



RSM InterFinance & Governance GOVERNANCE NEWSLETTER N°1

2011-2012 Governance news

1. Remuneration report included in the Declaration of corporate governance

The law of April 6th 2010 aiming at reinforcing the corporate governance of Belgian listed companies and some public companies¹ stipulates that those companies should:

- Create a remuneration committee
- Include a declaration of corporate governance in the director' report

This declaration of corporate governance includes 2 elements:

- A description of the main characteristics of the internal control and risk management systems in place through the process of preparation of financial statements
- **A remuneration report.**


The declaration of corporate governance is applicable since accounting year 2010, the remuneration report from accounting year 2011.

The content of the remuneration report as included in art. 96 of company code is as follow:

- 1) A description of the procedure applied during the accounting year to :
 - a) Elaborate a policy related to remuneration of directors, members of the executive committee, CEO and other members of the management²
 - b) Determine the individual compensation of directors, members of the executive committee, CEO and other members of the management
- 2) A declaration about the remuneration policy of directors, members of the executive committee, CEO and other members of the management applied during the accounting year including at least :
 - a) The basic principles of compensation including the link between compensation and service
 - b) The relative importance of the various components of compensation
 - c) The characteristics of benefits in shares, options or other rights to acquire shares
 - d) Information about the remuneration policy for the subsequent two accounting years. If the remuneration policy has been substantially modified in comparison to the one applicable to the accounting year about which the report is prepared, the changes should be specifically highlighted.


¹ Belgocontrol, Infrabel, La Poste, SNCB, SNCB Holding

² Members of any committee where the general strategy of the company is discussed except the committee defined in article 524 of the Belgian company code.

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- 3) On an individual basis, the amount of compensation and other direct and indirect benefits of non executive directors granted by the company or a company that is part of the consolidation perimeter of the company.
 - 4) If some members of the executive committee, some others members of the management or the CEO are also members of the board, information about the compensation they receive in such capacity.
 - 5) If executive directors, members of the executive committee, the CEO or other members of management can receive bonuses based on the performance of the company or a company that is part of the consolidation perimeter or on the performance of the person, the criteria used for the evaluation of performance against objectives, an indication of the evaluation period and description of methods used to determine whether these criteria of performance have been complied with. This information should be given without revealing any confidential elements of the company's strategy.
 - 6) The amount of remuneration and other benefits granted directly or indirectly to the main representative of executive directors, to the president of the executive committee, to the main representative of other members of management and to the CEO by the company or a company included in the consolidation perimeter. These information will include :
 - a) Basis remuneration
 - b) Variable remuneration: any additional remuneration linked to performance criteria and indication of the terms of payment of this variable remuneration
 - c) Pensions: amount paid during the accounting year on which the report is made or expenses incurred during the year depending on the pension plan type with some explanations about the applicable pension plans.
 - d) Other remuneration components such as insurance expenses and other benefits in kind, including an explanation of the characteristics of the main components. In case of significant changes of this compensation in comparison to the previous accounting year, these should be specifically highlighted.
 - 7) Globally, the amount of remuneration and other benefits granted directly or indirectly to other executive directors, members of the executive committee, CEO and other management members by the company or a company in the consolidation perimeter.

These information will include :

- a) Basis remuneration
- b) Variable remuneration: any additional remuneration linked to performance criteria and indication of the terms of payment of this variable remuneration
- c) Pensions: amount paid during the accounting year on which the report is made or expenses incurred during the year depending on the pension plan type with some explanations about the applicable pension plans.

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- d) Other remuneration components such as insurance expenses and other benefits in kind, including an explanation of the characteristics of the main components. In case of significant changes of this compensation in comparison to the previous accounting year, these should be specifically highlighted.
- 8) Individually, for executive directors, members of the executive committee, CEO and other members of the management, the amount and main characteristics of shares, options or any other rights to acquire shares exercised or having reached maturity during the accounting year.
- 9) Individually, for executive directors, members of the executive committee, CEO and other members of the management, the arrangements related to severance pay
- 10) In case of departures of executive directors, members of the executive committee, CEO or other members of the management, the motivation and decision of the board of directors, on the proposition of the remuneration committee, to grant or not a severance pay and the calculation basis of it.
- 11) For executive directors, members of the executive committee, CEO and other members of the management, the extent to which a right of recovery of variable compensation awarded on the basis of erroneous financial information is provided for the benefit of company

Considering that the content of this remuneration report is now included in the Belgian company code, the « Comply or explain » principle is not applicable to this topic anymore.

