialogue policy to enhance ESG within their investee companies. In case of failure they provide criteria and lists for exclusion of companies. On many websites detailed explanations of the dialogue and exclusion process are provided as well as dialogues that failed, providing examples of how important ESG has become.

Among the 10 best practices provided for within the Eumedion Code, the ESG consideration principle appears to be the one taken most seriously. Apart from well-defined policies, many members even established specific committees that exclusively deal with matters of ESG and with how to implement it in their investment strategies.

Best Practice 10 – Stock Borrowing and Lending

Eumedion participants do not borrow shares solely for the purpose of exercising voting rights on these shares. They consider recalling their lent shares before the voting registration for the relevant general meeting of the relevant Dutch investee company, if the agenda for this general meeting contains one or more controversial subjects.

The outcome of the research on the stock borrowing and lending was among the least successful. Only about 15 members could be identified that disclosed their treatment of stock borrowing and lending.

The way of compliance differs and a coherent approach is hard to grasp. Nearly all participants include a possibility to recall stock under certain circumstances, when stock lending is allowed. Some members clearly state that they do not allow stock borrowing and lending at all. Others mentioned that they adhere to the International Corporate Governance Network (ICGN) Code on stock lending and again others employ a lending agent to deal with stock lending and borrowing.

The majority of members does not borrow shares merely to exercise voting rights. However, few of the members state that the predominant reason is the exercise of voting rights.

In our compliance analysis of the 68 members, stock lending and borrowing is the least disclosed of the Eumedion best practices and therefore, it is rather difficult to conclude on a general way of compliance. From the participants that disclose their approach towards stock lending and borrowing the majority is still incompliant, whereas some already refrain from practicing it. Since stock lending and borrowing is not one of the best practices that requires disclosure, it may very well be that most of the members that do not disclose information on it, refrain from voting using lent securities.

5. Conclusion and suggestions

From the perspective of the Eumedion participants ESG considerations, exercising shareholder rights, voting, including policies and informed voting, as well as monitoring are important for being an engaged shareholder. More than 85% of the members comply with best practice 9 relating to ESG. This makes best practice 9 on ESG the best practice that investors comply with the most.

Investors are less likely to comply with the principles on conflicts of interest, conflicts with the board, stock lending and voting disclosure. This shows that Eumedion members tend to consider more general matters as important, while paying less attention to specific issues such as stock lending. Moreover, the Eumedion members regard being an active shareholder as significant. This is expressed in detailed reports over past and present engagements with companies through dialogues or voting behavior. The underlying considerations in most of the cases are ESG principles.

All in all, we conclude that the principles established by Eumedion per se are well balanced. Compliance with the best practices of the Eumedion Code is, as has been shown above, possible to a great extent. Although the degree of compliance differs, the overall level of the best practice relating to ESG is very high.

This leads us to the assumption that this best practice can in fact be made stricter. As a suggestion we thought about including a list of issues that should be covered by the respective ESG policies. Moreover, since many participants already abide by the PRI and Global Compact principles, it is advisable that those principles serve as a good guideline when complying with the Eumedion best practices.

Taking into consideration that the Eumedion Stewardship Code is voluntary and an expression of self-regulation, it may be difficult to impose more stringent measures to achieve greater compliance. Nonetheless, we believe that better compliance and especially public disclosure of compliance could be achieved through a requirement for a specific document relating to compliance with the Eumedion best practices.

Although a statement of compliance is mentioned in point 1.3 of the Eumedion Code, requesting to publish a Eumedion compliance document with respective links for further details has two advantages. On the one hand, it shows that despite other codes and obligations the institutional investors strive to become engaged as much as possible. On the other hand, it would be an expression of the Eumedion affiliation. Finally monitoring compliance with the Eumedion best practices would be easier if there is a statement of compliance.

Part 3

Three

Part 3 – The EU Definition of an Engaged Shareholder

1. Introduction

This part of the report will focus on the European Union's definition of an "engaged shareholder". The European Commission has recently published a proposal to amend the current Shareholder Rights Directive (2007/36/EC).[6] The analysis bellow will examine the part of the Commission proposal which addresses the stewardship duties of asset owners and managers. It will be discussed whether, as the Commission argues, action is needed at the Union level and whether only at that level the appropriate measures can be taken. Furthermore, the Commission's initiative will be examined against the existing Stewardship Codes analyzed for the purposes of this assignment. Finally, the question on where the Eumedion Code stands with respects to the proposal will be addressed in detail.

