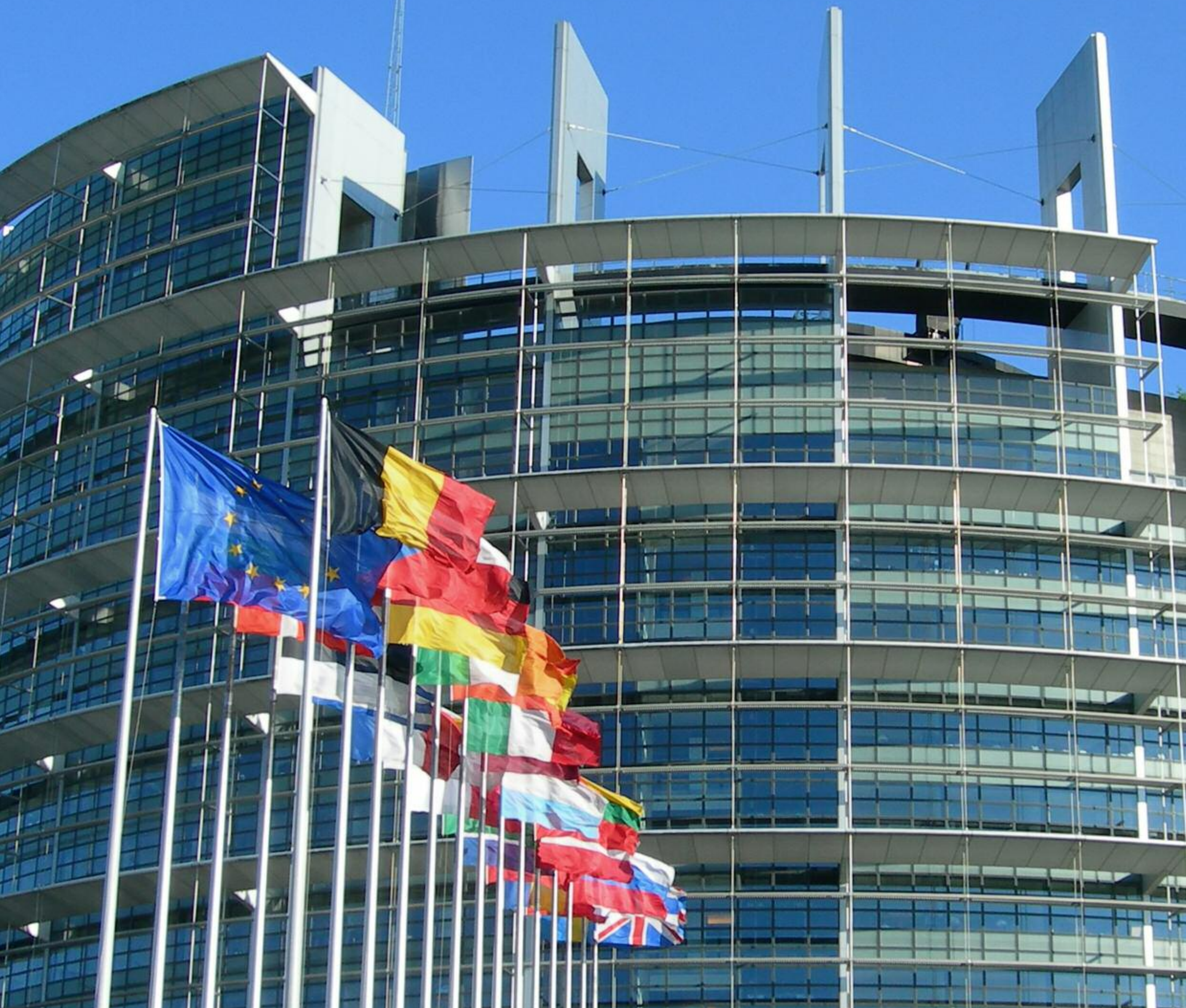
European Union
Germany
United Kingdom
France
The Netherlands

December 2011



CLIFFORD CHANCE

Core Corporate Governance Issues
A comparative overview

This comparative overview of corporate governance issues focuses on certain corporate governance aspects which directors of listed companies on the one hand and directors of financial institutions (independent of their legal form), on the other hand, are subject to. As far as financial institutions are concerned, this overview focuses mainly on banks and insurance companies, which are dealt with by all jurisdictions in detail. Certain other forms of institutions such as portfolio management companies and certain types of funds (e.g. UCITS) and AIF are also addressed in the EU, German, French and Dutch sections (not in the UK sections) and pension funds are addressed in the German and Dutch sections (not in the EU, UK and French sections). The Dutch sections also cover insurance brokers, persons or companies offering "investment objects" (beleggingsobjecten), consumer credit providers, certain custody service providers, e-money institutions, payment services providers, persons exploiting regulated markets and trust offices. Should you need information on aspects not covered, please do not hesitate to contact us.

The original version of this comparative overview was produced for the benefit of the Report of the Government Commission for the German Corporate Governance Code to the German government ("Report") and was attached to the Report as annex 3. The Report was submitted to the German Government on 16 December 2010. It can be downloaded from the internet site of the Government Commission for the German Corporate Governance Code. Whereas the original version focused on the core corporate governance issues for listed companies, the current version also covers corporate governance issues for the financial sector.

contents

This overview is intended for general information purposes and does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. Clifford Chance LLP, Clifford Chance Partnerschaftsgesellschaft von Rechtsanwälten, Wirtschaftsprüfern, Steuerberatern und Solicitors and Clifford Chance Europe LLP do not accept any liability in respect of anything done or not done in reliance on the information contained in this overview. For further information or advice in the context of any particular transaction, please contact your regular contact person at Clifford Chance (E-Mail: firstname.surname@cliffordchance.com). Should you have any comments please feel free to address them to anapaula.tavares@cliffordchance.com.

Core Corporate Governance Issues
A comparative overview

Preface

Corporate Governance is generally understood as the system by which companies are directed and controlled. The Corporate Governance structure thus specifies the rights and responsibilities among the executives and the boards as well as other stakeholders, such as shareholders, employees and creditors. Corporate Governance provides for the rules and procedures for decision making within a company.

Corporate Governance is perhaps one of the most debated corporate law issues of the last decade. The most visible debates took first place in the US as a result of the Enron collapse in 2001 and following the introduction of the Sarbanes-Oxley-Act in 2002. In Europe, the Action Plan of the European Commission "Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward" of 2003 set the framework for the developments that were to come. The collapse of Lehman Brothers in 2008 enlivened once more the international discussions.

The current international, European and domestic legal developments in the Corporate Governance arena are extensive and no longer easy to follow. They focus on issues such as board remuneration, professionalisation and composition of boards, including diversity, independence and freedom from conflicts of interest.

At an European level, the De Larosière Report dated 25 February 2009 on financial supervision in the EU reached the sombre conclusion that corporate governance "is one of the most important failures of the present crisis". One of the recommendations made in the report relates to remuneration issues in the financial sector. Taking into consideration the conclusions of the Larosière report, the EU Commission announced, in its Communication of 4 March 2009 setting out an effective program for reforming the regulatory and supervisory framework for financial markets, that it will examine the corporate governance rules and practices within financial institutions and make recommendations or propose regulatory measures.

In June 2010 the EU Commission initiated a review on Corporate Governance with its Green Paper on Corporate Governance and Remuneration Policies for Financial Institutions ("**Green Paper 2010**") (COM(2010) 284 final). The main aim of the Green Paper 2010 was to identify and describe corporate governance practices in financial institutions and to make suggestions for improvement. The EU Commission consulted on seven areas in which it identified deficiencies and weaknesses: boards of directors, risk management, supervisory authorities, external auditors, shareholders, remuneration and conflicts of interest. Although the Green Paper 2010 was addressed to financial institutions, the EU Commission underlined as of the start that half of the issues covered were also relevant to listed companies in general.

Ten months later, in April 2011, the EU Commission published a Green Paper on the EU Corporate Governance Framework ("**Green Paper 2011**") (COM(2011) 164) aimed at assessing the need for improvement of the corporate governance in listed companies and possibly also non-listed companies. The Green Paper 2011 focuses on the following areas: boards of directors, shareholders' engagement and the "comply or explain" approach. It contains a set of 25 questions seeking views on different issues:

(i) the means to tackle the phenomenon of group-think in the boards of companies by improving their functioning and ensuring they are composed of a mixed group of people, e.g. by enhancing gender diversity and encouraging a variety of professional backgrounds and skills as well as nationalities for board members;

(ii) the functioning of boards of directors in terms of the availability and time commitment of directors;

(iii) risk governance;

(iv) how to enhance shareholder involvement on corporate governance issues and address problems arising from the principal-agent relationship between investors and their asset managers, conflicts of interests and difficulties with shareholder cooperation, and how to enhance the protection of minority shareholders;

(v) whether there is a need for shareholder identification and for an improved framework for shareholder cooperation; and

(vi) ways to improve the monitoring and enforcement of existing national corporate governance codes, and, in particular the quality of information provided by companies and the oversight by regulators or other monitoring bodies.

As a result of the consultation on the Green Paper 2010, the European Commission published a draft of a CRD IV Directive (COM(2011) 453 final) in July 2011, which contains a detailed section on governance issues (providing for mandatory provisions and a set of technical standards to be developed by the European Banking Authority, EBA), aiming at the implementation of the issues tackled by the Green Paper 2010. The Solvency II Directive (2009/138/EC) is also undergoing a review process (COM/2011/0008 final - COD 2011/0006).

A further online consultation on company law, which will surely also touch upon Corporate Governance issues, will take place in early 2012. The EU Commission announced furthermore that any future European legislative or non-legislative proposals will take the results of the future consultation on company law in addition to the results of the consultation on Corporate Governance into account and will be furthermore accompanied by an impact assessment.

The issue of corporate governance is thus still on the European and national agendas. It will stay there for the years to come.

We hope that you may find this overview comparing the approaches to major Corporate Governance issues at European level and at domestic level in certain continental European jurisdictions (Germany, France and The Netherlands) as well as in the United Kingdom helpful.

Clifford Chance

December 2011

Sources

EU

- Commission Recommendation of 14 December 2004 fostering an appropriate regime for the remuneration of Directors of listed companies – 2004/913/EC (**"Rec. 2004"**)

- Commission Recommendation of 15 February 2005 on the role of Non-Executive or Supervisory Directors of listed companies and on the Committees of the (Supervisory) Board – 2005/162/EC (**"Rec. 2005"**)

- Commission Recommendation of 30 April 2009 complementing the Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the Remuneration of Directors of listed companies – 2009/385/EC (**"Rec. 2009"**)

- Commission Recommendation of 30 April 2009 on remuneration policies in the financial services sector – 2009/384/EC (**"Rec. 2009-FS"**)

- Committee of European Banking Supervisors ("**CEBS**") Guidance on sound remuneration policies issued 10 December 2010 ("**CEBS Guidance**")

- Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (**"EU-Directive 2006/43/EC"**)

- Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings ("**EU-Directive 2006/46/EC**")

- Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast by CRD III) ("**EU-Directive 2006/48/EC**").

- Directive 2009/65/EC Of The European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ("**Directive 2009/65/EC**")

- Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies – Third Capital Requirements Directive ("**CRD3**")

- Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers ("**AIFM**") and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 ("**EU-Directive 2011/61/EU**")

- Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies ("**EU Directive 78/660/EEC**")

Germany

- Circular of the German Federal Financial Services Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – the "**BaFin**") on the minimum requirements for risk management for investment companies ("**InvVaRisk**")

- German Act on the Supervisory Requirements of Remuneration Systems for Institutions and Insurance Undertakings of 21 July 2010

- German Banking Act (*Kreditwesengesetz),* (**KWG**)

- German Commercial Code ("**German Commercial Code**")

- German Corporate Governance Code in the version of 26 May 2010 as published in the German Federal Gazette on 2 July 2010 ("**GCGC**")

- German Insurance Supervision Act (*Versicherungsaufsichtsgesetz),* (**VAG**).

- German Stock Corporation Act (*Aktiengesetz* – "**AktG**")

- Guidance notice of BaFin on the monitoring of members of administrative and supervisory bodies pursuant to the German Banking Act and the German Insurance Supervision Act, dated 22 February 2010

- Investment Act (Investmentgesetz), ("**InvG**")

- Regulation on Supervisory Requirements for the Remuneration Systems in the Banking Sector of 6 October 2010, (*Instituts-Vergütungsverordnung)* ("**InstitutsVergV"**)

- Regulation on Supervisory Requirements for the Remuneration Systems in the Insurance Sector of 6 October 2010, (*Versicherungs-Vergütungsverordnung*), ("**VersVergV"**)
- Regulation detailing conduct of business and organisational requirements under the German Investment Act of 28 June 2011, (Investment-Verhaltens- und Organisationsverordnung), ("**InvVerOV**")
- UK
- BIPRU Prudential Sourcebook for Banks, Building Societies and Investment Firms, section 11 Disclosure (Pillar 3) as set out in the FSA Handbook ("**BIPRU Sourcebook**")
- Corporate Governance Policy and Voting Guidelines issued by NAPF in November 2010 ("**NAPF Guidance**")
- Final Report of the Independent Commission on Banking published in September 2011 ("**Vickers Report**")
- Financial Services and Markets Act 2000 ("**UK Financial Services Act**")
- Review of corporate governance in UK banks and other financial industry entities (final recommendations) by Sir David Walker for HM Treasury in November 2009 ("**Walker Report**")
- UK Companies Act 2006 ("**UK Companies Act**")
- UK Corporate Governance Code issued by the Financial Reporting Council in May 2010 and effective for reporting periods beginning on or after 29 June 2010 ("**UK CG Code**")
- UK Disclosure and Transparency Rules as set out in the FSA Handbook ("**UK DTR**")
- UK FSA Remuneration Code as set out in SYSC Chapter of FSA Handbook ("**FSA Remuneration Code**") applies with effect from 1 January 2011 to all UK banks, building societies and investment firms under the Capital Adequacy Directive ("**CAD**") ("**FSA Remuneration Code firms**"). The Code includes revisions to take into account the Capital Requirements Directive III (CRD III), the Walker report and the CEBS Guidance
- UK FSA Rulebook on Senior Management Arrangements, Systems and Controls ("**UK SYSC Rules**").
- UK Listing Rules as set out in the Financial Services Authority ("**FSA**") Handbook ("**UK Listing Rules**")

- UK Stewardship Code issued by the Financial Reporting Council in July 2010 ("**UK Stewardship Code**")

France

- AFEP/MEDEF Corporate Governance Code applicable to listed companies ("**FCG Code**")
- Amending Finance Bill for 2011 (*Loi de finances rectificative pour 2011*), dated 2 November 2011 ("**Amending Finance Bill for 2011**")
- *Association française des marchés financiers* (French Financial Market Professionals) – "**AMAFI**" Professional Standard, dated 13 April 2011, relating to remuneration of professionals whose activities have a material impact on the risks profile of their institution and its implementing guide, dated 13 April 2011, implementing Regulation n° 97-02 (as defined below) ("**AMAFI Professional Standards**")
- Common provisions of the *Association française de la gestion financière* (French Asset Management Association ("**AFG**"), the *Association française des investisseurs en capital* (French Private Equity Association) ("**AFIC**") and the *Association française des sociétés de placement immobilier* (Association of real estate investment companies) ("**ASPIM**") relating to remuneration policies in portfolio management companies, dated 23 November 2010 ("**AFG, AFIC, ASPIM Rules**")
- *Fédération Bancaire Française* (French Banking Federation) ("**FBF**") professional standards, dated March 2011, relating to governance and variable remunerations of professionals whose activities have a material impact on the risk profile of their firm and of the members of the executive body, implementing Regulation n° 97-02 (as defined below) ("**FBF Professional Standards**")
- French Commercial Code ("**French Commercial Code**")
- French Insurance Code ("**FIC**")
- French Monetary and Financial Code ("**FMFC**")
- General Regulation of the French *Autorité des marchés financiers* (French Financial Markets Authority) ("**GRAMF**")
- MiddleNext Corporate Governance Code for medium size and small listed companies (as published in December 2009) ("**MiddleNext CG Code**")

- Recommendations on corporate governance made by the AFG, as updated on January 2011 ("**AFG Recommendations**")

- Regulation n° 97-02 of 21 February 1997 relating to internal control in credit institutions and investment firms of the *Comité de la Réglementation Bancaire et Financière (*Financial and Banking Regulation Committee*)* (*"***Regulation n° 97-02**"*)*

- Report on the governance of insurance undertakings, October 2007, French *Autorité de Contrôle Prudentiel*

The Netherlands

- Dutch Central Bank Remuneration Code (*Regeling beheerst beloningsbeleid Wft 2011*) ("**DCB Remuneration Code**") as set out in the Dutch Government Gazette (*Stcrt*. 2010, 20931). This applies with effect from 1 January 2011 to all Dutch investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions and insurers, and to Dutch branch offices of certain of those firms with statutory seat outside the European Economic Area ("**EEA**")("**DCB Remuneration Code firms**"). The DCB Remuneration Code implements annex I of the Capital Requirements Directive III (CRD III) and the CEBS Guidance.

- Dutch Civil Code, Book 2, as revised by Stb. 2010, 789 ("**Dutch Civil Code**")

- Dutch Corporate Governance Code as revised by the Dutch Corporate Governance Code Monitoring Committee that entered into force on 1 January 2009 ("**DCG Code**")

- Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten*) (the "**AFM**")

- Dutch Banking Code (*Code Banken*) of 9 September 2009, drawn up by the Netherlands Bankers' Association (NVB). The Banking Code became effective on 1 January 2010 (the "**Dutch Banking Code**")

- Dutch Act on Management and Supervision (*Wet Bestuur en Toezicht)*, adopted on 31 May 2011 and it is envisaged that it will enter into force on 1 June 2012 (the "**Act on Management and Supervision**")

- Dutch Central Bank (*De Nederlandsche Bank*) (the "**DCB**")

- Dutch Conduct of Business Decree FMSA (*Besluit gedragstoezicht financiële ondernemingen Wft*) (the "**Dutch Conduct of Business Decree FMSA**")

- Dutch Economic Offences Act (*Wet op de economische delicten*)

- Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*) (the "**FMSA**")
- Dutch Insurance Code (*Code Verzekeraars*) of 15 December 2010, drawn up by the Dutch Association of Insurers. The Dutch Insurance Code became effective on 1 January 2011 (the "**Dutch Insurance Code**")
- Dutch Pensions Act (*Pensioenwet*)
- Dutch Decree on the Pensions Act and the Occupational Pension Scheme Act (*Besluit uitvoering Pensioenwet en Wet verplichte beroepspensioenregeling*)
- Dutch Pension Fund Governance Code (*Principes voor Goed Pensioenfondsbestuur*) as published by the Labour Foundation (*Stichting van de Arbeid*) on 16 December 2005 (the "**Pension Fund Governance Code**")
- Dutch Remuneration Principles (*Principes voor Beheerst Beloningsbeleid*) published by the AFM and the DCB in May 2009, applicable to financial undertakings as defined in the FMSA and pension funds (the "**Remuneration Principles**")
- Dutch Policy Rule on Expertise 2011 (*Beleidsregel deskundigheid 2011*), issued by the DCB and the AFM (the "**Expertise Policy Rule**")

Competence to Determine the Directors' Remuneration

1. Competence to Determine the Directors' Remuneration

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- Implementation of an independent remuneration committee (sec. 9.1 Rec. 2009) with at least one of the members having knowledge of and experience in the field of remuneration policy (sec. 7.1 Rec. 2009).
- Remuneration committee to make proposals on the remuneration policy and the individual remuneration for executive or managing directors to the (supervisory) board. Approval of the proposals by the (supervisory) board (annex I sec. 3 Rec. 2005).
- The remuneration policy and any significant change to the remuneration policy should be an explicit item on the agenda of the annual general meeting (sec. 4.1 Rec. 2004).
- Share-based remuneration should be subject to the prior approval of shareholders by way of a resolution at the annual general meeting (sec. 6.1 Rec. 2004).

Rules applicable to Financial Undertakings[i] pursuant to Rec. 2009-FS

- The (supervisory) board should determine the remuneration of directors. In addition, the (supervisory) board should establish the general principles of the remuneration policy of the financial undertaking and be responsible for its implementation (sec. 6.2 Rec. 2009-FS).
- Control functions and, where appropriate, human resources departments and external experts should also be involved in the design of the remuneration policy (sec. 6.3 Rec. 2009-FS).
- Members of the (supervisory) board responsible for remuneration policy and members of the remuneration committees and staff members who are involved in the design and implementation of the remuneration policy should have relevant expertise and functional independence from the business units they control and thus be capable of forming an independent judgement on the suitability of the remuneration policy, including the implications for risk and risk management (sec. 6.4 Rec. 2009-FS).
- Rules applying to credit institutions[ii] pursuant to Directive 2006/48/EC (recast by CRD III)[iii]
- The management body of the credit institution, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation (annex V, sec. 11, no. 23 (c) of Directive 2006/48/EC, recast by CRD III).
- The remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function (annex V, sec. 11, no. 23 (f) of Directive 2006/48/EC, recast by CRD III).
- Credit institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee, constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity. The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the credit institution concerned and which are to be taken by the management body in its supervisory function. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive functions in the credit institution concerned (annex V, sec. 11, no. 24 of Directive 2006/48/EC, recast by CRD III).

1. Competence to Determine the Directors' Remuneration				
EU	Germany	UK	France	The Netherlands

Rules applicable to managers of alternative investment funds ("AIF")[iv]

- The management body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation (annex II, Nr. 1 (2) of Directive 2011/61/EU).
- AIFMs that are significant in terms of their size or the size of the AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk. The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are to be taken by the management body in its supervisory function and shall be chaired by a member of the management body who does not perform any executive functions in the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the AIFM concerned. (annex II, Nr. 3 of Directive 2011/61/EU).

1. Competence to Determine the Directors' Remuneration				
EU	**Germany**[v]	UK	France	The Netherlands

General rules for listed companies

- Exclusive competence of the supervisory board to determine managing directors' remuneration.
- The determination of the total compensation of each member of the management board is to be made by the full supervisory board in a joint session (plenary decision). The resolution may not be delegated to a remuneration committee (sec. 107 para. 3 sent. 2 AktG, no. 4.2.2 GCGC).
- The full supervisory board shall resolve and regularly review the management board compensation system. (no. 4.2.2 GCGC).
- The annual general meeting of a listed company may resolve on whether to approve the compensation scheme for members of the management board or not (say on pay). Such resolution does not create any rights or obligations, it does not affect the obligations of the supervisory board and is not voidable pursuant to sec. 243 AktG (sec. 120 para. 4 AktG, no. 2.2.1 GCGC).

Rules applicable to the banking sector

General rules for all executive directors and employees

- The supervisory body is responsible for the structure of the remuneration systems for executive directors (sec. 3 (1) InstitutsVergV[vi]).
- Executive directors are responsible for the structure of appropriate remuneration systems for employees (sec. 3 (1) InstitutsVergV).

Special rules applicable to significant institutions in relation to remuneration systems of executive directors and those employees whose activities impact substantially the risk profile of the institution

- An institution shall be considered to be significant if its total assets on the respective balance sheet dates (*Bilanzstichtage*) for the last three financial years reached or exceeded an average of EUR 10bn and the institution determines on the basis of a risk analysis and in its own responsibility that it is significant. Institutions whose total assets on the respective balance sheet dates (*Bilanzstichtage*) for the last three financial years reached or exceeded an average of €40bn are to be considered significant as a rule (sec. 1 (2) InstitutsVergV).
- Senior management shall establish a remuneration committee (which is not the sub-committee of the supervisory board), to monitor the appropriateness of the remuneration systems; additional duties (design/further development of the remuneration systems) may be assigned to the remuneration committee (sec. 6 (1) InstitutsVergV).
- Employees of the human resources department and of organisational units originating business, e.g. front office and trading as well as the control units are represented in the remuneration committee. The internal audit function must be involved within the framework of its duties (sec. 6 (2) InstitutsVergV). The CRO and the risk committee should be involved. The CEO and executive directors responsible for front office areas should not sit on the remuneration committee. Executive directors may, however, participate in meetings (explanatory statement to sec. 6 (2) InstitutsVergV).

Rules applicable to the insurance sector (including pension funds)

General rules for all executive directors and employees

- The supervisory board is responsible for the appropriate structure of the remuneration systems for executive directors (sec. 3 (1) sentence 4 VersVergV[vii]).

1. Competence to Determine the Directors' Remuneration

EU	**Germany**[v]	UK	France	The Netherlands

- Executive directors are responsible for the structure of appropriate remuneration systems for employees (sec. 3 (1) sentence 3 VersVergV).

<u>*Special rules applicable to significant undertakings in relation to remuneration systems of executive directors and those employees whose activities substantially impact the risk profile of the undertaking*</u>

- An insurance undertaking shall be considered to be significant if its total assets amount to at least EUR 45bn and undertakings being part of an insurance group or a financial conglomerate pursuant to section 104o of the German Insurance Supervisory Act (*Versicherungsaufsichtsgesetz* – the "**VAG**") shall be considered to be significant if its total assets amount to at least EUR 45bn. Such undertakings have to determine that they qualify as significant on the basis of a risk analysis and in its own responsibility. Institutions whose total assets on the respective balance sheet dates (*Bilanzstichtage*) for the last three financial years reached or exceeded an average of EUR 40bn are to be considered significant as a rule (sec. 1 (2) InstitutsVergV).
- The managing board has to establish a remuneration committee (which is not the sub-committee of the supervisory board), to structure, review and develop the remuneration systems (sec. 4 (7) VersVergV).
- In addition to employees of the human resources department, the remuneration committee shall also include employees of the organisational units that originate business and of the control units (e.g. risk controlling). The members of the remuneration committee must play an important role in their respective organisational units. Executive directors may participate in meetings (no explicit statement regarding sitting) (explanatory memorandum to sec. 4 (7) VersVergV).

1. Competence to Determine the Directors' Remuneration

EU	Germany	**UK**[viii]	France	The Netherlands

General rules for listed companies

- The board should establish a remuneration committee of at least three, or in the case of smaller companies, two independent non-executive directors. The company chairman, if considered independent, can also be a member of, but not chair, the remuneration committee (D.2.1 UK CG Code). The remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The remuneration committee should also recommend and monitor the level and structure of remuneration for senior management (D.2.2 UK CG Code).
- Shareholders should be invited specifically to approve all new long-term incentive schemes and significant changes to existing schemes (D.2.4 UK CG Code).
- Shareholders of a quoted company are entitled to an advisory vote giving them the opportunity to consider a company's remuneration policy and the remuneration actually paid to directors in the previous financial year. The vote is advisory and no aspects of the directors' entitlements are conditional on the vote being passed (S439 UK Companies Act – for more information see no. 9 below).

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- A Tier One [ix] FSA Remuneration Code firm that is significant in terms of its size, internal organization and the nature, scope and complexity of its activities must establish a remuneration committee. The chairman and members of the remuneration committee must not perform any executive function of the firm. (FSA Remuneration Code 19.A.3.12.R).
- The remuneration committee must be responsible for the preparation of decisions regarding remuneration and responsible for ensuring compliance with the FSA Remuneration Code (FSA Remuneration Code 19.A.3.12.R & 13 G).
- The remuneration committee must directly oversee the remuneration of the senior officers in risk management and compliance functions (FSA Remuneration Code 19A.3.16.R).

1. Competence to Determine the Directors' Remuneration

EU	Germany	UK	**France**[xxi]	The Netherlands

General rules for listed companies

- The determination of the remuneration of members of the board of directors (*conseil d'administration*) or of the supervisory board (*conseil de surveillance*), through the allocation of attendance fees falls within the exclusive jurisdiction of the annual general meeting. Individual allocation to each member falls upon the board of directors (or the supervisory board as the case may be).
- Exclusive competence of the board of directors for the remuneration of the executive directors and the president of the board of directors (art. L.225-47, al.1, art. L.225-53, al. 3 of the French Commercial Code).
- Exclusive competence of the supervisory board regarding the remuneration of the members of the management board (art. L.225-63 of the French Commercial Code).
- The decision determining the remuneration may not be delegated to a remuneration committee (art. L.225-47, al.1, art. L.225-63, L.225-53 of the French Commercial Code and case law).

Rules applicable to credit institutions and investment firms

- The decision-making body of the company shall establish the remuneration principles of certain categories of employees in accordance with the provisions of Chapter VI of Title IV of the same regulation on the consideration of risk in compensation policy and the applicable professional standards[xii] implementing the principles and provisions set forth by the Financial Stability Board[xiii] (art. 38-4 of Regulation n° 97-02). The decision-making body may be, *inter alia*, depending on the legal form of the company, the board of directors, the supervisory board or the shareholders' meeting. The categories of employees concerned include members of the executive body, risk takers, staff in charge of internal control functions, employees whose total income fall into the same remuneration brackets as the risk takers, employees of subsidiaries not concerned by Regulation n° 97-02 that are part of a group supervised on a consolidated basis, whose activities have a material impact on the group's risk profile. Should a director fall in one of these categories, then his/her remuneration shall comply with the rules set out in this section and related sections.
- To prepare its decisions the decision-making body appoints an *ad hoc* remuneration committee unless the size (which is to be determined by a decree to be issued) of the credit institution or investment firm does not justify such a measure (art. 38-4 of Regulation n° 97-02, Part I.2 of the FBF Professional Standards and paragraph 14 of the AMAFI Professional Standards). The remuneration committee must receive all information necessary to the carrying out of its mission, including individual amounts of remuneration that are greater than a sum determined by the company.
- Within the framework thus determined by the decision-making body, the general management (*direction générale*) sets up the rules relating to the remunerations (part I.1 of the FBF Professional Standards which apply also to the directors without prejudice of the application of the FCG Code). The AMAFI Professional Standards refers to the "executive body" for which a definition is provided in Regulation n° 97-02 (the persons who are responsible for the effective direction of the undertaking – called responsible managers. Neither the FBF Professional Standard nor Regulation n° 97-02 provide a definition of "general management". In our view, by "general management" it should be meant the "executive body" which is defined by Regulation 97-02 as mentioned above.

1. Competence to Determine the Directors' Remuneration

EU	Germany	UK	**France**[xxi]	The Netherlands

Rules applicable to portfolio management companies[xiv]

Pursuant to the AFG, AFIC, ASPIM Rules:

- The general management (*direction générale*) shall establish the remuneration policy of certain categories of employees of the portfolio management company concerned and monitor its implementation. The categories of employees concerned by the remuneration policy are, in particular, the assets managers, employees in charge of compliance and internal control functions, employees who assume marketing functions, those whose activities may have a significant impact on the risk exposure of the portfolio management company and the members of the executive body. Should a director fall in one of these categories, then his/her remuneration shall comply with the rules set out in this section and related sections.
- Where the portfolio management company deems it necessary, it shall set up a remuneration committee. Its members shall have the competence to assess the compliance of the company's remuneration policy and practices with the whole set of applicable rules (including the risks management policy of the company). As the case may be, the individual amounts of variable remunerations shall, at the time of their attribution and if they are greater than a sum which must be determined by the company, be submitted to the *ad hoc* committee(s) (the audit committee and/or the remuneration committee).

Special rules for sociétés d'assurance mutuelles (art. R. 322-55-1 of the FIC)

- As a principle, members of the board of directors or the supervisory board shall not receive any compensation for their functions as member of such boards. However, the board may decide to allocate an allowance to them within the limits prescribed by the annual general meeting (for example, travelling expenses). Every year the chairman of the board shall inform the general meeting of the members of the sums allocated under this provision.
- The compensation of the chief executive officers and of the members of the management board shall be determined by the board of directors or the supervisory board.
- The compensation of a director or a salaried executive shall not be linked directly or indirectly to the amount of contributions made to the *société d'assurance mutuelle* by its members.

1. Competence to Determine the Directors' Remuneration

EU	Germany	UK	France	**The Netherlands**[xv]

General rules for listed companies

- The annual general meeting determines the remuneration policy for the members of the management board. This remuneration policy addresses the remuneration to be granted to each member of the management board, the granting of any rights to receive shares and the granting of loans to the members of the management board (art. 2:135 para. 1, art. 2:383c – 2:383e Dutch Civil Code).
- Whilst as a general rule, the annual general meeting determines the remuneration of the members of the management board, the Articles of Association of the company may however provide that the remuneration is determined by another corporate body (art. 2:135 para. 4 Dutch Civil Code), subject to the remuneration policy as determined by the annual general meeting. In practice, the supervisory board generally determines the remuneration of the members of the management board based on a proposal by the remuneration committee.
- In accordance with the DCG Code, the articles of association of a listed company may stipulate that the supervisory board shall determine, on a proposal by the remuneration committee, the remuneration of the members of the management board within the scope of the remuneration policy adopted by the General Meeting (principle II.2 DCG Code). The granting of any rights to receive shares will have to be submitted to the annual general meeting for approval (art. 2:135 para. 5 Dutch Civil Code).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- A DCB Remuneration Code firm being significant in terms of size, internal organisation, nature, scope and complexity of its activities must establish a remuneration committee. Its chairman and members shall be also members of the internal supervisor[xvi] (DCB Remuneration Code, article 8.1 and 8.2).
- The remuneration committee must be responsible for the preparation of decisions regarding remuneration, including decisions that have consequences for the risks and risk management of the firm and decisions that must be taken by the internal supervisor[xvii]. In preparing such decisions, the remuneration committee must take into account the long-term interests of the shareholders, investors and other stakeholders of the firm (DCB Remuneration Code, article 8.4).
- When determining the remuneration policy and setting the level of remuneration for the firm's managing directors, the annual general meeting must take into account the articles 4, 5 and 10 to 25 of the DCB Remuneration Code. Articles 4, 5 and 10 to 24 implement the remuneration principles of the CRD III[xviii] and article 25 implements the requirements on disclosure of the remuneration policy[xix] . The same should apply to another corporate body having been appointed as competent to determine the directors' remuneration, in accordance with art. 135 para. 3 Dutch Civil Code (DCB Remuneration Code, article 6.2).

Rules applicable to the banking and insurance sector

- The supervisory board shall be responsible for the implementation and evaluation of the remuneration policy adopted with regard to the members of the executive board. The supervisory board also approves the remuneration policy for the senior management and oversees its implementation by the executive board. Additionally, the supervisory board approves the principles of the remuneration policy for other bank or insurer employees. The bank's or insurer's

1. Competence to Determine the Directors' Remuneration				
EU	Germany	UK	France	**The Netherlands**[xv]

remuneration policy shall also comprise the policy on awarding retention, exit and welcome packages (art. 6.2.1 Dutch Banking Code[xx]; Article 6.2.1 Dutch Insurance Code[xxi]).