In order to help companies comply with the Belgian company code, the corporate governance committee has elaborated a remuneration grid which can be found in French and Dutch here: http://www.corporategovernancecommittee.be/en/tools/remuneration_grid/default.aspx

2. Increased powers of the General Assembly of Shareholders

The law of November 7th 2011 has modified article 554 of the Belgian Company Code in order to give more powers to the General Assembly of Shareholders by requiring the assembly to vote **separately** on the remuneration report.

The General Assembly also needs to approve:

- Termination pay when they are above 12 months of remuneration (or based on a motivated advise from the remuneration committee, 18 months of remuneration) after the worker's council has formulated an opinion.
- Variable compensation of **non executive** directors.



3. Variable remuneration and compensation in shares of executive directors of listed companies

Articles 520 bis & 520 ter of the Company Code include new principles about the compensation of **executive directors** of listed companies.

The criteria on which a variable remuneration is based should be specifically mentioned in the contract between the director and the company. This remuneration can only be paid if the criteria are reached for the accounting year. In case of non-compliance with those principles, this variable remuneration won't be taken into account to calculate the termination pay.

Except otherwise indicated in the statutes of a listed company or express approval of the general assembly of shareholders, a share can be definitely acquired by a director only 3 years after it has been attributed (the same applies for stock option exercise).

Except otherwise indicated in the statutes of a listed company or express approval of the general assembly of shareholders, if the variable part of the compensation of an executive director represents more than 25% of the annual remuneration:

- At least 25% of the variable compensation will be based on pre-determined objectively measurable criteria assessed during a period of 2 years
- At least 25% of the variable compensation will be based on pre-determined objectively measurable criteria assessed during a period of 3 years
- Maximum 50% of the variable compensation will be based on criteria related to the current year.

4. Presence of both sexes in the board of directors composition

The law of July 28th 2011 has introduced article 518 bis in the Company Code which applies to listed companies, autonomous public companies and "Loterie Nationale". 1/3 of directors of listed company will have to be of a different sex than the other members. This applies starting January 1st 2017. From this date on, if the quota is not respected, each new director will have to be a member of the minority sex, otherwise the decision will be considered null and void.

If the quota is not reached after the first general meeting of shareholders to be held after January 1st 2019, all directors' benefits (financial or not) will be suspended.

For listed companies whose free float is below 50% and those who don't reach more than one of the 3 following criteria:

- Balance sheet total : 43.000.000 €
- Turnover : 50.000.000 €
- 250 workers

The deadline is pushed by another year.

For companies going public, the quota will have to be reached for the 6th accounting year after going public.

The declaration of corporate governance will include from 2012 on, a short description of the efforts made to reach the quota.



5. New decree related to public governance in Wallonia

A new decree was voted by the Walloon parliament in April 2011 to reinforce the governance of its public interest organizations.

Some of the new elements are:

- A deadline is set to appoint public directors
- To reduce possible conflicts of interest, an extra incompatibility is introduced between the functions of president of the board and the Chief of Cabinet of the minister in charge
- An improved transparency of compensation of public directors
 - Public companies are required to publish the amounts of compensation of public directors (anonymous) and a report explaining the principles of compensation
 - Public companies are required to send the individual compensation of each public director to the Minister in charge.
- A possibility to appoint observers in the board of public companies

6. EU green paper on Corporate Governance (05-2011)

The European Commission has published a green paper related to corporate governance of companies. This paper asked a number of questions and received over 400 replies. The Commission will be making propositions in the second half of 2012.

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We help you analyze the structure of your company and make the best decisions related to organisation and governance, with the highest degree of security and confidence.

***Need advice or an answer to your questions ?
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