2. EU developments regarding engaged shareholding

The Commission's objectives are to "contribute to the long-term sustainability of EU companies, to create an attractive environment for shareholders and to enhance cross-border voting by improving the efficiency of the equity investment chain in order to contribute to growth, jobs creation and EU competitiveness".[7] To that end, there are five key elements that the proposal addresses: 1) Improving engagement of institutional investors and asset managers; 2) Strengthening the link between pay and performance of directors; 3) Improving shareholder oversight on related party transactions; 4) Enhancing transparency of proxy advisors; and 5) Facilitating the exercise of rights flowing from securities for investors. For the purposes of our analyses, only this part of the proposal which relates to the stewardship duties of asset owners and managers will be discussed.

2.1 Improving engagement of institutional investors and asset managers

The impact assessment undertaken by the Commission has revealed that short-termism is one of the main problems of institutional shareholders and asset managers. Furthermore, the evidence showed that currently the level of monitoring of investee companies and the engagement by shareholders and managers is suboptimal.[8] The short-termism further derives from the failure to align the interests between asset owners and asset managers. Thus, the new proposal aims to install the following measures:

2.1.1 Engagement policy

Member States need to ensure that institutional investors and asset managers develop, on a comply-or-explain basis, a policy on shareholder engagement (Article 3f). Among other things, the policy should provide how institutional investors and asset managers integrate shareholder engagement in their investment strategy and how they exercise their voting rights. Additionally, the engagement policy shall outline the monitoring of investee companies, including on their non-financial performance, and the conduct of dialogue with these companies. The use of services of proxy advisers and the cooperation with other shareholders should be addressed in the engagement policy. Moreover, the policy should outline how actual or potential conflicts of interest regarding shareholder engagement are managed. The engagement policy should be publicly disclosed on an annual basis and details on implementation and the results of the policy should be provided.

2.1.2 Investment strategy of institutional investors and arrangements with asset managers

Member States shall ensure that institutional investors disclose to the public how their equity investment strategy ("investment strategy") is aligned with the profile and duration of their liabilities and how it

[6] Commission 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement' COM (2014) 0213 final. Available at: *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014PC0213&from=EN* accessed 10 July 2014.

[7] Ibid, p. 2, Explanatory Memorandum.

[8] Ibid, p. 4, Impact Assessment.

contributes to the medium to long-term performance of their assets (Article 3g). This, according to the proposal, shall be published on the company's website, where applicable. In addition to that, where an asset manager invests on behalf of an institutional investor, the latter is required to disclose annually six specified elements of the arrangement. This includes whether and to what extent it incentivizes the asset manager to align its investment strategy and decisions with the profile and duration of its liabilities. If one of the elements is not covered in the arrangement with the asset managers, the institutional investor shall provide a clear explanation why this is the case.

2.1.3 Transparency of asset managers

According to Article 3h of the proposal, on a half-yearly basis, the asset managers will be required to disclose to the institutional investors how their investment strategy and implementation thereof complies with that arrangement and how the investment strategy and its implementation thereof contributes to medium to long-term performance of the assets of the institutional investor.

2.2 The rationale behind the EU intervention

"According to the principle of subsidiarity the EU should act only where it can provide better results than intervention at Member State level and action should be limited to what is necessary and proportionate in order to attain the objectives of the policy pursued."[9] The Commission thus believes that the EU equity market has to a very large extent become a European/international market. Furthermore, it is stated that having in mind the international character of the activities of institutional investors, asset managers and proxy advisors the objectives relating to engagement of these investors and the reliability of the advice of proxy advisors cannot be sufficiently achieved by Member States. Actions taken without Union harmonization are likely, the Commission claims, to result in differing and unequal requirements that will lead to an unequal level playing field on the internal market.

The rationale behind the proposal is that a framework of corporate governance which is embedded in EU legislation and is regulated at this level will ensure a better framework for shareholder engagement, since the same transparency rules will be applicable across Europe. What is more, harmonizing rules on disclosure is believed to remedy asymmetrical information and enhance companies' accountability.

