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Management, decision-making and supervision of Belgian state owned enterprises: an inefficient patchwork?

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Abstract

Corporate In April 2005 the OECD published its guidelines on the corporate governance of state-owned enterprises (S0E). Its first guideline reads that "…SOEs should not be exempt from the application of general laws and regulations… the legal and regulatory framework should allow sufficient flexibility for adjustments in the capital structure of SOEs". In 1991, long before the corporate governance discussions hit the European coasts, Belgium developed a proper regulatory governance framework for autonomous state-owned enterprises, including specific checks and balances. The general commercial company code is applicable for the remaining issues. However, due to constitutional developments and divergent views on industrial policy, federal and regional Parliaments modified the applicable rules of a large number of SOE's, pushing the checks and balances to the edge. This paper assesses the 1991 corporate governance framework for Belgian autonomous SOE's, compares governance features of these entities and considers the differences with the commercial corporate governance practices. The paper starts with a brief introduction of the Belgian federal state and concludes with some thoughts for future developments.

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Management, decision-making and supervision of Belgian state owned enterprises: an inefficient patchwork?

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Management, decision-making and supervision of Belgian state owned enterprises: an inefficient patchwork?

I. Introduction

1. In April 2005 the OECD published its guidelines on the corporate governance of state-owned enterprises (S0E). Its first guideline reads that "…SOEs should not be exempt from the application of general laws and regulations… the legal and regulatory framework should allow sufficient flexibility for adjustments in the capital structure of SOEs". In 1991, long before the corporate governance discussions hit the European coasts, Belgium developed a proper regulatory governance framework for autonomous state-owned enterprises, including specific checks and balances. The general commercial company code is applicable for the remaining issues. However, due to constitutional developments and divergent views on industrial policy, federal and regional Parliaments modified the applicable rules of a large number of SOE's, pushing the checks and balances to the edge. This paper assesses the 1991 corporate governance framework for Belgian autonomous SOE's, compares governance features of these entities and considers the differences with the commercial corporate governance practices. The paper starts with a brief introduction of the Belgian federal state. Next some general issues of the Company Code are highlighted. Further, this section discusses the legal corporate governance framework of the public limited liability company and the most important principles of the new Corporate Governance Code vis-à-vis the board of directors. Section IV comments on the additional corporate governance features of some of the most important state owned companies. The last section assesses the governance framework of state owned companies and includes policy recommendations to simplify the governance structure.

II. Principles of the Belgian federal state[1]

2. Establishing an efficient corporate governance system is a common task for a modern company of any kind. It makes no difference whether a company's ownership structure is concentrated or disperse, private or public, in hands of institutional investors, families, overseas or a government (agency). However, these differences might result in a different governance framework.

3. To understand Belgian state owned enterprises, a general understanding of the basic principles of the Belgian state is necessary. Independent since 1830, Belgium is a constitutional and parliamentary monarchy. Since the second half of the twentieth century, Belgian's political structure has significantly changed.
First, four sets of institutional reforms – in 1970, 1980, 1988 and 1993 – reformed the Belgian unitary state into a federal state. The reforms can be considered as exceptional due to the fact that this transformation took place without any conflict. However, several governments were not able to end the regular term of a four year period and on several occasions parliamentary elections had to be organised. Since 1993, article 1 of the constitution reads "Belgium is a federal state made up of communities and regions". The powers are no longer exclusively vested in the national authorities but shared among several national and regional authorities, which exercise their respective competences independently from one another. Specific

[1] This section is based on the excellent overview of Van Bael & Bellis, *Business Law Guide to Belgium*, The Hague, Kluwer Law International, 2003, p. 1-24.

coordination and conflict resolution procedures are in place to resolve any conflict of interests or conflict of competences.
An additional institutional reform, transferring new competences to the communities and regions has been approved although not yet fully implemented. Further, Belgium, like all other countries in the European Union, has witnessed a transfer of a substantial amount of its sovereignty to the European Union.

4. The aforementioned reforms created a hybrid and complex structure. Belgium is headed by a monarch and comprises a federal government in combination with a two chamber federal parliament (House of Representatives and Senate), three communities and three regions, all having their own parliament and government.

The three communities – the Flemish, the French and a German speaking community – and the three regions – the Flemish, the Walloon and the Brussels capital region – all have attributed powers and implied powers. The latter are powers for which the regions or communities are not competent but due to the necessity for the exercise of the authority in matters for which they are competent, the rules issued by the community or region are considered valid.

A crucial aspect of this Belgian federal system is that between these different levels there is no hierarchy. Federal laws and regional or community "decrees" or "ordonnances" are treated equally. This complex structure needs different cooperation and conflict resolution mechanisms.

5. The powers of the federal state remained considerable and are subdivided in three broad categories:

1. the competences specifically attributed to the federal state like the army and the police force;
2. the competences which are exceptions to regional or community competences and specifically attributed to the federal state (like the multilateral commercial policy such as the WTO) whereas foreign trade in general is a regional competence);
3. the residual competences.

In general, the federal state remained competent for all matters that fall within the sphere of national interest like finance, defence, justice, foreign policy, social security, and domestic affairs. However some of these competences have been scattered into several parts, like foreign policy and public health. The federal state retained control over an important part of the Belgian society, including public debt, social welfare, price policy, nuclear weapons but also *state owned companies like the railways and the post office*.