Rules applicable to pension funds

- The supervisory board (or a similar internal supervisory body) shall ensure a prudent and controlled design, execution and evaluation of the director's remuneration policy (Remuneration Principles 4[xxii]).
- Pension funds are required to have a supervisory body (*Verantwoordingsorgaan*), which is entitled to advise the board of the pension fund on the determination and amendment of the remuneration policy of the board members. The supervisory body consists of active participants, pensioners and financially related employers (principles B1, B9 sub f Pension Fund Governance Code).

Control of the Remuneration Policy

2. Control of the Remuneration Policy

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- The remuneration committee reviews the remuneration policy and its implementation for executive or managing directors, including the policy regarding share-based remuneration (sec. 8.1 Rec. 2009).
- The remuneration committee shall report on the exercise of its functions to the shareholders and be present at the annual general meeting for this purpose (sec. 9.4 Rec. 2009).
- The remuneration statement should be submitted to the annual general meeting for a vote, which may be mandatory or advisory. The vote may be subject to a request by shareholders representing at least 25% of the total number of votes held by shareholders present or represented at the annual general meeting (sec. 4.2 Rec. 2004).
- Shareholders, should be encouraged to attend annual general meetings where appropriate and make considered use of their votes regarding directors´ remuneration (sec. 6.1 Rec. 2009).

Rules applicable to Financial Undertakings[xxiii] pursuant to Rec. 2009-FS

- Financial undertakings should establish, implement and maintain a remuneration policy which is consistent with and promotes sound and effective risk management and which does not induce excessive risk-taking (sec. 3.1 Rec. 2009-FS).
- The implementation of the remuneration policy should, at least on an annual basis, be subject to central and independent internal review by control functions for compliance with policies and procedures defined by the (supervisory) board. The control functions should report on the outcome of this review to the (supervisory) board (sec. 6.5 Rec. 2009-FS).
- Staff members engaged in control processes should be independent from the business units they oversee, have appropriate authority, and be compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control (sec. 6.6 Rec. 2009-FS).

Rules applicable to credit institutions[xxiv] pursuant to Directive 2006/48/EC (recast by CRD III)[xxv]

- The implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function (annex V, sec. 11, no. 23 (d) of Directive 2006/48/EC, recast by CRD III).
- The remuneration of the senior officers in the risk management and compliance functions is overseen by the remuneration committee or, in its absence, by the management body in its supervisory function (annex V, sec. 11, no. 23 (f) of Directive 2006/48/EC, recast by CRD III).

Rules applicable to managers of alternative investment funds ("AIF")[xxvi]

- The implementation of the remuneration policy is to be reviewed (centrally and independently) for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function (annex II, Nr. 1 (d) of Directive 2011/61/EU).
- The management body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation (annex II, Nr. 1 (c) of Directive 2011/61/EU).

2. Control of the Remuneration Policy

EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- The full supervisory board shall regularly review the remuneration system (no. 4.2.2 para. 1 GCGC).
- In cases, in which the annual general meeting of a listed company makes use of their "say on pay" according to sec. 120 para. 4 AktG (see 1. above), the annual general meeting may approve (or disapprove) the compensation scheme for members of the management board. This vote of the general meeting does not create any rights or obligations (sec. 120 para. 4 AktG, no. 2.2.1 GCGC).

Rules applicable to the banking and the insurance sectors (including pension funds)

- The institution / insurance undertaking shall review the appropriateness of the remuneration systems at least once a year and amend them if necessary (sec. 3 (11) sentence 3 InstitutsVergV; sec. 3 (1) sentence 3 VersVergV).
- Executive directors shall inform the supervisory body about the structure of the remuneration systems at least once a year. The chairman of the supervisory body shall be granted a corresponding right to obtain such information from the executive directors (sec. 3 (10) InstitutsVergV; sec. 3 (5) VersVergV).

Special rules applicable to significant institutions / insurance undertakings in relation to remuneration systems of executive directors and those employees whose activities impact substantially the risk profile of the institution / insurance undertaking

- The remuneration committee monitors the appropriateness of the remuneration systems; it prepares a report on the structure of the remuneration systems at least once a year and submits this report to both executive directors and supervisory body (remuneration report) (sec. 6 (3) InstitutsVergV; sec. 4 (7) VersVergV).
- The chairperson of the supervisory body shall be granted a direct right to obtain information from the remuneration committee (InstitutsVergV sec. 6 (3); VersVergV sec. 4 (7)).

2. Control of the Remuneration Policy

EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- No specific provisions exist regarding the control of the remuneration policy. The UK CG Code does provide, however, that the remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the chairman and should recommend and monitor the level and structure of remuneration for senior management (D.2.2 and Schedule A UK CG Code) and the remuneration committee should follow the provisions of Schedule A of the UK CG Code in designing schemes of performance-related remuneration.
- Investor protection committees in the UK also produce guidance on remuneration policy to which listed companies are expected to adhere, for example the Association of British Insurer's ("**ABI**") Executive Remuneration Guidelines on Policies and Practice (published in December 2009 and reaffirmed by the ABI in September 2010).

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- FSA Remuneration Code firms must ensure that the implementation of remuneration policy is, at least annually, subject to central and independent review for compliance with policies and procedures for remuneration adopted by the firm's governing body in its supervisory function (FSA Remuneration Code 19A.3.11 R).
- In Tier One FSA Remuneration Code firms[xxvii] a remuneration committee must be responsible for decisions regarding remuneration (FSA Remuneration Code 19A.3.12 R (4)).
- The remuneration committee Chair (or board chair) must certify that the Tier One firm is compliant with the rules on remuneration structures before making awards.[xxviii]

2. Control of the Remuneration Policy

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

- It is recommended to set up a remuneration committee: no executive or managing director should sit thereon and it should mostly be made up of independent members (art.16.1 of the FCG Code).
- Work carried out by the remuneration committee should enable the board of directors (or supervisory board as the case may be) to be better informed and to benefit from its proposals in terms of remuneration policy, it being noted that the board of directors (or supervisory board as the case may be) remains the sole body responsible for determining the remuneration of executive or managing directors (art.16.3 of the FCG Code).
- No specific legal provisions exist regarding the control of the remuneration policy, but review cycles are recommended with respect to fixed and variable components of executive and managing directors' remuneration.
- In principle, fixed compensation should be reviewed at relatively long intervals, *e.g.* every three years (art. 20.2.1 of the FCG Code).
- The board of directors (or supervisory board as the case may be) must monitor any changes of the aggregate compensation, comprised of the fixed part and the variable part, over a period of a few years, having regard to corporate performance (art. 20.2.2 of the FCG Code).

Rules applicable to credit institutions and investment firms

- The verification of the adequacy between the remuneration policy and the objectives of the risk control is part of the internal control to be set up by credit institutions and investment firms pursuant to Regulation n°97-02.
- The monitoring of the remuneration policy is carried out at the time of its drawing up which involves various bodies as described in no. 1 above and further detailed below and, once implemented, through a reporting and regular review process.
- The decision-making body must ensure that the internal control system make it possible to check whether remuneration principles it defined comply with the professional rules applicable and the objectives of the risk management (part I.1 of the FBF Professional Standards). Equivalent rules are set forth in the paragraphs 12, 25, 30 and 33 of the AMAFI Professional Standards.
- The general management shall consult persons in charge of risk control and compliance in relation to the establishment and implementation of the remuneration policy of the members of the executive board and the employees whose professional activities may have a significant impact on the risk profile of the company.
- The remuneration committee shall ensure that such consultation takes place and that the opinions issued by the persons in charge of risk control and compliance functions are taken into account by the general management. It shall also give its opinion on the proposals of the general management and ensure that the principles set up by the decision-making body are implemented.
- At least once a year, the remuneration committee or, if there is none, the decision-making body, shall review: the principles of the remuneration policy, the remunerations of all sorts allocated to the legal representatives of the company and the remuneration policy applied to the members of the executive board and the employees whose professional activities may have a significant impact on the risk profile of the company.
- The remuneration committee shall monitor, on the basis of the report made by the general

2. Control of the Remuneration Policy				
EU	Germany	UK	**France**	The Netherlands

management, compliance of the remuneration policy of the company with Chapter VI of Title IV of Regulation n° 97-02 on the *consideration of risk in the compensation policy*, the FBF Professional Standards or AMAFI (AMAFI Professional Standards, paragraph 25).

- Such committee shall report to the decision-making body (part I.2 of the FBF Professional Standards). Equivalent rules are set forth in the AMAFI Professional Standards, paragraph 27).

Rules applicable to portfolio management companies

- The general management shall monitor the implementation of the remuneration policy it previously established.
- In addition, the general management must submit the general principles of the remuneration policy to the board of directors, management board or supervisory board, as well as, as the case may be, to the relevant *ad hoc* committee(s) that has (have) been appointed by the board of directors or the supervisory board (the audit committee and/or the remuneration committee).
- The board of directors, management board or supervisory board, as well as, as the case may be, the relevant *ad* hoc committee(s) must be informed of the implementation of the remuneration policy within the portfolio management company (part IV of the AFG, AFIC, ASPIM Rules).

2. Control of the Remuneration Policy

EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- In accordance with the DCG Code, the supervisory board shall appoint from among its members a remuneration committee if the supervisory board consists of more than four members. The duties of the remuneration committee include (i) making a proposal to the supervisory board for the remuneration policy to be pursued (which shall be in line with the remuneration policy as approved by the general meeting, in accordance with art. 2:135 para. 1 Dutch Civil Code), (ii) making proposals for the remuneration of the individual members of the management board, for adoption by the supervisory board – such proposals shall in any event deal with (a) remuneration structure, (b) amount of fixed remuneration, the shares and/or options to be granted and/or other variable remuneration components, pension rights, redundancy pay and other forms of compensation to be awarded, as well as the performance criteria and their application, and (iii) preparing the remuneration report.
- The annual remuneration report of the supervisory board to be published on the company's website shall contain an account of the manner in which the remuneration policy has been implemented in the past financial year, as well as an overview of the remuneration policy planned by the supervisory board for the next financial year and subsequent years. The report must explain how the chosen remuneration policy contributes to the achievement of the long-term objectives of the company.
- If a management board member or former management board member is paid severance pay or other special remuneration during a given financial year, an account and an explanation of this remuneration shall be included in the remuneration report.

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- The internal supervisor[xxix] shall:
  - Approve the general principles of the remuneration policy;
  - Periodically test the general principles of the remuneration policy;
  - Be responsible for the implementation of the remuneration policy; and
  - Ensure that a central and independent internal assessment takes place at least once per year in order to test the implementation of the remuneration policy for compliance with the remuneration policies and procedures as approved by the internal supervisor.

  (DCB Remuneration Code, article 6.1)
- The remuneration committee must be responsible for preparing decisions on remuneration, including decisions that have consequences for the risks and risk management of the firm and decisions that must be taken by the internal supervisor[xxx] (DCB Remuneration Code, article 8.4).
- The remuneration committee or, if such a committee has not been appointed, the internal supervisor, must directly oversee the remuneration of the senior officers that have control functions, e.g. in the field of risk management, human resources, compliance and internal audit functions (DCB Remuneration Code, article 9).

2. Control of the Remuneration Policy				
EU	Germany	UK	France	**The Netherlands**

Rules applicable to the banking and insurance sector

- The supervisory board shall be responsible for the implementation and evaluation of the remuneration policy adopted with regard to the members of the executive board. The supervisory board also approves the remuneration policy for the senior management and oversees its implementation by the executive board. Additionally, the supervisory board approves the principles of the remuneration policy for other bank or insurer employees. The bank's or insurer's remuneration policy shall also comprise the policy on awarding retention, exit and welcome packages (art. 6.2.1 Dutch Banking Code; Article 6.2.1 Dutch Insurance Code).
- The supervisory board shall annually discuss the highest variable incomes at the bank or insurer. The supervisory board shall ensure that the executive board assesses whether variable incomes are consistent with the remuneration policy adopted by the bank or insurer, and in particular whether they comply with the principles set out in section 6 of the Dutch Banking Code or Dutch Insurance Code respectively. Furthermore, the supervisory board shall discuss material retention, exit and welcome packages, assess whether they are consistent with the remuneration policy adopted by the bank or insurer and ensure that these packages are not excessive (art. 6.2.2 Dutch Banking Code; Article 6.2.2 Dutch Insurance Code).

Rules applicable to pension funds

- The supervisory board shall evaluate the remuneration policy for the directors, and supervise the remuneration policy for all employees of the pension fund (Remuneration Principle 4[xxxi]).
- Each variable remuneration structure enabling remuneration above a fixed level, shall require prior approval of the supervisory board (Remuneration Principle 4).
- The human resources, risk management, compliance and internal audit functions of the pension fund shall cooperate to control the risks of the remuneration policy for all employees (Remuneration Principle 5).
- The human resources function ensures the consistent application of the remuneration policy for all function groups in the pension fund, and evaluates its performance (Remuneration Principle 5a).
- The risk management function analyses the effects of a variable remuneration structure on the risk profile of the pension fund and ensures that it is controlled (Remuneration Principle 5b).
- The internal audit function periodically performs research into the design, execution and effects of the remuneration policy of the pension fund (Remuneration Principle 5d).

Criteria to Ensure Reasonableness of Directors' Remuneration

3. Criteria to Ensure Reasonableness of Directors' Remuneration

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- The remuneration committee shall ensure that remuneration of individual executive or managing directors is proportionate to the remuneration of other executive or managing directors and other staff members of the company (vertical comparability) (sec. 9.3 Rec. 2009).
- Cap for variable remuneration components is to be provided (sec. 3.1 Rec. 2009).

Rules applicable to Financial Undertakings[xxxii] pursuant to Rec. 2009-FS

- Financial undertakings should establish, implement and maintain a remuneration policy which is consistent with and promotes sound and effective risk management and which does not induce excessive risk-taking (sec. 3.1 Rec. 2009-FS).
- Where remuneration is performance related, its total amount should be based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the financial undertaking (sec. 5.1 Rec. 2009-FS).
- When determining individual performance, non-financial criteria, such as compliance with internal rules and procedures, as well as compliance with the standards governing the relationship with clients and investors should be taken into account (sec. 5.4 Rec. 2009-FS).
- Staff members engaged in control processes should be compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control (sec. 6.6 Rec. 2009-FS).
- The actuarial function and the responsible actuary should be remunerated in a manner commensurate with her or his role in the insurance or reinsurance undertaking and not in relation to the performance of the undertaking concerned (sec. 6.6 Rec. 2009-FS).

Rules applicable to credit institutions[xxxiii] pursuant to Directive 2006/48/EC (recast by CRD III)[xxxiv]

- The remuneration policy needs to be consistent with and to promote sound and effective risk management and must not encourage risk-taking that exceeds the level of tolerated risk of the credit institution (annex V, sec. 11, no. 23 (a) of Directive 2006/48/EC, recast by CRD III).
- The remuneration policy is in line with the business strategy, objectives, values and long-term interests of the credit institution, and incorporates measures to avoid conflicts of interest (annex V, sec. 11, no. 23 (b) of Directive 2006/48/EC, recast by CRD III).
- Staff engaged in control functions is independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control (annex V, sec. 11, no. 23 (e) of Directive 2006/48/EC, recast by CRD III).
- Where remuneration is performance related, its total amount is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the credit institution; financial and non-financial criteria are taken into account for the assessment of performance (annex V, sec. 11, no. 23 (g) of Directive 2006/48/EC, recast by CRD III).
- The assessment of the performance is set in a multi-annual framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of

3. Criteria to Ensure Reasonableness of Directors' Remuneration				
EU	Germany	UK	France	The Netherlands

the underlying business cycle of the credit institution and its business risks (annex V, sec. 11, no. 23 (h) of Directive 2006/48/EC, recast by CRD III).

- Credit institutions benefiting from exceptional government intervention: the variable remuneration should generally be limited to a percentage of net revenue and no variable remuneration is to be paid to the persons who effectively direct the business, unless justified. The relevant authorities are to require such credit institutions to restructure remuneration in alignment with sound risk management and long-term growth and may establish limits to the remuneration of the persons who effectively direct the business (annex V, sec. 11, no. 23 (k) of Directive 2006/48/EC, recast by CRD III).

Rules applicable to managers of alternative investment funds ("AIF")[xxxv]

- The remuneration policy shall be consistent with and shall promote sound and effective risk management and shall not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage (annex II, Nr. 1 (a) of Directive 2011/61/EU).
- The remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee (annex II, Nr. 1 (f) of Directive 2011/61/EU).
- Where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM, and when assessing individual performance, financial as well as non-financial criteria are taken into account. The assessment of performance is set in a multi-annual framework appropriate to the life-cycle of the AIFs managed by the AIFM in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks (annex II, Nr. 1 (g) and (h) of Directive 2011/61/EU).
- Fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component (annex II, Nr. 1 (j) of Directive 2011/61/EU).

3. Criteria to Ensure Reasonableness of Directors' Remuneration

EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- The aggregate remuneration shall be in a reasonable relation to the duties and performance of the members of the management board as well as the financial condition of the company, and not exceed the usual compensation in absence of special reasons (sec. 87 para. 1 sent. 1 AktG). The remuneration of the supervisory board members must also be appropriate (sec. 113 para. 1 AktG).
- Remuneration granted by the company for services provided by a member of the supervisory board to the company (in addition to his services as a member of the supervisory board) need to be approved by the supervisory board. Any such remuneration paid without the respective consent needs to be repaid (unless the supervisory board subsequently approves such contract) (sec. 114 AktG).
- Criteria for determining the appropriateness of compensation are the tasks of the individual member of the management board, the personal performance, the economic situation, the performance and outlook of the enterprise, the common level of the compensation taking into account peer companies and the compensation structure in place in other areas of the company (horizontal and vertical comparability) (no. 4.2.2 para. 2 GCGC).
- All compensation components must be appropriate, both individually and in total, and in particular must not encourage taking unreasonable risks (no. 4.2.3 para. 2 sent. 5 GCGC).
- The supervisory board should agree on the possibility of limitations of the remuneration in case of extraordinary developments (sec. 87 para. 1 sent. 3 AktG).
- For extraordinary, unforeseen developments a possibility of limitation of variable components (cap) shall be agreed by the supervisory board (no. 4.2.3 para. 3 sent. 4 GCGC).

Rules applicable to the banking sector

General rules for all executive directors and employees

- The remuneration system shall be appropriate, transparent and aligned with the institution's long-term performance (does not apply to remuneration based on a collective agreement) (sec. 25a (1) no. 4 KWG).
- The remuneration systems are to be structured in such a way as to avoid incentives for directors and employees to assume disproportionately high risks and if the remuneration systems do not conflict with the monitoring function of the control units (sec. 3 (3) InstitutsVergV).
- Incentives to enter into disproportionately high risks exist in particular (i) if there is a significant dependence of directors on variable remuneration or (ii) through entitlement to severance payments, the amount of which is secured even in the event of individual negative performance contributions (sec. 3 (4) sentence 1 InstitutsVergV).
- The risk-orientation of the remuneration must not be eliminated or limited by personal hedging strategies or other counter-measures. Appropriate compliance structures to prevent such measures shall be implemented (sec. 3 (8) sentence 1 and 2 InstitutsVergV).
- When determining the remuneration of each director, the supervisory body must ensure that it is appropriately related to the duties and performance of the executive director and to the institution's financial situation and does not exceed the usual remuneration without a special reason (sec. 3 (4) sentence 2 InstitutsVergV).

3. Criteria to Ensure Reasonableness of Directors' Remuneration				
EU	**Germany**	UK	France	The Netherlands

- Variable remuneration shall be calculated on the basis of multi-annual assessment basis; the supervisory body shall establish measures to limit the remuneration in the event of exceptional developments (sec. 3 (4) sentence 3 InstitutsVergV).
- There must be an appropriate relation between fixed and variable remuneration. The relation is deemed to be appropriate if (i) there is no significant dependency on the variable remuneration, (ii) the variable remuneration can nevertheless set an effective performance incentive. The institution shall establish an appropriate upper limit for the ratio between fixed and variable remuneration (sec. 3 (5) InstitutsVergV).
- Remuneration systems are considered to conflict with the monitoring function of the control units if (i) the amounts of variable remuneration for the employees of the control units and for the directors of the organisational units monitored by them are largely determined by the same remuneration parameters and (ii) a risk of conflict of interest exists simultaneously (sec. 3 (6) sentence 1 InstitutsVergV). The remuneration of the control units is to be structured in such a way as to ensure that staffing is appropriate in terms of both quality and quantity (sec. 3 (6) sentence 2 InstitutsVergV).
- Directors shall inform the supervisory body about the structure of the remuneration systems at least once a year. The chairman of the supervisory body shall be granted a right to obtain such information from the executive directors (InstitutsVergV sec. 3 (10)).
- The institution has to establish principles for its remuneration systems in its organisational guidelines (sec. 3 (11) sentence 1 InstitutsVergV).
- The appropriateness of the remuneration systems shall be reviewed, and amended if necessary, at least once a year (sec. 3 (11) sentence 3 InstitutsVergV).

Rules applicable to the insurance sector (including pension funds)

General rules for all executive directors and employees

- The remuneration system shall be appropriate, transparent and aligned to the undertaking's long-term performance (sec. 64b (1) VAG) and objectives (sec. 3 (1) sentence 2 no. 1 VersVergV).
- Insurance undertakings may only grant remuneration to directors and supervisory board members for other services that they provide to the undertaking, if this complies with their statutory duties (sec. 64b (2) VAG).
- Insurance undertakings have to establish principles for its remuneration systems (sec. 3 (1) sentence 1 InstitutsVergV).
- The remuneration systems are to be structured in such a way as to avoid incentives for directors and employees to enter into disproportionately high risk positions and if the remuneration systems do not run counter to the monitoring function of the control units (VersVergV sec. 3 (1) no. 2).
- Material risks and their time horizon have to be taken into account when structuring remuneration systems (sec. 3 (1) sentence 2 no. 4 VersVergV).
- The remuneration systems must be structured in such a way as to ensure that staffing of the control units is appropriate in terms of both quality and quantity (sec. 3 (1) sentence 2 no. 6 VersVergV).
- When determining the remuneration of each director, the supervisory body must ensure than it is appropriately related to the duties and performance of the director and to the undertaking's financial situation and does not exceed the usual remuneration without a special reason (sec. 3 (2) sentence

3. Criteria to Ensure Reasonableness of Directors' Remuneration				
EU	**Germany**	UK	France	The Netherlands

1 VersVergV).

- Variable remuneration shall be calculated on the basis of multi-annual assessment basis; the supervisory body shall establish measures to limit the remuneration in the event of exceptional developments (sec. 3 (2) sentence 2 VersVergV).
- Executive directors shall inform the supervisory body on the structure of the remuneration systems at least once a year. The chairman of the supervisory body shall be granted a right to obtain such information from the executive directors (sec. 3 (5) VersVergV).
- The appropriateness of the remuneration systems shall be reviewed, and amended if necessary, at least once a year (sec. 3 (1) sentence 3 VersVergV).

Special rules only for significant undertakings and for remuneration systems of executive directors and those employees whose activities substantially impact the risk profile of the undertaking

- The risk-orientation of the remuneration must not be eliminated or limited by personal hedging strategies or other counter-measures. Appropriate compliance structures to prevent such measures shall be implemented (sec. 4 (4) sentence 1 and 2 VersVergV).

3. Criteria to Ensure Reasonableness of Directors' Remuneration

EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance. Furthermore, the performance-related elements of executive directors' remuneration should be stretching and designed to promote the long term success of the company (D.1 UK CG Code).
- The remuneration committee must judge where to position their company relative to other companies and should use such comparisons with caution in view of the risk of an upwards ratchet of remuneration levels with no corresponding improvement in performance. They should be sensitive to pay and employment conditions elsewhere in the group especially when determining annual salary increases (D.1 UK CG Code).
- One of the Walker Report recommendations was that for FTSE 100-listed banks and comparable unlisted entities such as the largest building societies, the remuneration committee report should disclose the remuneration of "high end" employees whose total expected remuneration in respect of the reported year is in a range of £1 to £2.5 million, £2.5 million to £5 million and in £5 million bands thereafter. Details about the composition of the respective remuneration packages and the areas of business activities to which the higher bands of remuneration relate should also be disclosed (recommendation 31, Walker Report).

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- The FSA Remuneration Code includes the following key provisions:
  - At least 50% of variable remuneration should consist of shares (or other specified instruments) and that this should be applied equally to both the deferred and non-deferred portions;
  - At least 40% of the variable remuneration component must be deferred over a period of not less than 3 to 5 years;
  - Variable remuneration paid in shares (or other specified instruments) should be subject to an appropriate retention period; According to FSA Guidance[xxxvi] a retention period of 6 months should be sufficient.
  - Guaranteed bonuses should be exceptional, should occur only in the context of hiring and should be limited to the first year of employment; According to FSA Guidance[xxxvii] 'buy out' awards to new staff are allowed if reasonable steps are taken to ensure it is not more generous in either amount or terms than the variable remuneration awarded or offered by the employee's previous employer and it is subject to appropriate performance adjustment requirements.
  - Provisions on guaranteed bonuses should be applied on a firm-wide basis and not just to "code staff", in line with the CEBS Guidelines;
  - Payments related to early termination of contracts must reflect performance achieved over time and not reward failure; and
  - No maximum ratio between an individual's fixed and variable remuneration.

3. Criteria to Ensure Reasonableness of Directors' Remuneration

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

- The reasonableness of remuneration should be ensured through the respect of the following criteria (art. 20.1 and following of the FCG Code):
  - Comprehensive determination of all components of the remuneration including advantages.
  - The criteria for the determination of the remuneration have to be simple, stable and transparent.
  - Each component of the remuneration has to be reasonable, in line with the company's general interest and has to take into account the individual performance of the director.
  - The remuneration has to be determined in line with the European or worldwide peer-group (horizontal comparability).
  - The remuneration should be appropriate in relation to the overall remuneration structure within the company (vertical comparability).

Rules applicable to credit institutions and investment firms

<u>*General rules*</u>

The reasonableness of remuneration should be ensured through the following criteria:

- The total amount of variable remunerations shall not affect the ability of credit institutions and investment firms to reinforce their own funds, if needs be. Thus, credit institutions and investment firms shall determine an appropriate ratio between the fixed and variable parts of the total remuneration.
- A principle of proportionality applies between the remuneration and the nature, scope, complexity of activities of executive directors and employees, level of experience and responsibility, and as the case may be, the level of control exerted by the mother company in terms of risk management (art. 31-4 of Regulation n° 97-02 and Part II-4 of the FBF Professional Standards). Equivalent rules are set forth in the AMAFI Professional Standards (paragraph 50).
- The total amount of variable remuneration and its allocation within the company shall be determined by taking into account the whole set of risks including liquidity risk inherent in the activities concerned as well as the owns funds required to support the risks taken. As part of the risk management policy, credit institutions and investment firms shall be able to significantly decrease the amount of variable remunerations granted for an accounting period where the company has suffered losses (art. 31-3 of Regulation n° 97-02).
- The remuneration of the members of the executive body and the employees whose professional activities may have a significant impact on the risk profile of the company shall be granted in line with the following principles:
  - A significant part of their remuneration shall be variable and granted on the basis of criteria that make it possible to assess the individual or collective performances as well as the company's performances; As such, the calculation basis for the variable part of the remuneration shall be coherent with the objectives expressly assigned (i.e. the objectives of the beneficiary, its team and the company).
  - The assessment of the performances shall be made on a multiannual basis so as to ensure that

3. Criteria to Ensure Reasonableness of Directors' Remuneration

EU	Germany	UK	**France**	The Netherlands

the assessment process takes into account the long-term performances.

- No guaranteed variable remuneration shall be granted, unless, eventually, in the context of a recruitment and for a period which cannot exceed one year;
- A significant part (not lower than 40%, 60% for the highest variable remunerations) of the variable part of the remuneration shall be paid subject to performances and must be deferred over a minimal period of three years (such remuneration shall be paid, at soon as possible, *pro rata temporis*). The deferred period takes into account the economic cycle, the nature of the activities carried out and the risks related to them.
- A significant part (not lower than 50%) of the variable part of the remuneration shall be granted as stocks, stocks backed securities, instruments linked to assets favoring the long term creation of value or, for non-listed companies, equivalent instruments. The granting of such instruments shall be subject to a minimum holding period which cannot be less than 6 months. Such rule applies to the deferred part of the variable remuneration, as well as to its non-deferred part.
- In case of loss suffered by the relevant activity, it shall be possible to decrease or to cancel the deferred part of the variable remuneration.
- Discretionary payments linked to the anticipated termination of a labour contract shall comply with conditions linked to the performances of the beneficiary, assessed with regard to the performances of the company, subject to compulsory labour law provisions.
- The pension policy shall comply with the objectives of risk management of the company. If the relevant person leaves the company before its retirement, discretionary pension benefits shall be granted as instruments in the form mentioned in point 4 above and paid after a five-year period. In case of an employee reaching retirement age, discretionary pension benefits shall be paid to the employee in the form of financial instruments (or equivalent) subject to a five-year retention period (art. 31-4 of Regulation n° 97-02).

Specific rules applicable to credit institutions to which the French State has provided financial support

■ The Amending Finance Bill for 2011 includes various prohibition measures applicable to the board of directors or management boards of credit institutions the State has provided financial support to, whether directly or indirectly (in conditions where European State Aid rules require the entering into an agreement), be it through subscription of securities, allocation of credits or of guarantees. In particular, under the prohibition measures, boards of directors or management boards may neither decide nor propose:

- The allocation of stock options or free shares to designated members of the relevant company's management;
- The allocation or payment of variable items of remuneration, compensation or benefits based on the performance of the same individuals, as well as allocation or payment of deferred remuneration to the same; or
- The payment of a dividend in cash to shareholders when the solvency or liquidity of the relevant credit institution is compromised or likely to be so.

These prohibition measures are effective since 4 November 2011 and should last for the financial years during which the relevant credit institution has benefited from a financial commitment on the part of the

3. Criteria to Ensure Reasonableness of Directors' Remuneration				
EU	Germany	UK	**France**	The Netherlands

State.

Rules applicable to portfolio management companies

- According to the AFG, AFIC, ASPIM Rules, the reasonableness of remuneration shall be ensured through general and though specific provisions. The specific provisions concern the remuneration of employees whose activities are likely to have a significant impact on the risk exposure of the company and the remuneration of the executive body and the remuneration of employees in charge of control and compliance functions

General provisions

- Integration of the various risks when defining the remuneration policy
  - The remuneration policy of the portfolio management company shall comply with an efficient management of the risks to which the portfolio management company is exposed and shall not promote an excessive risk-taking.
  - The remuneration policy shall aim at providing coherence between the behavior of the employees and the long-term objectives of the portfolio management company. It shall, notably, dissuade the company's employees to take unacceptable and excessive risks for the company.
  - The measure of performance used for the calculation of the variable part of the remuneration, if applicable, shall include an adjustment mechanism taking into account all the relevant current and future risks.
  - Portfolio management companies shall take into account the whole set of risks where determining the amount allocated to variable remuneration and its repartition. They shall also make it possible to significantly decrease the amount allocated to variable remuneration granted for the current accounting period if losses have been suffered during such accounting period.
- Composition of the remuneration (fixed/variable remuneration)
  - The fixed part of the remuneration shall be sufficiently high to remunerate the employee for its functions, its skills, its experience and its level of responsibility.
  - The ratio between the fixed part and the variable part of the remuneration shall be absolute. It shall not be possible for part of the fixed remuneration to become part of the variable remuneration and vice versa.
  - Guaranteed bonus shall be prohibited except in case of a new recruitment and, in such case, the guarantee shall be limited to a one-year period.
  - The variable part shall balance the fixed part of the remuneration, taking into account the performances of the beneficiary. Quantitative and/or qualitative criteria shall be taken into account to determine its amount. It should also take into account the applicable laws and regulations, the gains and overall performance of the portfolio management company.
  - For determining the calculation basis of the variable part of the remuneration, each portfolio management company shall:
    - Concerning portfolio management companies which are AGF members
      1. explain the link between the variable part of the remuneration and the assessment of

3. Criteria to Ensure Reasonableness of Directors' Remuneration				
EU	Germany	UK	**France**	The Netherlands

the performances of the beneficiaries (objectives, factual and measurable criteria)

2. set up the process for determining objectives and ensuring that those objectives comply, on a long-term basis, with the company's and its clients' interests;
3. mix quantitative, qualitative and, as the case may be, managerial objectives in order to limit the importance of purely financial performances in the allocation of variable remuneration; as regards the objectives assigned to the managers of funds/portfolio (*gérants*), the performance objectives should be assessed on a multiannual basis with respect to the products managed;
4. apply such objectives' policy to the whole chain of command by making managers accountable for the performances of their team so that they are conscious of the importance of collective performance;

- Concerning portfolio management companies which are AFIC members
  1. ensure that bonuses be paid after the closing of accounts and the determination of its global income for the relevant accounting period;
  2. take into account its global revenue in order to determine the variable part of the remuneration. Such variable part will be determined by taking into account most often qualitative (quality of the files brought or followed up, quality of the management of the investments made, quality of internal and external relationships...) but also sometimes quantitative objectives (for instance, number and amounts of the transactions carried out, evolution of the managed assets, commissions received).
- Concerning portfolio management companies which are ASPIM members
  1. take into account the revenue of the company and, as the case may be, the performance of the beneficiary assessed on the basis of preset financial and extra-financial criteria following a process ensuring the realisation of a qualitatively satisfactory investment based on a long term horizon;
  2. ensure that the purchase and sale of a real-estate asset is systematically subject to a collective study and decision-making process;
  3. ensure that the share of the variable part of the remuneration does not reach an amount which could affect the economic balance of the portfolio management company;
  4. ensure that the bonuses of the persons whose variable remuneration amounts to a significant part of its total wage bill be paid after the closing of its accounts and the determination of its global income.

■ Form of the remuneration (cash/securities)

– One of the ways to establish a link between the remuneration and the long-term performance of the company and shareholders interest is the granting of securities, options on securities issued by the companies or similar instruments. The hedging of the risks related to such instruments should not be authorised before the exercise of the options or final acquisition of securities. If the payment of the variable remuneration is granted in the form of units/shares of the funds managed, the portfolio management company should define clear rules so that such payment

3. Criteria to Ensure Reasonableness of Directors' Remuneration				
EU	Germany	UK	**France**	The Netherlands

be compatible with the objectives of management of the funds concerned and there should be an alignment between the interest of the beneficiaries of the payment and the other unit-holders/shareholders especially by the implementation of the policy of management of the conflicts of interest.