The Commission further states that the proposed aspects should be dealt with in a more binding form to ensure a harmonized approach within the EU and concludes that: "Only EU action can ensure that institutional investors and asset managers, but also intermediaries and proxy advisors from other Member States are subject to appropriate transparency and engagement rules".[10]

3. Where does Eumedion stand with respect to the Proposal?

With regards to engagement policies required by the proposal, Article 3f (1) requires that policies should be made concerning how (a) to integrate shareholder engagement in the investment strategy; (b) to monitor investee companies, including on their non-financial performance; (c) to conduct dialogues with investee companies; (d) to exercise voting rights; (e) to use services provided by proxy advisors; (f) to cooperate with other shareholders. The sub-paragraphs (c) (d) and (f) are found in the Eumedion Code respectively under best practice 2, 6 and 4. The sub-paragraph (a) is not explicitly found in the Eumedion Code, nor is sub-paragraph (b). For the latter, the code states that Eumedion members monitor their Dutch investee companies, however, it is not explicitly stated that they need to make policies on that. Finally, the obligation to have policies on how to use services provided by proxy advisers is completely absent in the Eumedion Code.

Then, Article 3f (2) requires that policies on conflict of interest should be made in all the situations enumerated in the paragraph. The first situation which requires the institutional shareholders to have policies

[9] Ibid, p. 6.

[10] Ibid, p. 3.

in place is when the institutional investor or the asset manager, or other companies affiliated to them, offer financial products to, or have other commercial relationships with the investee company, or when a director of the institutional investor or the asset manager is also a director of the investee company. Another envisaged scenario is when an asset manager managing the assets of an institution for occupational retirement provision invests in a company that contributes to that institution. Finally, in a situation when the institutional investor or asset manager is affiliated with a company for whose shares a takeover bid has been launched. In the Eumedion Code, best practice 5 requires policies on conflict of interest arising from a situation when an institutional investor may have other business relations with Dutch investee companies apart from the shareholder relationship alone. This seems to be a more general situation and is more linked to the sub-paragraph (b) of the Article 3f (2). However, in the Guidance following the best practice 5, all the situations found in Article 3f (2) are covered. Thus, the Eumedion Code seems to be in line with Article 3f (2).

Next, Article 3f (3) requires annual disclosure, once a year and at least on the website, on how the policies have been implemented. Institutional shareholders also have to disclose how they have voted at the General Meetings and provide explanations. Furthermore, where an asset manager casts votes on behalf of an institutional investor, the institutional investor shall make a reference as to where such voting information has been published by the asset manager. The Eumedion Code requires annual disclosure on how the policies have been implemented under best practice 2. Concerning the reference in case of vote on behalf of an institutional shareholder, the situation seems not to be covered by the Eumedion Code.

The last paragraph of Article 3f requires institutional investors or asset managers who decide not to develop an engagement policy or decide not to disclose the implementation and results thereof, to give a clear and reasoned explanation as to why this is the case. This "comply or explain" principle is found in the preamble of the Eumedion Code.

With regards to Article 3g, which requires the disclosure of the investment strategy of institutional investors and arrangements with asset managers, one can notice that this is not present in the Eumedion Code in general.

Article 3h which is about transparency of asset managers towards institutional shareholders is also not present in the Eumedion Code. This article is really detailed and would enhance the relation between the asset managers and the institutional shareholders. It would be good if Eumedion incorporates it in its code because it would improve transparency.

4. Self-regulation or EU approach

The Commission Proposal is already a very detailed and high-level instrument with respect to the engagement policies and the stewardship duties of asset owners and asset managers. We welcome harmonization of stewardship responsibilities because this will ensure uniformity Union-wide and will reduce transaction costs for institutional investors who have diverse portfolios and currently need to comply with different Stewardship Codes. Furthermore, the amended Directive, if adopted, will not only ensure an equal level-playing field in the internal market, but will require all EU Member States to establish and maintain stewardship standards. Currently, there is no German or French counterpart of the Eumedion or UK Stewardship Codes. Moreover, EU action has the potential of enhancing greater compliance with the existing stewardship responsibilities which are currently maintained in certain countries. As we have seen from the previous section, compliance by Eumedion members with the Eumedion Code is not optimal. The code is a self-regulatory instrument and compliance is annually monitored by the secretariat. The adoption of the Commission Proposal would mean that the enshrined stewardship duties will need to be implemented in hard law, and compliance or deviation from the principles with adequate explanation will become mandatory. This might serve as an incentive for institutional investors and asset managers to comply with their obligations or provide reasonable and detailed reasons when they have decided not to apply certain requirements.