6. The three communities cover four broad areas:

1. cultural matters (like arts, museums, *radio and television*, tourism, sports);
2. education with the exceptions of schooling period, minimum requirements to issue diplomas and teachers' pensions;
3. matters attached to the person which include in particular public health policy and welfare for individuals (like protection of the youth and family policy);
4. use of languages.

7. The regions have power in more areas, most of them listed in the special law of August 8, 1980:

1. regional development and town planning;
2. environment and water policy;
3. rural development and nature conservations;
4. housing policy;
5. agriculture policy;
6. energy policy excepted matters as pricing policy, monetary policy, competition law or corporate law which remains in the field of competences of the federal state;
7. employment policy;
8. public works and transport;
9. economic policy and
10. supervision of the provinces and municipalities and their financing.

In 2002 new competences were attributed to the regions:

11. Foreign trade;
12. Agriculture and maritime fishing (the protection of the food chain excepted);
13. Organisation and operation of the municipalities.

All these competences allow the regions and the communities to establish state owned companies. As will be discussed, an important number of state owned companies have a region or community as their principal or only shareholder.

III. The Belgian corporate governance framework

1. The Belgian commercial Company Code and forms of companies

8. In 1999 the Belgian Parliament adopted a new Company Code, after several years of complaints that the provisions governing company law were fragmented. The Company Code distinguishes several forms of companies:

1. The public limited liability company;
2. The closely held limited liability company;
3. The cooperative company with limited liability;
4. The cooperative company with unlimited liability;
5. The general partnership;
6. The limited partnership;
7. The limited partnership with shares;
8. The Economic interest grouping;
9. The agricultural company;
10. The European company.

The aforementioned legal entities all have legal personality. Three other types of business enterprises do not have legal personality:

1. The partnership;
2. The temporary commercial company and
3. The company in participation.

9. Table 1 gives an overview of the number of traders and companies. More than half of all entities are individual traders, although this number is continuously decreasing. More and more traders incorporate their business due to inter alia a more advantageous tax and social security system. Lawyers and accountants are more familiar with the closely held and the public limited liability company. Hence, the most frequently used company types are both types (38% of all entities and around 80% of all incorporated forms of businesses).

Table 1: Number of commercial entities

	1998		2000		2003	
	number	%	number	%	number	%
Individual traders	417.425	59,83%	386.704	56,26%	369.781	53,77%
General and limited partnership	3.062	0,44%	4.328	0,63%	5.663	0,82%
Public limited liability company	81.482	11,68%	82.500	12,00%	82.732	12,03%
Closely held limited liability company	143.590	20,58%	163.447	23,78%	178.638	25,97%
Cooperative company	24.081	3,45%	21.087	3,07%	19.468	2,83%
Other company forms	28.047	4,02%	29.283	4,26%	31.480	4,58%
Total	697687	100%	687349	100%	687762	100%

Source: Ministry of Economic Affairs (Federale Overheidsdienst Economie)

10. Theoretically government owned companies can opt for one of the aforementioned legal entities. However, the government prefers some of the more familiar entities like the public limited liability company. The government can – within certain limits – decide which rules apply for the government owned companies and in all cases the government issues specific acts for these types of companies. However, in all these cases the articles of the Company Code are applicable if the specific act does not deviate from it.

11. Generally, government approvals are not required. However, in some industries the company or entity has to apply for specific licences or government approvals prior to starting its operations. The production or distribution of alcoholic beverages, medicinal products, leasing, and the exploitation of a hotel are examples. The Ministry of Economic Affairs published a list of 93 activities that need a licence or approval.

In the next section we will focus on the most familiar form for state owned enterprises, the public limited liability company.

2. Rules governing the management and control of a public limited liability company

12. Title IV of Book VIII of the Company Code contains the rules governing the management of the public limited liability company. According to article 517 of the Company Code the public limited liability company is managed by natural persons or legal entities. The law of August 2, 2002 modified the general Belgian monistic system and introduced an optional specific two tier look alike system with a board of directors and a management board. The same law also modified rules governing the general meeting of shareholders.

13. For stock exchange listed companies the supervisory authority – the Belgian Banking Finance and Insurance Commission – the stock exchange – Euronext – and the employers' organisation FEB have issued a comply or explain corporate governance code in December 2004. From 2006, the stock exchange listed companies are encouraged to issue a corporate governance report. This corporate governance code has no special legal basis and is not legally binding though the first study related to the annual reports over 2004 indicate a large majority of the companies comply or at least show a relevant willingness to report in compliance with the corporate governance code.[2] The markets will evaluate the compliance. The market refers to price formation as well as decisions made by investment banks, by the rating agencies, the media, the public opinion, and so on.[3]

2.1. The board of directors

14. The board of directors of a public limited liability company is composed of at least three directors. A company with only two shareholders can opt for a board of directors of two members. The general meeting of shareholders appoints the directors for a renewable fixed term of maximum six years, the corporate governance code recommends a maximum of four years. A majority of listed companies complies with this requirement.[4]

The average board of directors of Belgian listed companies has 9,2 board members.[5]

A very important feature of the Belgian corporate governance systems is the possibility for the general meeting of shareholders to dismiss the directors at any time and without any cause. The courts consider this rule of public order.