Specific provisions

- Remuneration of employees whose activities are likely to have a significant impact on the risk exposure of the company and the remuneration of the executive body
  - These rules do not apply to the employees of the portfolio management companies acting in the private equity sector except for retiring indemnifications.
  - Each portfolio management company shall draw up the list of persons concerned and the mode of variable remuneration which are likely to increase the level of risk exposure (e.g. variable remuneration based on an outperformance fees).
  - Regarding the persons concerned and the part of variable remuneration which are likely to increase the level of risk exposure, the portfolio management company shall:
    - Defer on several years (*e.g.* 3 years as from their attribution) a fraction of that variable remuneration when it substantially exceeds the fixed remuneration, with a payment on a *pro rata temporis* basis; when a bad performance is recorded for a year, the differed part of the variable remuneration should be reduced or not paid for that year.
    - Prohibit the employees concerned from using individual hedging strategies or insurance or strategies for reducing their liabilities. The mechanisms set up before 2010 could be maintained until their end.
    - Provide for the payment related to a anticipated termination of an employment contract to reflect the performance achieved and that they do not reward the failure of the employees concerned.
- Remuneration of employees in charge of control and compliance functions
  - The remuneration of employees of control and compliance area shall (i) be set irrespective of those of the profession whose transactions they validate or verify and at a sufficient level to have persons with required experience and skills, and (ii) take into account the achievement of the objectives associated with the functions.

(part II of the AFG, AFIC, ASPIM Rules)

3. Criteria to Ensure Reasonableness of Directors' Remuneration				
EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- The supervisory board shall determine the level and structure of the remuneration of the members of the management board by reference to the scenario analyses carried out and with due regard for the pay differentials within the enterprise (vertical comparability) (best practice provision II.2.2 DCG Code).
- The remuneration of the members of the management board should take into account the results, the share price performance and non-financial indicators that are relevant to the company's medium and long-term objectives with due regard for the risks to which variable remuneration may expose the company (best practice provision II.2.3 DCG Code).
- The variable component of the remuneration must be appropriate in relation to the fixed component (principle II.2 DCG Code).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions and insurers)

- Please refer to no. 5 below with regard to variable components of remuneration and stock-based compensation. Relevant measures could be regarded as criteria to ensure reasonableness of directors' remuneration.

Rules applicable to the banking and insurance sector

- The total income of a member of the executive board shall be in reasonable proportion to the remuneration policy adopted by the bank or insurer. At the time when his or her total income is decided, it shall be slightly below the median level for comparable positions in the relevant markets both inside and outside the financial sector. The relevant international context shall be a major factor (art. 6.3.1 Dutch Banking Code; Article 6.3.1 Dutch Insurance Code).

Rules applicable to pension funds

- No specific regulations are in place for Dutch pension funds on this subject. In general, the Remuneration Principles[xxxviii] aim at establishing a controlled remuneration policy, within which risks of unwanted incentives are prevented and/or controlled. In addition, when determining the remuneration of directors, attention should be explicitly and structurally given to limiting and controlling the negative effects of variable remuneration structures on the risk profile of the fund and the interest of clients (Remuneration Principles 2 and 3).

Directors' Remuneration Adjusted to Long-term Interests of the Company

4. Directors' Remuneration Adjusted to Long-term Interests of the Company

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- Performance criteria of variable components should promote the long-term sustainability of the company and include non-financial criteria that are relevant to the company's long-term performance, such as compliance with applicable rules and procedures (sec. 3.2 Rec. 2009).

Rules applicable to Financial Undertakings[xxxix] pursuant to Rec. 2009-FS

- Remuneration policy should be in line with the business strategy, objectives, values and long-term interests of the financial undertaking, such as sustainable growth prospects, and be consistent with the principles relating to the protection of clients and investors in the course of services provided (sec. 3.2 Rec. 2009-FS).
- The structure of the remuneration policy should be updated over time to ensure that it evolves to meet the changing situation of the financial undertaking concerned (sec. 4.7 Rec. 2009-FS).
- The assessment of performance should be set in a multi-annual framework in order to ensure that the assessment process is based on longer term performance and that the actual payment of bonuses is spread over the business cycle of the company (sec. 5.2 Rec. 2009-FS).

Rules applicable to credit institutions[xl] pursuant to Directive 2006/48/EC (recast by CRD III)[xli]

- The remuneration policy needs to be consistent with and to promote sound and effective risk management and must not encourage risk-taking that exceeds the level of tolerated risk of the credit institution (annex V, sec. 11, no. 23 (a) of Directive 2006/48/EC, recast by CRD III).
- The remuneration policy is in line with the business strategy, objectives, values and long-term interests of the credit institution, and incorporates measures to avoid conflicts of interest (annex V, sec. 11, no. 23 (b) of Directive 2006/48/EC, recast by CRD III).
- A substantial portion (not less than 50%) of any variable remuneration (deferred and not deferred) shall consist of an appropriate balance of (i) shares or equivalent ownership interests, subject to the legal structure of the credit institution concerned or share-linked instruments or equivalent non-cash instruments, in case of a non- listed credit institution, and (ii) where appropriate, other instruments that adequately reflect the credit quality of the credit institution as a going concern. These instruments shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the credit institution. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate (annex V, sec. 11, no. 23 (o) of Directive 2006/48/EC, recast by CRD III).
- A substantial portion (not less than 40%) of the variable remuneration component is deferred over a period which is not less than three to 5 years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question (annex V, sec. 11, no. 23 (p) of Directive 2006/48/EC, recast by CRD III).
- Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question (annex V, sec. 11, no. 23 (p) of Directive 2006/48/EC, recast by CRD III).
- The variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the credit institution as a whole, and justified according to the

4. Directors' Remuneration Adjusted to Long-term Interests of the Company				
EU	Germany	UK	France	The Netherlands

performance of the credit institution, the business unit and the individual concerned (annex V, sec. 11, no. 23 (q) of Directive 2006/48/EC, recast by CRD III).

- Payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure (annex V, sec. 11, no. 23 (m) of Directive 2006/48/EC, recast by CRD III).
- Pension policies need to be in line with the business strategy, objectives, values and long-term interests of the credit institution (annex V, sec. 11, no. 23 (r) of Directive 2006/48/EC, recast by CRD III).
- Credit institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee, constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity. The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the credit institution concerned and which are to be taken by the management body in its supervisory function. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive functions in the credit institution concerned. When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the credit institution (annex V, sec. 11, no. 24 of Directive 2006/48/EC, recast by CRD III).

Rules applicable to managers of alternative investment funds ("AIF")[xlii]

- The remuneration policy should be consistent with and to promote sound and effective risk management and should not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage (annex II, Nr. 1 (a) of Directive 2011/61/EU).
- The remuneration policy should be in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and should include measures to avoid conflicts of interest (annex II, Nr. 1 (b) of Directive 2011/61/EU).
- Staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control (annex II, Nr. 1 (e) of Directive 2011/61/EU).
- The remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee (annex II, Nr. 1 (f) of Directive 2011/61/EU).
- Subject to the legal structure of the AIF and its rules or instruments of incorporation, a substantial portion, and in any event at least 50 % of any variable remuneration consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of AIFs accounts for less than 50 % of the total portfolio managed by the AIFM, in which case the minimum of 50 % does not apply. The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the AIFM and the AIFs it manages and the investors of such AIFs (annex II, Nr. 1 (m) of Directive 2011/61/EU).
- A substantial portion, and in any event at least 40 %, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF

4. Directors' Remuneration Adjusted to Long-term Interests of the Company				
EU	Germany	UK	France	The Netherlands

concerned and is correctly aligned with the nature of the risks of the AIF in question. The period referred to in this point shall be at least three to 5 years unless the life cycle of the AIF concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount is deferred AIFs (annex II, Nr. 1 (n) of Directive 2011/61/EU).

- The variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned. The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements AIFs (annex II, Nr. 1 (o) of Directive 2011/61/EU).

4. Directors' Remuneration Adjusted to Long-term Interests of the Company				
EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- The guiding principle for the compensation structure in listed companies must be the sustainable development of the company (sec. 87 para. 1 sent. 2 AktG, no. 4.2.3 para. 2 sent. 1 GCGC).
- Multi-annual assessment regarding variable components of the compensation (sec. 87 para. 1 sent. 3 AktG).
- All compensation components must not encourage taking unreasonable risks (no. 4.2.3 para. 2 sent. 5 GCGC).

Rules applicable to the banking sector

General rules for all executive directors and employees

- The remuneration systems must be aligned with achieving the objectives set out in the strategies of the institution; if strategies change, the structure of the remuneration systems must be reviewed and, if necessary, amended (sec. 3 (1) sentence 3 InstitutsVergV).

Special rules applicable to significant undertakings in relation to remuneration systems of executive directors and those employees whose activities impact substantially the risk profile of the institution

- At least 60% of the variable remuneration must be spread over a deferral period of not less than 3 to 5 years (sec. 5 (2) no. 4 sentence 2 InstitutsVergV). The duration of the deferral period shall be aligned with the business cycle, the type and risk content of the business activities conducted and the activities of the relevant director (sec. 5 (2) no. 4 sentence 3 InstitutsVergV).
- 50% of the variable remuneration spread over the deferral period and 50% of the non-spread variable remuneration shall depend on the undertaking's long-term performance. In each case an appropriate period shall apply, after which the relevant portion of the variable remuneration may become available at the earliest (InstitutsVergV sec. 5 (2) no. 5).
- Discretionary pension scheme contributions that are paid in the event of a termination of the employment agreement, <u>for reasons other than retirement</u>, shall be dependent on the institution's long-term performance and be spread out over a deferral period of at least 5 years. Furthermore, during the deferral period, the beneficiary is only entitled to an error-free calculation of these discretionary pension scheme contributions but not to the contributions themselves. Finally, the amount of the pension scheme contribution shall be reduced if the performance contributions from the director, his organisational unit or the overall performance from the institution or group being essentially relevant for the discretionary contributions do not prove to be sustainable (sec. 5 (3) InstitutsVergV).
- Discretionary pension scheme contributions that are paid in the event of a termination of the employment agreement, <u>for reasons of retirement</u>, shall be dependent on the institution's long-term performance and be subject to a deferral period of at least 5 years, after which payment may become available (sec. 5 (4) InstitutsVergV).

Rules applicable to the insurance sector (including pension funds)

General rules for all executive directors and employees

- The remuneration systems must be aligned with the objectives set out in the strategies; if strategies change, the structure of the remuneration systems must be reviewed and, if necessary, amended

4. Directors' Remuneration Adjusted to Long-term Interests of the Company				
EU	**Germany**	UK	France	The Netherlands

(sec. 3 (1) sentence 2 no. 1 VersVergV).

- Alignment of the variable element of directors' remuneration to the undertaking's long-term performance and no significant dependence of directors' variable remuneration on premium income, new business acquired or the mediation of individual insurance contracts (sec. 3 (1) sentence 2 no. 3 VersVergV). These shall make up not more than 30% of the parameters for determining the variable remuneration (explanatory memorandum to sec. 3 (1) no. 3 VersVergV).
- When determining the remuneration for individual organisational units, the overall performance of the undertaking has to be taken into account appropriately. This does not preclude the payment of commissions for employed field staff (sec. 3 (1) sentence 2 no. 5 VersVergV).

Special rules applicable to significant undertakings in relation to remuneration systems of executive directors and those employees whose activities substantially impact the risk profile of the undertaking

- At least 40% of the variable remuneration shall be paid at the end of an appropriate deferral period taking the business performance into account (generally 3 years). 50% of the deferred variable remuneration shall be dependent on the undertaking's long-term performance (sec. 4 (3) no. 3 VersVergV).
- Discretionary pension scheme contributions that are paid in the event of a termination of the employment agreement, for reasons other than retirement, shall be dependent on the undertaking's long-term performance and be spread out over a deferral period of at least 5 years. During the deferral period, the beneficiary is only entitled to an error-free calculation of these discretionary pension scheme contributions but not to the contributions themselves. The amount of the pension scheme contribution shall be reduced if the performance contributions from executive directors / employees, their organisational unit or the overall performance from the institution or group being essentially relevant for the discretionary contributions do not prove to be sustainable (sec. 4 (5) VersVergV).
- Discretionary pension scheme contributions that are paid in the event of a termination of the employment agreement, for reasons of retirement, shall be dependent on the undertaking's long-term performance and be subject to a deferral period of at least 5 years, after which payment may become available (sec. 4 (6) VersVergV).

4. Directors' Remuneration Adjusted to Long-term Interests of the Company

EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- The main principle regarding executive remuneration is that a significant proportion of executive directors' remuneration should be structured so as to link reward to corporate and individual performance and should be linked to promoting the long-term success of the company (D.1 UK CG Code).
- Remuneration incentives should be compatible with the company's risk policies and systems (Schedule A UK CG Code).
- The UK Government issued a call for evidence on the existence of short-termism and market failures in UK equity markets; in particular, the Government has asked respondents for views on the effectiveness of the linkage in current corporate pay-setting models used by UK companies with the long term success of the company[xliii].

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- An FSA Remuneration Code firm must ensure that any measurement of performance used to calculate variable remuneration includes adjustments for all types of current and future risk (FSA Remuneration Code 19.A.3.22 (1)).
- The allocation of variable remuneration must also take into account all types of current and future risk (FSA Remuneration Code 19.A.3.22 (2)).
- An FSA Remuneration Code firm must ensure that its total variable remuneration is generally considerably contracted where subdued or negative financial performance occurs (FSA Remuneration Code 19.A.3.27).

4. Directors' Remuneration Adjusted to Long-term Interests of the Company

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

- Please refer to no. 3 (*Criteria to Ensure Reasonableness of Directors' Remuneration*) above.
- The various components of the remuneration must be balanced; each component must be clearly motivated and correspond to the company's general interest (art. 20.1 of the FCG Code).
- Rules governing the determination of the variable part of the remuneration must be consistent with the annual review of the management's performance and the medium term strategy of the company (art. 20.2 of the FCG Code).

Rules applicable credit institutions and investment firms

General rules

- The express objective of FBF Professional Standards and AMAFI Professional Standards is to ensure consistency between the employee's behaviour and long-term objectives of the company who employs them, especially with respect to risk area. The rules detailed above contribute to achieving this purpose.
- The remuneration policy shall be reviewed on a yearly basis and, if necessary, adjusted.
- The total amount of variable remuneration and its distribution within the company shall be determined by taking into account the whole set of risks (art. 31-3 of Regulation n° 97-02). Therefore, in addition to the individual performance, the team or business unit and the company performance should be taken into account. Accordingly, the deferred part of the variable remuneration (other than in the form of securities or equivalent instruments) could be substantially reduced or not at all paid if the company suffered losses.
- The prohibition of guaranteed variable remuneration (except in the context of hiring and for a maximum period of one year) and the prohibition for the employees from having recourse to personal hedging or insurance strategies or limitation liabilities strategies which would limit the thrust of alignment with the risks contained in their remuneration structure.
- The remunerations of, *inter alia*, the members of the executive body of the credit institutions and investment firms must be granted in line with, *inter alia*, the following principles (please refer to no. 3 (*Criteria to Ensure Reasonableness of Directors' Remuneration*) above for the complete list):
  - A significant part (not lower than 40%, 60% for the highest variable remunerations) of the variable part of the remuneration shall be paid subject to performances and must be deferred over a minimal period of three years (such remuneration must be paid, at the fastest, *pro rata temporis*). The deferred period takes into account the economic cycle, the nature of the activities, the risks related to them and the activities of the relevant person.
  - A significant part, not lower than 50%, of the variable remuneration shall be granted as shares, shares backed securities, instruments linked to assets favouring the long term creation of value or, for non-listed companies, equivalent instruments. The granting of such instruments shall be subject to a minimum holding period which cannot be less than 6 months. Such rule applies to the deferred part of the variable remuneration, as well as to its non-deferred part.
  - The pension policy must comply with the objectives of risk management of the company. If the relevant person leaves the company before its retirement, discretionary pension benefits shall be granted as instruments in the form mentioned in point 2 above and paid after a five-year

4. Directors' Remuneration Adjusted to Long-term Interests of the Company

EU	Germany	UK	**France**	The Netherlands

period. In case of an employee reaching retirement age, discretionary pension benefits shall be paid to the employee in the form of financial instruments (or equivalent) subject to a five-year retention period (art. 31-4 of Regulation n° 97-02).

<u>*Specific rules applicable to credit institutions to which the French State has provided financial support*</u>

- In order to prevent the financial situation of the credit institutions benefiting from the financial support of the French State from worsening, certain prohibition measures in relation to the remuneration of the management were introduced by the Amending Financial Bill for 2011, described in no. 3 (*Criteria to Ensure Reasonableness of Directors' Remuneration*) above.

Rules applicable to portfolio management companies

- As a general principle, the remuneration policy shall aim at providing coherence between the behaviour of the employees and the long-term objectives of the portfolio management company. It shall, notably, dissuade the company's employees to take unacceptable and excessive risks for the company. The other rules detailed above contribute to achieving this purpose.
- The remuneration policy shall aim at prohibiting any form of remuneration that may create excessive risks for the portfolio management company. The measure of performance used for the calculation of the variable part of the remuneration, if applicable, shall include an adjustment mechanism taking into account all the relevant current and future risks.
- It should be ensured that bonuses be paid after the closing of the accounts and the determination of the global income of the portfolio management company.
- Guaranteed bonus shall be prohibited except in case of a new recruitment and, in such case, the guarantee shall be limited to a one-year period.
- For determining the calculation basis of the variable part of the remuneration, each portfolio management company which is a member of the AGF shall set up a process for determining objectives and ensuring that those objectives comply, on a long-term basis, with the company's and its clients' interests.
- If possible, the portfolio management company shall favour the granting of its shares, share options or equivalent instruments as payment for the variable part of the remuneration. In such cases, the hedging of the risks associated with those assets must be prohibited before the exercise of the options or the definitive acquisition of those assets.
- If the portfolio management company decides to grant units of collective investment schemes under its management as payment for part of the variable remuneration, it shall set up rules so as to ensure that (i) such payment complies with the management objectives of those collective investment schemes and (ii) the interests of the beneficiaries of such payments and those of the other unit holders are compatible (set up a policy preventing conflicts of interests).
- The part of the variable remuneration of the members of the executive body and those employees whose activities are likely to have a significant impact on the risk exposure of the company shall be granted in line with the following principle :
  - Where such part is substantially greater than the fixed part of the remuneration, it shall be deferred over several years (for instance, three years). Such remuneration shall be paid, at the fastest, *pro rata temporis*. If losses are suffered by the portfolio management company, it shall be provided that the deferred part which could have been paid will be substantially decreased or

4. Directors' Remuneration Adjusted to Long-term Interests of the Company				
EU	Germany	UK	**France**	The Netherlands

not paid;

- The beneficiaries shall not be allowed to use individual hedging and insurance strategies that would undermine the scope of the provisions providing for the taking into account of the risk exposure in the remuneration policy. However, the hedging and insurance strategies that were put in place before 2010 may be maintained;
- Discretionary payments linked to the early termination of a labor contract shall reflect the performance of the beneficiary and shall not reward failure.

■ The AFG Recommendations recommend that both increases and decreases in the compensation of executive directors must be linked to medium-term and long-term trends in the company's intrinsic worth and the relative performance of its share price and must be consistent with the company's average employee compensation, dividend and earnings.

(part II of the AFG, AFIC, ASPIM Rules)

4. Directors' Remuneration Adjusted to Long-term Interests of the Company

EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- The remuneration structure has to promote the interests of the company in the medium and long-term and must not encourage members of the management board to act in their own interests or take risks that are not in line with the adopted strategy (principle II.2 DCG Code).
- The variable component of the remuneration of management board members shall be linked to predetermined, assessable and influenceable targets, which are predominantly of a long-term nature (principle II.2 DCG Code).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions and insurers)

- Where remuneration is related to performance, the total amount of the remuneration shall be based on a combination of an assessment of the performance of the employee concerned, the business unit concerned and the results of the firm as a whole. The assessment of the personal performance shall take into account both financial and non-financial criteria (art. 10 DCB Remuneration Code).
- The financial institution shall ensure that the total variable remuneration does not constrain its ability to strengthen its qualifying capital, solvency margin or own funds (art. 12 DCB Remuneration Code).
- In assessing performance, the firm must, for the calculation of variable remuneration components or of pools for variable remuneration components, apply a correction for all categories of present and future risks and shall make allowance for the costs of the capital employed and the costs of the required liquidity. (art. 17.1 DCB Remuneration Code). When allocating the variable remuneration components within its enterprise, the financial institution shall also take into account all categories of present and future risks (art. 17.1 DCB Remuneration Code).
- The variable remuneration, including the deferred portion thereof, shall only be paid or vested if this can be reconciled with the financial status of the firm as a whole and is justified by the performance of the firm, the business entity and the employee in question. In general, the firm shall reduce the total variable remuneration significantly if its financial performance is weaker or negative, taking into account both the present level of remuneration and the reduction in payments of amounts earned earlier, inter alia by means of malus or reclaim arrangements (art. 20.1 and 20.2 DCB Remuneration Code).
- The firm shall align its pension policy with its business strategy, objectives, values and long-term interests (art. 21.1 DCB Remuneration Code).

Rules applicable to the banking and insurance sector

- The bank or insurer shall implement a meticulous, restrained and long-term remuneration policy that is in line with its strategy and risk appetite, objectives and values, taking into account the long-term interests of the bank or insurer, the relevant international context and wider societal acceptance. The supervisory board and the executive board shall take this basis into account when performing their tasks in relation to the remuneration policy (art. 6.1.1 Dutch Banking Code; Article 6.1.1 Dutch Insurance Code).

Rules applicable to pension funds

- The remuneration policy shall enhance the integrity and soundness of the pension fund with a focus

4. Directors' Remuneration Adjusted to Long-term Interests of the Company				
EU	Germany	UK	France	**The Netherlands**

on the long term interests of the fund (Remuneration Principle 1[xliv]).

- An appropriate time horizon will be applied when considering commercial performance as a basis for variable remuneration, in order to take into account the effect of the performance on long term results (Remuneration Principle 8g).

Variable Components of Remuneration and Stock-Based Compensation

5. Variable Components of Remuneration and Stock-Based Compensation				
EU	Germany	UK	France	The Netherlands

General rules for listed companies

- Award of variable components of remuneration should be subject to predetermined and measurable performance criteria (sec. 3.2 Rec. 2009).
- Companies should set limits on the variable component(s) (sec. 3.1 sent. 1 Rec. 2009).
- The non-variable components should be sufficient to allow the company to withhold variable components when performance criteria are not met (sec. 3.1 sent. 2 Rec. 2009).
- A major part of the variable components should be deferred for a minimum period of time (three to five years) (sec. 3.3 Rec. 2009).
- Vesting of shares and the right to exercise share options or any other right to acquire shares or to be remunerated on the basis of share price movements, should be subject to predetermined and measurable performance criteria (sec. 4.2 Rec. 2009).
- Share options or any other right to acquire shares or to be remunerated on the basis of share price movements should not be exercisable for at least three years after their award (sec. 4.1 Rec. 2009).
- Remuneration of non-executive directors or supervisory board members should not include share options (sec. 4.4 Rec. 2009).

Rules applicable to Financial Undertakings[xlv] pursuant to Rec. 2009-FS

- Where remuneration includes a variable component or a bonus, remuneration policy should be structured with an appropriate balance of fixed and variable remuneration components. The remuneration policy of a financial undertaking sets a maximum limit on the variable component (sec. 4.1 Rec. 2009-FS).
- The fixed component of the remuneration should represent a sufficiently high proportion of the total remuneration allowing the financial undertaking to operate a fully flexible bonus policy. In particular, the financial undertaking should be able to withhold bonuses entirely or partly when performance criteria are not met by the individual concerned, the business unit concerned or the financial undertaking. The financial undertaking should also be able to withhold bonuses where its situation deteriorates significantly, in particular where it can no longer be presumed that it can or will continue to be able to carry out its business as a going concern (sec. 4.2 Rec. 2009-FS).
- Where a significant bonus is awarded, the major part of the bonus should be deferred with a minimum deferment period. The amount of the deferred part of the bonus should be determined in relation to the total amount of the bonus as compared to the total amount of the remuneration (sec. 4.3 Rec. 2009-FS).
- The deferred element of the bonus should take into account the outstanding risks associated with the performance to which the bonus relates and may consist of equity, options, cash, or other funds the payment of which is postponed for the duration of the deferment period (sec. 4.4 Rec. 2009-FS).
- The measurement of performance, as a basis for bonus or bonus pools, should include an adjustment for current and future risks related to the underlying performance and should take into account the cost of the capital employed and the liquidity required (sec. 5.3 Rec. 2009-FS).
- Rules applicable to credit institutions[xlvi] pursuant to Directive 2006/48/EC (recast by CRD III)[xlvii]
- Credit institutions are to limit variable remuneration as a percentage of total net revenues when it is

5. Variable Components of Remuneration and Stock-Based Compensation

EU	Germany	UK	France	The Netherlands

inconsistent with the maintenance of a sound capital base (art. 136 para 1 f) EU-Directive 2006/48/EC).

- The assessment of the performance is set in a multi-annual framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks (annex V, sec. 11, no. 23 (h) of Directive 2006/48/EC, recast by CRD III).
- The total variable remuneration does not limit the ability of the credit institution to strengthen its capital base (annex V, sec. 11, no. 23 (i) of Directive 2006/48/EC, recast by CRD III).
- Guaranteed variable remuneration is exceptional and occurs only when hiring new staff and is limited to the first year of employment (annex V, sec. 11, no. 23 (j) of Directive 2006/48/EC, recast by CRD III).
- Fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component. Credit institutions shall set the appropriate ratios between the fixed and the variable component of the total remuneration (annex V, sec. 11, no. 23 (l) of Directive 2006/48/EC, recast by CRD III).
- The measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required, whereby the allocation of the variable remuneration components within the credit institution shall also take into account all types of current and future risks (annex V, sec. 11, no. 23 (n) of Directive 2006/48/EC, recast by CRD III).
- A substantial portion (not less than 50%) of any variable remuneration (deferred and not deferred) shall consist of an appropriate balance of (i) shares or equivalent ownership interests, subject to the legal structure of the credit institution concerned or share-linked instruments or equivalent non-cash instruments, in case of a non- listed credit institution, and (ii) where appropriate, other instruments that adequately reflect the credit quality of the credit institution as a going concern. These instruments shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the credit institution. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate (annex V, sec. 11, no. 23 (o) of Directive 2006/48/EC, recast by CRD III).
- A substantial portion (not less than 40%) of the variable remuneration component is deferred over a period which is not less than three to five years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question (annex V sec. 11, no. 23 (p) of Directive 2006/48/EC, recast by CRD III).
- Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question (annex V, sec. 11, no. 23 (p) of Directive 2006/48/EC, recast by CRD III).
- The variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the credit institution as a whole, and justified according to the

5. Variable Components of Remuneration and Stock-Based Compensation				
EU	Germany	UK	France	The Netherlands

performance of the credit institution, the business unit and the individual concerned (annex V, sec. 11, no. 23 (q) of Directive 2006/48/EC, recast by CRD III).

- The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the credit institution occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements (annex V, sec. 11, no. 23 (q) of Directive 2006/48/EC, recast by CRD III).
- Credit institutions benefiting from exceptional government intervention: the variable remuneration should generally be limited to a percentage of net revenue and no variable remuneration is to be paid to the persons who effectively direct the business of the credit institution unless justified. The relevant authorities are to require credit institutions benefiting from exceptional government intervention to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the persons who effectively direct the business (annex V, sec. 11, no. 23 (k) of Directive 2006/48/EC, recast by CRD III).

Rules applicable to managers of alternative investment funds ("AIF")[xlviii]

- Guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year (annex II, Nr. 1 (i) of Directive 2011/61/EU).
- Fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component (annex II, Nr. 1 (j) of Directive 2011/61/EU).
- The measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks (annex II, Nr. 1 (l) of Directive 2011/61/EU).
- Subject to the legal structure of the AIF and its rules or instruments of incorporation, a substantial portion, and in any event at least 50 % of any variable remuneration consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of AIFs accounts for less than 50 % of the total portfolio managed by the AIFM, in which case the minimum of 50 % does not apply. The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the AIFM and the AIFs it manages and the investors of such AIFs (annex II, Nr. 1 (m) of Directive 2011/61/EU).
- A substantial portion, and in any event at least 40 %, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question. The period referred to in this point shall be at least three to 5 years unless the life cycle of the AIF concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount is deferred AIFs (annex II, Nr. 1 (n) of Directive 2011/61/EU).
- The variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned. The total variable remuneration shall generally be considerably contracted where subdued or negative financial

5. Variable Components of Remuneration and Stock-Based Compensation				
EU	Germany	UK	France	The Netherlands

performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements AIFs (annex II, Nr. 1 (o) of Directive 2011/61/EU).

- Variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this Directive (annex II, Nr. 1 (r) of Directive 2011/61/EU).

5. Variable Components of Remuneration and Stock-Based Compensation

EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- The variable compensation elements shall be based on a multi-annual assessment (sec. 87 para. 1 sent. 3 AktG, no. 4.2.3 para. 2 sent. 3 GCGC).
- Vesting period for the first exercise of stock options shall be at least four years (sec. 193 para. 2 no. 4 AktG).
- Both positive and negative developments shall be taken into account (no. 4.2.3 para. 2 sent. 4 GCGC).
- Variable components include *e.g.* share or index-based compensation elements related to the company which should be related to demanding, relevant comparison parameters and a retroactive change of such targets or parameters shall be excluded (no. 4.2.3 para. 3 GCGC).

Rules applicable to the banking sector

General rules for all executive directors and employees

- Remuneration systems must be aligned with the achievement of the objectives set out in the strategies (InstitutsVergV sec. 3 (1)).
- BaFin may prohibit the payment of variable remuneration components or restrict them to a certain proportion of the institution's annual net profit (except remuneration based on a collective agreement) (sec. 45 (2) sentence 1 no. 6 KWG).
- Variable remuneration shall be calculated on the basis of multi-annual assessment basis; the supervisory body shall establish measures to limit the remuneration in the event of exceptional developments (sec. 3 (4) sentence 3 InstitutsVergV).
- There must be an appropriate relation between fixed and variable remuneration (to be established by the institution). The relation is deemed to be appropriate if (i) there is no significant dependency on the variable remuneration, (ii) the variable remuneration can nevertheless set an effective performance incentive (sec. 3 (5) InstitutsVergV).
- Guaranteed variable remuneration is only permitted in the context of hiring new staff and for no longer than one year (sec. 3 (7) InstitutsVergV).
- The aggregate amount of the directors' and employees' variable remuneration must not limit the ability of the institution to maintain permanently, or to restore its capital adequacy requirements (sec. 4 InstitutsVergV).

Special rules applicable to significant institutions in relation to remuneration systems of executive directors and those employees whose activities impact substantially the risk profile of the institution

- In addition to the overall performance of the institution / group and the performance contribution of the organisational unit, the director's individual performance contribution shall also be taken into account when determining the variable remuneration, provided that this does not require a disproportionate effort by the company (sec. 5 (2) no. 1 InstitutsVergV).
- The individual performance contribution shall take into account non-financial parameters (e.g. compliance with the institution's internal rules and strategies, customer satisfaction and qualifications obtained) (sec. 5 (2) no. 2 InstitutsVergV).
- At least 60% of the variable remuneration shall be spread over a deferral period of at least three to

5. Variable Components of Remuneration and Stock-Based Compensation

EU	**Germany**	UK	France	The Netherlands

five years. Entitlement to this portion of the remuneration shall not accrue faster than *pro rata temporis*. During the deferral period, the beneficiary shall be entitled to an error-free calculation of the part of the variable remuneration that is not yet due but not to such part of the variable remuneration itself. The period of deferral depends on the business cycle, nature and risk content of business operations and the activities of the relevant employees or executive directors (sec. 5 (2) no. 4 InstitutsVergV).

- 50% of the variable remuneration spread over the deferral period and 50% of the non-spread variable remuneration shall depend on the undertaking's long-term performance. In each case an appropriate period shall apply, after which the relevant portion of the variable remuneration may become available at the earliest (InstitutsVergV sec. 5 (2) no. 5).
- Discretionary pension scheme contributions that are paid in the event of a termination of the employment agreement, <u>for reasons other than retirement</u>, shall be dependent on the institution's long-term performance and be spread out over a deferral period of at least 5 years. Furthermore, during the deferral period, the beneficiary is only entitled to an error-free calculation of these discretionary pension scheme contributions but not to the contributions themselves. Finally, the amount of the pension scheme contribution shall be reduced if the performance contributions from the director, his organisational unit or the overall performance from the institution or group do not prove to be sustainable (sec. 5 (3) InstitutsVergV).
- Discretionary pension scheme contributions that are paid in the event of a termination of the employment agreement, <u>for reasons of retirement</u>, shall be dependent on the institution's long-term performance and be subject to a deferral period of at least 5 years, after which payment may become available (sec. 5 (4) InstitutsVergV).

Rules applicable to the insurance sector (including pension funds)

<u>*General rules for all executive directors and employees*</u>

- The variable element of the remuneration shall be aligned with the long-term performance of the undertaking. The variable element of the remuneration must not depend on the undertaking's premium income, its new business acquisition or the mediation of individual insurance contracts (sec. 3 (1) no. 3 VersVergV). Premium income, new business acquired or the mediation of individual insurance contracts shall make up not more than 30% of the parameters for determining the variable remuneration (explanatory memorandum in relation to sec. 3 (1) no. 3 VersVergV).
- Variable remuneration shall have a multi-annual assessment basis; the administrative or supervisory body shall agree a limitation option for exceptional developments (sec. 3 (2) sentence 2 VersVergV).
- BaFin may prohibit the payment of variable remuneration components or restrict them to a certain proportion of the annual net profit (except remuneration based on a collective agreement) (sec. 81b (1a) of the V AG).

<u>*Special rules only for significant undertakings and for remuneration systems of executive directors and those employees whose activities substantially impact the risk profile of the undertaking*</u>

- There must be an appropriate relation between fixed and variable remuneration. The relation is deemed to be appropriate if (i) there is no significant dependency on the variable remuneration, (ii) the variable remuneration can nevertheless set an effective performance incentive (sec. 4 (2) sentence 1 VersVergV).