However, the Proposal is silent on how compliance with the engagement policies should be monitored. From the wording of the provisions, it is clear that Member States are required to ensure that institutional investors and asset managers develop a policy on engagement, on a comply-or-explain basis. This would perhaps mean that each Member State should designate a national authority to monitor compliance. However, there is a risk that in this case the ultimate goals of the Directive may not be achieved. The Directive only sets minimum standards and since it prescribes for the principle of comply-or-explain, there should be a uniform framework drafted at the EU level providing guidance on how non-compliance and explanation should be assessed and monitored. Another alternative to that is the creation of a European authority to oversee compliance, but this scenario appears to be complicated.

The Eumedion Code does have the potential of becoming the Dutch national Stewardship Code since it already includes the majority of requirements and policies introduced by the Commission, particularly with respect to the engagement policy provided for in Article 3(f). As explained above, with respect to Article 3(f), the code already provides for: conduct of dialogue with investee companies, policies on voting rights, policies on cooperation with other shareholders. The code provides for monitoring on investee companies, although monitoring on non-financial performance is not explicitly mentioned, but it is implied in the statement that monitoring should include careful scrutiny of the environmental and social policies. The use of services of proxy advisors and integration of the engagement policy in the investment strategy, are, however, not addressed. We would like to stress the fact that the EU Commission only enlists all the aspects that a policy on shareholder engagement should include. Through its best practices, however, the Code of Eumedion is already detailed on what each of these stewardship responsibilities should entail.

Part 4

Four

Part 4 – Article IV.3.13 of the Dutch Corporate Governance Code on bilateral contacts, comparison with foreign codes and compliance by Dutch listed companies

1. Introduction

Part four of this report is about bilateral contacts between investors and their investee companies. Companies can have one-on-one contacts with their shareholders. These so-called bilateral contacts can be useful, because the company and the shareholder can share their views on important company matters. These moments of contact, while potentially useful, may also lead to a selective exchange of valuable inside information. The more contact there is between an investor and the investee company, the higher the risk of exchange of insider information.

Article IV.3.13 of the Dutch Corporate Governance Code contains an obligation for Dutch listed companies to formulate an outline policy on bilateral contacts with shareholders and to publish this policy on their website. The article was adopted in order to tackle the potential risk of market abuse as a result of bilateral contacts between the shareholder and the company.[11] Article IV.3.13 of the Dutch Corporate Governance Code aims to increase transparency on these contacts.

The first part of this chapter deals with the question whether there are obligations similar to the one stated in article IV.3.13 Dutch Corporate Governance Code in the corporate governance codes of six influential European countries. The second part of this chapter will deal with the question how Dutch listed companies implemented article IV.3.13 in practice.

2. Methodology

To answer the questions that are dealt with in this part publically available resources were used, such as company websites and annual reports. On the basis of the research findings companies are divided into three groups. Those three groups are: companies that have formulated a policy, companies that explain why they have not adopted a policy and companies that do not have a policy. A company was only counted as a company that has formulated a policy if it has disclosed specific information about how bilateral contacts are handled. Many companies state that they have a policy on bilateral contacts, while these policies are often difficult to find. Companies which only state that they have a policy on bilateral contacts but for which the policy itself could not be easily retrieved from publicly available information, were counted as companies that do not have a policy.

As to the amount of the companies, we focus on 52 Dutch listed companies provided by the client, Eumedion. These 52 companies represent Dutch listed companies in general. Out of the 52 companies involved in the research 35 of them have adopted a policy. Two companies explain why they did not implement a policy and the rest does not seem to have a policy on bilateral contacts.