In cases a legal entity is appointed as member of the board of directors or of the management committee, the legal entity must designate a single natural person to execute the directorship or management function in the name and for the account of the legal entity. The natural person is civilly and criminally liable as if he were performing the function in his own name and for his own account. For tax and other reasons, legal entities are frequently found to be directors of public limited liability companies.

The board of directors is authorised to take all necessary measures to accomplish the corporate purpose, unless the law expressly made the general meeting competent. The powers of the board can be limited in the articles of association but any such limitation cannot be relied upon as against third parties, even when they are published according to the disclosure rules. One or more members of the board or according to the Highest Belgian Court – Cour the Cassation – a board member and another person can be given the powers to represent the

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[2] C. Van der Elst, *Corporate governance op het snijvlak tussen wetgeving en aanbeveling*, Financial Law Institute, Ghent University, September 2005, working paper 2005-03, to be published in *Maandschrift Accountancy & Bedrijfskunde* 2006, 25 p.

[3] E. Wymeersch, *Enforcement of corporate governance codes*, European Corporate Governance Institute working paper nr. 46/2005, June 2005, p. 5.

[4] C. Van der Elst, *Corporate governance op het snijvlak tussen wetgeving en aanbeveling*, Financial Law Institute, Ghent University, September 2005, working paper 2005-03, to be published in *Maandschrift Accountancy & Bedrijfskunde* 2006, p. 11.

[5] C. Van der Elst, *Corporate governance op het snijvlak tussen wetgeving en aanbeveling*, Financial Law Institute, Ghent University, September 2005, working paper 2005-03, to be published in *Maandschrift Accountancy & Bedrijfskunde* 2006, p. 7

company. This mandate can be relied upon as against third parties provided the power is published in the Belgian Official Journal.

Since 1995 the board of directors can decide by means of unanimous written consent in the interest of the company and in cases of extreme urgency.

Already back in 1991 the Belgian companies act contained very specific rules related to conflicts of interests. These rules have been modified in 1995 and 2002. A conflict of interest arises when the direct or indirect patrimonial interest of a director conflicts with a decision or transaction to be taken by the board of directors. The director should inform the board of this conflict before the board takes the relevant decision. In companies where an auditor is appointed, the director must also inform the former.
The minutes of the meeting of the board of directors must mention:

- the declaration of the director;
- the grounds for justification of the conflict;
- the nature of the decision of the board;
- the patrimonial consequences of the decision.

If the company is stock exchange listed, the director is not allowed to participate in the deliberations of the board and must refrain from casting a vote. The company can request the annulment of the decision in cases where the counter party was aware or should be aware of the violation.

2.2. Independent directors

15. Only the board of directors is competent to take all measures, individual members are not. However to monitor intra-group dealings in listed entities, an important adjustment has been introduced.[6] A committee of three independent directors has to assess the dealing. The law defines the minimum requirements to be considered as an independent director:

1. an independent director should not have exercised any mandate within the company or any of its affiliates in the two-year period prior to the appointment;
2. the independent director should not have a spouse, concubine or relative (to the second degree) exercising a mandate within the company or any of its affiliates;
3. the independent director should not hold any security in the company that represents more than 10 per cent of the capital. The 10 per cent threshold must take into account the amount of securities held by any other company the independent director controls;
4. the independent director does not have any other relationship with the company that can compromise his independence.

The average board of directors of Belgian listed entities has 3,9 independent directors, an average of 41 per cent of all board members. 84 per cent of the boards have at least three independent directors.[7]

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6 Cf. infra.

7 C. Van der Elst, *Corporate governance op het snijvlak tussen wetgeving en aanbeveling*, Financial Law Institute, Ghent University, September 2005, working paper 2005-03, to be published in *Maandschrift Accountancy & Bedrijfskunde* 2006, p. 7

2.3. The management committee

16. In 1979 Parliament discussed a bill to introduce a mandatory two-tier board system. The bill was never voted. However in 2001 the government launched a new bill to offer public limited liability companies the possibility to organise a particular two tier system with a management committee and a board of directors. The law enacted in August 2002.

Summarized, the company can be structured along the following lines. The board of directors or the articles of association determine the organisation, composition and functioning of the management committee. The Companies Code does not impose any other requirements than for a minimum of two members and the publication of the appointment and dismissal of the members in the Belgian Official Journal. Therefore, the system is particular as it allows members of the board of directors to become a member of the management committee. On average 50% of the members of the management committee are directors, but in some companies all members are directors whereas in others no board members combine this membership with a management committee membership.[8]

If the management committee is established, all powers of the board of directors are delegated with the exception of:

1. Strategic policy;
2. Control of the management committee and
3. Powers the Companies Code reserve to the board of directors (like calling the general meeting).

In the legal doctrine there is discussion whether this rule forbids the board of directors to make use of the powers that have been delegated.[9] This is due to differences in the French and Dutch version of the Companies Code.

Any limitations to the powers of the management committee are not enforceable vis-à-vis third parties.

The articles of association can mandate one or more members of the management committee to represent the company. This right of representation can be relied upon against third parties provided it is published in the Belgian Official Journal.