5. Variable Components of Remuneration and Stock-Based Compensation				
EU	**Germany**	UK	France	The Netherlands

- Guaranteed variable remuneration is only permitted in the context of hiring new staff and for no longer than one year (sec. 4 (2) sentence 2 VersVergV).
- The overall performance of the undertaking / group, the organisational unit and the individual performance contribution (provided this can be determined at reasonable effort) shall be taken into account for the determination the variable remuneration. The individual performance contribution may also be determined on the basis of non-financial parameters (in particular: compliance with the institution's internal rules and strategies, and qualifications obtained) (sec. 4 (3) no. 1 VersVergV).
- For determining the overall performance of the undertaking, the performance contribution of the organisational unit and the individual performance contribution are to be taken into account; particularly relevant are such remuneration parameters which account for a sustainable success (sec. 4 (3) no. 2 VersVergV).
- A substantial portion of the variable remuneration (at least 40%) may not be paid prior to the end of an appropriate deferral period (generally 3 years), taking business performance into account (sec. 4 (3) no. 3 sentence 1 VersVergV). The deferred portion of the remuneration is to be paid *pro rata temporis* during the deferral period (explanatory memorandum to sec. 4 (3) no. 3 VersVergV).
- 50% of the deferred variable remuneration shall be dependent on the undertaking's long-term performance (sec. 4 (3) no. 3 sentence 2 VersVergV).
- Discretionary pension scheme contributions that are paid in the event of a termination of the employment agreement, <u>for reasons other than retirement</u>, shall be dependent on the undertaking's long-term performance and be spread out over a deferral period of at least 5 years. Furthermore, during such deferral period, the beneficiary is only entitled to an error-free calculation of these discretionary pension scheme contributions but not to the contributions themselves. Finally, the amount of the pension scheme contribution shall be reduced if the performance contributions from the director, his organisational unit or the overall performance of the undertaking or the group do not prove to be sustainable (sec. 4 (5) VersVergV).
- Discretionary pension scheme contributions that are paid in the event of a termination of the employment agreement, <u>for reasons of retirement</u>, shall be dependent on the undertaking's long-term performance and be subject to a deferral period of at least 5 years, after which such payment may become available (sec. 4 (6) VersVergV).

5. Variable Components of Remuneration and Stock-Based Compensation

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- Please refer to no. 3 above.
- Traditional share option schemes should be weighed against other kinds of long-term incentive scheme. Executive share options should not be offered at a discount except as permitted by the relevant provisions of the UK Listing Rules. In normal circumstances, shares granted or other forms of deferred remuneration should not vest, and options should not be exercisable in less than three years (Schedule A, para. 2 and 3 UK CG Code).
- Any new long-term incentive schemes should be approved by shareholders and the total rewards which are potentially available should not be excessive (Schedule A, para. 4 UK CG Code).
- The payouts or grants under all incentive schemes should be subject to challenging performance criteria reflecting the company's objectives, including non-financial performance metrics where appropriate. Remuneration incentives should be compatible with risk policies and systems. (Schedule A, para. 5 UK CG Code).
- Grants under executive share option and long-term incentive schemes should normally be phased, rather than awarded in one large block (Schedule A, para. 6 UK CG Code).

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- The FSA's Remuneration Code contains detailed rules regarding variable and stock-based remuneration structures addressing guaranteed variable remuneration ratios between fixed and variable, shares and other instruments and deferral (FSA Remuneration Code – Principle 12).
- Tier Two, Three and Four Remuneration Code Firms [xlix] may disapply some aspects of the Remuneration structures set out in Principle 12.

5. Variable Components of Remuneration and Stock-Based Compensation

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

- Granting stock options may be subject to (amongst other things) performance criteria, which cannot be modified retroactively without the consent of the beneficiary.
- The vesting period for bonus shares is at least two years (art. L.225-197-1 of the French Commercial Code).
- In listed companies, the price of stock options may not be lower than 80% of the average stock price over the past 20 business days and may not exceed 80% of the average price of the company's shares purchased by the company itself (art. L.225-177, L.225-179 of the French Commercial Code).
- The board of directors or the supervisory board, as the case may be, must restrict executive or managing directors from the exercise of the options (or the sale of the stock), at least in part, until the end of their mandate (art. L. 225–185, L.225-197-1 of the French Commercial Code).
- In listed companies, the company may only grant stock options to executive or managing directors, if all the employees of the company are also granted such options or bonus shares or if they participate by any other means in the benefits of the company (art. L.225-186-1, L.225-197-6 of the French Commercial Code).
- Stock options and/or bonus shares and/or other variable components of remuneration is subject to performance criteria and may only represent an appropriate portion of the overall remuneration. No stock option or bonus shares may be allocated to an executive director upon his/her departure. Free riding during a depression has to be prevented. The options may not be exercised during specific time periods prior to the disclosure of the annual accounts. Price reductions and hedges are prohibited. A portion of the stock acquired through the exercise of the options has to be vested with the beneficiary for a longer term (art. 20.2.3 of the FCG Code).

Rules applicable to credit institutions and investment firms

- Full details of the variable components of remuneration are provided in no. 3 above.
- For instance, a significant part, not lower than 50%, of the variable remuneration must be granted as shares, shares backed securities, instruments linked to assets favoring the long term creation of value or, for non-listed companies, equivalent instruments. The granting of such instruments must be subject to a minimum holding period which cannot be less than 6 months. Such rule applies to the deferred part of the variable remuneration, as well as to its non-deferred part.

(art. 31-4 of Regulation n° 97-02, Part II, paragraph 7 of the FBF Professional Standards and paragraph 59 of the AMFI Professional Standards).

Rules applicable to portfolio management companies

- Full details of the variable components of remuneration are provided in no. 3 above.
- The portfolio management company must favour, if possible, the granting of its shares, share options or equivalent instruments as payment for the variable part of the remuneration. In such cases, the hedging of the risks associated with those assets must be prohibited before the exercise of the options or the definitive acquisition of those assets.

(part II of the AFG, AFIC, ASPIM Rules)

5. Variable Components of Remuneration and Stock-Based Compensation

EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- If options are granted to members of the management board they should not be exercised in the first three years (best practice provision II.2.4 DCG Code).
- The number of options and shares granted shall depend on the achievement of challenging targets specified beforehand (best practice provision II.2.4 and II.2.5 DCG Code).
- The option exercise price should not be fixed at a level lower than a verifiable price or a verifiable price average in accordance with the trading in a regulated market on one or more predetermined days during a period of not more than five trading days prior to and including the day on which the option is granted (best practice provision II.2.6 DCG Code).
- Shares granted to members of the management board without financial consideration should be retained for at least five years or until the end of the employment if this period is shorter (best practice provision II.2.5 DCG Code).
- The exercise price and other conditions of the options may not be modified during the term of the options, except in case of structural changes to the shares or the company (best practice provision II.2.7 DCG Code).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- The DCB Remuneration Code includes the following key provisions:
  - At least 50% of variable remuneration should consist of shares (or other specified instruments) and that this should be applied equally to both the deferred and non-deferred portions (art. 18.1 and 18.3 DCB Remuneration Code);
  - At least 40% of the variable remuneration component must be deferred over a period of not less than three to five years (art. 19 DCB Remuneration Code);
  - Variable remuneration paid in shares (or other specified instruments) should be subject to an appropriate retention period. The minimum retention period is in principle one year (art. 18.2 DCB Remuneration Code);
  - Guaranteed bonuses should be exceptional, should occur only in the context of hiring and should be limited to the first year of employment (art. 13 DCB Remuneration Code);
  - Provisions on guaranteed bonuses should be applied on a firm-wide basis and not just to "code staff", in line with the CEBS Guidelines;
  - Payments related to early termination of contracts must reflect performance achieved over time and not reward failure (art. 16 DCB Remuneration Code);
  - No maximum ratio between an individual's fixed and variable remuneration. However, the firm must allocate the fixed and variable components of the total remuneration in a balanced way; the amount of the fixed component of the total remuneration package shall be sufficiently high to enable an entirely flexible policy to be pursued in respect of variable remuneration components, including the ability not to pay a variable remuneration component. The firm must establish suitable ratios between fixed and variable components of the total remuneration (art. 15 DCB Remuneration Code).

5. Variable Components of Remuneration and Stock-Based Compensation

EU	Germany	UK	France	**The Netherlands**

Rules applicable to the banking and insurance sector

- When variable remuneration is awarded to the executive board, the long-term component shall be taken into account as well as profitability and/or continuity of the bank or insurer and a material part of the variable remuneration shall be conditional and shall not be paid until at least three years have passed (art. 6.3.3 Dutch Banking Code; Article 6.3.3 Dutch Insurance Code).
- The allocation of variable remuneration shall be related to the bank's or insurer's long-term objectives (art. 6.4.1 Dutch Banking Code; Article 6.4.1 Dutch Insurance Code).
- Every bank or insurer shall set a maximum ratio of variable remuneration to fixed salary that is appropriate for the bank or insurer in question. The variable remuneration per annum of members of the executive board shall not exceed 100% of the member's fixed income (art. 6.4.2 Dutch Banking Code; Article 6.4.2 Dutch Insurance Code).
- Variable remuneration shall be based on the performances of the individual, his part of the business and the performance of the bank or insurer as a whole according to pre-determined and assessable performance criteria. In addition to financial performance criteria, non-financial performance criteria shall also make up a significant portion of the assessment of the individual. Performance criteria shall be defined in terms that are as objective as possible in the bank's or insurer's remuneration policy (art. 6.4.3 Dutch Banking Code; Article 6.4.3 Dutch Insurance Code).
- When performances are assessed based on the pre-determined performance criteria, financial performances shall be adjusted to allow for estimated risks and capital costs (art. 6.4.4 Dutch Banking Code; Article 6.4.4 Dutch Insurance Code).

Rules applicable to pension funds

- Each variable remuneration structure shall include a balanced set of measures appropriate for the function in order to safeguard the right incentives (Remuneration Principle 8[i]).
- The variable remuneration is proportionate to the fixed remuneration. The pension fund shall determine the maximum ratio between the fixed and variable remuneration for each function group (Remuneration Principle 8a).
- The variable remuneration should be linked to predefined, assessable and influenceable performance criteria. These criteria shall as much as possible reflect the interests of all stakeholders (Remuneration Principle 8b).
- Awarding variable remuneration should be dependent on a suitable relation between the performance of the employee, the department and the pension fund as a whole (Remuneration Principle 8c).
- Financial results used for assessing performance are adjusted to take account of risks and costs (Remuneration Principle 8d).
- Awarding variable remuneration should not depend on an "all or nothing" commercial objective, but such compensation should instead have a linear or graduated structure (Remuneration Principle 8e).
- The variable compensation structure should provide for the possibility of exercising some degree of discretion when awarding variable compensation in order to counter undesirable effects, such as compensation that is not commensurate with actual performance. This is equally applicable in exceptional situations such as an acquisition or dismissal (Remuneration Principle 8f).

5. Variable Components of Remuneration and Stock-Based Compensation				
EU	Germany	UK	France	**The Netherlands**

- An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of the performance on the long-term results may be taken into consideration (Remuneration Principle 8g).
- The ratio between remuneration in cash, stock, options or other forms of remuneration components shall be in line with the risk management of the pension fund (Remuneration Principle 8h).

Reduction of Directors' Remuneration

6. Reduction of Directors' Remuneration				
EU	Germany	UK	France	The Netherlands

General rules for listed companies

- Contractual arrangements with executive or managing directors should include provisions that permit the company to reclaim variable components of remuneration that were awarded on the basis of data which subsequently proved to be manifestly misstated (clawback) (sec. 3.4 Rec. 2009).

Rules applicable to Financial Undertakings[li] pursuant to Rec. 2009-FS

- The (supervisory) board of a financial undertaking should be able to require staff members to repay all or part of bonuses that have been awarded for performance based on data which has subsequently proven to be manifestly misstated (sec. 4.1 Rec. 2009-FS).

Rules applicable to credit institutions[lii] pursuant to Directive 2006/48/EC (recast by CRD III)[liii]

- The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the credit institution occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements (annex V, sec. 11, no. 23 (q) of Directive 2006/48/EC, recast by CRD III).

6. Reduction of Directors' Remuneration

EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- Remuneration shall be subsequently reduced by the supervisory board to an appropriate amount in case the situation of the company deteriorates to such extent that continuation of payment constitutes an inequity for the company (sec. 87 para. 2 sent. 1 AktG).
- Pensions, payments to surviving dependents and similar payments may be reduced only during the first three years after the member of the management board leaves the company (sec. 87 para. 2 sent. 2 AktG).

Rules applicable to the banking and the insurance sectors (including pension funds)

Special rules applicable to significant institutions / undertakings in relation to remuneration systems of directors and those employees whose activities impact substantially the risk profile of the institution / undertaking

- Individual negative performance contributions from executive directors, their organisational unit and a negative overall performance of the undertaking shall also be reflected in the amount of the variable remuneration, including any deferred amounts (sec. 5 (2) no. 6 InstitutsVergV); sec. 4 (3) no. 4 VersVergV).
- Discretionary pension scheme contributions that are paid in the event of a termination of the employment agreement, for reasons other than retirement, shall be dependent on the institution's / undertaking's long-term performance and be spread out over a deferral period of at least 5 years. During the deferral period, the beneficiary is only entitled to an error-free calculation of these discretionary pension scheme contributions but not to the contributions themselves. Furthermore, the amount of the pension scheme contribution shall be reduced if the performance contributions from the director, his organisational unit or the overall performance from the institution / undertaking or group being essentially relevant for the discretionary contributions do not prove to be sustainable (sec. 5 (3) InstitutsVergV; sec. 4 (5) VersVergV).

6. Reduction of Directors' Remuneration

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- Companies should give consideration to the use of provisions that permit the company to reclaim variable components of remuneration in exceptional circumstances of misconduct and/or misstatement (Schedule A, para. 7, UK CG Code).

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- Tier One and Two[viii] Remuneration Code firms should retain the contractual ability to make adjustments to an individual's unvested, deferred amounts of variable remuneration, after the amount has been communicated to the employee, to reflect the performance of the employee, the firm and the business in which the employee works. (FSA Remuneration Code 19.A.3.51 R).
- For tier One and Two Remuneration Code firms where there is evidence of employee misbehavior or material error, or the firm/business unit suffers a material downturn in its financial performance, a downward adjustment should be made to the employee's variable remuneration. (FSA Remuneration Code 19.A.3.52 E).
- The FSA has power to render void any contractual provision which contravenes certain restrictions in its Remuneration Code on employees being remunerated in a specified way, and to oblige the firm to recover payments made or property transferred to the relevant employee under that provision. In these circumstances, the firm will be restricted from paying further variable remuneration to that employee in respect of the same performance year, unless it has a legal opinion stating that the award complies with the Code. Any payment made in breach of this restriction will also be void and will have to be recovered (FSA Remuneration Code 19A.3.55).
- The FSA's voiding powers apply in relation to the Code's rules that restrict guaranteed variable remuneration, require deferral of variable remuneration, and prohibit payments made to replace any payments or property recovered under void agreements.
- The voiding provisions will not apply to Code Staff whose total remuneration is less than or equal to £500,000 and whose variable remuneration is less than 33% of total remuneration (FSA Remuneration Code 19A.3.54).

6. Reduction of Directors' Remuneration				
EU	Germany	UK	**France**[liv]	The Netherlands

General rules for listed companies

- Principles governing the issue of reduction of directors' remuneration derive essentially from case law.
- The reduction (or cancellation) of the remuneration allocated to managing directors, deputy managing directors and/or chairman of the board of directors (in the one tier system) and members of the management board (in the two tier system) may only result from a vote of the board of directors (in the one tier system) or of the supervisory board (in the two tier system) or alternatively from the individual (the relevant director) relinquishing his/her right to the remuneration at stake. The reduction may not be such that it is held as abusive, that is as a form of inducement to the individual resigning from his/her office.
- Where the payment of a remuneration (or the increase thereof) would cause the company to be in a difficult economic situation, the chairman (or managing director or deputy managing director) may be held liable if he/she does not reduce his/her remuneration.
- The consent of the individual is required if the amendment is to have a retroactive effect.
- In listed companies and where the reduction relates to termination payments, the procedure described in relation to termination payments as referred to in no. 7 below is to be taken into account.

Rules applicable to credit institutions and investment firms

- As part of the risks management policy, credit institutions and investment firms must be able to significantly decrease the amount of variable remunerations granted for an accounting period where the company has suffered losses (art. 31-3 of Regulation n° 97-02).
- The remunerations of the members of the executive body of credit institutions and investment firms must be granted in line with, *inter alia*, the following principles (please see to no. 33 above for the complete list of principles):
- 1. no guaranteed variable remuneration shall be granted, unless, eventually, in the context of a recruitment and for a period which cannot exceed one year;
- 2. in the case of loss suffered by the relevant activity, it must be possible to decrease or to cancel the deferred part of the variable remuneration.

(art. 31-4 of Regulation n° 97-02)

Rules applicable to portfolio management companies

- Guaranteed bonus must be prohibited except in case of a new recruitment and, in such case, the guarantee must be limited to a one-year period.
- The part of the variable remuneration of the members of the executive body and those employees whose activities is likely to have a significant impact on the risk exposure of the company must, where such part is substantially greater than the fixed part of the remuneration, be deferred over several years (for instance, three years). Such remuneration must be paid, as soon as possible, *pro rata temporis*. If losses are suffered by the portfolio management company, it must be provided that the deferred part which could have been paid will be substantially decreased or not paid.

(part II of the AFG, AFIC, ASPIM Rules)

6. Reduction of Directors' Remuneration

EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- The supervisory board may recover from the members of the management board any variable remuneration awarded on the basis of incorrect financial or other data (best practice provision II.2.11 DCG Code).
- If a conditionally awarded variable remuneration produces an unfair result due to extraordinary circumstances during the period in which the predetermined performance criteria have been or should have been achieved, the supervisory board has the power to adjust the value downwards or upwards (best practice provision II.2.10 DCG Code).
- A bill is pending, a revised draft of which was sent to Dutch parliament on 27 November 2011, containing rules on potential clawback of bonuses received by management board members of public limited companies and financial institutions (whatever their form). This bill provides that the corporate body authorized to determine the remuneration of management board members (i.e., the supervisory board or the general meeting) may alter the amount of the initially agreed bonus (i.e., the non-fixed part of the remuneration) to a suitable amount, if payment of the initially agreed bonus would be unreasonable or undfair. In the case of a change in control, this rule (mandatorily) applies to the bonus that becomes payable as a result of the change of control. The bill further provides that the company is authorized to reclaim a bonus to the extent it has been paid out on the basis of incorrect information regarding the specific circumstances of the event triggering the bonus payment. If the bill is approved, these rules would also apply to existing bonus agreements.

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- The variable remuneration, including the deferred portion thereof, shall only be paid or vested if this can be reconciled with the financial situation of the firm as a whole and is justified by the performance of the firm, the business entity and the employee in question. In general and without prejudice of the obligations and employment law, the firm shall reduce the total variable remuneration significantly if its financial performance is weaker or negative, taking into account both the present level of remuneration and the reduction in payments of amounts earned earlier, inter alia by means of *malus* or reclaim arrangements (art. 20.1 and 20.2 DCB Remuneration Code).

Rules applicable to the banking and insurance sector

- In exceptional circumstances - for example, if application of the predetermined performance criteria would result in undesired variable remuneration for a member of the executive board - the supervisory board shall have the discretionary power to adjust the variable remuneration if, in its opinion, this remuneration would have unfair or unintended effects (art. 6.4.5 Dutch Banking Code; Article 6.4.5 Dutch Insurance Code).
- The supervisory board shall be authorised to reclaim variable remuneration allocated to a member of the executive board based on inaccurate data (whether or not the inaccurate data is financial in nature) (art. 6.4.6 Dutch Banking Code; Article 6.4.6 Dutch Insurance Code).

Rules applicable to pension funds

- Since pension funds are neither 'financial institutions' as defined in the FMSA nor public limited companies (Dutch pension funds are in general foundations - *stichtingen*), the abovementioned bill will in its current version not apply to pension funds.

Termination Payments

7. Termination Payments

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- Termination payments should not exceed a fixed amount or fixed number of years of annual remuneration, which should, in general, not be higher than two years of the non-variable component of remuneration or the equivalent thereof (sec. 3.5 Rec. 2009).
- Termination payments should not be paid if the termination is due to inadequate performance (sec. 3.5 Rec. 2009) or if an executive or managing director leaves on own account (7th Reasoning Rec. 2009).

Rules applicable to Financial Undertakings[lv] pursuant to Rec. 2009-FS

- Payments related to the early termination of a contract which are awarded on a contractual basis, should be related to performance achieved over time and designed in a way that does not reward failure (sec. 4.5 Rec. 2009-FS).

Rules applicable to credit institutions[lvi] pursuant to Directive 2006/48/EC (recast by CRD III)[lvii]

- Payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure (annex V, sec. 11, no. 23 (m) of Directive 2006/48/EC, recast by CRD III).
- Pension policies need to be in line with the business strategy, objectives, values and long-term interests of the credit institution (annex V, sec. 11, no. 23 (r) of Directive 2006/48/EC, recast by CRD III).
- If the employee leaves the credit institution before retirement, discretionary pension benefits shall be held by the credit institution for a period of 5 years in the form of financial instruments (or equivalent). In case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of financial instruments (or equivalent) subject to a five-year retention period (annex V, sec. 11, no. 23 (r) of Directive 2006/48/EC, recast by CRD III).

Rules applicable to managers of alternative investment funds ("AIF")[lviii]

- Payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure (annex II, Nr. 1 (k) of Directive 2011/61/EU).
- The pension policy is in line with the business strategy, objectives, values and long-term interests of the AIFM and the AIFs it manages. If the employee leaves the AIFM before retirement, discretionary pension benefits shall be held by the AIFM for a period of five years in the form of instruments defined in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee subject to a 5 year retention period (annex II, no. 1 (p) of Directive 2011/61/EU).

7. Termination Payments				
EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- Service contracts with members of the management board shall ensure that payments on premature termination without serious cause do not exceed the value of two years' compensation (severance payment cap) and compensate no more than the remaining term of the contract. The severance payment cap shall be calculated on the basis of the total compensation for the past full financial year and if appropriate also the expected total compensation for the current financial year (no. 4.2.3 para. 4 GCGC).
- Payments promised in the event of premature termination of a member of the management board contract due to a change of control shall not exceed 150% of the severance payment cap (no. 4.2.3 para. 5 GCGC).

7. Termination Payments				
EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- Careful consideration should be given by the remuneration committee to compensation commitments for early termination with a view to avoiding rewarding poor performance. A robust line should be taken on reducing compensation to reflect departing directors' obligations to mitigate loss (D.1.4 UK CG Code).
- Notice or contract periods to be set at one year or less (D.1.5 UK CG Code).
- Shareholder approval must be obtained for any payments for loss of office, except where a payment is to discharge an existing legal obligation, is by way of damages for breach of a legal obligation or is by way of settlement or compromise of any claim arising in connection with termination of office or employment or is by way of a pension in respect of past services and is made in good faith (SS215 – 222 UK Companies Act). The UK Government has noted that it is generally the case that termination payments are made pursuant to existing contractual entitlements and is seeking views in its call for evidence (see endnote xliii) on whether this statutory exception should be removed to provide shareholders with more direct involvement in deciding the amount of any such termination payments.

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- FSA Remuneration Code firms must ensure that payments related to the early termination of contract reflect performance and do not reward failure (FSA Remuneration Code 19A.3.45 R).

7. Termination Payments

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

- In listed companies, undertakings of any kind taken for the benefit of the president of the board of directors, managing director or deputy managing director (in the one tier organisational form) or member of the management board (in the two tier organisational form) by the company (or by a controlling company or a company under its control) relating to compensation, indemnities or benefits which are due or likely to be due by virtue of said individual's entry into, departure from, or change of duties must contain performance requirements (assessed by reference to the company performance) and are subject to a specific prior approval procedure by the board of directors (or supervisory board) and a subsequent specific shareholders' vote on the basis of the statutory auditors' special report. Similar rules apply to employees appointed to the aforementioned duties (art. L.225-22-1, art.L.225-42-1, art.L225-79-1 and art.L.225-90-1 of the French Commercial Code) (please refer to no. 8 (*Disclosure of Remuneration Structure*) below).
- The FCG Code recommends that when a senior executive is appointed as president of the board of directors and/or managing director in a one tier organisation or as president of the management board (or sole managing director) in a two tier organisation, his or her employment contract be terminated whether through contractual termination or resignation (art. 19 of the FCG Code).
- The FCG Code contains the following provisions with respect to indemnities paid in the event of departure of executive directors (art. 20.2.4 of the FCG Code):
  - The indemnification may only be authorised in the event of an imposed departure linked to a change of control or change in strategy.
  - Termination payments may not be granted if the individual is entitled to exercise his rights to pension in a near future.
  - Termination payments may not exceed two years of remuneration (fixed and variable).
  - The foregoing applies to all indemnities, including in particular any indemnity paid pursuant to a non-competition clause.
  - Any artificial increase in the compensation prior to the departure is to be prohibited.
- Remuneration paid as retirement benefits to the chairman/managing director/deputy managing directors by non-listed companies are held to be surplus of remuneration and follow the same regime (exclusive determination by the board of directors or supervisory board, as the case may be) provided that (i) the surplus allocated acts as a counterpart to specific services granted to the company, (ii) its amount is proportionate to said services and (iii) does not constitute an excessive burden for the company. If such criteria are not met, the allocation is to follow the prior approval procedure as described in no. 8 below (the relevant individual must refrain from voting, notice to the auditors, special auditor's reports, approval by the shareholders meeting).

Rules applicable to credit institutions and investment firms

- Discretionary payments linked to the early termination of a labour contract must be subject to the recording of beneficiary's performances, assessed in light of the company's performances, subject to compulsory law provisions of the French Labour Law Code (art. 31-4 of Regulation n° 97-02).
- The pension policy must comply with the risk management objectives of the company. If the relevant person leaves the company before its retirement, discretionary pension benefits must be

7. Termination Payments				
EU	Germany	UK	**France**	The Netherlands

granted in the form of financial instruments and paid after a five-year period. In case of an employee reaching retirement age, discretionary pension benefits shall be paid to the employee in the form of financial instruments (or equivalent) subject to a five-year retention period (art. 31-4 of Regulation n° 97-02).

Rules applicable to portfolio management companies

- Discretionary payments linked to the early termination of a labour contract must reflect the performance of the beneficiary and must not reward failure.

(part II of the AFG, AFIC, ASPIM Rules)

7. Termination Payments

EU	Germany	UK	France	**The Netherlands**[lix]

General rules for listed companies

- The amount of severance payment in the event of dismissal of a member of the management board may not exceed one year's salary (the fixed remuneration component). If the maximum of one year's salary would be manifestly unreasonable for a member of the management board who is dismissed during his/her first term, he/she shall be eligible for a severance pay not exceeding twice the annual remuneration (best practice provision II.2.8 DCG Code).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- The firm shall only make severance payments if these reflect performance achieved over time and are designed in a way that they do not reward failure (art. 16 DCB Remuneration Code).

Rules applicable to the banking and insurance sector

- In the event of dismissal, remuneration must not exceed one year's salary (the 'fixed' remuneration component). If the maximum of one year's salary would be manifestly unreasonable for an executive board member who is dismissed during his or her first term of office, such board member shall be eligible for severance pay not exceeding twice the annual salary (art. 6.3.2 Dutch Banking Code; Article 6.3.2 Dutch Insurance Code).

Rules applicable to pension funds

- No specific rules are in place for pension funds on this subject. Remuneration Principle 8f (see par. 5 above) provides that the variable remuneration structure should provide for the possibility of exercising some degree of discretion when awarding variable compensation in order to counter undesirable effects, such as compensation that is not commensurate with actual performance. Principle 8f states that this is equally applicable in exceptional situations such as an acquisition or dismissal.

Disclosure of Remuneration Structure

8. Disclosure of Remuneration Structure[lx]

EU	Germany	UK	France	The Netherlands

General rules for listed companies

Special remuneration-related disclosure requirements:

- Each listed company should disclose a statement regarding the remuneration policy of the company (remuneration statement). It should be part of an independent remuneration report and/or be included in the annual accounts and annual report or in the notes to the annual accounts of the company (sec. 3.1 Rec. 2004).
- The remuneration statement should be clear and easily understandable (sec. 5.1 Rec. 2009) and should include the following (sec. 3.3 Rec. 2004):
  - An explanation of the importance of the variable/ non-variable components of directors' remuneration.
  - Sufficient information on the performance criteria on which any entitlement to share options, shares or variable components of remuneration is based.
  - Sufficient information on the linkage between remuneration and performance.
  - The main parameters and rationale for any annual bonus scheme and any other non-cash benefits.
  - A description of the main characteristics of supplementary pension or early retirement schemes for directors.
- Moreover, the remuneration statement should include the following (sec. 5.2 Rec. 2009):
  - An explanation how the choice of performance criteria contributes to the long-term interests of the company.
  - An explanation of the methods applied in order to determine whether performance criteria have been fulfilled.
  - Sufficient information on deferment periods with regard to variable components of remuneration.
  - Sufficient information on the policy regarding termination payments.
  - Sufficient information with regard to vesting periods for share-based remuneration.
  - Sufficient information on the policy regarding retention of shares after vesting.
  - Sufficient information on the composition of peer groups of companies the remuneration policy of which has been examined in relation to the establishment of the remuneration policy of the company concerned.

General disclosure requirements:

- Implementation of a general corporate governance statement to be included into the annual report and according to which any listed company has to provide information on the corporate governance code to which the company is subject, and/or the corporate governance code which the company may have voluntarily decided to apply, and/or all relevant information about the corporate governance practices applied beyond the requirements under national law (art. 46a para. 1 lit. a of EU Directive 78/660/EEC, as inserted by EU-Directive 2006/46/EC).
- Implementation of the "comply-or-explain" principle for European listed companies: To the extent to

8. Disclosure of Remuneration Structure[lx]

EU	Germany	UK	France	The Netherlands

which a company, in accordance with national law, departs from a corporate governance code it shall explain as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code, it shall explain its reasons for doing so (art. 46a para. 1 lit. b of EU Directive 78/660/EEC, as inserted by EU Directive 2006/46/EC).

Rules applicable to Financial Undertakings[lxi] pursuant to Rec. 2009-FS

- The remuneration policy should include measures to avoid conflicts of interest. The procedures for determining remuneration within the financial undertaking should be clear and documented and should be internally transparent (sec. 6.1 Rec. 2009-FS).
- The general principles of the remuneration policy should be accessible to staff members to whom they apply. Those staff members should be informed in advance of the criteria that will be used to determine their remuneration and of the appraisal process. The appraisal process and the remuneration policy should be properly documented and transparent to the individual staff members concerned (sec. 6.7 Rec. 2009-FS).
- Relevant information on the remuneration policy should be disclosed by the financial undertaking in a clear and easily understandable way to relevant stakeholders. Such disclosure may take the form of an independent remuneration policy statement, a periodic disclosure in annual financial statements or any other form (sec. 9 Rec. 2009-FS).
- The following information should be disclosed (sec. 8 Rec. 2009-FS):
  - Information concerning the decision-making process used for determining the remuneration policy, including if applicable, information about the composition and the mandate of a remuneration committee, the name of the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders;
  - Information on linkage between pay and performance;
  - Information on the criteria used for performance measurement and the risk adjustment;
  - Information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based;
  - The main parameters and rationale for any annual bonus scheme and any other non-cash benefits.
- When determining the level of the information which should be disclosed, Member States should take into account the nature, the size as well as the specific scope of activities of the financial undertakings concerned (sec. 8 Rec. 2009-FS).

Rules applicable to credit institutions[lxii] pursuant to Directive 2006/48/EC (recast by CRD III)[lxiii]

- Home Member State competent authorities shall collect information on the number of individuals per credit institution in pay brackets of at least EUR 1 million including the business area involved and the main elements of salary, bonus, long-term award and pension contribution. That information shall be forwarded to the Committee of European Banking Supervisors, which shall disclose it on an aggregate home Member State basis in a common reporting format. (art. 22 para 5 of Directive 2006/48/EC, recast by CRD III).
- The following information, including regular, at least annual, updates, shall be disclosed to the

8. Disclosure of Remuneration Structure[lx]

EU	Germany	UK	France	The Netherlands

public regarding the remuneration policy and practices of the credit institution for those categories of staff whose professional activities have a material impact on its risk profile:

- Information concerning the decision-making process used for determining the remuneration policy, including if applicable, information about the composition and the mandate of a remuneration committee, the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders;
- Information on link between pay and performance;
- Most important design characteristics of the remuneration system, including information on the criteria used for performance measurement and risk adjustment, deferral policy and vesting criteria;
- Information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based;
- Main parameters and rationale for any variable component scheme and any other non-cash benefits;
- Aggregate quantitative information on remuneration, broken down by business area;
- Aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the credit institution, indicating the following:
- Amounts of remuneration for the financial year, split into fixed and variable remuneration, and the number of beneficiaries;
- Amounts and forms of variable remuneration, split into cash, shares, share-linked instruments and other types;
- Amounts of outstanding deferred remuneration, split into vested and unvested portions;
- Amounts of deferred remuneration awarded during the financial year, paid out and reduced through performance adjustments;
- New sign-on and severance payments made during the financial year, and the number of beneficiaries of such payments; and
- The amounts of severance payments awarded during the financial year, number of beneficiaries and highest such award to a single person.

■ For credit institutions that are significant in terms of their size, internal organisation and the nature, scope and the complexity of their activities, the quantitative information referred to above also be made available to the public at the level of persons who effectively direct the business of the credit institution (annex XII, Point 15 of Directive 2006/48/EC, recast by CRD III).

Rules applicable to managers of alternative investment funds ("AIF")[lxiv]

■ An AIFM shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, make available an annual report for each financial year no later than 6 months following the end of the financial year. The annual report shall contain the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of

8. Disclosure of Remuneration Structure[lx]				
EU	Germany	UK	France	The Netherlands
beneficiaries, and, where relevant, carried interest paid by the AIF as well as the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF Ar. 22 no. 2 (e and (f) of the 2011/61/EU Directive).				

8. Disclosure of Remuneration Structure

EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

Special remuneration-related disclosure requirements[lxv]

- In addition to the provisions laid down in the Rec. 2004, the obligation to disclose the individual compensation of members of the management board in the annual report includes:
  - Benefits promised to members of the management board in case of an early termination.
  - Benefits promised to the member of the management board in case of the statutory termination, at their cash value, as well as the amount expended or set aside by the company during the financial year for this purpose.
  - Any changes to these promises agreed upon during the financial year.
  - Benefits promised in this connection to a former member of the management board who has left the company in the course of the financial year, and granted in the course of the financial year.