[11] *Monitoring Commissie Corporate Governance, advies over de verhouding tussen vennootschap en aandeelhouders en over het toepassingsbereik van de Code, mei 2007, p. 12.*

3. Bilateral Contacts in other Corporate Governance Codes

3.1 Introduction

This section looks at the Corporate Governance Codes of six large markets within the EU to determine whether a provision similar to article IV.3.13 also exists in the Corporate Governance Codes of these markets. The six countries analyzed are Sweden, the UK, France, Spain, Germany and Belgium. Each Code is analyzed in a short paragraph followed by a general conclusion.

3.2 Corporate Governance Codes

3.2.1 Swedish Corporate Governance Code

The revised Swedish Corporate Governance code entered into force on 1 February 2010. The Swedish Corporate Governance Code applies to all Swedish companies whose shares are traded on a regulated market in Sweden. There are currently two markets, Nasdaq OMX Stockholm and NGM Equity. The code follows the rule of "comply or explain". The companies shall report each of the individual deviation from the rules by describing their own solution and explain the reason.

The Swedish Corporate Governance Code does not have a requirement for companies to establish a policy on bilateral contacts with shareholders nor does it contain specific rules on engagement activities of shareholders.

However, in article II.1 "the ownership role", the importance of active ownership is emphasized. The code states that *"ownership in Sweden is often concentrated to single or small numbers of major shareholders, as is the case in many continental European countries"*. In addition, Swedish society holds a positive view that major shareholders can actively influence corporate governance through using seats on boards of directors. But the major shareholding should not be used to the detriment of the company or to other shareholders. The code also requires from the perspective of the board that the chair of the board shall *"be responsible for contacts with the shareholders regarding ownership issues and communicate shareholders' views to the board"*.

As to the requirement for institutional investors, Hans Dalborg, the former Chairman of Swedish Corporate Governance Board says in a brochure on... that *"institutional shareholders are recommended to make their ownership policy public to provide information about the principles followed in exercising their voting rights"*.[12]

3.2.2 UK Corporate Governance Code

The latest version of the UK Corporate Governance Code was adopted in September 2012 and applies to all companies that have a premium listing of equity shares incorporated in the UK or elsewhere. Previously there was a combined code including a code of conduct for investors. Now there is a separate document the "UK Stewardship Code", providing guidance specifically for good practice of investors. The UK Corporate Governance Code is also based on the underlying principle of 'comply and explain'. The code, like the other codes examined, is non-binding and only serves as a guide as explained in the preface.[13]

With regard to bilateral contacts, the UK Code does not include a provision requiring a policy on that matter.

Nevertheless, there is a section within the code called 'Relations with Shareholder'. In this chapter it is laid down that *"a dialogue with shareholders based on the mutual understanding of objectives"*[14] should be ensured. Moreover, in the supporting principles part it is stipulated that all directors should be made aware of the concerns and issues of the shareholders and that the *"board should keep in touch with the shareholder opinion in whatever ways are most practical and efficient."*

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[12] Sven Unger, Special Features of Swedish Corporate Governance, The Swedish Corporate Governance Board, December 2006, p 3.

[13] UK Corporate Governance Code 2012 Preamble retrieved from:
https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf

[14] UK Corporate Governance Code 2012 Section E "Relations with Shareholders" retrieved from:
https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf

All in all, there is no explicit provision that necessitates the implementation of a bilateral contact policy. There is merely recognition in the code that contact in the form of dialogue shall be ensured.

3.2.3 Spanish Corporate Governance Code

In Spain the so-called Unified Code on Corporate Governance was adopted in May 2006, applying to all companies that trade shares on the Spanish Stock Exchange Market. It is made clear in the preface that the code is voluntary and is subject, like the others, to the 'comply or explain' approach.

Again, there is no mentioning of a provision that requires bilateral contacts between the board and the shareholders.

The relationship between the board and the shareholders is described in Chapter I under "Competence of the Shareholder Meeting" and Chapter II under "Corporate Interest". In particular the responsibilities of the board with regard to the General Meeting are laid down. Furthermore, a board obligation to act in good faith and according to legal obligations in the interest of the corporation is set out in Chapter II[15].

The provisions in the Spanish Code in relation to a requirement of bilateral contacts and the employment of a specific policy are in this case also not existent.