Two years after this two-tier framework was enacted, at least 10% of all listed corporations have opted for this new system, an indication that the business community welcomed the legislator's more liberal approach of organising companies.[10]

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[8] For a discussion see C. Van der Elst, "Corporate Governance: een wettelijke (r)evolutie – De gevolgen van de wet "corporate governance" op de organisatie van genoteerde vennootschappen", *Tijdschrift voor Rechtspersoon en Vennootschap* 2004, 69-86.

[9] J.-M. NELISSEN GRADE, "Het Nieuwe Directiecomité", in *Nieuw Vennootschapsrecht 2002-Wet Corporate Governance*, K. GEENS, e.a. (eds.), Kalmthout, Biblo, 133-136; F. HELLEMANS en M. WAUTERS, "Het Wetboek van vennootschappen gewijzigd door de Wetten van 2 augustus en 4 september 2002, een overzicht", *T.R.V.* 2002, 481; E. JANSSENS en J. LEMMENS, "De Wet Corporate Governance: De nacht is het duisterst voor dageraad", *Accountancy & Bedrijfskunde* 2003, 19; P. ERNST en L. VAN DEN EYNDEN, "De Corporate Governance-Wet verleent aan het directiecomité een wettelijke basis en een flexibel regime", in *Behoorlijk vennootschapsbestuur*, H. BRAECKMANS en E. WYMEERSCH (eds.), Antwerpen, Intersentia, 2003, 61. Zie ook H. DEWULF, "De wet corporate governance en het bestuur: het directiecomité en intra-groepsverrichtingen", in *Financiële regulering: op zoek naar nieuwe evenwichten*, M. TISON, C. VAN ACKER en J. CERFONTAINE (eds.), Antwerpen, Intersentia, 2003, 216.

2.4. The statutory audit committee

The Belgian Parliament introduced a particular responsibility for audit committees of listed companies. However, it is not (yet)[11] compulsory for listed companies to establish such committee. If a statutory audit committee is established, it is empowered to pre-approve non audit services if the total amount of the fees for non audit services exceeds the audit fee.[12]

2.5. Daily management

17. The daily management of a company can be entrusted to one or more persons. These persons do not need to be directors of the company but the appointment must be published in the Official Gazette. The person(s) can bind the company as against third parties for matters that can be considered as daily management. The Company Code does not define "daily management". Belgian highest court, the Cour de Cassation, defined daily management as "any actions which are necessary in the normal course of business or which can be taken without a formal decision of the board or directors because of their minor importance or their urgency"[13]. It is clear that daily management depends on the size and the activities of the companies. Third parties do not always know whether an engagement of the daily manager falls within the scope of his competence.

2.6. Intra-group dealings and corporate opportunities

18. In general, Belgium has not developed group law. However in 2002 some company law amendments resulted in some specific rules to be applied in a group of companies.

First, the law introduced provisions on intra-group transfers relating to Belgian listed companies and conflicts of interest relating thereto. The old provisions were considered to be insufficient to manage the relationship between the listed company and its shareholders as well as its affiliates.

The new rule covers any dealing with other entities of the same group with the exception of dealings at arm's length and dealings representing less than 1% of the net assets to be taken from the consolidated accounts. These exceptions were introduced to avoid costs of burdensome procedures would outweigh a possible disadvantage for the company of the dealing. Dealings between a subsidiary and a listed entity or between a sub-subsidiary and a subsidiary are excluded. The legislator had the opinion that these kinds of dealings do not shift any assets out of the direct sphere of influence of the listed entity and its shareholders.

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[10] C. Van der Elst, "Corporate Governance: een wettelijke (r)evolutie – De gevolgen van de wet "corporate governance" op de organisatie van genoteerde vennootschappen", *Tijdschrift voor Rechtspersoon en Vennootschap* 2004, 69-86.

[11] Recently, a proposal was introduced in Parliament to change the companies code and make it mandatory for listed companies to establish an audit committee, composed of more than 50% independent directors as defined in the companies code (*Parlementaire Stukken*, Kamer, 2003-2004, nr. 51/1312).

[12] Belgian companies act, article 133.

[13] Cass. 17 September 1968, *Pas.* 1969, I, 61.

The items related to the intra-group dealing must be presented to a committee of three independent directors, assisted by one or more independent experts. The committee defines the kind of the transaction, evaluates the advantage or disadvantage for the company and its shareholders, assesses the financial impact and advises whether the decision can be considered unlawful or detrimental nature of the transaction. The committee must deliver a written report. The board of directors deliberates and takes a decision. The minutes of the meeting must mention whether the procedure has been applied and whether the decision of the board deviates from the advice of the committee and on what grounds the board of directors takes its decision.

In cases the dealing occurs between a non-listed subsidiary of the Belgian listed entity and another entity of the group the same procedure applies. It requires the approval of the parent company. It can be considered as a group law rule.

Second, the annual report of a listed company must disclose the real limitations or burdens the parent company imposes on the former.