  (sec. 285 no. 9 lit. a sent. 6, sec. 314 para. 1 no. 6 lit. a sent. 6 German Commercial Code)
- The total compensation of each member of the management board is to be divided into variable compensation components disclosed by name. The same applies to promises of benefits that are granted to a member of the management board in case of an early or statutory end of mandate or that are changed during the financial year (no. 4.2.4 GCGC).
- The total remuneration shall be disclosed in a remuneration report which as part of the corporate governance report describes the compensation system for members of the management board in a generally understandable way (no. 4.2.5 GCGC).
- The chairman of the supervisory board shall outline the salient points of the compensation system and any changes thereto to the annual general meeting (no. 4.2.3 para. 6 GCGC).

General disclosure requirements

- The management board and supervisory board of capital market-orientated companies shall declare annually whether the companies complied and comply with the recommendations of the GCGC or which recommendations have not been or are not applied and why not (sec. 161 AktG – comply-or-explain principle in accordance with the EU-Directive 2006/46/EC).
- The management and supervisory boards have to issue since May 2009 a new corporate governance statement to be included into the company's annual report. This statement consists of (i) the declaration of conformity pursuant to sec. 161 AktG, (ii) information on company's operations to the extent they may have an impact on the company and go beyond any legal reporting requirements, especially, generally accepted rules of conduct or ethic codes, as well as (iii) a description of the working methods of the management and supervisory board including their respective committees (sec. 289a German Commercial Code).
- Statutory auditors to assert that the annual report contains the elements required by law (*e.g.* remuneration, compliance with the GCGC, etc.) (sec. 316, 317 German Commercial Code).
- The management board and the supervisory board shall report each year on the company's corporate governance in the annual report (corporate governance report according to the GCGC). This includes an explanation of possible deviations from the recommendations of the GCGC (no. 3.10 GCGC).

8. Disclosure of Remuneration Structure				
EU	**Germany**	UK	France	The Netherlands

Rules applicable to the banking sector

General rules for all executive directors and employees

- Executive directors and employees must be informed in writing of the structure of the remuneration systems applicable to them (sec. 3 (9) InstitutsVergV).
- Any institution is obliged to disclose separately for each business unit (i) the structure of the remuneration systems (in particular the key remuneration parameters, the composition of the remuneration and the way in which remuneration is awarded), and (ii) the aggregate amount of remuneration separated into fixed and variable remuneration, and the number of beneficiaries of the variable remuneration (sec. 7 (2) sentence 1 no. 1 and 2 InstitutsVergV).
- The disclosure is to be made at least on the undertaking's own website and must be updated at least once a year (sec. 7 (1) InstitutsVergV).
- Any involvement of external consultants shall be disclosed (sec. 7 (2) sentence 3 InstitutsVergV).

Special rules applicable to significant institutions in relation to remuneration systems of directors and those employees whose activities impact substantially the risk profile of the institution

- Any significant institution shall also publish the following: (i) the aggregate amount of remuneration, separated into fixed remuneration and variable remuneration, and the number of beneficiaries, (ii) the aggregate amount of guaranteed variable remuneration paid for hiring new staff and the number of beneficiaries per financial year, (iii) the aggregate amount of the portion of the variable remuneration spread over a period of time, separated into aggregate amounts deferred and paid out, stating the aggregate amount by which the variable remuneration is reduced due to negative performance contributions from executive directors and employees, their organisational unit and a negative overall performance from the undertaking, (iv) the composition of the variable remuneration, with particular reference to the portion which depend on the institution's long-term performance, and (v) the aggregate amount of payments due to individual contract for the termination of the contract and the number of beneficiaries per financial year, stating the highest single entitlement awarded (sec. 8 (3) InstitutsVergV).
- The institution shall publish the composition, functions and organisational integration of the remuneration committee (sec. 8 (2) InstitutsVergV).

Rules applicable to the insurance sector (including pension funds)

General rules for all executive directors and employees

- Executive directors and employees must be informed in writing of the structure of the remuneration systems applicable to them (sec. 3 (4) VersVergV).

Special rules applicable to significant undertakings in relation to the remuneration systems of executive directors and those employees whose activities impact substantially the risk profile of the undertaking

- Annual publication of a remuneration report with details of remuneration policy and remuneration structures, including the proportion of the variable remuneration (sec. 4 (8) VersVergV).

8. Disclosure of Remuneration Structure

EU	Germany	UK	France	The Netherlands

General rules for listed companies

Special remuneration-related disclosure requirements

- The UK Listing Rules provide that the board's report to shareholders must contain certain information on directors' remuneration including:
  - A statement of the company's policy on executive directors' remuneration.
  - The total remuneration package for each director, split up into separate elements (salary, benefits in kind, bonuses, share options etc.).
  - Details of any long-term incentive schemes.
  - An explanation and justification of any element of a director's remuneration which is pensionable.
  - Details of, and reasons for, any directors' service contract with notice periods of more than one year, or contract provisions for compensation on termination which exceed one year's salary and benefits in kind.
  - Information on defined benefit pension schemes detailing the amount of the increase during the period (excluding inflation), and the accumulated total amount at the end of the period, in respect of the accrued benefit to which each director has become entitled over the year.
  - Details of contributions made by the company to money purchase schemes for each director.
  - Details of the unexpired term of a director proposed for election or re-election at the next annual general meeting.

  (UK Listing Rule 9.8.8 R)
- Directors of the company must prepare a directors' remuneration report for each financial year of the company (sec. 420 UK Companies Act, Parts 2, 3 of Schedule 8 to the Large and Medium Sized Companies and Groups (Accounts and Reports) Regulations 2008).
- The directors' remuneration report must include details of:
  - The board's procedures relating to directors' remuneration.
  - The company policy on current and future directors' remuneration, including details and explanations of performance criteria for long-term incentive plans.
  - Details of each director's remuneration in the preceding financial year (emoluments, compensation, share options, long-term incentive plans and pensions).
  - Performance graphs to provide historic information on the company's performance against the relevant criteria.
  - Details of directors' pension.
  - Significant payments to past directors.
  - Sums paid to third parties in respect of a director's services.
  - Policy statements on length of contracts, notice periods and termination payments.

8. Disclosure of Remuneration Structure				
EU	Germany	**UK**	France	The Netherlands

- Information on directors' service contracts.
- A statement of how pay and employment conditions of employees of the company and other undertakings within the same group as the company were taken into account when determining directors' remuneration for the relevant financial year (Para. 4 Schedule 8 to the Large and Medium Sized Companies and Groups (Accounts and Reports) Regulations 2008).

<u>*General disclosure requirements*</u>

- The "comply-or-explain" principle requires the company to set out in its annual report to shareholders the reasons why any principles of the UK CG Code, including the provisions on the level and make up of remuneration and remuneration policy in sec. B, have not been complied with (UK Listing Rule 9.8.6.).

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- All FSA Remuneration Code firms are expected to ensure their remuneration policies, practices and procedures are clear and documented (FSA Remuneration Code 19A.2.4.G).
- BIPRU firms are required to disclose on an annual basis at least, amongst other things, information on the firm's decision-making process, the link between pay and performance, performance criteria for assessment of remuneration and aggregate quantitative information on total remuneration broken down by business area, senior management and members of staff indicating amongst other things: new sign on payments and severance payments made in the financial year, the number of beneficiaries and the split between variable and fixed remuneration (BIPRU Sourcebook).
- The FSA Remuneration Code firms are required to submit electronic annual data returns setting out aggregate data on their remuneration policies and practices, together with a certification that the firm's remuneration policies are compliant with the Code. The FSA will use the data to assess whether the firm's policies and practices warrant further investigation.
- FSA Remuneration Code firms will also be required to prepare a Remuneration Policy Statement ("**RPS**") which records the firm's self-assessment of compliance with the Code. The FSA expect the RPS to be reviewed and approved by a firm's remuneration committees or equivalent body with overall responsibility for remuneration policies. The level of detail to be supplied in the RPS and when it has to be filed with the FSA will depend on whether the firm is classified as Tier One, Two, Three or Four. Tier Two, Three and Four[lxvi] firms are required to complete a less detailed RPS on the basis of a questionnaire/template, and will not have to automatically file a copy of the RPS with the FSA, but can be requested to do so. The RPS should be reviewed annually to take account of any changes to policies, practices or procedures and the changes should be approved by the remuneration committee or equivalent body.[lxvii]
- Tier One firms must submit RPS to the FSA no later than three months before sign off is required.
- Prior notification to FSA required and guidance sought on retention awards made to the Remuneration Code staff (August 2011 FSA Guidance on Guaranteed Variable Remuneration).

8. Disclosure of Remuneration Structure

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

Special remuneration-related disclosure requirements:

- In the context of the specific prior approval procedure by the board of directors (or supervisory board as the case may be) of the company referred to in no. 3 above, those undertakings which grant benefits to the executive or managing directors or employees relating to compensation, indemnities or benefits which are due or likely to be due by virtue of said individual's entry into, departure from, or change of duties:
  - are to be specifically and individually voted upon by the board of directors (or supervisory board as the case may be) prior to their allocation (whereas the relevant individual must refrain from voting) and the publication of the relevant authorization is to be posted on the company's website within five days of the holding of the meeting and to remain accessible all through the duration of the relevant individual's term of office (art. R.225-34-1 and R.225-60-1 of the French Commercial Code);
  - notice is to be given by the president of the board of directors (or supervisory board as the case may be) to the auditors of the execution of any such undertaking within one month of the execution of the relevant document (art. L.225-40, L.225-88, R.225-30 and R.225-57 of the French Commercial Code;
  - the auditors have to make a special report on the relevant undertakings (with adequate details), such report to be filed at the company's registered office 15 days prior to the annual general meeting (art.R.225-31, R.225-58 and R.225-161 of the French Commercial Code); and
  - those undertakings are to be specifically voted upon in the next annual general meeting of the company (art.L.225-40 and art.L.225-88 of the French Commercial Code).
- Upon payment of the relevant compensation indemnity or benefit, the board of directors (or supervisory board as the case may be) has to check that the conditions set forth for such payment (performance requirements) have effectively been fulfilled. The relevant board resolution has to be published in the manner set forth above. Any payment nor consistent with Item conditions is void.
- art. 21.1 of the FGC Code recommends that all components of the remuneration (whether acquired or contingent) of the executive directors be published immediately after the meeting of the board.
- The annual report drawn up by the board of directors (or the management board as the case may be) by virtue of Article L.225-100 *et seqq.* of the French Commercial Code must contain information on the following items:
  - The total remuneration and benefits of all kinds paid by the company to each executive or managing director or member of the supervisory board during the relevant accounting period, including any allotment of capital securities, debt instruments or securities giving access to share capital or giving entitlement to allotment of debt instrument of the company or of companies whose share capital is held up to at least 50% by the company or of companies holding at least 50% of the share capital in the company. The remuneration covers all remuneration items (fixed and variable).
  - The total remuneration and benefits of all kinds which the executive or managing director or member of the supervisory board has received from controlled companies within the meaning of art. L.233-16 of the French Commercial Code (control for consolidation purposes) or from the

8. Disclosure of Remuneration Structure				
EU	Germany	UK	**France**	The Netherlands

company which controls the company in which the duties are performed during the relevant accounting period.

- The description and itemisation of the fixed, variable and exceptional components that is contained in the remuneration and benefits as well as the description of the criteria used to calculate these components or of the circumstances giving rise to them.
- If the relevant agreement is likely to have an impact in the event of a tender offer over the company, information on the agreements providing for the payment of indemnities to members of the administrative (or management board as the case may be).

- The AMF (Recommandation de l'AMF relative à l'information à donner dans les documents de référence sur les rémunérations des mandataires sociaux dated 22 December 2008 as contained amongst other documents in the AMF Guide for compiling registration documents as updated on 20 December 2010) and the FGC have issued guidance (art. 21.2 of the FCG) as to how these disclosure requirements should be organised and detailed in the annual report. The issuers should fill in 10 charts which contain extensive disclosure on compensation received by directors on an individual basis.
- The statutory auditors are specifically required to attest in the context of their general report presented to the shareholders that the information regarding remuneration and other benefits is true and accurate (art. L.823-10 and art. R.823-7 3° of the French Commercial Code).
- The president of the board of directors (or supervisory board as the case may be) is required to issue a report on internal control process commenting inter alia, on the working methods of the relevant board and on the ways in which the company manages the various risks which it encounters (art. L.225-37 and L.225-68 of the French Commercial Code). In this context, the report must contain details on the principles and rules drawn up for the purpose of determining the remuneration and benefits of all kinds granted to executive or managing directors or members of the supervisory board. Following the recent publication of the law on balanced representation of women and men on company boards, the report is also to contain information as to what extent the company has applied the principle towards a balanced representation on its board (see no. 14 below).
- Statutory auditors are to assert in a specific report annexed to the internal control report that the information contained is accurate (art. L.225-235 of the French Commercial Code).
- The annual report, the auditors' reports and the internal control report are part of the documents to be sent to or put at shareholders' disposal prior to the annual general meeting (art.L.225-115, R.225-81 and R.225-83, art.L.451-1-2 of the FMFC, art. 221-1 and subs. of the AMF General Regulation)
- Information regarding stock-options and bonus shares is to be disclosed to the annual general meeting of the company by way of a special report (art.L.225-184 and L.225-197-4 of the French Commercial Code)
- The amount of the ten highest remunerations are to be disclosed in the bilan social (a document issued by companies having more than 300 employees which describes, inter alia, the remuneration structure and the human resources policy of the company) (art. 2323-74 of the French Labour Code)
- Furthermore, the aggregate amount (as certified by the auditors) of the remuneration paid to the

8. Disclosure of Remuneration Structure				
EU	Germany	UK	**France**	The Netherlands

five or ten highest paid individuals in the company (depending on whether or not the total number of employees of the company exceeds 200) is to be disclosed (art. L225-115 of the French Commercial Code)

- Transactions (whether by way of acquisitions, transfers, exchanges of or subscriptions for shares or related financial instruments) on shares (or related financial instruments) in a company whose shares are listed on a regulated market or on an organized multilateral trading facility carried out by board members and/or managing directors of the relevant company or individuals held by virtue of their duties and accessibility to inside information as executive of said company or close family members of board members, managing directors or executive (as above characterized) of the same are to be disclosed to the AMF within five days of negotiation via the filing of a declaration. Exemptions to this rule apply. Exercise of stock options as well as sale of shares pursuant to the exercise of stock options fall within the scope of the disclosure requirement (art. L.621-18-2 of the French Monetary Code and art. 223-22 A and subs of the AMF General Regulation)

General disclosure requirements:

- The internal control report must contain a statement as to whether the company complies with a corporate governance code as drawn up by representative professional organisations of companies (such as the FCG drawn up by the AFEP/MEDEF) and if so, explain why provisions of such code have not been complied with. If the company does not refer to any such code, the report must indicate rules which are abided by in addition to the requirements set forth by law and explain the reasons why the company has decided not to refer to any such code (comply or explain principle) (art. L225-37 and L225-68 of the French Commercial Code).
- The works council and other employee representatives of the company are to be provided with the same information and documents as those provided to shareholders for the annual general meeting (art. 2323-8 of the French Labour Code).
- The tax declaration of the company has to contain a detailed description of the remuneration structure.
- Various filing and advertising formalities are to be performed by the company with the companies register and the tax authorities in connection, inter alia with the company's accounts or other items of corporate information and several items of corporate information (covering the current accounting period and past accounting periods) are to be left accessible for consultation at the company's registered office as well as posted on the company's website.
- The AMF monitors the quality of information sent to shareholders. In this content, copies of documents sent are to be filed with the AMF (art. L.621-18 of the FMFC). Regulated information is to be filed with the AMF, such to include the internal control report at specific period (art. 221-1 and subs of the AMF General Regulation).
- The AMF issues a yearly report on the basis of the information given by the listed companies in their internal control report (art. L621-18-3 of the FMFC). In this context, it analyses reports and issues recommendations as to best practices. The most recent report available is that released on 13 December 2011. For more details on this issue, please refer to footnote x and no. 16 below.
- Listed companies are required to set up a website dedicated to the posting of the various items of information required by law. Amongst other items and in respect of shareholders meetings held as from 1st October 2010, the following items of information should be posted for a period of 21 days starting from the convening notice: draft texts of resolutions and documents to be submitted to the

8. Disclosure of Remuneration Structure				
EU	Germany	UK	**France**	The Netherlands

shareholders' meeting by virtue of the provisions of the law (art. R.225-73-1 of the French Commercial Code).

Rules applicable to credit institutions and investment firms

- The minutes of the decisions of the decision-making body relating to the remuneration policy shall be transmitted to the French Banking Commission (which merged into the ACP) (art. 38-4 of Regulation n° 97-02).
- Every year, credit institutions and investment firms shall provide the ACP with a report containing the following information on the policy and practices relating to the remuneration of the members of the executive board and persons whose professional activities have a significant impact on the risks profile of the company:
  - The decision-making process put in place in order to determine the remuneration policy of the company, including the composition and mission of the *ad hoc* remuneration committee and the identity of the external advisors used to determine the remuneration policy.
  - The main characteristics of the remuneration policy, including in particular the criteria used to measure the performances and adjust the remuneration to the risks, the link between remuneration and performance, the policy with respect to deferred and guaranteed remunerations, as well as the criteria used to determine the part of cash remuneration compared with the other forms of remunerations.
  - Consolidated quantitative information as to the remuneration of the members of the executive board and persons whose professional activities have a significant impact on the risks profile of the company. For each category, the following information must be included in the report:
    - The total amount of remuneration for the relevant accounting period, divided into fixed and variable remuneration and the number of beneficiaries. Such information should also be detailed for each area of activity;
    - The amounts and forms of variable remunerations, divided into cash remunerations, shares, shares linked instruments and other forms of remunerations;
    - The amounts of outstanding deferred remunerations, divided into certain and uncertain remunerations.
    - The amounts of outstanding deferred remunerations granted during the relevant accounting period, paid and decreased, after adjustments by the taking into account of the performances;
    - Payments made for new recruitments or redundancy during the relevant accounting period and the number of beneficiaries;
    - Guaranteed redundancy payments granted during the relevant accounting period, the number of beneficiaries and the highest sum granted to a single beneficiary for such reason.

  (art. 43-1 of Regulation n° 97-02)
- Once a year, credit institutions and investment firms shall publish the information mentioned above in Points 1 to 3. Such publication shall be made in a way adapted to their size, organization and the

8. Disclosure of Remuneration Structure

EU	Germany	UK	**France**	The Netherlands

nature, scope and complexity of their activities. Such information may be published at the group level on which the ACP exercises, on a consolidated basis, its supervision, as the case may be.

- The report relating to the remuneration policy shall be transmitted to the decision-making body and, as the case may be, the audit committee (art. 44 of Regulation n° 97-02).

Rules applicable to portfolio management companies

- The portfolio management company shall communicate within the company the general principles of its remuneration policy.
- The portfolio management company must make available to the AMF and, as the case may be, the employees' representatives, the following information:
- 1. the decision-making process put in place to establish the company's remuneration policy, including the composition and mission of the *ad hoc* remuneration committee;
- 2. the main characteristics of the remuneration policy (for instance, the criteria used to assess performance and adjust remunerations to the risks and the link between remuneration and performance).

(part V of the AFG, AFIC, ASPIM Rules)

8. Disclosure of Remuneration Structure

EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

Special remuneration-related disclosure requirements

- Dutch accounting rules provide that the company must disclose in its annual report the remuneration awarded to each member of the management board and of the supervisory board. The disclosure has to specify the amounts of periodically paid remuneration, the remuneration payable in instalments, the distributions made on termination of the employment and profit shares and bonus payments that have been agreed on (art. 2:383c para. 1, 3 Dutch Civil Code). In addition, the company must disclose the remuneration to former members of the management board and members of the supervisory board to the extent that they should be allocated to the relevant financial year.
- The granting of rights to each member of the management board and member of the supervisory board to acquire shares must be disclosed as well as the key terms and conditions in relation to this granting (art. 383d Dutch Civil Code).
- If the relevant provisions of the DCG Code are applicable, the supervisory board shall prepare a remuneration report explaining the remuneration policy in clear terms and presenting the various components of the individual full remuneration of the members of the management board. The report shall contain amongst others:
  - The fixed salary, annual cash bonus, shares, option and pension rights that have been awarded and other ancillary income.
  - A statement that the scenario analyses have been made.
  - For each member of the management board the maximum and minimum numbers of shares conditionally granted in the financial year or other share-based remuneration the member of the management board may acquire when the criteria are met.
  - A table listing for incumbent members of the management board at year end for each year in which share-based remuneration has been granted:
    - The value and number of shares or share-based remuneration on the date of granting.
    - The present status of shares and share-based remuneration awarded, *i.e.* whether they are conditional or unconditional, the ending of vesting and lock-up periods.

  (best practice provisions II.2.12 and II.2.13 DCG Code)
- Statutory auditor to assert that the annual report contains the elements required by law (art. 2:393 Dutch Civil Code).
- The remuneration report shall describe how the remuneration policy has been implemented in the past financial year and the remuneration policy planned for the upcoming years. The remuneration report shall explain how this policy contributes to the achievement of the long-term objectives of the company in line with its risk profile. The remuneration report shall be disclosed on the company's website (best practice provisions II.2.12 and II.2.13 DCG Code).
- The main elements of the contract of a member of the management board with the company shall be disclosed (best practice provision II.2.14 DCG Code).

8. Disclosure of Remuneration Structure				
EU	Germany	UK	France	**The Netherlands**

General disclosure requirements

- The management board and the supervisory board shall broadly outline the corporate governance structure of the company in a separate chapter of the annual report. As a consequence of the amendment by EU-Directive 2006/46/EC dated 1 April 2009, Dutch listed companies are generally required to publish certain information in their annual corporate governance statement. The corporate governance statement is considered to form part of the company's annual report, but it can also be published on the company's website with a reference thereto in the annual report. The corporate governance statement must contain information on the composition and operation of the management and supervisory boards and their committees (e.g. appointment, remuneration and audit committee).
- The corporate governance statement extends the scope of the "comply-or-explain" statement pursuant to which the company must indicate expressly to what extent it applies the best practice provisions of the DCG Code and other relevant codes of conduct and, if does not do so, why and to what extent it does not apply them ("comply-or-explain" principle in accordance with the EU-Directive 2006/46/EC).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- The firm must publish the following information annually regarding employees whose professional activities have a material impact on its risk profile:
  - information concerning the decision-making process used in determining the remuneration policy including, if applicable, information about the composition and the mandate of a remuneration committee, the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders;
  - Information on the link between pay and performance;
  - The most important characteristics of the remuneration system, including information on the criteria used for performance measurement and risk adjustment, deferral policy and vesting criteria;
  - Information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based;
  - The main parameters and rationale for any variable remuneration scheme and any other non-cash benefits;
  - Aggregate quantitative information on remuneration, broken down by business unit;
  - Aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the financial institution, indicating the following:
    - The amounts of remuneration for the financial year, split into fixed and variable remuneration, and the number of beneficiaries;
    - The amounts and types of variable remuneration, split into cash, shares, share-linked instruments and other types;

8. Disclosure of Remuneration Structure				
EU	Germany	UK	France	**The Netherlands**

- The amounts of outstanding deferred remuneration, split into vested and unvested portions;
- The amounts of deferred remuneration awarded during the financial year, paid out and reduced through performance adjustments;
- New sign-on and severance payments made during the financial year, and the number of beneficiaries of such payments; and
- The amounts of severance payments awarded during the financial year, the number of beneficiaries and the highest such award to a single person.

- In line with the CEBS Guidance, institutions should also provide general information about the basic characteristics of their institution-wide remuneration policies and practices (art. 25 DCB Remuneration Code).

Rules applicable to pension funds

- The pension fund shall be transparent about its remuneration policy towards all the relevant stakeholders in a clear manner. (Remuneration Principle 7[lxviii]) This means that at request, the fund shall provide insight to the regulators in the set-up of the remuneration policy and the consequences thereof for the behaviour of employees and directors and the risk profile of the fund. In general, the DCB recommends providing insight in the remuneration policy to shareholders and consumers, which for pension funds could be employers and employees, to enable them to determine whether the remuneration policy matches their interests.

Liability of (Supervisory) Board for Inappropriate Remuneration

9. Liability of (Supervisory) Board for Inappropriate Remuneration				
EU	Germany	UK	France	The Netherlands
■ N/A				

9. Liability of (Supervisory) Board for Inappropriate Remuneration				
EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- Members of the supervisory board are obliged to pay damages to the company (internal liability) if they approve an inappropriate compensation (sec. 116 sent. 3, Sect. 87 para. 1, sec. 93 para. 2 sent. 1 AktG).
- However, members of the supervisory board cannot be held liable vis-à-vis third parties (external liability).

9. Liability of (Supervisory) Board for Inappropriate Remuneration				
EU	Germany	**UK**[lxix]	France	The Netherlands

General rules for listed companies

- There is no specific legislation governing the liability of board members sitting on the remuneration committee for inappropriate determination of remuneration. Board members are subject to general duties of directors to act within their powers, exercise independent judgment, act with reasonable care, skill and diligence and avoid conflicts of interests (sec. 171 – 177 UK Companies Act).
- Breach of directors' general duties may give rise to civil action by shareholders (via a statutory derivation action) or a negative advisory vote on the company's remuneration policies. (Note that there are proposals to amend the UK CG Code to provide that in the event that the shareholders' non-binding resolution on a remuneration committee report attracts less than 75% of total votes cast, the chairman of the remuneration committee should stand for re-election in the following year irrespective of his/her normal appointment).
- All directors of FTSE-350 companies should be submitted for annual re-election, subject to continued satisfactory performance (B.7.1 UK CG Code). It should be noted that this requirement is subject to the "comply or explain" principle of the UK CG Code, and that some UK investor protection committees have indicated that they will allow listed companies additional time to comply with the re-election requirement.
- PIRC, an independent research and advisory consultancy in the UK providing services to institutional investors on corporate governance and corporate social responsibility, has stated in its UK Shareholder Voting Guidelines that the annual election of directors should not be limited to FTSE 350 companies and will look to all listed companies to hold full elections on an annual basis. However, it acknowledges companies need to prepare for this measure and PIRC will suspend implementation of across the board voting recommendations until 2012.

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- Significant breaches of the FSA Remuneration Code could lead to the FSA taking action against the firm.

9. Liability of (Supervisory) Board for Inappropriate Remuneration

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

Board of directors

- No specific provision governing liability of members of the board of directors for inappropriate determination of remuneration. However, the fact of determining remuneration in an inappropriate manner may give rise to liability under the general civil and criminal law provisions applicable to members of the board of directors. Members of the board of directors can be found liable personally as well as collectively. The collective liability can be joint and several between the members of the board of directors. Members of the board of directors can (as opposed to members of the supervisory board) be found liable for negligence within the context of the management of the company.

Supervisory board

- No specific provision governing liability of members of the supervisory board for inappropriate determination of remuneration. Only personal liability in the event of non-compliance with their duties as a member of the supervisory board. The fact of inappropriate determination of remuneration may in some cases give rise to liability under the general civil law liability rules (art. L.225-257 French Commercial Code). Potential criminal liability remains rather theoretical.

Rules applicable to the financial sector

- Breaches of Regulation n° 97-02, FBF Professional Standards and AMFI Professional Rules could lead to the ACP taking action and imposing disciplinary sanctions against the members of the executive body or decision-making body of a credit institution or investment firm.
- Breaches of AFG, AFIC, ASPIM Rules could lead to the AMF taking action and imposing disciplinary sanctions against the responsible managers of a portfolio management company.
- No specific sanctions are provided for as regards the violation of the prohibition measures set out by Article 4 paragraph V of the Amending Finance Bill for 2011, by the board of directors or management boards of credit institutions to which the French State has provided financial support, referred to in no. 3 above. However the violation of those provisions might expose to liability, board members or management boards who are found guilty of such violation, on the grounds of an error of management (pursuant to Article L. 225-251 of the Code of Commerce) and/or, possibly, for breach of legal or regulatory provisions applicable to limited liability companies (although the provisions of Article 4 paragraph V of the Amending Finance Bill for 2011 are not incorporated into the provisions applicable to limited liability companies contained in the French Commercial Code but it is referred to therein). Moreover, the board of directors or management boards could expose themselves to disciplinary sanctions by the ACP due to their position of directors of a credit institution, being responsible in such quality for the compliance by the credit institution concerned with applicable laws and regulations.

9. Liability of (Supervisory) Board for Inappropriate Remuneration				
EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- With regard to the determination of remuneration the supervisory board is only accountable to the annual general meeting for compliance with the DCG Code, *e.g.* the remuneration structure (principle I DCG Code).
- No specific provision governing liability of members of the supervisory board for inappropriate determination of remuneration. Only personal liability in the event of non-compliance with their duties as a member of the supervisory board (mismanagement).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- Significant breaches of the DCB Remuneration Code could lead to the Dutch Authority for the Financial Markets (AFM) or the Dutch Central Bank (DCB) taking action against the firm and against individuals that effectively supervised the conduct in question, i.e. the breach of the DCB Remuneration Code, or where the conduct was under the authority of any such individual. A breach would in principle also amount to a criminal offence (art. 1:80 FMSA) (art. 1 Economic Offences Act)

Rules applicable to pension funds

- Since the Remuneration Principles[lxx] are not laid down in formal regulations for pension funds (in contrast to financial undertakings), the regulators do not have a specific legal basis to take actions against the supervisory board members when the determined remuneration is in breach of the Remuneration Principles. The DCB has requested the Ministry of Employment and Social Affairs to be granted the authority to carry out, supervise and enforce remuneration regulations for pension funds.
- The Pensions Act provides that pension funds shall organise their operations in such a way as to safeguard controlled and sound business operations (art. 143 sub 1 Pensions Act). This Article provides the DCB with a general basis for acting against pension funds when their remuneration policy or the execution thereof is considered to be in breach of the Article. In such situations the DCB could for example issue instructions to the pension fund to amend the policy. Also, significant breaches of Article 143 Pensions Act could lead the DCB to take action against the fund and against individuals that effectively supervised the conduct in question, i.e. the breach of article 143, or where the conduct was under the authority of any such individual (art. 176 Pensions Act).

Independent Remuneration Consultants

10. Independent Remuneration Consultants

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- There are no legal obligations to retain an independent remuneration consultant.
- When using the services of a consultant with a view to obtaining information on market standards for remuneration systems, the remuneration committee should ensure that the consultant concerned does not at the same time advise the human resources department or executive or managing directors of the company concerned (sec. 9.2 Rec. 2009).

10. Independent Remuneration Consultants				
EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- There are no legal obligations to retain an independent remuneration consultant.
- External compensation experts involved for evaluating the appropriateness of the compensation must be independent from respectively the management board and the company (no. 4.2.2 para. 3 GCGC).
- Any involvement of external consultants shall be disclosed (sec. 7 (2) sentence 3 InstitutsVergV).

10. Independent Remuneration Consultants

EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- There are no legal obligations to retain an independent remuneration consultant.
- The remuneration committee is responsible for appointing any consultants in respect of executive remuneration. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company (D.2, D.2.1 UK CG Code).
- Consultants to the remuneration committee should be independently appointed and should be independent of management of the company. The function of remuneration consultants should be subject to periodic tender (NAPF Guidance).
- The UK Government has noted that remuneration consultants who advise remuneration committees often have a significant, if not transparent, influence on the decisions of the committee, and in its call for evidence (see endnote xliii) is seeking views on whether it might be appropriate to broaden the membership of remuneration committees to include consultants and other relevant third parties.

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- Remuneration committees may seek internal and external independent advice however there is no obligation to do so.

10. Independent Remuneration Consultants

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- There is no legal provision regarding the retention of independent remuneration consultant. As a matter of general corporate law, the board of directors must decide the setting up of committees in charge of reviewing specific issues. The composition of these committees is at the board of directors' discretion: the committee may be made up in whole or in the part of shareholders or non-shareholders, board members or non board members. The task allocated to such committees is decided by the board and a specific remuneration may be granted to its members (art.R.225-29 of the French Commercial Code).
- The FCG Code recommends that several committees be set up for the purpose of inter alia carrying out preparatory work in connection with the remuneration policy and the appointment of board members (Art 13 of the FCG Code).

Rules applicable to credit institutions and investment firms

- The majority of credit institutions or investment firms remuneration committee members shall be independent and have an expertise in remuneration and risk management. All members of remuneration committee are members of the decision-making body. If the company is listed, the independent members must meet the conditions set out for independent directors in the FCG, Part I-2 of the FBF Professional Standards and paragraph 14 of the AMAFI Professional Standards. The AMAFI Professional Standards add in respect of non-listed companies that the independent members must not carry out executive functions within the company (paragraph 14 of the AMAFI Professional Standards).

Rules applicable to portfolio management companies

- As regards portfolio management companies there are no specific provisions regarding the appointment of independent remuneration consultants when setting up a remuneration committee. However, pursuant to Part III (B) of AFG, AFIC, ASPIM Rules, remuneration of members of the compliance and internal control division should be set independently of the members of divisions whose they verify and validate the operations and should be sufficiently high to attract qualified and experienced staff.

10. Independent Remuneration Consultants				
EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- If the remuneration committee makes use of the services of a remuneration consultant in carrying out its duties, it shall verify that the consultant concerned does not provide advice to the company's management board members (best practice provisions III.5.13 DCG Code).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- The CEBS Guidance, which is in principle followed by the DCB, provides, amongst others, that the remuneration committee must review the appointment of external remuneration consultants that the internal supervisor[lxxi] may decide to engage for advice or support.
- The CEBS Guidance recommends that remuneration committees seek internal and external independent advice and the remuneration committee should have regard to this guidance.
- When disclosing details of their remuneration structure, firms shall provide, amongst others, information concerning the decision-making process used in determining the remuneration policy including, if applicable, information about the composition and the mandate of a remuneration committee, the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders. (art. 25 DCB Remuneration Code)

Rules applicable to pension funds

- The Remuneration Principle 4 lxxii provides that the supervisory board (or any similar internal supervisory body) should arrange for the careful and sound design, implementation and evaluation of the compensation policy for the management board; it should also supervise the compensation policy for the entire enterprise; each variable compensation structure within which compensation above a fixed level is possible requires the prior approval of the supervisory board. In connection with this principle, the DCB highlighted that supervisory board members should be aware of the incentives which may emanate from the compensation structures they frame for directors and of their role in limiting and managing any negative consequences of these structures; as this is not an easy task, the supervisory boards often uses the services of external advisers. It is important for such advisers to be appointed by the supervisory board and not by the management board. Ultimately it is the supervisory board that must ensure that it is sufficiently able to make its own independent assessment of what is desirable and appropriate with regard to the management of the enterprise in keeping with the long-term interests of the various stakeholders.