3.2.4 French Corporate Governance Code

The French Corporate Governance Code for listed Companies has been developed by the Association Francaise des Entreprise (Afep) and the Mouvement des Entreprises de France (Medef). It is addressed to public limited liability companies as well as partnerships limited by shares. The development of the code arose within the business community itself and resulted in the recommendations of the code. In line with the previously discussed codes, the recommendations of the French Code shall be implemented on the basis of the 'comply or explain approach'.

Throughout the code there is nothing to be found that relates to bilateral contact policies.

Section 5 of the code, which deals with 'The Board of Directors and the General Meeting of Shareholder', is one of the few sections that deal with the interaction between the board and the shareholders. Subparagraph 2 states that the General Meeting is the occasion where dialogue between the board and the shareholder shall take place. Yet, it also stipulates that this does not prevent the board from finding more opportunities to engage in a genuine and open dialogue with the shareholders.[16]

Although engagement with the shareholders is to a certain extent encouraged, the French Corporate Governance Code does also not require a policy on bilateral contact in any way.

3.2.5 German Corporate Governance Code

The newest version of the German Corporate Governance Code came into force in May 2013. The primary focus of the code is on publicly listed companies although it is recommended that companies not geared towards the capital markets respect the code as well. As all of the other Corporate Governance Codes, the German Code is based on the principle of 'comply or explain'.

Also this code does not contain a provision that requires a policy for bilateral contacts.

As in all of the other codes also Germany merely includes provisions on the interaction between the board and the shareholders under the heading of section II 'Shareholder and General Meeting'. This section outlines that the exercise of the shareholder rights is predominantly done before and at the General Meeting. No additional dialogue or interaction was laid down, other than decisions that have to be taken by the shareholders. In section IV the responsibilities and obligations of the management board are described. Again, it is only mentioned that the board shall act in the interest of the company and their

[15] Spanish Corporate Governance Code Chapter I point 4 and Chapter II point 8 retrieved from:
http://www.ecgi.org/codes/documents/unified_code_jan06_en.pdf

[16] French Corporate Governance Code Section 5 (2) retrieved from:
http://www.medef.com/fileadmin/www.medef.fr/documents/AFEP-MEDEF/Code_de_gouvernement_d_entreprise_des_societes_cotees_juin_2013_EN.pdf

shareholders. Establishment of specific contacts are not mentioned.[17]

Germany like all the previous corporate governance codes analysed does not require companies to establish a policy on bilateral contacts.

3.2.6 Belgian Corporate Governance Code

Belgium revised its corporate governance code on the 12th of March 2009. The code applies to Belgian listed companies. The Belgian Code is also based on the principle of 'comply or explain".[18]

Principle 8.2 states that the company produces a policy on communication with shareholders and disclosure to shareholders. This policy encourages dialogue with shareholders and potential shareholders.[19]

Principle 8.2 obliges Belgian listed companies to have a policy on shareholder communication. Furthermore, the principle makes clear that the policy should encourage dialogue. Article IV.3.13 of the Dutch Corporate Governance Code and principle 8.2 of the Belgian Corporate Governance Code have many similarities. Both best practices oblige listed companies to have a policy on shareholder communication and both best practices focus on dialogue between investors and their investee companies. A difference between the two best practices is that principle 8.2 states that the goal of having a communication policy is to promote dialogue between investors and investee companies. Article IV.3.13 doesn't state what purpose having a policy on bilateral contacts has.

4. Analysis of the policies on bilateral contacts

Following article IV.3.13 of the Dutch Corporate Governance Code, many Dutch listed companies have formulated policies. This analysis examines the question if and in how far Dutch listed companies on the AMX and EMX apply article IV.3.13.

Out of the 52 companies involved in the research, 35 of them had a policy on bilateral contacts. Most policies contain only a few of the subjects that are analysed in part 4.1 of this part. Two of the companies involved in the research explain why they do not have a policy on bilateral contacts. One of these companies states that the current laws on market abuse suffice. Therefore, there is no reason to have a policy on bilateral contacts. The other company mentions that article IV.3.13 is not applicable to the company, without giving further explanation. The 15 companies that remain have no policy on bilateral contacts. Even though they often state on their website that they do have such a policy, these policies could not be easily retrieved.