2.7. Control of the public limited liability company

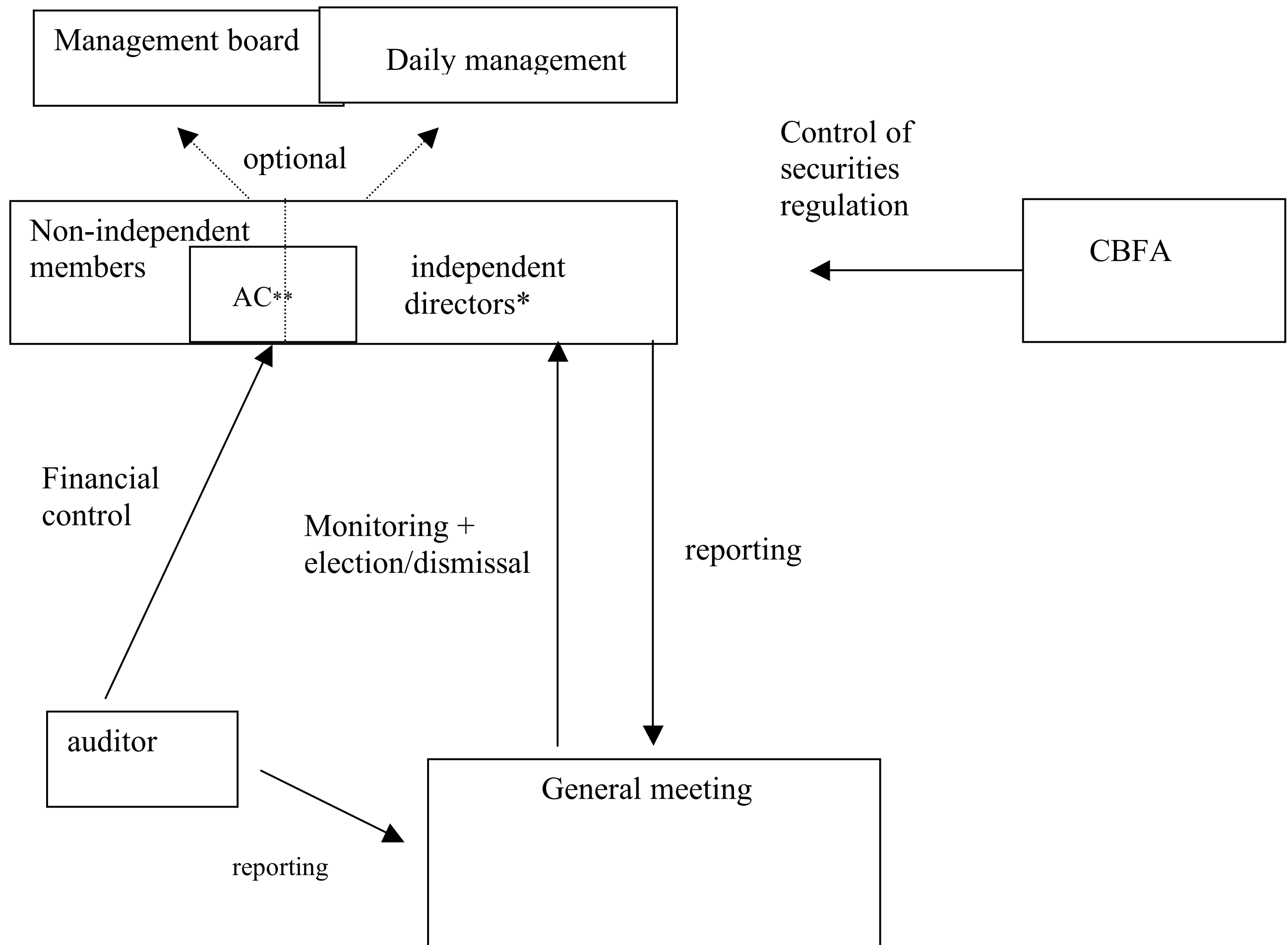
19. Next to the general meeting of shareholders that is competent to take decisions that relate to the proper functioning of the company, like the appointment and dismissal of directors and the approval of the annual accounts, and decisions that relate to the corporate structure, like the modification of the articles of association, the liquidation etc., one or more statutory auditors control the financial condition of the company and review the annual accounts. The statutory auditor must be qualified and member of the Institute of Registered Auditors (Institut des Reviseurs).

The general meeting elects the statutory auditor for a renewable fixed period of three years. He receives a fixed remuneration determined by the general meeting.

Further, the Belgian Banking, Finance and Insurance Commission monitors the compliance of listed entities with the applicable securities regulation.

Figure 1 summarizes the corporate management and control structure of a Belgian listed public limited liability company.

Figure 1: The organisation and control of a listed public limited liability company



* to evaluate decisions between company and related companies ; ** AC: audit committee

3. Corporate governance code

20. In the spring of 2004 the Stock Exchange Euronext, the Belgian Banking, Finance and Insurance Commission and the Federation of Belgian Employers established a corporate governance working group. After consultation of all interested parties, this group, the Commission Corporate Governance, published its final code in December 2004. From 2005 on – annual reports of 2006 – listed entities must disclose their corporate governance practices while referring to the Code ("comply" or "explain"). So far, and contrary to the Dutch and the German system, the Belgian system is not legally binding.[14] However, due to the announced supervision of the Belgian Banking, Finance and Insurance Commission[15] it is expected that most companies will disclose the required information. Some preliminary research confirms the expectations.[16]

The corporate governance code contains 9 principles, the pillars of good corporate governance:

"PRINCIPLE 1. THE COMPANY SHALL ADOPT A CLEAR GOVERNANCE STRUCTURE
PRINCIPLE 2. THE COMPANY SHALL HAVE AN EFFECTIVE AND EFFICIENT BOARD TAKING DECISIONS IN THE CORPORATE INTEREST
PRINCIPLE 3. ALL DIRECTORS SHALL DEMONSTRATE INTEGRITY AND COMMITMENT
PRINCIPLE 4. THE COMPANY SHALL HAVE A RIGOROUS AND TRANSPARENT PROCEDURE FOR THE APPOINTMENT AND EVALUATION OF THE BOARD AND ITS MEMBERS
PRINCIPLE 5. THE BOARD SHALL SET UP SPECIALISED COMMITTEES
PRINCIPLE 6. THE COMPANY SHALL DEFINE A CLEAR EXECUTIVE MANAGEMENT STRUCTURE
PRINCIPLE 7. THE COMPANY SHALL REMUNERATE DIRECTORS AND EXECUTIVE MANAGERS FAIRLY AND RESPONSIBLY
PRINCIPLE 8. THE COMPANY SHALL RESPECT THE RIGHTS OF ALL SHAREHOLDERS AND ENCOURAGE THEIR PARTICIPATION
PRINCIPLE 9. THE COMPANY SHALL ENSURE ADEQUATE DISCLOSURE OF ITS CORPORATE GOVERNANCE"

21. Provision 2.2. establishes a basic rule regarding the composition of the board. No individual or group of directors should dominate the board's decision-making. Most companies already have modified their board structure to comply with this provision. Figure 2 illustrates the average board composition.

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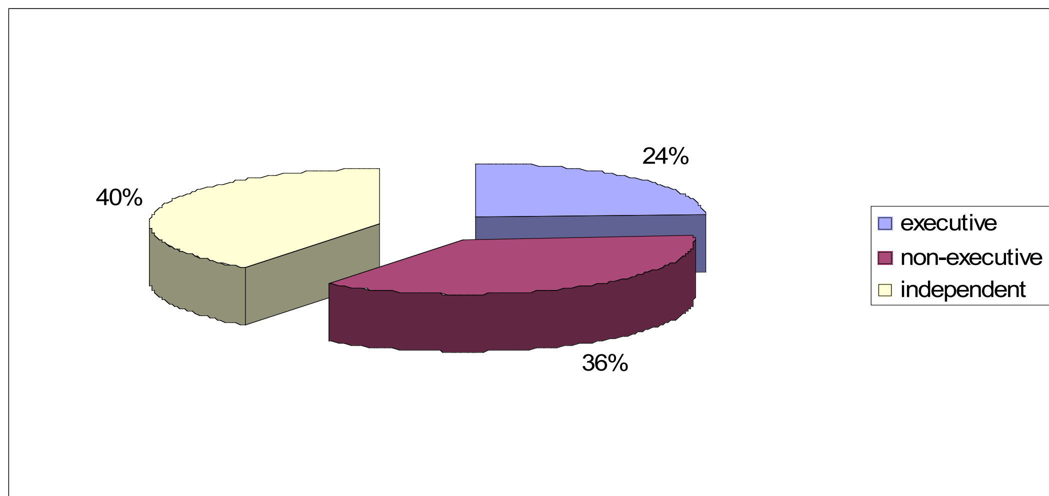
[14] Companies cannot be punished if they do not disclose any corporate governance materials the corporate governance code requires.

[15] This Commission has only supervisory authority over the ongoing and periodic disclosure of information and the monitoring corporate governance is therefore limited to some kind of "moral support".

[16] C. Van der Elst, *Corporate governance op het snijvlak tussen wetgeving en aanbeveling*, Financial Law Institute, Ghent University, September 2005, working paper 2005-03, to be published in *Maandschrift Accountancy & Bedrijfskunde* 2006, 25 p.

Figure 2: Average composition of a board of a Belgian listed company



Source: C. Van der Elst, *Corporate governance op het snijvlak tussen wetgeving en aanbeveling*, Financial Law Institute, Ghent University, September 2005, working paper 2005-03, to be published in *Maandschrift Accountancy & Bedrijfskunde* 2006, table 1, p. 8.

22. Regarding the management of the company, especially the principles 4, 5, 6 and 7 are of importance. Principle 4 contains guidelines for a nomination procedure, an induction programme and an evaluation process of individual directors. Principle 5 requires the company to establish a nomination, remuneration and audit committee. The nomination committee must be composed of a majority of independent non-executive directors and should make recommendations to the board with regard to the appointment of directors.[17] Only non-executive directors can become a member of the remuneration committee or the audit committee and more than half of them must be independent. The remuneration committee must determine the remuneration policy for both the non-executive and the executive directors. The remuneration policy for the executive members should contain the most important contractual terms as well as the key elements like the performance criteria.[18] The audit committee should monitor the integrity of the financial information, discuss financial reporting issues, review the internal control, internal audit and risk management systems, and the external audit process, including the selection and reappointment of the external auditor and the non-audit services of the external auditor.[19]

75% of the listed entities have established a remuneration committee, 72% an audit committee but only 45% a nomination committee. In two remuneration committees out of five and in one audit committee out of five one executive member participates in the meetings. Those companies do not yet comply with the Corporate Governance Code.[20]

Aforementioned the difficult management structure of the company with a management committee, daily management, representatives etc. was highlighted. Principle 6 requires the company to "determine, in close consultation with the CEO, the terms of reference of the

[17] Appendix D of the Corporate Governance Code.