D&O-Insurance and Individual Deductible

11. D&O-Insurance and Individual Deductible				
EU	Germany	UK	France	The Netherlands
Rules applicable to credit institutions[lxxiii] pursuant to Directive 2006/48/EC (recast by CRD III)[lxxiv] ■ Staff members are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements (annex V, sec. 11, no. 23 (s) of Directive 2006/48/EC, recast by CRD III).				

11. D&O-Insurance and Individual Deductible

EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- In case of D&O insurance for members of the management board a deductible of at least 10% of the loss up to at least the amount of one and a half times the fixed annual compensation of the member of the management board must be provided for (sec. 93 para. 2 AktG, no. 3.8 para. 2 sent. 1 GCGC).
- Recommended insurance deductible in case of a D&O insurance for members of the supervisory board (no. 3.8 para. 2 sent. 2 GCGC).

11. D&O-Insurance and Individual Deductible				
EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- Companies should arrange appropriate insurance cover in respect of legal action against its directors (A.1.3 UK CG Code).
- A company may purchase third party indemnity insurance in favour of a director in respect of any liability incurred by the director defending civil proceedings brought by a third party (sec. 232-234 UK Companies Act).
- In addition to the purchase of D&O insurance, a company is able to indemnify its directors against liabilities incurred to a person other than the company, subject to certain limitations (Sec 232-234 UK Companies Act).

11. D&O-Insurance and Individual Deductible				
EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

- No individual retention provided for by law with respect to D&O insurance. However, companies are increasingly taking out insurance policies covering financial consequences of liability in tort incurred by members of the various boards.
- Members of the board of directors (or supervisory board as the case may be) are no longer by law required to pledge (some of their) shares of the company as security for the event they should be found liable. However, the articles of association may still require such security.
- See no. 12 below in connection with registration of shares held by board members in listed companies.

11. D&O-Insurance and Individual Deductible				
EU	Germany	UK	France	**The Netherlands**

Rules applicable to the investment services sector

- Smaller investment firms with limited activities may be exempt from the requirement to have a minimum level of equity capital, if they have a professional indemnity insurance that meets the standards described in the FMSA.

Rules applicable to the insurance sector

- Insurance brokers and reinsurance brokers are required by law to have professional indemnity insurance in place.

Investment and Retention of Shares in the Company

12. Investment and Retention of Shares in the Company

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- After vesting, directors should retain a number of shares until the end of their mandate, subject to the need to finance any costs related to acquisition of the shares. The number of shares to be retained should be fixed (sec. 4.3 Rec. 2009).

Rules applicable to credit institutions[lxxv] pursuant to Directive 2006/48/EC (recast by CRD III)[lxxvi]

- A substantial portion (not less than 50%) of any variable remuneration (deferred and not deferred) shall consist of an appropriate balance of (i) shares or equivalent ownership interests, subject to the legal structure of the credit institution concerned or share-linked instruments or equivalent non-cash instruments, in case of a non-listed credit institution, and (ii) where appropriate, other instruments that adequately reflect the credit quality of the credit institution as a going concern. These instruments shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the credit institution. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate (annex V, sec. 11, no. 23 (o) of Directive 2006/48/EC, recast by CRD III).

12. Investment and Retention of Shares in the Company

EU	**Germany**	UK	France	The Netherlands

Rules applicable to the banking sector

Special rules applicable to significant undertakings in relation to remuneration systems of executive directors and those employees whose activities impact substantially the risk profile of the institution

- 50% of the variable remuneration spread over the deferral period and 50% of the non-spread variable remuneration shall depend on the undertaking's long-term performance. In each case an appropriate period shall apply, after which the relevant portion of the variable remuneration may become available at the earliest (InstitutsVergV sec. 5 (2) no. 5).

Rules applicable to the insurance sector (including pension funds)

Special rules only for significant undertakings and for remuneration systems of executive directors and those employees whose activities substantially impact the risk profile of the undertaking

- 50% of the deferred variable remuneration shall be dependent on the undertaking's long-term value creation (VersVergV sec. 4 (3) no. 3).

12. Investment and Retention of Shares in the Company				
EU	Germany	**UK**	France	The Netherlands

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- Tier One and Two Remuneration Code firms must ensure that at least 50% of variable remuneration should consist of shares, share-linked instruments or equivalent non-cash instruments (in the case of non-listed credit institutions). Retained shares/other instruments must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the firm (FSA Remuneration Code 19A.3.47).

12. Investment and Retention of Shares in the Company

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

- Members of the board of directors (or supervisory board as the case may be) are no longer required (since 1 January 2009) to own at least one of the company's shares. However, the articles of association may still require such share ownership.
- According to the FCG Code members of the board of directors should be shareholders of the company and hold a significant number of shares. If the members of the board of directors are not shareholders of the company upon their appointment, they should acquire shares with their remuneration (art. 17 para. 3 of the FCG Code).
- With a view to preventing insider dealing, individuals (such as board members) are required to register the shares they (or close members of their family) hold in listed companies as registered shares (*mise au nominatif et dépôt de titres*) (art. L.225-109 of the French Commercial Code).
- As mentioned in no. 5 above, the exercise of stock options (or sale of stock) by executive or managing directors is restricted (at least for part of the options or bonus shares) until the end of the relevant individuals' term of office (art. L.225-185, L.225-197-1 of the French Commercial Code and art. 20.2.3 of the FCG Code).
- As mentioned in no. 8 above, transactions carried out on listed shares by board members or close members of their family are subject to disclosure requirements.

Rules applicable to credit institutions and investment firms

- The variable remuneration (both the deferred and the non-deferred portion) awarded for a financial year to employees of credit institutions or investment firms, whose professional activities have a material impact on the risk profile of the credit institutions or investment firms, shall be at least 50% in form of, *inter alia*, shares or share-linked instruments. The award of shares or linked-shares shall be subject to a minimum retention period of at least six months (part II-7 of the FBF Professional Standards and paragraph 59 of the AMAFI. Professional Standards).

Rules applicable to portfolio management companies

- Pursuant to Part II (B) of the AFG, AFIC, ASPIM Rules, as a general rule, remuneration of the employees of portfolio management companies could be, where possible, in the form of securities, stock options or equivalent securities but no retention period is required or recommended.
- The AFG Recommendations recommends to its members that executive directors should personally (i) hold (at risk) a significant amount of company shares and (ii) also keep as company shares (at risk) a portion of their exercised stock options.

12. Investment and Retention of Shares in the Company

EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- If members of the management board are granted options, these shall in any event not be exercised in the first three years after the date of granting (best practice provision II.2.4 DCG Code).
- Shares granted to members of the management board without financial consideration shall be retained for a period of at least five years or until at least the end of the employment, if this period is shorter (best practice provision II.2.5 DCG Code).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- At least 50% of variable remuneration should consist of shares (or other specified instruments) and this percentage should be applied equally to both the deferred and non-deferred portions (art. 18.1 and 18.3 DCB Remuneration Code).
- Variable remuneration paid in shares (or other specified instruments) should be subject to an appropriate retention period (art. 18.2 DCB Remuneration Code). The minimum retention period is in principle one year. The larger the impact of activities conducted by an employee on the firm's risk profile, the longer the retention period should be.

Rules applicable to the banking and insurance sector

- Shares granted to executive board members without financial consideration shall be retained for a period of at least five years or at least until the end of the employment, if this period is shorter. If options are granted, they shall, in any event, not be exercised in the first three years after the date on which they were awarded (art. 6.3.4 Dutch Banking Code; Article 6.3.4 Dutch Insurance Code).

Rules applicable to pension funds

- The ratio between remuneration in cash, shares, options or other remuneration components shall be in line with the risk management of the fund (Remuneration Principle 8h[lxxvii]).

Number of Mandates

13. Number of Mandates				
EU	Germany	UK	France	The Netherlands

General rules for listed companies

- Each director should devote to his duties the necessary time and attention, and should undertake to limit the number of his other professional commitments (in particular any directorships held in other companies) to such an extent that the proper performance of his duties is assured (sec. 12.1 Rec. 2005).

13. Number of Mandates

EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- A member of the supervisory board is not permitted to be a member in more than ten supervisory boards, whereas the role of a chairman counts as two memberships. Up to five memberships in supervisory boards of companies that belong to the same group are not taken into account for these purposes (sec. 100 para. 2 AktG).
- Every member of the supervisory board shall take care that he/she has sufficient time to perform his/her mandate (no. 5.4.5 sent. 1 GCGC).
- Members of the management board of a listed company shall not accept more than a total of three supervisory board mandates in non-group listed companies or in companies with similar requirements (no. 5.4.5 sent. 2 GCGC).

Rules applicable to the banking and the insurance sectors (including pension funds)

- Not more than two former managing directors are allowed to be member of the relevant institution's supervisory board (sec. 36 para. 3 sentence 5 KWG; sec. 7a para. 4 sentence 3 VAG).
- Supervisory board members may not assume more than five mandates in entities supervised by BaFin that are not members of the same group of companies (sec. 36 para. 3 sentence 6 KWG; sec. 7a para. 4 sentence 4 VAG).

13. Number of Mandates

EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- The board should not agree to a full-time executive director taking on more than one non-executive directorship in a FTSE 100 company nor the chairmanship of such a company (B.3.3 UK CG Code).
- The letter of appointment for non-executive directors of the board should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved and the board should be informed of subsequent changes (B.3.2 UK CG Code).
- There are no legal restrictions on the number of offices that a board member may hold.
- Care should be taken to ensure that all directors are able to allocate sufficient time to the company to discharge their responsibilities effectively (B.3 UK CG Code).

13. Number of Mandates

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

- An individual may be a member of up to five boards of directors or supervisory boards (art. L.225-21 al.1, L.225-77 al.1, L.225-94 al.1 of the French Commercial Code). Multiple board memberships within a consolidated group company[lxxviii] count as one. The holding of executive directorships (such as that of managing director) follows specific and tougher rules (art. L.225-54 al.1 and L.225-67 al. 1 of the French Commercial Code).
- As regards unlisted companies, which are controlled by the same consolidated group parent company (*i.e.* sister companies), the board memberships in these companies should, for the purposes of the above rule, be counted as one board membership only, provided however, that these board memberships within the same group do not exceed a maximum of five.
- Any appointment as executive director should also be taken into account for the purposes of the above rule. However, if a member of the board of directors has been additionally appointed as chief executive officer of the same company, the office as chief executive officer should not be taken into account for the purposes of the above rule.
- No limitations apply to group entities.
- The FCG Code recommends that a member of the board of directors or managing director dedicate the time and attention necessary to perform his/her duties. When exercising executive duties, he/she should in principle not hold more than four mandates in listed companies (whether French of foreign) not affiliated with his/her group (Art 17 of the FCG Code). The MiddleNext CG Code recommends that only three other such mandates be accepted by the relevant individual.
- Draft bills are pending before the French Parliament with a view to limiting further the number of mandates which can be held in a company. The AMF (in its 2010 Report on corporate governance and executive compensation) takes the view that tougher rules on multiple directorships should be introduced. The AMF considers that the strengthening of these rules could also have a positive influence in terms of board diversity.

Rules applicable to French investment funds having legal personality

- Mandates of permanent representative of a legal entity at the supervisory or board of directors of an open-ended investment company (SICAV) shall not be taken into account for the calculation of the general limit set out above (art. L. 214-7-2, 5° of the FMFC).
- A natural person may exercise simultaneously up to five mandates of executive director, member of the management board or sole executive director of an open-ended investment company (SICAV) having its registered office in France (art. L. 214-7-2, 4° of the FMFC) and these mandates shall not be counted for the purposes of the general limit set out above.
- The AFG Recommendations advise that board memberships with executive management responsibilities outside the group be limited to two and the limit for non-executive directorships be five and that the foreign companies' board memberships be taken into account.

13. Number of Mandates				
EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- A member of the management board shall not be member of the supervisory board of more than two listed companies (best practice provision II.1.8 DCG Code). Nor may a management board member be the chairman of the supervisory board of a listed company. Membership in the supervisory board of other companies within the group to which the company belongs does not count for this purpose.
- The number of supervisory boards of Dutch listed companies of which an individual may be a member is limited to five, for which purpose the position of chairman counts double.
- On 31 May 2011 a bill introducing new rules on management and supervision applicable to, inter alia, Dutch public companies was adopted (the "Act on Management and Supervision" (*Wet bestuur en toezicht*)). It is envisaged that this bill will enter into force on 1 July 2012.
- The Act on Management and Supervision contains an amendment maximising the number of board memberships. A member of the management board of a Large Entity (see below) may not be:
  - A member of the supervisory board or a non-executive director in more than two other Large Entities; or
  - The chairman of the supervisory board or one-tier board in another Large Entity.
- Furthermore, a person may not be a member of the supervisory board or a non-executive director in more than five Large Entities, whereby the position of chairman of a supervisory board or one-tier board counts twice.
- A Large Entity includes a Dutch public company that meets at least two of the following requirements (in each given financial year):
  - The value of the assets according to the balance sheet exceeds EUR 17.5 million;
  - The net turnover exceeds EUR 35 million;
  - The average number of employees is 250 or more.
- Non-compliance with these rules will lead to the latest appointment being invalid. The rules do not apply to:
  - Intra-group board memberships;
  - Boards of non-Dutch legal entities;
  - Advisors to boards; and
  - Board memberships obtained before the bill takes effect.

Rules applicable to Financial Institutions[lxxix]

- In the Expertise Policy Rule, issued by the DCB and the AFM, a number of key competencies for "policy makers" is outlined, specifying the requirements for daily policy makers in relation to the mandatory test of expertise carried out by the regulators. Policy makers are persons who determine the policy of the entity and are responsible for determining the day-to-day policy of the entity and/or take decisions aimed at the long term strategy of the entity. One of the key competencies the regulators test policy makers on is "loyalty". According to the Policy Guidelines, loyalty includes

13. Number of Mandates

EU	Germany	UK	France	**The Netherlands**

being able to adequately fulfil a function in spite of potential other mandates. Hence, policy makers should be able to ensure (and, if requested, prove) that they have sufficient time available for properly carrying out their tasks. Note that members of the supervisory board are subject to these rules as well.

- Above described expertise requirements, which until 2012 applied only to daily policy makers, will likely be applied to members of a supervisory board of a Financial Institution (or equivalent body) as per 1 January 2012.

Composition of (Supervisory) Boards (Diversity and Special Skills)

14. Composition of (Supervisory) Boards (Diversity and Special Skills)				
EU	Germany	UK	France	The Netherlands

General rules for listed companies

- In order to maintain a proper balance in terms of the qualifications possessed by its members, the (supervisory) board should determine its desired composition in relation to the company's structure and activities, and evaluate it periodically. The (supervisory) board should ensure that it is composed of members who, as a whole, have the required diversity of knowledge, judgement and experience to complete their tasks properly (sec. 11.1 Rec. 2005).
- At least one member of the remuneration committee should have knowledge of and experience in the field of remuneration policy (sec. 7.1 Rec. 2009).

Rules applicable to credit institutions

- The competent authorities shall grant an authorisation to the credit institution only when there are at least two persons who effectively direct the business of the credit institution. They shall not grant authorisation if these persons are not of sufficiently good repute or lack sufficient experience to perform such duties (fit & proper test) (Directive 2006/48/EC, art. 11).

Rules applicable to UCITS[lxxx]

- The competent authorities of the UCITS home Member State shall not authorise a UCITS if the directors of the depositary are not of sufficiently good repute or are not sufficiently experienced also in relation to the type of UCITS to be managed (art. 5 para 4 of Directive 2009/65/EC).

14. Composition of (Supervisory) Boards (Diversity and Special Skills)

EU	**Germany**[lxxxi]	UK	France	The Netherlands

General rules for listed companies

- For nominations for the election of members of the supervisory board, care shall be taken that the supervisory board, at all times, is composed of members who have the required knowledge, abilities and experience to properly complete their tasks. The Supervisory Board shall specify concrete objectives regarding its composition which, whilst considering the specifics of the enterprise, take into account the international activities of the enterprise, potential conflicts of interest, an age limit to be specified for the members of the Supervisory Board and diversity. These concrete objectives shall, in particular, stipulate an appropriate degree of female representation (no. 5.4.1 GCGC).
- Recommendations by the Supervisory Board to the competent election bodies shall take these objectives into account. The concrete objectives of the Supervisory Board and the status of the implementation shall be published in the Corporate Governance Report (transparency) (no. 5.4.1 GCGC).
- When appointing the management board, the supervisory board shall respect diversity and, in particular, aim at an appropriate representation of women (no. 5.1.2 GCGC). Furthermore, diversity and in particular the representation of women in senior management shall be increased (N o. 4.1.5 GCGC).

Rules applicable to the banking and the insurance sectors (including pension funds)

- The members of the supervisory board are required to be reliable and to have sufficient expertise to enable them to fulfil their control function and to assess and supervise the business of the relevant company (fit & proper). (sec. 36 para. 3 sentence 1 KWG; sec. 7a para. 4 and sec. 113 para. 1 VAG). The same applies by the way *mutatis mutandi* for the members of the management board, where in addition the four eye principle applies.
- The shareholders are responsible for the appointment of supervisory board members; the appointment must not be approved by BaFin. However, an institution / insurance undertaking, appointing a new member of the supervisory board, has to notify BaFin about such appointment including information about his qualification and reliability (sec. 24 (a) no. 15 KWG; sec. 13d no. 12 VAG). BaFin may oppose to the appointment if it is not satisfied that the candidate is a fit and proper person to perform the function. Furthermore, BaFin may request the company to dismiss the members of the supervisory board if he is are not adequately qualified or not reliable, or if they act negligently in the exercise of their control functions (sec. 36 para. 3 sentences 3 and 4 KWG; sec. 87 (8) sentences 1 and 2 VAG).
- Qualification may be acquired within six months upon appointment at the latest (BaFin guidance notice on the monitoring of members of administrative and supervisory bodies pursuant to the KWG and the VAG dated 22 February 2010, paragraph 1 c)).

14. Composition of (Supervisory) Boards (Diversity and Special Skills)

EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively (B.1 UK CG Code).
- The search for board candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender. The board should have plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and to ensure progressive refreshing of the board (B.2 UK CG Code).
- Lord Davies' review on increasing diversity in the Boardroom (February 2011) falls short of suggesting that a fixed quota of women should sit on the boards of listed companies. Amongst its recommendations the report states that the Chairmen of FTSE 350 companies should set out the percentage of women they aim to have on their boards in 2013 and 2015. FTSE 100 boards should aim for a minimum of 25% female representation by 2015. The report also states that quoted companies should need to disclose each year the proportion of women on the board, in senior executive positions and in the whole organisation.
- Following the publication of this report, the Financial Reporting Council ("**FRC**") published a consultation on potential changes to the UK CG Code requiring listed companies to publish their policy on gender diversity in the boardroom and report against it annually. These changes are being implemented in the UK CG Code for financial years beginning on or after 1 October 2012, though the FRC are strongly encouraging all UK listed companies to voluntarily apply and report on them with effect from October 2011.
- The Institute of Chartered Secretaries and Administrators ("**ICSA**") published a guidance note in May 2011 for prospective directors considering a new board appointment and the due diligence which they should undertake about the company in order to satisfy themselves that it is an organisation in which they can have confidence and in which they will be well suited to working including questions relating to the business of the company, its governance, the effectiveness and composition of the board, the role of NEDs within the company, remuneration, investor relations and the company's approach to risk management.
- PIRC's 15th edition of its UK Shareholder Voting Guidelines (published in March 2011) supports the view that management should present a complete organisational and operational structure to the board, including a process chart identifying key risks, and that at least the organisational structure should be published for shareholders.

Rules applicable to UK Financial Institutions[lxxxii]

- A Financial Institution must comply with the governance requirements below.
  - The senior personnel is of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the firm (4.2.1R of the UK SYSC Rules).
  - Its management is undertaken by at least two such persons (4.2.2R of the UK SYSC Rules).In the case of a corporate body, those two persons should either be executive directors or persons granted executive powers by, and reporting immediately to, the governing body (4.2.3G of the UK SYSC Rules).

14. Composition of (Supervisory) Boards (Diversity and Special Skills)

EU	Germany	UK	France	The Netherlands

- At least two independent minds should be applied to both the formulation and implementation of the firm's policies, each should play a part in the decision-making process on all significant decisions, and both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation (4.2.4G of the UK SYSC Rules). In practice, the FSA would usually expect that firms appoint two independent directors at board level.

- Persons performing certain "controlled functions" in relation to a Financial Institution (such as key employees) are required to become approved persons (sec. 59 UK Financial Services Act). The term "controlled function" encompasses a wide range of functions. The FSA has identified and listed 22 such functions in the FSA Rulebook on Supervision (SUP). They fall into three categories: (i) governing functions; (ii) compliance and oversight functions; and (iii) customer functions. Each director of a company incorporated under the UK Companies Act will be deemed to perform a governing function and will be required to become an approved person.
- Certain controlled functions, such as the significant management function or the governing function, are 'significant influence functions', which trigger greater regulatory obligations. The 'approved persons' regime illustrates the UK regulator's approach to the governance of Financial Institutions, which applies to a variety of different types of entities and individuals, depending on the type of activities they perform. For example, a number of the requirements do not apply to the UK branch of an EEA firm that has exercised its passport rights under MiFID), although the UK SYSC Rules must be consulted at all times to reach a conclusive analysis based on the type of entity in question.
- As FSA approved persons, directors of Financial Institutions also have responsibilities under the FSA Statements of Principle and Code of Practice for Approved Persons (APER). APER 2 contains seven statements of principle, which set out the conduct it expects of approved persons and APER 3 and 4, the Code of Practice for Approved Persons includes descriptions of conduct which, in the FSA's view, do not comply with the statements of principle. The FSA has the power to impose penalties on approved persons for regulatory breaches, including the imposition of fines and the suspension or restriction of their authorised status.
- The Financial Institution will have to submit an application form at least three months before the director performs his governing function. The FSA will generally approve an application to perform a controlled function if it is satisfied that the candidate is a fit and proper person to perform the function. The "fit and proper" assessment is based on a number of factors, the most significant of which are the following: (i) honesty, integrity and reputation; (ii) competence and capability; and (iii) financial soundness. The FSA may vet and interview prospective candidates.
- The FSA has adopted rules which introduced two new controller functions, relating to the roles of a chairman and a senior independent director. The FSA has expanded the scope of the 'CF1' director function to include certain directors of unregulated parent undertakings whose decisions or actions are regularly taken into account by the board/management of a Financial Institution (Rule 10.6.4 of the UK SUP Rules). Therefore, in certain circumstances, directors of parent undertakings of UK Financial Institutions may also require approval by the FSA as an approved person.
- The FSA proposed the introduction of a number of new controlled functions, such as a new "parent entity" significant influence function through which the FSA will have direct oversight over non-FSA authorised entities and new governing functions relating to the roles of chairman and senior independent director, along with changes to the scope and definition of certain existing controlled functions.[lxxxiii]

14. Composition of (Supervisory) Boards (Diversity and Special Skills)

EU	Germany	UK	**France**[lxxxiv]	The Netherlands

General rules for listed companies

- Each board of directors should carefully consider what the appropriate balance within its membership should be; in particular with a view to the representation of women and men and the diversity of competencies, it should in addition take appropriate action to assure the shareholders and market that its duties will be performed with the necessary independence and objectivity. With a view to reaching the appropriate balance within its membership, the objective is that a percentage of at least 20% of the board of directors (or supervisory board) of each company be composed of women within a three year period and that it then be increased to 40% within a six year period. In case a company does not have a female board member as of today, at least one female board member has to be elected within the next two annual general meetings (art. 6.3 of the FCG Code).
- According to the FCG Code it is not desirable to have various specific groups or interests within the administrative representatives, first because the board could become a battleground for vested interests instead of representing the shareholders as a whole, and second because the presence of independent directors is sufficient to ensure that all appropriate interests have been taken into account (art. 7 of the FCG Code).
- Board of directors (or supervisory boards as the case may be) should be composed with a view to seeking a balanced representation between women and men. The law further provides for an obligation applicable to listed companies as well as companies of a certain size to reserve at least 40% of board membership to women within 6 years of publication of the law with an interim stage for listed companies of 20% to be reached at mid period. Appointments made in breach may be declared void and attendance fees served to board members suspended. With a view to enforcing the statement of intent contained in the law, the new law provides for the appointment of a woman on boards upon the next renewal of board members, should no woman sit then on the relevant board. The exact scope of this last obligation is unclear. In addition, the law provides for increased information on women/men representation on boards to be contained in the internal control annual report drawn up by the president as well as details on sanction applied if any, in the event of breach of the relevant obligations to be contained in the board annual management report. The board of directors (or supervisory board as the case may be) is required to discuss at least once a year on the company's policy in terms of professional and salaried equality, it being understood that the law does not provide for sanction in the event of failure to comply with said obligation (art.L.225-17, L.225-18-1, L.225-37, L.225-45 of the French Commercial Code and equivalent provisions for companies with a supervisory board as well art.L.226-4 and L.226-4-1 of the same in relation to companies organized as *Sociétés en commandite par actions* "SCA").
- The law of 16 June 2011 on emigration, integration and citizenship has provided for a new obligation for listed companies as well as for companies of a certain size in terms of information to be contained in the board annual management report in relation to the relevant company's undertakings in favor of fight against discrimination and promotion of diversity. An implementing regulation should detail the list of information to be provided in that context. The new provision will only come into force upon publication of the relevant implementing regulation.

Rules applicable to credit institutions, investment firms and portfolio management companies

- Any person who has been convicted for a criminal offence or has been sentenced to an administrative or disciplinary sanction or has been suspended or excluded from a professional organisation in France or abroad in the last 10 years is prohibited from administrating or managing

14. Composition of (Supervisory) Boards (Diversity and Special Skills)

EU	Germany	**UK**	France	The Netherlands

a credit institution, an investment firm or a portfolio management company.

- Credit institutions, investment firms and portfolio management companies must be effectively managed, subject to the exceptions detailed below, by at least two persons ("four eyes" principle) called responsible managers of sufficiently good repute and sufficient experience so as to ensure a sound and prudent management. The responsible managers are responsible towards the regulator (art. L. 511-13 of the FMFC for credit institutions, article L. 532-2 of the FMFC for investment firms and article 312-6 of the GRAMF).
- When processing the request of authorisation to act as a credit institution or investment firm, the ACP verifies the reputation, skills and experience of those two persons designated to effectively manage the company. The same applies for new appointments which should be notified to the ACP within a month of the appointment. The ACP may decide that such person is not suitable for the functions of responsible manager and object to such person effectively managing the company; it may also make observations (art. 9 of Regulation n° 96-16 of 20 December 1996 relating to changes in the situation of credit institutions and of investment firms other than portfolio management companies).
- The same regime applies to portfolio management companies: the AMF verifies the reputation, skills and experience of those two persons designated to effectively manage the company. Such control also applies when a new person is appointed and the notification to the AMF should be made immediately following the appointment. The AMF may decide that such person is not suitable for its functions and object to such person effectively managing the company or make observations (AMF Instruction n° 2008-03).
- In portfolio management companies, at least one of the responsible managers must be a company officer with the power to represent the company in its dealings with third parties. The other person may be the chairman of the board of directors or a person specifically empowered by the company's governing bodies or by-laws to direct the company and determine its policies.
- By way of exception to the rule mentioned above, a portfolio management company may be effectively managed by a single person under the following conditions (art. 312-7 of the GRAMF):
  - The portfolio management company does not manage collective investment schemes complying with Directive 2009/65/EC of 13 July 2009;
  - The total assets managed by the portfolio management company amount to less than EUR 20 million or, if such amount is higher, the management company is authorized solely to manage venture capital funds with streamlined investment rules (*fonds communs de placement à risques bénéficiant d'une procédure allégée*);
  - The governing bodies or by-laws of the portfolio management company empower a person to replace the manager immediately and perform all his duties if he himself is unable to perform them;
  - The person appointed pursuant to point 3 shall be of sufficiently good repute and have sufficient experience to carry out the function of manager so as to ensure sound and prudent management of the portfolio management company. He must have the necessary availability to replace the manager.
- By way of exception to the rule mentioned above, an investment firm may be effectively managed by a single person under the following conditions (order - *arrêté* - dated 2 July 2007 relating to

14. Composition of (Supervisory) Boards (Diversity and Special Skills)				
EU	Germany	**UK**	France	The Netherlands

investment firms, other than portfolio management companies, with a single responsible manager):

- The investment firm does not hold any funds or financial instruments (*titres*) for the public;
- The net banking income and the balance sheet total of the investment firm are lower than EUR 10 millions;
- The board of directors or governing body of the investment firm empowers a person, belonging to the investment firm or the group of which the investment firm is a part, to replace the manager immediately and perform all his duties if he is unable to perform them.

Rules applicable to the insurance sector

- Any person who has been convicted for a crime in the last 10 years is prohibited from administrating or managing an insurance company. This incapacity also applies to any person that has been sentenced to imprisonment without remission or to at least a six-month deferred sentence for, but not limited to, the following offences: fraud, money laundering, drug trafficking, bankruptcy or tax fraud.
- The skills and experience of persons responsible for the running of an insurance company are assessed by the French regulator (*Autorité de Contrôle Prudentiel - ACP*) (art. L. 322-2 of the FIC). The ACP has recommended that all insurance companies keep updated information on the qualification, skills and experience of its top managers in order to facilitate the ACP's assessment of the capacity of such managers (Governance Report of, October 2007).

14. Composition of (Supervisory) Boards (Diversity and Special Skills)

EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- The supervisory board shall prepare a profile of its size and composition, taking into account the nature of the business, its activities and the desired expertise and background of the members of the supervisory board (best practice provision III.3.1 DCG Code).
- The supervisory board shall aim for a diverse composition in terms of such factors as gender and age (principle III.3 DCG Code).
- At least one member of the supervisory board shall be a financial expert with relevant knowledge and experience of financial administration and accounting for listed companies or other large legal entities (best practice provision III.3.2 DCG Code in accordance with art. 41 para. 1 EU-Directive 2006/43/EC).
- The Act on Management and Supervision (as referred to under no. 13 above), which is envisaged to enter into force on 1 July 2012, contains a temporary rule to enhance the participation of women in Dutch limited liability companies of a Large Entities (as referred to under no. 13 above). This rule will cease to apply on 1 January 2016. The bill provides that, when appointing members of the board, a balanced composition should be taken into account as much as possible. According to the bill, the composition of the board is balanced when at least 30% of its members is female and at least 30% is male. Non-compliance with the balanced composition rule must be explained in the company's annual report.

Rules applicable to Financial Institutions[lxxxv]

- The day-to-day policy of banks, payment services providers, clearing institutions, premium-pension institutions, insurers, investment firms and pension funds must be undertaken by at least two persons, which must conduct their activities from the Netherlands. In practice, the AFM would usually expect that firms appoint two independent directors at board level.
- Generally, directors and other persons determining, co-determining or supervising the policy of Dutch Financial Institutions must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the firm. In particular, persons that determine the day-to-day policy of a Financial Institution, e.g. executive directors, are subject to both trustworthiness requirements and expertise requirements, while other persons determining, co-determining or supervising the policy of a Financial Institution, e.g. members of a supervisory board, are subject only to a trustworthiness test.
- Members of a supervisory board of a Financial Institution (or equivalent body), e.g. non-executive directors, are likely to be subjected to an expertise test as per 1 January 2012, in addition to the trustworthiness test to which they were already subjected prior to that date. As mentioned, daily policy makers of a Financial Institution are in principle already subject to a full fit and proper test (including trustworthiness and an expertise test).
- Generally, save for exceptions for certain Dutch Financial Institutions, a Financial Institution will have to submit an application form before new directors or other persons determining, co-determining or supervising the policy of the Financial Institution are appointed. Such persons must not be appointed before the AFM or the DCB, as the case may be (i.e. depending on the category of Financial Institution, either the AFM or the DCB will make the assessment), has approved the relevant person, which it will do if it is satisfied that the candidate is a fit and proper person to perform the function. In our experience, the regulator and in particular the AFM tend to require that

14. Composition of (Supervisory) Boards (Diversity and Special Skills)				
EU	Germany	UK	France	**The Netherlands**

it be informed in the same way about new major shareholders (>50%) in a Financial Institution, which are deemed to be policy makers and therefore vetted for trustworthiness (i.e. honesty, integrity and reputation).

- The "fit and proper" assessment is based on a number of factors, the most significant of which are the following: (i) honesty, integrity and reputation (properness); and (ii) competence and capability (fitness).
- In establishing a person's honesty, integrity and reputation, i.e. trustworthiness or properness, the AFM or DCB, as the case may be, will consider in any event: a. criminal antecedents (as referred to in relevant decrees implementing the FMSA); b. financial antecedents referred to in such decrees; c. supervision antecedents referred to in such decrees; d. fiscal antecedents under administrative law referred to in such decrees; and e. other antecedents.
- With regard to establishing a person's competence and capability, i.e. expertise or fitness, the AFM or DCB have issued a joint policy rule, the Expertise Policy Rule (*Beleidsregel deskundigheid 2011*), in which they clarify the expertise requirements for daily policy makers and the aspects they take into consideration when carrying out their assessment. In particular, the regulators have formulated a number of competencies, which should however not be regarded as an exhaustive account. A daily policy maker is also not expected to be an expert in all of those competencies.
- The daily policy makers' expertise has to be applied to the following areas:
  - Management, organization and communication;
  - The products, services and markets of the financial institution, including relevant legislation;
  - Controlled and sound operational management of a financial institution; and
  - Balanced and consistent decision making, which reflects that the interests of clients and other stakeholders take a central position.
- The regulator will take into account the exact role of the daily policy maker, as well as the nature, size, complexity and risk profile of the Financial Institution when assessing the expertise of a person. If the daily policy of the Financial Institution is determined by a group of persons, the regulator will also take into account the collective expertise of that group to determine whether a person has the required expertise to function as daily policy maker as part of that group. A CEO does not have to have the extensive financial knowledge of a CFO, but should nevertheless be able to critically assess the functioning and decisions of the CFO.
- The expertise of a daily policy maker is assessed both prior to its appointment and thereafter if and when facts and circumstances reasonably require such an assessment, e.g. when the nature or scope of the role of a daily policy maker changes.
- The Financial Institution is as such responsible for the appointment and retention of daily policy makers having the prerequisite amount of expertise. It is also the Financial Institution which has to ascertain and monitor the level of expertise and convince the regulator of the existence of such expertise.In practice this means that the Financial Institution will have to have a policy on the qualities, expertise and experience required for its daily policy makers, as well as profiles for each of the functions performed by daily policy makers. The function profiles have to include at least the following elements:
  - Tasks;

14. Composition of (Supervisory) Boards (Diversity and Special Skills)				
EU	Germany	UK	France	**The Netherlands**

- Responsibilities;
- Necessary competencies;
- Required level of both education and experience.