4.1 Bilateral Contacts Policies

4.1.1 Deviation, Amendment and Annulment

An important part of a policy is whether it is possible to deviate from, amend or annul it. Out of the 35 companies that have a policy, seven of them provide information on deviation of their policy. The other policies have no information on deviation. Companies do not give any further explanation of the reasons that may justify deviation of the policy. In all cases deviation is only possible with authorization of the executive (and sometimes supervisory) board. One company allows for deviation of the policy in special circumstances only.

Seven out of 35 policies contain information regarding the amendment and annulment of the policy. There is a consensus among companies that the executive board is authorized to amend or annul the policy, sometimes in combination with consent of the supervisory board. Annulment and amendment of the policy is also in all cases up to the executive (and sometimes supervisory) board.

[17] German Corporate Governance Code Section 2 and 4 retrieved from: *http://www.ecgi.de/codes/code.php?code_id=402*

[18] Art. 96, § 2, 1° *Wetboek van Vennootschappen.*

[19] *De vennootschap werkt een openbaarmakings- en communicatiebeleid uit dat de effectieve dialoog met aandeelhouders en potentiële aandeelhouders bevordert.*

4.1.2 Accepting invitations to have bilateral contacts

14 out of 35 policies describe the company`s attitude towards accepting invitations. All policies that contain information on accepting shareholder invitations for bilateral contacts express that the company is free to accept or decline invitations. Only a few companies require a combined decision of the executive and the supervisory board prior to accepting or declining an invitation.

12 Policies include data on accepting invitations from investors. All companies require information from the shareholder before accepting an invitation. Companies are most interested in the equity stake the investor has in the company, the goals the investor wishes to accomplish with the bilateral contacts, the subject that would be discussed during a potential meeting and the shareholder's opinion on these subjects.

4.1.3 The party that initiates the contacts

14 out of 35 policies report on the party that initiates bilateral contacts. There is a consensus among companies that the company may seek contact with its shareholders if it so desires. Only two companies state that usually the shareholders are the ones that seek bilateral contacts with the company and not the other way around.

4.1.4 Silent periods

The policies of 17 out of 35 companies contain information regarding silent periods. These are periods during which no contact with investors or analysts may take place to prevent inadvertent disclosure of sensitive information. The silent periods take place before publication of the annual report, quarterly reports and Q1 or Q3 statements (trading updates). The length of silent periods before publication of the annual report ranges from 15 days to two months. The silent periods before publication of the quarterly result are usually half the length of the silent periods before publication of the annual report.

4.1.5 Purpose of the bilateral contacts

22 Policies include provisions on the purpose of bilateral contacts. Most companies state in their policies that the goal of bilateral meetings with shareholders is to inform the shareholder, explain and answer questions, give 'colour' to the business, clarify publically disclosed facts, make sound investment decisions possible etc. On the other hand several companies express that the goal of bilateral contacts is to maintain an open and constructive dialogue with their shareholders.

4.1.6 Sharing of price sensitive information

Almost all policies have information on the sharing of price sensitive information. While many companies agree that there should be no disclosure of price sensitive information during bilateral contacts with shareholders, there are a few that allow for exceptions when it is legal and in the best interest of the company to do so. One policy adds that in this case the consent of the shareholder is necessary before disclosing price sensitive information to the shareholder.

4.1.7 Procedures that are in place when information is inadvertently leaked

A lot of companies have procedures installed in case price sensitive information is inadvertently leaked during bilateral contacts. Opinions on solving this problem differ. Some companies choose to disclose the information immediately, as soon as possible, quickly, without delay or before the market opens for the next day's trading. Others oblige the shareholder to keep the information confidential and to not trade in securities of the company until public disclosure has taken place. There are also proponents of a combination of the two solutions above.

4.1.8 People who are present at bilateral meetings

25 Out of 35 companies include data in their policies about the company representatives that should be present during bilateral contacts with shareholders. The persons who deal with bilateral contacts on behalf of the company are generally the CEO, CFO, management board, investor relations department and occasionally the supervisory board.

The companies have different opinions on the number of company representatives who should be present during bilateral meetings with shareholders. A small majority expresses that there should be at least two company representatives, while the others state that the CEO or CFO alone can attend the bilateral meetings with shareholders. In principle the members of the supervisory board will not attend bilateral

contacts with shareholders, but on request and after consulting the executive board it is possible to have contacts with the supervisory board.