[18] Appendix E of the Corporate Governance Code.

[19] Appendix C of the Corporate Governance Code.

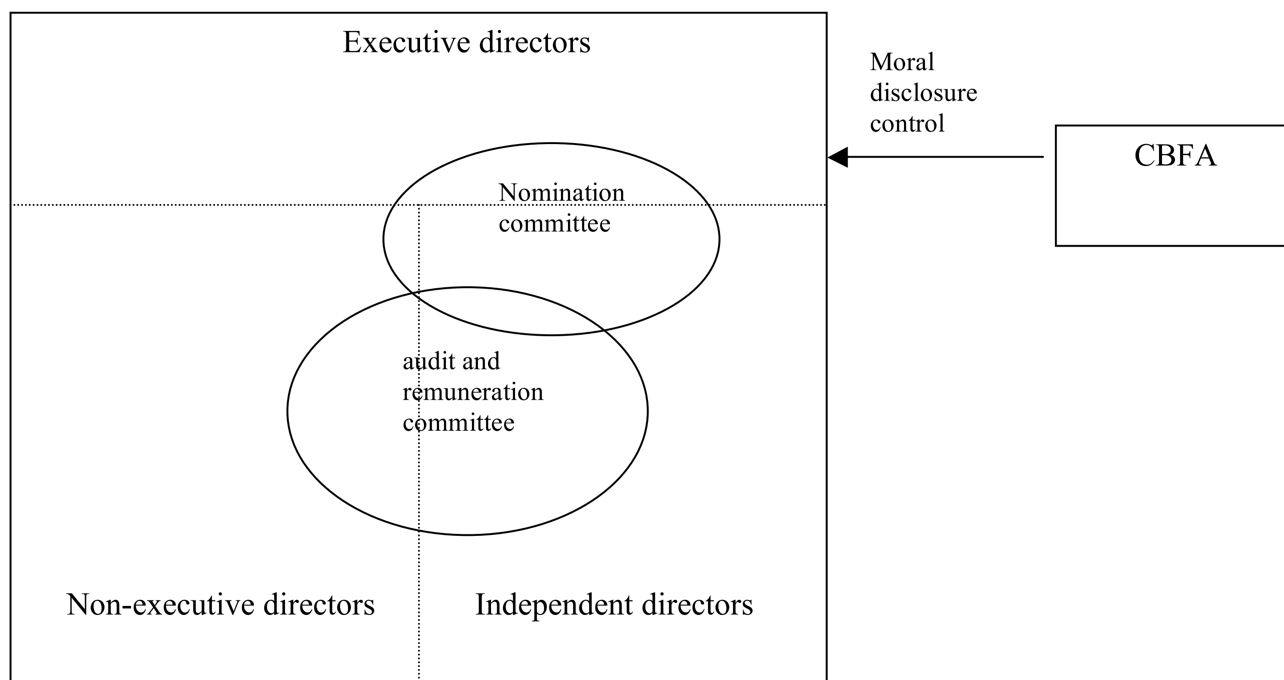
[20] C. Van der Elst, *Corporate governance op het snijvlak tussen wetgeving en aanbeveling*, Financial Law Institute, Ghent University, September 2005, working paper 2005-03, to be published in *Maandschrift Accountancy & Bedrijfskunde* 2006, table 1, p. 14-16.

executive management detailing its responsibilities, duties, powers, composition and operation. These terms should be disclosed in the CG Charter."[21]

The provisions in the seventh principle create the most opposition from listed entities and their chief executive officers. Principle 7 and the provisions not only require an appropriate level of remuneration to attract, retain and motivate directors and managers but also oblige an adequate disclosure. Detailed disclosure rules apply for the remuneration of individual non-executive directors, the chief executive officer, and the other members of the executive management. The disclosed information should inform the reader about the basic salary, the variable remuneration as well as the other components

Figure 3 summarizes the additional organisational requirements of the board of directors to comply with the Belgian Corporate Governance Code.

Figure 3: The structure of the board of directors as recommended by the Belgian Corporate Governance Code



IV. Corporate governance framework of Belgian state owned companies

1. Introduction

23. In 1991 the Belgian Parliament voted the Law of March 21 to reform some economic state owned companies. The purpose of the law was the improvement of the commercial position of the state owned companies as well as to offer optimal public services at reasonable costs.[22]

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[21] Provision 6.1. of the Corporate Governance Code.

[22] Bill to reform some economic state owned companies. Report of the Parliamentary Commission infrastructure, *Parl. Doc.*, Chamber 1989-90, nr. 1287/10, p. 4.

This law harmonised the position of federal state owned companies, brought the corporate structure into line, introduced a legal "novum", the policy contract and reformed the employee's position.[23] The law is only applicable on federal state owned companies, not on regional or community owned companies. However, as it can be hypothesized that the only major difference between both types of companies is the identity of the largest shareholder – the federal or the local government – there should be no need to diverge from the general framework.

State owned enterprises continue to play an important role in the economic development of the country. Table 1 gives a brief overview of some of the most important economic state owned enterprises. Two companies, the Railway and the Post office employ individually more than 1% of the total number of employees in Belgium.