- The next step is that persons are selected which sufficiently meet the function profile and related requirements. It will not always be realistic that a candidate is perfect in light of the formulated requirements. The Financial Institution should therefore be able to argue why a certain person is considered to be appropriate for that particular function, and how a particular person has actually been selected. The decision making process will have to be laid down in writing and should include information as set out above. It should reflect that the expertise of the candidate, the various relevant factors and the composition of the group of daily policy makers have been sufficiently taken into account. The existence of expertise can be evidenced through education received, relevant (work) experience and competencies. Both education and experience should not be out of date given the fast developments of and on the financial markets. As part of the selection process the regulator could contact the persons provided as references. Furthermore, the AFM or the DCB may invite a candidate to have a meeting allowing the regulator to get a better feeling for the candidate in light of the requirements. Questions asked may relate to the various areas discussed above, as well as the personality of the candidate itself.
- Above described expertise requirements, which currently apply only to daily policy makers, will be applied to members of a supervisory board of a Financial Institution (or equivalent body) in the near future, likely as per 1 January 2012.

Rules applicable to pension funds

- The management board of an industry-wide or company pension fund must consist of equal numbers of employers' and employees' representatives. In case representatives of pensioners are in the board of a company pension fund, they are considered employees in relation to the required equal numbers of employers and employees in the board.
- The Minister of Employment and Social Affairs has published a draft bill for amendment of the governance provisions for pension funds. The draft bill includes a mandatory supervisory board for industry-wide pension funds, consisting of three independent members.

Training of (Supervisory) Board Members

15. Training of (Supervisory) Board Members				
EU	Germany	UK	France	The Netherlands
■ N/A				

15. Training of (Supervisory) Board Members

EU	**Germany**[lxxxvi]	UK	France	The Netherlands

General rules for listed companies

- The members of the supervisory board are themselves responsible to take out the necessary training and further education measures that are required to fulfil their tasks, for which the company shall provide appropriate support (no. 5.4.1 CGC Code).

Rules applicable to the banking and to the insurance sectors

- The members of administrative and supervisory bodies are required to be trustworthy and sufficiently qualified to understand the transactions performed by the institution / insurance undertaking, to assess the transactions' risks and where necessary to enforce changes in the management of the company's business.
- The required knowledge can generally also be acquired through training, whether before or after the appointment of the relevant member of the administrative or supervisory body. The scope and content of such training must duly reflect the principle of proportionality and thus the size and complexity of the company. The training must encompass the basic economic and legal processes involved in the daily business of such companies, risk management, as well as the duties and responsibilities of the members of the administrative or supervisory body also in distinction to the management of the company. It should deal with the basic principles of accounting as well as regulatory and supervisory law. The question of whether a training measure conveys the required knowledge can only be decided on a case-by-case basis. For this reason, BaFin cannot certify training programs to the effect that attendance of a certain training program will be deemed sufficient in any case.
- If the knowledge is acquired only after the person is appointed and commences work on the supervisory body, it must be acquired within six months of the appointment so as to ensure a reasonable relationship between the period within which the qualification is acquired and the term of office. In the notification to BaFin and the Deutsche Bundesbank, the company must point out that such member will undergo training. Corresponding proof of participation must be submitted without undue delay after completion of the training (BaFin guidance notice on the monitoring of members of administrative and supervisory bodies pursuant to the KWG and the VAG dated 22 February 2010, paragraph 1 c).

15. Training of (Supervisory) Board Members

EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties (B.5 UK CG Code).
- All directors should receive a full, formal and tailored induction on joining the board and should regularly update and refresh their skills and knowledge. In addition the chairman should ensure that directors continually update their skills and knowledge and familiarity with the company required to fulfil their role both on the board and on board committees. The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities (B.4, B.4.1 UK CG Code).
- The chairman should regularly review and agree with each director their training and development needs (B.4.2 UK CG Code).
- PIRC and ICSA support the need to demonstrate how training is specific to committee objectives and the establishment and maintenance of directors' skills basis. PIRC will identify a commitment on behalf of the company to structure its ongoing training programme as best practice in the absence of a legal requirement for such activities.

Rules applicable to UK Financial Institutions

- The FSA requires that firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (Rule 5.1.1 of the UK SYSC Rules for common platform firms and Rule 3.1.6 of the UK SYSC Rules for other firms regulated by the FSA).

15. Training of (Supervisory) Board Members

EU	Germany	UK	**France**[lxxxvii]	The Netherlands

General rules for listed companies

- Each member of the board of directors, (or the supervisory board, as the case may be) should be able to understand the operation of the company and invest himself (herself) sufficiently in the definition of the company's strategy (art. 6 of the FCG Code). Although the competency of the individual is one of the main conditions for his/her appointment as board member, such requirement does not mean that the relevant individual is to know in advance and precisely all matters interesting the operation of the company and its activities; but each board member should be able to benefit, if necessary from an additional training on the company's specificities, its various trades or its market activity (Art 11 of the FCG Code).
- The FCG Code provides for a periodical evaluation process of the board of directors with the objective, inter alia, of measuring the actual contribution of each board member to the board's work through his competence and involvement in discussions (art. 9 of the FCG Code).

Rules applicable to credit institutions, investment firms and portfolio management companies

- As referred in no. 14 above, persons effectively managing a credit institution, investment firm or portfolio management company, *i.e.* the responsible managers should have the requested skills, integrity and experience to comply with the functions they are entrusted with, which are assessed by the relevant regulator (the ACP or the AMF, as the case may be) at the time of their appointment. These requirements should be complied with on an ongoing basis during the period of holding of their functions. Therefore, responsible managers should become acquainted of changes in the various aspects of their activities including changes in laws and regulations applicable to their activities. If they do not comply with such duty, they expose themselves to disciplinary sanctions in case an action is taken by the regulator against the company and/or themselves.
- Members of (supervisory) boards of credit institutions and investment firms must (i) ensure, *inter alia*, that the entities implement compliance and control systems and (ii) assess and control such systems efficiency. They should thus have a good knowledge of the activities of their firm and applicable laws and regulations.
- According to the AFG Recommendations, (i) it is essential that any new director receives on the chairman initiative, a training that allows him or her to learn more on the company and on its products (meetings with the executives of the company, visit of sites, communication of the organization chart…); (ii) the recently appointed director should be encouraged to get training in order to improve his expertise on the different aspects of the director’s duties; and (iii) the company must encourage and facilitate the regular training of board members during their mandate.

Rules applicable to the insurance sector

- There is no training obligation for members of each of the boards. Please refer to nr. 14 above regarding the obligation to keep updated information concerning the qualifications, skills and experience of top-managers.

15. Training of (Supervisory) Board Members

EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- After their appointment, all supervisory board members shall follow an induction programme, which, in any event, covers general financial, social and legal affairs, financial reporting by the company, any specific aspects that are unique to the company and its business activities, and the responsibilities of a supervisory board member. The supervisory board shall conduct an annual review to identify any aspects with regard to which the supervisory board members require further training or education during their period of appointment. The company shall play a facilitating role in this (best practice provision III.3.3 DCG Code).

Rules applicable to Financial Institutions[lxxxviii]

- Currently, there are no specific training requirements pursuant to Dutch regulatory laws in respect of (supervisory) board members, although received training/education is part of the mandatory expertise test of daily policy makers carried out by the regulators. In this respect, the Expertise Policy Rule (*Beleidsregel deskundigheid 2011*) clarifies the expertise requirements for daily policy makers and the aspects which the AFM and the DCB take into consideration when carrying out their assessment. Diploma's/certificates may have to be submitted to the regulators as part of this test. Should the results of the expertise test point out that a policy maker lacks competencies / knowledge in a certain area, the regulators can give instructions to follow a training programme.

Rules applicable to the banking and insurance sector

- The chairman of the supervisory board shall organise a programme of lifelong learning, with the aim of maintaining the expertise of the supervisory board directors at the required standard and improving their expertise where necessary. The learning programme shall cover relevant developments at the bank/insurer and in the financial sector, corporate governance in general and in the financial sector in particular, the duty of care towards the client, integrity, risk management, financial reporting and audits. Every member of the supervisory board shall take part in the programme and meet the requirements of lifelong learning. The assessment of the effectiveness of the lifelong learning shall be part of the annual evaluation performed by the supervisory board (art. 2.1.8 and 2.1.9 Dutch Banking Code; Article 2.1.8 and 2.1.9 Dutch Insurance Code).
- The chairman of the executive board shall organise a programme of lifelong learning, with the aim of maintaining the expertise of the executive board directors at the required standard and improving their expertise where necessary. The learning programme shall cover relevant developments at the bank/insurer and in the financial sector, corporate governance in general and in the financial sector in particular, the duty of care towards the client, integrity, risk management, financial reporting and audits. Every member of the executive board shall take part in the learning programme and meet the requirements of lifelong learning. They have to satisfy this condition in order to sit on the executive board. The supervisory board shall ascertain whether the members of the executive board continue to fulfil the expertise requirements developed by the DCB. Each year, the bank/insurer shall indicate in its annual report in what manner it implemented the principles of lifelong learning (art.s 3.1.3 to 3.1.5 Dutch Banking Code; Articles 3.1.3 to 3.1.5 Dutch Insurance Code).

Independence of Board Members / Conflicts of Interest

16. Independence of Board Members / Conflicts of Interest

EU	Germany	UK	France	The Netherlands

General rules for listed companies

- A sufficient number of independent non-executive or supervisory directors should be elected to the (supervisory) board in order to deal with conflicts of interest (sec. 4 Rec. 2005).
- At least one member of the audit committee shall be independent and shall have competence in accounting and/or auditing (art. 41 para. 1 EU-Directive 2006/43/EC).
- A director is deemed to be independent only if he/she is free of any business, family or other relationship with the company, its controlling shareholder or the management of either, that creates a conflict of interest such as to impair his/her judgment (sec. 13.1 Rec. 2005). A director is deemed not to be independent, if he/she was an executive or managing director of the company or an associated company, and has been in such a position for the previous 5 years (annex II sec. 1 lit. a Rec. 2005).
- Criteria for the independence of board members (guidance for Member States):
  - Not to be an executive or managing director of the company or an associated company, and not having been in such a position for the previous five years;
  - Not to be an employee of the company or an associated company, and not having been in such a position for the previous three years;
  - Not to receive, or have received, significant additional remuneration from the company or an associated company apart from a fee received as non-executive or supervisory director;
  - Not to be or to represent in any way the controlling shareholder(s);
  - Not to have, or have had within the last year, a significant business relationship with the company or an associated company, either directly or as a partner, shareholder, director or senior employee of a body having such a relationship;
  - Not to be, or have been within the last three years, partner or employee of the present or former external auditor of the company or an associated company;
  - Not to be executive or managing director in another company in which an executive or managing director of the company is non-executive or supervisory director, and not to have other significant links with executive directors of the company through involvement in other companies or bodies;
  - Not to have served on the (supervisory) board as a non-executive or supervisory director for more than three terms;
  - Not to be a close family member of an executive or managing director or of persons in the situations referred to in the above points.
- Independent directors undertake (a) to maintain their independence of analysis, decision and action, (b) not to seek or accept unreasonable advantages that could compromise their independence, and (c) to clearly express their opposition in the event that they find that a decision may harm the company. When decisions were taken about which an independent non-executive has serious reservations, he/she should draw the appropriate consequences. In case of resignation, the reasons are to be explained in a letter to the board or the audit committee, and, where appropriate, to any relevant body external to the company (annex II Rec. 2005).

16. Independence of Board Members / Conflicts of Interest

EU	**Germany**	UK	France	The Netherlands

General rules for listed companies

- Capital market-orientated companies: at least one member of the supervisory board shall be independent and have expert knowledge in the field of accounting or auditing (sec. 100 para. 5 AktG, sec. 264d German Commercial Code).
- A member of the supervisory board is considered independent if he/she has no business or personal relations with the company or its management board which causes a conflict of interest (no. 5.4.2 sent. 2 GCGC).
- The supervisory board shall have what it considers an adequate number of independent members (no. 5.4.2 sent. 1 GCGC).
- Cooling-off period of two years for appointments of members of the management board to the supervisory board of the same listed company, unless the member was appointed following a proposal by shareholders holding more than 25% of the voting rights of the company (sec. 100 para. 2 sent. 1 no. 4 AktG, no. 5.4.4 sent. 1 GCGC).
- The appointment of a former member of the management board as chairman of the supervisory board should be an exception to be justified to the annual general meeting (no. 5.4.4 sent. 2 GCGC).
- All members of the supervisory and management board are bound by the best interests of the company. No member may pursue personal interests in his/her decisions or use business opportunities intended for the company (no. 4.2.2 and 5.5.1 GCGC).
- Each supervisory board member shall inform the board of any conflicts of interest (no. 5.5.2 GCGC).
- The supervisory board informs the annual general meeting of any conflicts of interest which have occurred as well as of the ways, how they were handled. Material conflicts of interest and those which are not merely temporary shall result in the termination of the mandate (no. 5.5.3 GCGC).
- Advisory and other service agreements and contracts for work between a member of the supervisory board and the company require the supervisory board's approval (no. 5.5.4 GCGC).

Rules applicable to the banking and the insurance sectors (including pension funds)

- Not more than two former managing directors may simultaneously be members of the supervisory board (sec. 36 para. 3 sentence 5 KWG; sec. 7a para. 4 sentence 3 VAG).
- Supervisory board members may not assume more than five mandates in entities supervised by BaFin that are not members of the same group of companies (sec. 36 para. 3 sentence 6 KWG; sec. 7a para. 4 sentence 4 VAG).
- Members of the supervisory board must be trustworthy; this is not the case if there are reasonable grounds to assume, in view of personal circumstances, that according to general experience such personal circumstances are capable of impairing such member in properly performing such supervisory mandate with due care. Conflicts of interests of members of administrative and supervisory bodies with their own economic activity can constitute such circumstances. This applies in particular to the extent that the member – or the company for which such member works – is a borrower of the company to be supervised and at risk of default. When assessing conflicts of interest, the principle of proportionality must be observed (BaFin guidance notice dated 22 February 2010, paragraph 2)[lxxxix].

16. Independence of Board Members / Conflicts of Interest				
EU	Germany	**UK**	France	The Netherlands

General rules for listed companies

- Half of the board (excluding the chairman) should be independent non-executives; smaller companies should have at least two independent non-executive directors (B.1.2 UK CG Code).
- Generally there is no cooling-off period for executive directors to be appointed to the board. However, the UK CG Code provides that the roles of chairman and CEO should not be exercised by the same individual and that a CEO should not go on to be chairman of the same company (and if he/she does, then major shareholders should be consulted in advance) (A.3.1, UK CG Code).
- The board should establish an audit committee of at least three, or in the case of smaller companies, two independent non-executive directors. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience and the audit committee should monitor and review the effectiveness of the internal audit activities (C.3.1. and C.3.5 UK CG Code).
- The company's annual report should identify which non-executive directors are considered to be independent (executive directors are not regarded as being independent). The board should determine whether a director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgment. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director (B.1.1 UK CG Code):
  - Has been an employee of the company or any group company within the last five years;
  - Has, or has had within the last three years, a material business relationship with the company either directly, or as partner, shareholder, director or senior employee of a body that has such a relationship with the company;
  - Has received or receives additional remuneration from the company apart from director's fees, participates in the company's share option or a performance–related pay scheme, or is a member of the company's pension scheme;
  - Has close family ties with any of the company's advisers, directors or senior employees;
  - Holds cross directorships or has significant links with other directors through involvement in other companies or bodies;
  - Represents a significant shareholder; or
  - Has served on the board for more than nine years from the date of their first election.
- In addition to the guidance on independence included in the UK CG Code, many of the UK institutional shareholders committees also issue additional guidance and recommendations in connection with the criteria for assessing director independence. For example, PIRC's UK Shareholder Voting Guidelines provide guidance including its view that the appointment of the chairman in an executive capacity is an obstacle to independence and only in exceptional circumstances will they support the election of the former chief executive as chairman.
- A director must avoid any situation in which he/she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (S.175(1) UK Companies Act).

16. Independence of Board Members / Conflicts of Interest				
EU	Germany	**UK**	France	The Netherlands

- The duty to avoid conflicts of interest is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest or if the matter has been authorised by the non-conflicted directors. Directors of a public company may only authorise conflicts if the company's constitution includes a provision enabling the directors to do so (S. 175 UK Companies Act).
- Many listed companies include a "safe harbour" provision in their constitution that a director will not be in breach of duty by not disclosing to the company confidential information obtained in a different capacity, even if that information might be of benefit to the company. Thus, the position of someone holding multiple directorships may be authorised and appropriately addressed by the relevant board.
- The board may authorise conflicts for whatever term it feels is appropriate. It has been recommended that boards regularly review such authorisations. The GC 100 (an industry organisation bringing together the senior legal officers of FTSE 100 companies) recommends that boards consider how they give shareholders assurance that their powers of authorisation are being exercised properly and in accordance with the approved changes to the constitution, for example by providing an explanation in the company's corporate governance statement.
- If a director is directly or indirectly interested in a proposed or existing transaction with the company, he/she must declare (at a board meeting or by means of written notice to the board) the nature and extent of that interest to the other directors. (S. 177 and S. 182 UK Companies Act).

Rules applicable to UK Financial Institutions[xc]

- It is FSA practice to require banks to have some independent board members, even in the case of banks which are subsidiaries of a wider group.[xci]
- Financial Institutions are required to take all reasonable steps to identify conflicts of interest between:
  - Itself (including its managers, employees, appointed representatives, or any person directly or indirectly linked to them by control) and its clients; or
  - One client of the firm and another client.
- For the purposes of identifying the types of conflict of interest that arise, or may arise, a Financial Institution must consider whether they or a relevant person (which includes directors, partners, managers and employees of the firm) (10.1.4R of the UK SYSC Rules):
  - Is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
  - Has a financial or other incentive to favour the interest of another client;
  - Carries on the same business as the client; or
  - Receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

Rules applicable to FSA Remuneration Code firms (banks, building societies and CAD investment firms)

- The Chairman and members of the remuneration committee must not perform any executive function of the firm (FSA Remuneration Code 19A.3.12).

16. Independence of Board Members / Conflicts of Interest

EU	Germany	UK	**France**	The Netherlands

General rules for listed companies

- At least one member of the audit committee shall have expert knowledge in accounting or financial matters and be independent pursuant to criteria which are specified and made public by the board in charge of management or supervision (art. L823-19 of the French Commercial Code).
- It is important to have on the board of directors (or supervisory board) the presence of a significant proportion of independent directors. The independent directors should account for half the members of the board of directors (or supervisory board) in widely held companies and without controlling shareholder. In controlled companies, independent directors should account at least for a third (art. 8.2 of the FCG Code).
- According to the FCG Code, a member of the board of directors or supervisory board cannot be considered as independent if the latter has been a member of the management board within the last five years (art. 8.4 FCG Code). The cooling-off period provided for in the MiddleNext CG Code is of three years.
- The appointment of a lead director (*administrateur referent*) which is not dealt with by French Company law but is encouraged by various instances, such as the AMF, the MEDEF (please refer to no. 16 above) or the AFG is also seen as a way of ensuring the requirement towards better governance. A lead director can thus be entrusted with various tasks, such as assisting the legal representative of the company in handling conflicts of interests, monitoring compliance with the various corporate governance requirements, and reporting to shareholders meetings.
- Characterisation as an independent director should be discussed by the nomination committee (if any) and reviewed yearly by the board of directors (or supervisory board as the case may be). Conclusions as to the independence of its members should be notified to the shareholders by the board of directors (or supervisory board) in the annual report as well as to the shareholders' meeting at the time of a particular director's appointment (art. 8.3 of the FCG Code).
- The criteria to be reviewed by the nomination committee (if any) and the board in order to qualify a director as independent are as follows. The independent director:
  - Should not be an employee or executive (or managing) director of the company, or an employee or executive (or managing) director of its parent or a company that it consolidates, and not having been in such a position for the previous five years;
  - Should not be an executive (or managing) director of a company in which the company holds a directorship, directly or indirectly, or in which an employee appointed as such or an executive (or managing) director of the company (currently in office or having held such office in the last five years) is a board member;
  - Should not be a customer supplier, investment banker or commercial banker that is material for the company or its group or for a significant part of whose business the company or its group accounts;
  - Should not have been related by close family ties to an executive (or managing) director;
  - Should not have been an auditor of the company within the previous five years;
  - Should not have been an executive (or managing) director of the company for more than twelve years.

16. Independence of Board Members / Conflicts of Interest

EU	Germany	UK	**France**	The Netherlands

(art. 8.3 of the FCG Code)

- As regards board members representing major shareholders in the company, these may be considered as being independent, provided that they do not take part in control of the company. In excess of a 10% holding of stock or votes, the board should systematically review the qualification of such executive (or managing) director.
- The MiddleNext CG Code characterises the independence of directors in similar terms save that the cooling-off period is three years (as opposed to five). The recommended number of independent directors is two, to be reduced to one in boards made up of five directors or less.
- Any contract (save that entered at arm's length and in the normal course of business) entered into by the company (whether directly or through an intermediate) and one of its directors or supervisory board members, its managing directors (including any deputy managing directors), shareholders holding more than 10% of the shares in the company or any controlling company is subject to a prior approval procedure. The same procedure is applicable where an agreement is concluded between the company and companies that have common board members. The approval procedures includes the disclosure of interest by the individual, an approval process by the board in which the conflicted individual is not allowed to vote and a subsequent vote by the shareholders on the basis of a special report drawn up by the auditors (art. L.225-38, art. L.225-86 of the French Commercial Code).
- French company law purports to avoid conflict of interests which are detrimental to the company, such as in the case of contribution in kind by a shareholder in which case the relevant shareholder must refrain from voting (in his own name or by way of proxy) on the valuation of said contribution (art.L.225-147 of the French Commercial code).
- A board member is required to disclose any situation which gives rise to a conflict of interest (whether actual or potential) and may not take part in a subsequent decision of the relevant board (art. 17 of the FCG code).
- In its 2011 Report on corporate governance and executive compensation, the AMF highlights once again the need to provide detailed and clear information on the application of the independence criteria as defined in the FCG Code. It also recommends that companies who have appointed a lead director (*Administrateur référent*) with the particular responsibility of preventing conflict of interest (as recommend in last year AMF Report on corporate governance) give greater details as to the duties of said lead director. In addition, the AMF recommends that companies which refer to either one of the FCG or MiddleNext CG Code disclose the ways in which they prevent and monitor conflict of interests, within their boards.
- Within the context of its monitoring of corporate governance issues and its lobbying action on areas of interest to companies, the French employers trade association, the *Mouvement des Entreprises de France* (MEDEF) released in the course of March 2011 a guide on conflicts of interests within companies. Various measures are suggested with a view to identifying and preventing such conflicts.
- The guide defines what constitutes a conflict of interest and sets out the principles which governed its drafting. It is not aimed at providing constraints, but purports to enhance the corporate image and reputation of companies. The development of internal rules is intended to identify, prevent and manage conflicts of interest, thus enabling company directors to make sound decisions on an objective basis.

16. Independence of Board Members / Conflicts of Interest

EU	Germany	UK	**France**	The Netherlands

- The MEDEF sets out five recommendations:
  - Conduct a brain storming process within the company on the issue of conflict of interest and establish a code of conduct.
  - Identify any potential conflicts of interest such as those resulting from family ties or friendships, financial interests or the holding of positions in trade or other form of association or organizations. Conflicts resulting from the holding of offices within public authorities should also be borne in mind.
  - Organise the disclosure of potential conflicts of interest through the drawing up by directors of an annual declaration of interest setting out, amongst other items, interests held by family members or close friends.
  - Implement additional measures to those prescribed by law, such as requiring prior board approval in respect of holding other directorships abstain from voting or prohibiting the holding of shares or interests in companies in the same type of market.
  - Monitor the proper implementation of measures by appointing a third party interlocutor or dedicated director such as the lead director whose task would be to identify whether a conflict of interest exists and how to deal with the situation arising as a consequence.

Rules applicable to credit institutions, investment firms and portfolio management companies

- Article 11-3 of Regulation n° 97-02 provides that the executive body of a credit institutions or an investment firm shall establish procedures that guarantee the segregation of duties in the organisation and the prevention of conflicts of interests. Article 31-2 of the same text also provides that credit institutions and investment firms shall introduce procedures to prevent conflicts of interests in the context of their remuneration policies.
- Article 38-4 of Regulation n° 97-02 provides that the remuneration committee of a credit institution or an investment firm (which members are members of the decision-making body of that credit institutions or that investment firm) shall mostly include independent members which cannot be members of the executive body.
- Members of the general management who are direct or indirect beneficiaries of the remunerations could not take part in the general management's decision setting up the rules relating to the remunerations, within the framework determined by the decision-making body (part I.1 of the FBF Professional Standards which apply also to the directors without prejudice of the application of the FCG Code).
- According to the ACP's doctrine, a director other than the chairman of the board of directors could not be appointed responsible manager of a credit institution or an investment firm considering, *inter alia*, the nature of the duties vested in a responsible manager which seemed incompatible with compliance with company law. Although the board of directors may confer missions or mandates to directors, such missions or mandates may not be of a general or permanent nature, and those characteristics are applicable to responsible manager's effective direction of a company's business policy. The chairman of the board of directors would be allowed to hold such position, depending of its effective functions, based on a case by case analysis.
- A member of the supervisory board of a stock-joint company could not be appointed in quality of responsible manager of a credit institution, investment firm or portfolio management company.

16. Independence of Board Members / Conflicts of Interest

EU	Germany	UK	**France**	The Netherlands

- Article L. 533-10 of the FMFC (implementing Directive 2003/39/EC on markets in financial instruments – "**MiFID**") provides that investment service providers[xcii] shall adopt all necessary reasonable measures in order to prevent conflicts of interests that would infringe clients 'interests. Where those measures are not sufficient to guarantee, with reasonable certainty, the prevention of conflicts of interests, the investment firm or portfolio management company must clearly inform its clients, before acting on their behalf, of the nature and source of the conflict of interests.
- Article 313-18 of the GRAMF provides that investment service providers shall take all reasonable measures to detect conflicts of interest that arise in the course of the provision of investment and ancillary services, management of collective investment schemes or other activities (i) either between itself, relevant persons, or any person directly or indirectly linked (by way of a controlling interest) to the investment firm or portfolio management company, on the one hand, and its clients, on the other hand or (ii) between two clients.
- In order to detect conflicts of interest that could damage a client's interests, investment services providers shall at least take into account (art. 313-19 of the GRAMF):
  - The service provider or that person is likely to make a financial gain or avoid a financial loss, at the expense of the client;
  - The service provider or that person has an interest in the outcome of a service provided to a client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
  - The service provider or that person has a financial or other incentive to favour the interest of another client or group of clients over the interest of the client to whom the service is being provided;
  - The service provider or that person carries on the same business as the client;
  - The service provider or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client in any form whatsoever, other than the commissions or fees usually charged for such service.
- Investment firms/portfolio management companies shall establish and maintain an effective a Investment service providers shall establish and maintain an effective and written conflicts of interest policy, appropriate to their size and organisation and to the nature, scale and complexity of their business. Where the investment service provider is a member of a group, its conflicts of interest policy must also take into account any circumstances, of which it is or should be aware, that may give rise to a conflict of interest as a result of the structure and business activities of the other members of the group (art. 313-20 of the GRAMF).
- Such conflicts of interests policy must specifically (i) identify, with reference to investment service provider's investment services, ancillary services and other activities, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients when providing an investment service or an ancillary service or management of a collective investment scheme and (ii) specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- The procedures and measures provided for in point (ii) shall be designed to ensure that relevant persons (including board members) engaged in different business activities involving a conflict of

16. Independence of Board Members / Conflicts of Interest				
EU	Germany	UK	**France**	The Netherlands

interest of the kind specified in point (i) carry on those activities at a level of independence appropriate to the size and activities of the investment service provider and the group to which they belongs, and to the materiality of the risk of damage to clients' interests.

- Pursuant to the AFG Recommendations, at least one-third of the board of a portfolio management company shall be composed of members free from conflicts of interest, based in particular on the following criteria:
  - He or she must not be a salaried employee or executive director of this company or of any company of the same group, nor have been in such a position at any time during the past five years ;
  - He or she must not be a salaried employee or executive director of a significant shareholder of this company or of any company of the same group ;
  - He or she must not be a salaried employee or executive director of a significant or frequent commercial, banking, or financial partner of this company or of any company of the same group ;
  - Have been the auditor of the company during the previous five years; nor
  - Have been a board member of this company for more than 12 years.
- The AFG Recommendations also recommend to its members that (i) the chairman of the remuneration committee and a majority of its members be free of conflicts of interest and (ii) persons with management responsibilities and company employees may not be members of such committee.
- Managers of portfolio management companies should act independently and in the interest of all investors. A management and/or investment committee set up within a portfolio management company should not be composed of members who are conflicted and may influence by their votes the investment decisions.

Rules applicable to securitization fund management companies (additional provisions)

- The management company shall adopt an organizational structure that reduces the risks of conflicts of interest and functions likely to cause conflicts of interest shall be strictly segregated. The company shall keep separate the functions which are likely to raise conflict of interests. To this end, the business of managing securitization funds should be separated from management activities on own account of the company (art. 321-26 of the GRAMF).
- The management company shall seek to prevent conflicts of interests and, if any arise, resolve them fairly in the interests of the unit holders of the securitization funds. If the company finds itself in a conflict-of-interest situation, it shall inform the unit holders in the most appropriate way. The company shall take all necessary measures to ensure the independence of the portfolio management function, notably by segregating lines of business and job duties (art. 321-8 of the GRAMF).

Rules applicable to the insurance sector

- The ACP recommended that insurance companies put in place a process in order to prevent, detect and solve any conflict of interest that do not fall within the scope of the related party agreement procedure (Governance Report of October 2007.

16. Independence of Board Members / Conflicts of Interest

EU	Germany	UK	France	**The Netherlands**

General rules for listed companies

- The existing rules for Dutch public companies provide that if the company concludes an agreement with a third party where a management board member has a conflict of interest, the agreement is voidable by the company or by its receiver in bankruptcy (i.e., a conflict of interest affects the capacity of board members to represent the company). The new Act on Management and Supervision provides new conflict of interest rules as a result of which a conflict of interest will no longer affect agreements between the company and third parties. The bill provides that if a member of the (management, supervisory or one-tier) board has a conflict of interest with the company, such member has to abstain from participating and voting on the subject concerned. If all management board members are conflicted, the matter is referred to the supervisory board. In case of a one-tier board or if there is no supervisory board (or if all its members are conflicted), the shareholders' meeting adopts the relevant resolution, unless the articles of association state otherwise. In practice, it will be unlikely that the general meeting of a public company will have to represent the company.
- In addition, the DCG Code provides the following:
  - All members of the supervisory board, with the exception of not more than one person, shall be independent within the meaning of the DCG Code (best practice provision III.2.1. DCG Code).
  - At least one member of the supervisory board shall be a financial expert with relevant knowledge and experience of financial administration and accounting for listed companies or other large legal entities (best practice provision III.3.2 DCG Code in accordance with art. 41 para. 1 EU-Directive 2006/43/EC).
  - The report of the supervisory board (which forms part of the annual report) shall state that, in the board's view, best practice provision III.2.1 (i.e., that all supervisory board members, with the exception of not more than one, are independent) has been complied with, and it shall also state which supervisory board member is not considered to be independent (if any) (best practice provision III.2.3 of the DCG Code).
  - A member of the supervisory board shall be deemed independent if he/she or his/her partner, child or close relative are not:
    - Former employees or members of the management board or interim members of the management board in the five years prior to the appointment,
    - Receiving additional financial compensation outside the normal course of business of the company,
    - Having or formerly having an important business relationship with the company,
    - Managing director in a company where a member of the management board is a supervisory board member,
    - Holding 10% or more of the shares of the company,
    - Directors in a company that hold 10% or more of the shares of the company.

  (best practice provision III.2.2 DCG Code)

16. Independence of Board Members / Conflicts of Interest				
EU	Germany	UK	France	**The Netherlands**

- A member of the supervisory board shall report any material (potential) conflict of interest to the chairman of the supervisory board, or if the relevant member of the supervisory board is the chairman, to the vice-chairman of the supervisory board. The member of the supervisory board concerned may not take part in the assessment by the supervisory board whether a conflict of interest exists (best practice provision iii.6.1 DCG Code).
- A conflict of interest exists in any event if the company intends to enter into a transaction with a legal entity:
- In which the member of the supervisory board personally has a material financial interest;
- Which has a management board member who is related under family law to the member of the supervisory board; or
- In which the member of the supervisory board has a management or supervisory position.

(best practice provision III.6.1 DCG Code)

- A member of the supervisory board may not take part in a discussion and/or decision-making on the subject in relation to which he/she has a conflict of interest. Decisions to enter into transactions in which there are conflicts of interest with members of the supervisory board require the approval of the supervisory board (i.e., the non-conflicted members). Such transactions shall be published in the company's annual report, together with a statement of the conflict of interest (best practice provision iii.6.2 and iii.6.3 DCG Code).
- All material transactions between the company and persons that hold at least ten% of the shares in the company require the approval of the supervisory board. Such transactions shall be published in the annual report (best practice provision iii.6.4 DCG Code).

Rules applicable to DCB Remuneration Code firms (investment firms, clearing institutions, entities for risk acceptance, banks, premium pension institutions, and insurers)

- The Chairman and members of the remuneration committee must not perform any executive function of the firm (art. 8.2 DCB Remuneration Code).