5. Conclusion

5.1 Foreign corporate governance codes

Our research, analyzing the codes of six large European markets, has made clear that only one of the Corporate Governance Codes used in these markets adopts a provision comparable to the provision in the Dutch Corporate Governance Code on bilateral contacts. Principle 8.2 of the Belgian Corporate Governance Code is similar to article IV.3.13.

The general approach to contact between the board and the shareholders is through the General Meeting. However, the Belgian, UK and French Corporate Governance Codes mention additional dialogue between the board and the shareholders. Although dialogue has not been mentioned in the case of Sweden, the Swedish approach one of direct influence, where shareholders are welcomed to be part of the board. Germany and Spain apply a rather general approach and do not mention dialogue or direct influence. In conclusion, only the Dutch and Belgian Corporate Governance Codes contain a provision that requires a policy to be put in place for communication between investors and their investee companies. The other analyzed countries do not follow this trend in the current state of their Corporate Governance Codes.

5.2 Compliance with art. IV.3.13

Out of the 52 companies involved in the research 35 of them have adopted a policy. Two companies explain why they did not implement a policy and the rest does not seem to have a policy on bilateral contacts.

Deviation from, annulment and amendment of the policies on bilateral contacts is always possible, but only with the consent of the executive (and supervisory) board. Companies are free to accept or decline an invitation to have bilateral contacts with investors. They require information on the investor's equity stake, the goals, and the subjects that will be discussed at the meeting and the shareholder's opinion before having bilateral contacts. Companies are free to seek bilateral contacts with shareholders. Many companies have silent periods before publishing the annual report and quarterly reports during which no bilateral contacts take place.

The goal of bilateral meetings with shareholders is to inform the shareholders and to maintain an open and constructive dialogue. Generally, there will be no disclosure of price sensitive information during bilateral contacts, but in case such information is accidentally disclosed, the company will publically disclose the information as soon as possible. In the meantime, the shareholder is obliged to keep the information confidential and to not trade in securities of the company until the sensitive information is publically disclosed.
Companies are divided when it comes to the number of company representatives who should attend bilateral contacts with shareholders. Some require two or more company representatives, while others state that the CEO or CFO can attend the meetings on his own.

General Conclusion

This report provides an analysis and an overview of what is considered to be an engaged shareholder from different perspectives. First of all, it can be noticed that the stewardship codes are an important tool to assist and give guidance to shareholders in order for them to qualify as engaged shareholders. These codes are mainly characterized by the promotion of monitoring, enactment of policies, disclosure of policies and voting, cooperation and compliance with the policies. It is important to stress that the codes are based on the comply-or-explain principle, so that shareholders are obliged to comply or to explain why they are not complying.

When looking at how the institutional shareholders define an engaged shareholder by looking at their compliance with the Eumedion code, it has been reflected that the Eumedion members focus most on monitoring, voting at general meetings and ESG when being an engaged shareholder.

With regards to the proposed Directive, one can notice a bottom up approach. The various stewardship codes have pushed the Commission to make a Directive in order to unify and harmonize rules found in the stewardship codes in all EU member states. However, we can notice also a top down approach as, for instance, the proposal goes beyond what is found in the Eumedion code but also the fact that not all member states have a stewardship code in the first place. It can be said that the EU is a key actor to the promotion of engaged shareholding as it has the sole power to harmonize and create uniform rules across the EU. One question remains; whether it is better to make use of self-regulatory means or to make it into hard law in order to enhance stewardship. It has been seen that the essential feature of the stewardship codes is their flexibility and the fact that they are complied with on a voluntary basis. Thus, making the content of the stewardship codes into hard law through the proposed Directive could be opposed to the first aim of these stewardship codes. This is still under discussion and it will be up to the Commission and the institutional shareholders' representatives to find a compromise.

Many companies have implemented policies on bilateral contacts. Companies are free to accept or decline an invitation to have bilateral contacts with investors. They require information on the investor's equity stake, the goals, and the subjects that will be discussed at the meeting and the shareholder's opinion before having bilateral contacts. Companies are free to seek bilateral contacts with shareholders. Many companies have silent periods before publishing the annual report and quarterly reports during which no bilateral contacts take place. Companies state that no price sensitive information will be disclosed during bilateral contacts, and there are procedures in place in case such information is inadvertently leaked.