Rules applicable to investment firms (in the meaning of the MiFID (2004/39/EC), including banks that provide investment services or investment activities)

- Investment firms are required to take all reasonable steps to identify conflicts of interest between:
  - Itself (including its managers, employees, appointed representatives, or any person directly or indirectly linked to them by control) and its clients; or
  - One client of the firm and another client.
- For the purposes of identifying the types of conflict of interest that arise, or may arise, an investment firm must consider whether it or a relevant person (which includes directors, partners, managers and employees of the firm):
  - Is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
  - Has an interest in the result of a service performed for the client's benefit or a transaction conducted on the client's behalf that differs from the client's interest in this result;

16. Independence of Board Members / Conflicts of Interest				
EU	Germany	UK	France	**The Netherlands**

- Has a financial or other incentive to favour the interest of another client;
- Carries on the same business as the client; or
- Receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

(art. 4:88 FMSA / Article 167 Dutch Conduct of Business Decree FMSA)

- The investment firm must elaborate its policy with regard to conflicts of interest in measures and procedures (art. 35a Dutch Conduct of Business Decree FMSA).

Rules applicable to fund managers, collective investment companies, custodians of collective investment schemes, clearing institutions, investment firms and custodians of premium pension institutions

- Institutions must have an adequate policy to prevent conflicts of interests between themselves and their clients and among their clients (art.s 4:11 and 4:77 FMSA). This requirement has been elaborated for fund managers, collective investment companies and custodians of collective investment schemes, to the effect that they must have procedures and measures in place aimed at preventing conflicts between the private interests of persons determining the policy of the institution, persons belonging to a body responsible for supervising the policy and the general affairs of the institution, other employees, or other persons regularly carrying out activities for the institution concerned on the latter's instructions, and the interests of that institution or those of its unit holders.

Rules applicable to banks, entities for risk acceptance, premium pension institutions and insurers

- The provision of financial services to members of the body that is responsible for supervising the policy and the general course of affairs of the institution, as well as to family members, not being employees, of policy makers of the institution, of group directors and of members of the body that is responsible for supervising the policy and the general course of affairs of the institution, must take place only in the course of the normal business operations of the institution against the usual commercial terms and conditions and collateral.

Rules applicable to Financial Institutions[xciii]

- Persons that are subject to expertise requirements, which currently include daily policy makers of Dutch Financial Institutions and likely as from 1 January 2012 also members of a supervisory board (or similar body) of a Financial Institution must possess certain core competences. The AFM's en DCB's Expertise Policy Rule lists 16 core competences, among which "independence". According to the Expertise Policy Rule, a person is independent when "he/she is independent in his or her behavior, has the courage of standing by and justifying his/her opinions against others (and any relevant interest) in view of the interests of the company. He/she operates objectively and critically. He/she recognizes and anticipates situations where personal and business interests (potentially) conflict.

Rules applicable to pension funds

- The management board be independent when executing its management tasks. The management board shall ensure that the pension fund will act solely in the interest of all stakeholders

16. Independence of Board Members / Conflicts of Interest				
EU	Germany	UK	France	**The Netherlands**

(participants, former participants, pensioners, financially involved employers) of the fund. The management board assesses their interests in a prudent and balanced manner, and provides insight in this assessment (principle A5 Pension Fund Governance Code).

- The pension fund shall have procedures and measures in place with regard to preventing conflicts of interest of persons determining the policy of the fund, members of the supervisory body and other employees or persons who work for the fund on a structural basis.
- The pension fund will have a code of conduct in place for board members and employees including provisions for preventing conflicts of interest and abuse of the information/affairs of the fund.

[i] Financial undertaking pursuant to Rec. 2009-FS means any undertaking, irrespective of its legal status, whether regulated or not, which performs any of the following activities on a professional basis: (a) it accepts deposits and other repayable funds; (b) it provides investment services and/or performs investment activities within the meaning of Directive 2004/39/EC; (c) it is involved in insurance or reinsurance business; (d) it performs business activities similar to those set out in points (a), (b) or (c). A financial undertaking includes, but is not limited to, credit institutions, investment firms, insurance and reinsurance undertakings, pension funds and collective investment schemes.

[ii] Credit Institution pursuant to Directive 2006/48/EC means: an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account. The remuneration principles pursuant to the CRD III shall apply to all credit institutions and to investment firms falling within the scope of the EU Markets in Financial Instruments Directive (MiFID) to which the existing CRD capital rules apply. This will cover all EU incorporated banks (and, in the UK, building societies) and many investment management firms, including hedge fund managers and other so-called 'limited licence' or 'limited activity' firms that escape full EU capital requirements.

[iii] The remuneration rules, pursuant to Annex V section 11 No. 23 of Directive 2006/48/EC as recast by CRD III, Annex 1, apply to the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile. Credit institutions shall in these cases comply with the remuneration policies set forth by Annex V in a way and to the extent that is appropriate to their size, internal organisation and the nature, the scope and the complexity of their activities.

[iv] Alternative investment funds pursuant to the Directive 2011/61/EU are undertakings, which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy and do not require authorization pursuant to article 5 of Directive 2009/65/EC. Managers of alternative investment funds pursuant to the Directive 2011/61/EU are legal persons whose regular business is managing one or more alternative investment funds. The provisions regarding remuneration, inclusive of salaries and discretionary pension benefits, apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of AIFs they manage. The size, internal organisation and the nature, scope and complexity of the activities of the AIFs and AIFMs is to be taken into account. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers was published on 1 July 2011. On 16 November 2011, the European Securities and Markets Authority ("ESMA") published its final report on possible implementation measures of the AIFM Directive. It now has to be transposed into national law by each Member State within a period of two years, i.e. by July 2013. However, the enacted AIFM Directive provides (i) for a large number of delegated and implementing acts to be adopted by the Commission (Level 2 Measures) and (ii) is vague and/or undefined in several areas. Therefore, it will require further steps/workstreams: (i) on the European Union level with respect to the Level 2 Measures; and (ii) on each Member State level regarding the transposition of the AIFM Directive and the Level 2 Measures that are still to be enacted. Due to the significant number of implementing measures foreseen, the Commission sent a request for technical advice on Level 2 Measures concerning the implementation of the AIFM Directive to ESMA. Having published consultation papers in July and August 2011 and received feedback through a large amount of responses and several hearings in the course of August and September 2011, ESMA now has finalised its advice. On 16 November 2011, ESMA published its final report on possible implementing measures of the AIFM Directive and the underlying detailed rules to the Commission. ESMA's final report provides technical advice on the Level 2 Measures and covers four broad areas: (i) general provisions for managers, authorisation and operating conditions; (ii) governance of AIFs' depositaries; (iii) transparency requirements and leverage; and (iv) third countries. With ESMA having published its advice to the Commission, it is now for the Commission to prepare the implementing measures in light of the advice received from ESMA. It is expected that the Commission will publish its proposal for the Level 2 Measures in the course of April 2012. Following this, the European Parliament and Council have at least a three month reviewing period (that can be extended by a further three months) and are entitled to object to the proposal. It has not yet been decided as to what form the Level 2 Measures will take, i.e. directive, regulation etc. If the Level 2 Measures are to be implemented in the form of a directive, such a legislative act will need to be transposed into national law by the Member States. If it is implemented in form of a regulation, no further acts by a Member State will

be required. However, it is anticipated that a significant proportion of the Level 2 Measures will take the form of a regulation. As small funds are not within the scope of the AIFM Directive and as there is a clear intention to create a comprehensive and effective regulatory and supervisory framework for almost all kinds of investment funds at a European level, the Commission adopted a proposal for a Regulation on European Venture Capital Funds on 7 December 2011. Such regulation will provide for a framework of rules regarding the use of the designation "European Venture Capital Fund" and deal with, amongst others, the composition of the portfolio of funds that operate under this designation, their eligible investment targets and the investment tools.

[v] In Germany the remuneration of directors and board members is regulated by the AktG and the German Corporate Governance Code in the version of 26 May 2010. The GCG Code primarily addresses German listed stock corporations. However, it is seen as best practice that non-listed companies also respect the GCG Code. While German law, according to sec. 161 para. 1 of the AktG, already contained a mandatory corporate governance statement as to if the recommendations of the GCG Code are adhered to or not, the implementation of the EU-Directive 2006/46/EC (so called Audit Directive) through the German Act to Modernise Accounting Law (*Bilanzrechtsmodernisierungsgesetz*, *BilMoG*) introduced a true "comply-or-explain" principle into German law by requiring the company not only to state which parts of a corporate governance code it departs from, but to give reasons for doing so. The AktG and the German Commercial Code have been recently amended by the Law on the Reasonableness of the Management Board Compensation of 18 June 2009 ("**VorstAG**"). In parallel, several regulations of the GCG Code have been adjusted to be consistent with the new regulations.

[vi] The Regulation on Supervisory Requirements for the Remuneration Systems in the Banking Sector applies to all institutions as defined in sec. 1 (1b) and sec. 53 (1) of the Banking Act and to the remuneration systems for all executive directors and employees of these institutions. It shall not apply to branches of undertakings domiciled in another state of the European Economic Area pursuant to sec. 53b of the Banking Act. The special requirements only apply to significant institutions.

[vii] The Regulation on Supervisory Requirements for the Remuneration Systems in the Insurance Sector applies to primary insurers, reinsurers and pension funds domiciled in Germany, insurance holding companies within the meaning of sec. 1b and sec. 104a (2) No. 4 of the Insurance Supervision Act domiciled in Germany, insurance special purpose entities domiciled in Germany, mixed financial holding companies domiciled in Germany, superordinated financial conglomerate entity domiciled in Germany, unless these are institutions as defined in sec. 1 (1b) of the Banking Act, primary insurers and reinsurers requiring a licence in Germany as well as institutions for occupational retirement provision domiciled in a third country and primary insurers requiring a licence in Germany domiciled in another Member State of the European Union or another member state of the Agreement on the European Economic Area that are not covered by the Insurance Directives. The special requirements only apply to significant undertakings.

[viii] In the United Kingdom the remuneration of directors and board members is mainly regulated by the Companies Act 2006 and the UK Corporate Governance Code. The UK CG Code applies to companies that are admitted to listing by the UK Listing Authority and incorporated in the UK. The Code establishes principles of good governance which include principles addressing the issue of directors' remuneration. The UK CG Code is not legally binding, but companies are expected to adhere to a "comply-or-explain" approach (UK Listing Rule 9.8.6) setting out in the Annual Report to shareholders the reasons why any principles of the UK CG Code have not been adhered to. The UK CG Code was published in May 2010 and replaces the Combined Code on Corporate Governance and effective for reporting periods beginning on or after 29 June 2010.

[ix] Tier One firms are defined as banks and building societies with capital resources exceeding £1 billion; BIPRU £730k firms that full scope BIPRU investment firms with capital resources exceeding £750 million; all third country BIPRU firms with total assets (for the branch) exceeding £25 billion. Tier Two firms are defined as banks and building societies with capital resources between £50 million and £1 billion; BIPRU €730k firms that are full scope BIPRU investment firms with capital resources between £100 million and £750 million; and all third country BIPRU firms with total assets (for the branch) between £2 billion and £25 billion. Tier Three firms are defined as any bank, building society and full scope BIPRU investment firm that does not fall within proportionality Tiers One or Two; and all third country BIPRU firms that are not in proportionality Tiers One, Two or Four. Tier Four firms are defined as all limited licence and limited activity firms (including third country BIPRU firms with such permissions).

[x] French stock corporations organised as *société anonymes* ("**SA**") can choose between: (i) a one-tier organisational form with a managing director (*directeur general*) and one or several deputy managing directors (*directeur general délégué*) who need not be board members and a board of directors (*conseil d'administration*) chaired by a president and containing also non-executive members or (ii) a two-tier organisational form consisting of a management board (*directoire*) chaired by a *président* and a supervisory board (*conseil de surveillance*). In the one tier system, the president of the board of directors may be vested with the power to represent the company, in which case he is both chairman of the board of directors and managing director, or alternatively (and if so resolved by the board of directors) merely preside over the board and the power of representation is then granted to the managing director (together with deputy managing directors if any, as the case may be). Details of the organisational structure of the company (one tier or and two tier system) are contained in the articles of association of the company and in the relevant shareholders and boards resolutions. Disclosure is organised through various filing and publication formalities. This overview covers only SAs as these - alongside with *sociétés en commandite par actions* ("**SCA**"), the use of which is less frequent - are the only types of companies which may be listed. In France the remuneration of directors and board members is mainly regulated by the French Commercial Code and a number of other rules such as the FMFC or the French Labour Code. The general rules of the French financial markets regulator AMF (*Autorité des Marchés Financiers*) are also in part relevant. Since the implementation of the EU-Directive 2006/46/EC French listed companies are required to declare compliance with a corporate governance code ("comply-or-explain" principle, which until then had been unknown to French law). While several best practice recommendations exist in France, no unique code has been established by the legislator or the government such as, *e.g*., in Germany. The French employer associations AFEP (*Association Française des Entreprises Privées*) and MEDEF (*Mouvement des Entreprises de France*) published the most relevant corporate governance code, to which most of the French CAC 40 companies adhere. The FCG Code is only applicable to listed companies and contains, in particular, detailed principles and best practices recommendations with respect to the remuneration of directors and board members. It only covers the one tier system of management and provides that in two tier organisational form (with management board and supervisory board) the necessary adjustments must be made. Once a year, the AMF issues a report on the application by listed companies of corporate governance practices in accordance with the comply-or-explain principle. A code dedicated to small and medium size listed companies was published in December 2009 by MiddleNext, an independent professional association covering small to mid cap listed companies. The AMF issued on 7 December 2010 a recommendation (Recommendation AMF n°2010-15 of 7 December 2010) containing the AMF additional review on corporate governance for small and medium size listed companies applying the MiddleNext code. In the course of November 2011, the AFEP/MEDEF organizations referred to above, published their 3rd report on the implementation of the FCG by the SBF 120 listed companies: the report notes that companies have continued to make substantial progress, both in terms of following the recommendations contained in the code and in terms of the quality of the information supplied in their annual reports. In particular, as regards remuneration, the report notes an improvement in relation to the information provided on various items such as performance conditions for the exercise of stock options or free shares, the impact of the allocation of options and shares in terms of dilution, the timing for allocations and the absence of risk hedging transactions. Progress is also noted with regards to the relevance of reasons provided by companies for not applying certain provisions of the code. In addition, some organisations representing specific areas of activities may issue dedicated recommendations on corporate governance issues, such as those recently issued by the Association française de la guestion financière dated January 2011 which contains recommendations as to practices to be followed by companies within the French asset management industry. The increasing involvement over recent months in matters relating to corporate governance of bodies representing specialized areas of business, such as the Association française pour la gestion financière (AFG) which encompass asset management companies or Association Française des Investisseurs en Capital (AFIC) which federates companies operating in the private equity business, or of an organization dedicated to dispensing training session and information to directors or prospective directors known as the Institut Français des Administrateurs (IFA) is to be noted. The AMF published in December 2011 its 2011 report on corporate governance and executive compensation, where the AMF noted a substantial improvement both in terms of the quality of the information disclosed and of market practices. The AMF recommends companies to fully apply the "comply or explain" principle – with detailed and transparent explanations when they differ from recommendations. As far as executive compensation is concerned, AMF stresses in particular the importance of the retention for shares held by executive directors as well as adequate disclosure regarding the criteria used for determining the variable part of the executive directors' compensation. Regarding internal control and risk management, AMF takes the view that companies should present in a clear and exhaustive manner all the resources

they have dedicated to internal control and risk management and should indicate whether or not they have carried out an appraisal of their internal control process and the results thereof. The report contains various charts and extracts of annual reports and registration documents of the companies used as a sample for analysis ; copy of the report may be obtained from the AMF website.

[xi] In French, "responsible manager" means *dirigeant responsable*, decision-making body means *organe délibérant*, general management means *direction générale*. French terms shall be used to construe French rules applicable to credit institutions, investment firms and portfolio management companies.

[xii] As of the date of this comparative overview there are two sets of standard professional rules drawn up to implement provisions on remuneration contained in Regulation 97-02: (i) the FBF Professional Standards which were drawn up by the FBF (French Banking Federation) and (ii) the AMAFI Professional Standards which were drawn up by the AMAFI (Financial Markets Professionals). The FBF represents French banks and foreign banks that have set up subsidiaries or branches in France, whether they are from Europe or elsewhere and the AMAFI is the representative body for professionals working in the securities industry and financial markets in France (investment firms, credit institutions authorised to provide investment services, etc). According to the AMAFI Professional Standards, an AMAFI member that belongs to another industry association (*e.g.* for instance a bank which provides investment services might be a member of FBF and AMAFI) or to a group where the parent belongs to another industry association may chose to apply the professional standards established by that association. An AMAFI member that has not decided to apply the professional standards of another industry association shall be deemed to apply AMAFI Professional Standards. To remove any ambiguity about which standards should be adopted by an AMAFI member which is also a FBF member, the decision to apply the FBF Professional Standards must be taken formally by the decision-making body.

[xiii] The Financial Stability Board (FSB) was established in April 2009 as the successor to the Financial Stability Forum (FSF) which was founded in 1999 by the G7 Finance Ministers and Central Bank Governors. The FSB's mandate is to address, at an international level, vulnerabilities and to develop and implement strong regulatory, supervisory and other policies in the interest of financial stability.

[xiv] The AFG, AFIC, ASPIM Rules were approved by the *Autorité des marches financiers* (French Market Authority – the "**AMF**") as professional rules in accordance with Article 314-2 of the GRAMF and are, therefore, compulsory. These rules transpose by anticipation the provisions relating to remuneration aspects of the asset managers of Directive 2011/61/EU of 8 June 2011, on Alternative Investment Fund Managers (AIFM Directive) and Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS IV Directive). They apply to all portfolio management companies members of AFG, ASPIM and AFIC. In addition, the European Securities and Markets Authority (ESMA) should draw up guidance in this matter (especially measures of implementation of AIFM Directive). Directive UCITS V (still under discussion) should adopt a set of additional provisions relating to remuneration policy in portfolio management companies, which would require the amendment of the AFG, AFIC, ASPIM Rules.The AFG is a professional association which represents the French asset management industry, both for collective and for discretionary portfolio management (portfolio management companies, investment services providers, open-ended investment companies – SICAV, closed-ended companies – SIF, and affiliates members such as lawyers, legal firms, French affiliates of foreign asset management companies etc). The AFIC is a professional association which ensures the promotion and representation of all types of private equity activities carried out in France (Venture Capital firms (FCR), Venture Capital Funds (FCPR), Innovation Funds (FCPI), Local Investment Funds (FIP), portfolio management companies, consulting firms, investment companies, etc. The ASPIM is a professional association which gathers and represents the players of the collective real estate investment: regulated French real estate funds (SCPI and OPCI) and their portfolio management companies.

[xv] In the Netherlands the remuneration of directors and board members is regulated by the Dutch Civil Code and the Dutch Corporate Governance Code. The DCG Code applies to all Dutch stock corporations admitted to trading on a regulated market within the EEA or a comparable system outside the EEA. Since 1 January 2004 listed companies in the Netherlands have been obliged to report on compliance with the DCG Code in their Annual Report and to explain why any of the principles and best practice provisions intended for the management and supervisory boards are not

applied ("comply-or-explain" principle, Art. 2:391 para. 5 Dutch Civil Code). The statutory requirements to be met by this corporate governance statement have been extended in order to implement the EU-Directive 2006/46/EC.

[xvi] The internal supervisor is defined as the 'supervisory board or other body that is charged with supervising the policy and general course of business of the financial institution'.

[xvii] See endnote xvi.

[xviii] Annex I para (1) nr. 23 of CRD III; see also EU-Section of no. 1.

[xix] Annex I para (5) b.iii of CRD III amending Annex XII of the Banking Directive 2006/48/EC.

[xx] The Banking Code (*Code Banken*) was drawn up by the Netherlands Bankers' Association (NVB) in response to the report entitled 'Restoring Trust', which was published by the Advisory Committee on the Future of Banks (*Adviescommissie Toekomst Banken*) on 7 April 2009. The Banking Code, which became effective on 1 January 2010, applies to all activities in the Netherlands performed by banks that are in possession of a banking licence granted under the Dutch Financial Markets Supervision Act (FMSA), irrespective of whether they perform their activities in the Netherlands or in another Member State, and irrespective of whether those activities are performed by a branch. It is recommended that the Code should apply to all entities of Dutch incorporated banking groups which operate outside the European Union and to those entities that operate in the Netherlands, irrespective of their country of incorporation. It is expressly recommended that activities of branches of banks licensed in another Member State should apply the Banking Code. The Banking Code contains principles that are based on the Dutch Corporate Governance Code. All banks shall report every year in their annual report regarding the manner in which they applied the principles of the Banking Code in the previous year, providing a substantiated explanation – where applicable – of why a particular principle may not have been applied, either partly or in full. All banks shall place this report on their website.

[xxi] The Insurance Code (*Code Verzekeraars*) was drawn up by the Dutch Association of Insurers (VvV) and became effective on 1 January 2011. The Insurance Code applies to all activities in the Netherlands performed by insurers that are in possession of an insurance licence granted under the Dutch Financial Markets Supervision Act (FMSA), irrespective of whether they perform their activities in the Netherlands or in another Member State, and irrespective of whether those activities are performed by a branch. It is recommended that the Code should apply to all entities of Dutch incorporated insurance groups which operate outside the European Union and to those entities that operate in the Netherlands, irrespective of their country of incorporation. It is expressly recommended that activities of branches of insurers licensed in another Member State should apply the Insurance Code. The insurance Code contains principles that are based on the Dutch Corporate Governance Code. All insurers shall report every year in their annual report regarding the manner in which they applied the principles of the Insurance Code in the previous year, providing a substantiated explanation - where applicable - of why a particular principle may not have been applied, either partly or in full. All insurers shall place this report on their website.

[xxii] The Remuneration Principles were published by the AFM and the DCB in May 2009, and were addressed to financial undertakings (*financiële ondernemingen*) as defined in the FMSA as well as to pension funds. At that time, the principles were promulgated as a sort of "soft law". The principles appeared to be not strictly binding from a legal point of view, but at least expressed how the AFM and the DCB would approach the matter of sound remuneration. According to the AFM and the DCB at that time, the requirement to have a sound remuneration policy was implicit in the existing general requirement for financial undertakings and pension funds to "organise their operations in such a way as to safeguard controlled and sound business operations". In the mean time, detailed rules for financial undertakings, i.e. DCB Remuneration Code firms, have been established and apply as from 1 January 2011. In fact, the Remuneration Principles are now reflected in the DCB Remuneration Code. However, such concrete remuneration rules have not yet been established for pension funds, as the DCB Remuneration Code does not apply to pension funds. However, the 2009 Remuneration Principles have not been withdrawn and remain applicable to financial undertakings and to pension funds. Communications of the DCB indicate that it continues to take the Remuneration Principles into account in its supervision on pension funds. In addition, the DCB has requested the Dutch Ministry of Employment and Social Affairs for the competency to carry out regulations for pension funds similar to those laid down in the DCB Remuneration Code. The Remuneration Principles contain an interesting observation for pension funds, namely the following: Enterprises that have outsourced a substantial part of their activities, for example a large

proportion of the pension funds, must use their influence through the outsourcing relationship to bring the remuneration policy of the service provider into line with the principles for sound remuneration policies.

[xxiii] See endnote i.

[xxiv] See endnote ii.

[xxv] See endnote iii.

[xxvi] See endnote iv.

[xxvii] See endnote ix.

[xxviii] Tier 1 'Dear CEO' FSA letter providing guidance on issues relating to remuneration October 2011.

[xxix] See endnote xvi.

[xxx] See endnote xvi.

[xxxi] See endnote xxii.

[xxxii] See endnote i.

[xxxiii] See endnote ii.

[xxxiv] See endnote iii.

[xxxv] See endnote iv.

[xxxvi] FSA General Guidance: Retention periods April 2011

[xxxvii] FSA Guidance Consultation: Buy out awards to new staff July 2011

[xxxviii] See endnote xxii.

[xxxix] See endnote i.

[xl] See endnote ii.

[xli] See endnote iii.

[xlii] See endnote iv.

[xliii] The Department for Business, Innovation & Skills published a call for evidence entitled "A Long-Term Focus for Corporate Britain" on 25 October 2010. The paper considers the issues and their causes concerning short-termism and market failures in the UK equity markets with the aim of identifying potential remedies to ensure efficient, effective and transparent allocation of capital and the long term sustainability of UK companies, The call for evidence also considers directors' remuneration and takeovers, and their linkage to the long term success of UK companies.

[xliv] See endnote xxii.

[xlv] See endnote i.

[xlvi] See endnote ii.

[xlvii] See endnote iii.

[xlviii] See endnote iv.

[xlix] See endnote ix.

[l] See endnote xxii.

[li] See endnote i.

[lii] See endnote ii.

[liii] See endnote iii.

[liv] The following summary is exclusively based on court decisions and not specifically regulated by law.

[lv] See endnote i.

[lvi] See endnote ii.

[lvii] See endnote iii.

[lviii] See endnote iv.

[lix] In February 2009 a legislative proposal has been submitted to put a cap on severance payments. According to this, Dutch courts would generally grant no more than one annual salary as severance payment in relation to the termination of the employment agreements of employees with an annual gross salary of EUR 75,000 or more. However, the cap may not apply in the event of wrongful dismissal or if the parties agreed otherwise provided that the parties do not submit such agreement to a court.

[lx] The disclosure of the remuneration structure can result from either special remuneration-related disclosure requirements or general disclosure requirements in which remuneration issues can become relevant.

[lxi] See endnote i.

[lxii] See endnote ii.

[lxiii] See endnote iii.

[lxiv] See endnote iv.

[lxv] The obligation to disclose the individual compensation of members of the management board is regulated under sec. 285 no. 9 lit. a, sec. 314 para. 1 no. 6 lit. a of the German Commercial Code and was introduced by the German Management Compensation Disclosure Act in 2005 following the Rec. 2004. These provisions have been recently amended by the VorstAG. The mandatory information which had to be disclosed under the previous version of the German Commercial Code is not included in this chart as it is consistent with the provisions laid down in the Rec. 2004.

[lxvi] See endnote ix.

[lxvii] October 2011 FSA 'Dear CEO' letters providing guidance on issues relating to remuneration. www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_20.shtml and Augsut 2011 FSA Guidance for Tiers Two, Three and Four firms on completing on RPS.

[lxviii] See endnote xxii.

[lxix] In the UK, boards are generally unitary boards. The unitary board structure was endorsed in both the Walker Report and the UK CG Code.

[lxx] See endnote xxii.

[lxxi] See endnote xvi.

[lxxii] See endnote xxii.

[lxxiii] See endnote ii.

[lxxiv] See endnote iii.

[lxxv] See endnote ii.

[lxxvi] See endnote iii.

[lxxvii] See endnote xxii.

[lxxviii] Consolidated group company as provided for under Art. L.233-16 French Commercial Code.

[lxxix] By "Dutch Financial Institutions" we refer to persons or entities that are authorised under the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*) or other acts (such as the Pension Act) to perform a regulated activity. Categories of Financial Institutions include banks, investment firms, insurers, insurance brokers, collective investment companies, fund managers, persons offering "investment objects" (*beleggingsobjecten*), consumer credit providers, certain custody service providers, e-money institutions, payment services providers, persons exploiting regulated markets, trust offices and pension funds. In practice, such authorisation requirements can be required in respect of individuals, companies (and branches of companies), partnerships and unincorporated associations which wish to carry on regulated activities in the Netherlands. It should be noted that the financial regulatory requirements generally apply to regulated entities. As such, they may or may not apply to holding structures. Note however that the FMSA contains provisions imposing requirements, including but not limited to expertise requirements, on (directors of) holding companies that are themselves not subject to license requirements but which are connected in a financial group or conglomerate with regulated (licensed) entities. Financial Institutions must comply with the FMSA's prudential and conduct of business rules which operate as a high level standard of governance. Such rules include the following key matters: conducting business with integrity, due skill, care and diligence; treating customers fairly; and maintaining adequate financial resources, with adequate risk management systems. Other themes relate to: market conduct; clients’ interests; communications with clients; conflicts of interest; clients’ assets; and relations with regulators. The AFM or the DCB can take disciplinary action against any Financial Institution that violates any such provisions. The organisational and governance requirements imposed on Financial Institutions differ from one category to another. It falls outside the scope of this paper to describe the differences. Key requirements are referred to in the main part of this paper and it shall be indicated to which Financial Institutions relevant requirements apply.

[lxxx] Undertakings for collective investment in transferable securities, pursuant to Directive 2009/65/EC.

[lxxxi] Only members of the supervisory board themselves can be members of supervisory board committees (sec. 107 para. 3 sent. 1 AktG).

[lxxxii] By "UK Financial Institutions" we refer to persons that are authorised by the FSA to perform a regulated activity under section 19 of the UK Financial Services Act. In practice, such authorisation requirements can be required in respect of individuals, companies (and branches of companies), partnerships and unincorporated associations which wish to carry on regulated activities in the UK. It should be noted that the financial regulatory requirements generally apply to regulated entities. As such, they may or may not apply to holding structures. Note however that the FSA will introduce a new "parent entity" significant influence function through which the FSA will have direct oversight over non-FSA authorised entities. Financial Institutions must comply with the FSA's Principles which operate as a high level standard of governance. The Principles include the following key matters: conducting business with integrity, due skill, care and diligence; treating customers fairly; and maintaining adequate financial resources, with adequate risk management systems. Other themes relate to: market conduct; clients’ interests; communications with clients; conflict of interest; clients: relationships of trust; clients’ assets; and relations with regulators. The FSA can take disciplinary action against any Financial Institution that violates any such Principle. The organisational requirements imposed on a Financial Institution are prescribed under the UK SYSC Rules (which comprise part of the FSA's Handbook of Rules). They capture the majority of regulated firms, including banks, building societies, investment firms, brokers, custody service providers, commodity firms, some corporate and venture capital entities and others. SYSC rules apply equally to insurers, managing agents and Lloyds although these institutions are not bound to have regard to the requirements set forth in this paper for UK Financial Institutions. More generally, insurance governance requirements under various EU pieces of legislation require insurers to exclusively conduct "insurance activities". The SYSC Rules set out a number of governance requirements which Financial Institutions must follow.

[lxxxiii] FSA Policy Statement PS10/15. These rules were originally due to come into force on 1 May 2011 but have been put on hold, as explained in an announcement on 25 March 2011, which states that the delay does not represent a change of policy on the part of the FSA and that firms will have two months' notice of the new implementation date.

[lxxxiv] In one-tier corporate structures external persons can be appointed as board of directors committee members, whereas in two-tier corporate structures only members of the supervisory board themselves can be elected as members of a supervisory board committee (Art. R.225-29, R.225-56 French Commercial Code).

[lxxxv] See endnote lxxix.

[lxxxvi] Only members of the supervisory board themselves can be members of supervisory board committees (sec. 107 para. 3 sent. 1 AktG).

[lxxxvii] See endnote lxxxiv.

[lxxxviii] See endnote lxxix.

[lxxxix] Guidance note on the monitoring of members of administrative and supervisory bodies pursuant to the KWG and the VAG.

[xc] See endnote lxxxii.

[xci] Moreover, the Vickers Report (which recommends, among other things, that UK retail banking operations must be held in a separate ring fenced entity) recommends that the majority of directors of a ring fenced entity should be independent. The Vickers Report has not yet been implemented in to UK law, although the UK Government has expressed an intention to do so.

[xcii] Pursuant to Art. L. 531-1 of the FMFC, investment services providers are investment firms and credit institutions authorised to provide investment services referred to in article L. 321-1 of the FMFC.

[xciii] See endnote lxxix.

Contacts

Contacts
Overall coordination

Daniela Weber-Rey, LL.M.
Partner

T: +49 69 7199 2551
E: daniela.weber-rey@cliffordchance.com

Ana Paula Tavares, LL.M.
Senior Transaction Lawyer

T: +49 69 7199 1052
E: anapaula.tavares@cliffordchance.com

Further contacts - Germany
General Corporate Governance

Dr. Frank Scholderer
Partner

T: +49 69 7199 1216
E: frank.scholderer@cliffordchance.com

Gwendolyn Müller
Counsel

T: +49 89 21632 8458
E: gwendolyn.mueller@cliffordchance.com

Corporate Governance in the Financial Sector

Dr. Marc Benzler
Partner

T: +49 69 7199 3304
E: marc.benzler@cliffordchance.com

Jörg Rhiel
Senior Associate

T: +49 69 7199 1553
E: joerg.rhiel@cliffordchance.com

Further contacts - United Kingdom

General Corporate Governance

David Pudge
Partner

T: +44 20 7006 1537
E: david.pudge@cliffordchance.com

Maiko Adachi
Lawyer

T: +44 20 7006 2199
E: maiko.adachi@cliffordchance.com

Corporate Governance in the Financial Sector

Chris Bates
Partner

T: +44 20 7006 1041
E: chris.bates@cliffordchance.com

Charles Morris
Senior Associate

T: +44 20 7006 8288
E: charles.morris@cliffordchance.com

Further contacts - France

General Corporate Governance

Aline Cardin
Partner

T: +33 1 4405 5222
E: aline.cardin@cliffordchance.com

Cecile Duval
Professional Support Lawyer

T: +33 1 4405 5258
E: cecile.duval@cliffordchance.com

Corporate Governance in the Financial Sector

Frédérick Lacroix
Partner

T: +33 1 4405 5241
E: frederick.lacroix@cliffordchance.com

Sonia Lods
Avocat (focus: insurance sector)

T: +33 1 4405 2494
E: sonia.lods@cliffordchance.com

Camélia Dragan
Avocat (focus: banking sector)

T: +33 1 4405 2471
E: camelia.dragan@cliffordchance.com

Further contacts - Netherlands

General Corporate Governance

Jeroen Koster
Partner

T: +31 20 711 9202
E: jeroen.koster@cliffordchance.com

Floor van der Steenstraten
Senior Associate

T: +31 20 711 9194
E: floor.vandersteenstraten@cliffordchance.com

Corporate Governance in the Financial Sector

Frank Graaf
Partner

T: +31 20 711 9150
E: frank.graaf@cliffordchance.com

Erwin Schreuder
Senior Associate

T: +31 20 711 9227
E: erwin.schreuder@cliffordchance.com

CLIFFORD

CHANCE

Clifford Chance
Mainzer Landstraße 46
60325 Frankfurt am Main
Germany

Clifford Chance Partnerschaftsgesellschaft von Rechtsanwälten, Wirtschaftsprüfern, Steuerberatern und Solicitors
Frankfurt am Main • AG Frankfurt am Main PR 1000

Regulatory information pursuant to Sec. 5 TMG and 2, 3 DL-InfoV:
http://www.cliffordchance.com/german-regulatory

This publication does not necessarily deal with every important topic nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. If you would like to know more about the subjects covered in this publication or our services, please contact the authors or your usual contact at Clifford Chance.

www.cliffordchance.com

© Clifford Chance, December 2011