Table 1: number of employees of some important Belgian state owned companies (end 2003)

Industry	Company name	number of employees	% of total number of Belgian employees	stake government
Transport:				
Railways:				
	NMBS	41894	1,190%	100%
Bus, underground and tramways:				
	De Lijn	6475	0,184%	100%
	M.I.V.B.	5870	0,167%	100%
	TEC Liège-Verviers	1697	0,048%	100%
	TEC Charleroi	1026	0,029%	100%
	TEC Namur-Luxembourg	776	0,022%	100%
	TEC Hainaut	744	0,021%	100%
	TEC Brabant-Wallon	284	0,008%	100%
Telecommunications:				
	Belgacom	15957	0,453%	50%+1 share
	Proximus Belgacom Mobile	2293	0,065%	Belgacom>50%
Broadcast:				
	VRT	2848	0,081%	
	RTBF	2557	0,073%	
Post office:				
	De Post	38850	1,103%	100%
Total 13 companies		118714	3,444%	
Total number of employees in Belgium		3521000		

[23] W. Devroe, "Deugdelijk bestuur van overheidsondernemingen (autonome overheidsbedrijven, publiekrechtelijke naamloze vennootschappen)", *Tijdschrift voor Rechtspersoon en Vennootschap* 1998, 462-463.

24. State owned companies also play an important role in the industrial policy of the government. Two examples illustrate this. In 1980 the Flemish government incorporated G.I.MV., the most important venture capitalist in Flanders. It is estimated that G.I.M.V. provides more than 40% of all venture capital supplied by Belgian players anywhere in the world.[24] The Flemish government still controls 70% of the shares. In September 2005 an IPO of the Arkimedes-Fund was launched. Arkimedes-Fund is controlled by Arkimedes Management, which belongs to PMV, a 100% Flemish government owned company. Arkimedes-Fund will invest in Flemish entrepreneurs with innovative and good business ideas. The 75 mln. euro the IPO called for, was subscribed within 5 days.[25]

In this article we will focus on the corporate structure and the policy contract of state owned companies.

2. The policy contract

25. The rules that govern the public services that the government owned company must offer as well as the conditions for offering these services are established in a policy contract.[26] The policy contract governs:

1. the duties the government owned company has to perform;
2. the basic rules vis-à-vis the terms of the public services;
3. the rules of conduct for the consumers of public services
4. the rules regarding the subsidising of the government owned company;
5. the rules regarding the financial duties vis-à-vis the government;
6. the business plan of the company;
7. the sanctions for non-performance of the contracting parties.

If required, the policy contract contains rules regarding the business of strategic economic importance, the objectives of the financial structure of the company, rules regarding the allocation of the profit, and the amount for real estate transactions requiring the pre-approval of the responsible Minister.

Policy contract can be a very detailed document. The policy contracts for the three railroad companies cover more than 80 pages.[27]

The law explicitly states that a policy contract is not a regulation as meant in the law determining the competence of the highest administrative court, the Conseil d'Etat. Therefore an important monitoring mechanism is excluded.

3. The general corporate governance framework of state owned companies

26. The flexibility the Companies Code offers for commercial companies to optimize their governance system has not been granted to state owned enterprises. The latter companies must be managed with a two tier structure: a combination of a board of directors and a

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[24] G.I.M.V., *annual report 2004*, p. 5.
[25] BH, "Arkimedes-fonds vervroegd afgesloten", De Tijd, September 21, 2005, p. 5.
[26] Article 3 of the Law of March 21, 1991 to reform some economic state owned companies.
[27] See the Official Gazette of August 31, 2005, pp. 37930-38013.

management committee.[28] The system was based on the organisation of banks where the financial supervisory authority already required this specific kind of two tier board structure since the 1970's. This section informs about the corporate framework of the state owned companies.

3.1. Board of directors

27. The board of directors is composed of maximum 18 members, including the members of the management committee.[29] The number of management members must be 1/3 of the total number. State owned companies that operate all over the country must have a board of directors composed of as many French speaking members as Flemish speaking members, excluding the chairman and the chief executive officer. The latter two must have another native language. These checks and balances result in boards of directors that most easily will be composed of 18 members, well above the average number that is considered appropriate and exceeding the average of listed Belgian companies with almost 100%. However, the law refers to the general meeting as the competent corporate body to determine the number of board members. Six members will be executive, 9 members will be French speaking, 9 members Flemish speaking.

The nomination, election and dismissal procedures deviate from the Companies Code. The Council of Ministers nominates a number of directors in relation to the relative number of shares the federal State owns. The King appoints these members. The other members of the board are appointed by the other shareholders. However, these rules should be read together with the rules requiring the King to appoint the chairman of the board of directors and the chief executive officer. [30] Both appointments need the approval of the Council of Ministers.
The members that have been appointed by the King cannot be dismissed unless the King approves the dismissal. This procedure requires a Royal Decree pre-approved by the Council of Ministers and an advice of the board of directors of the state owned company taken with a majority of two thirds of the votes cast.[31]

When the general meeting elects the remaining board members, it should take into account the requirement to compose the board with as many Flemish and French speaking members, given the language of the board members the King appointed.

All non executive members of the board of directors are elected for a renewable period of six years[32], longer than the period of 4 years recommended in the Corporate Governance Code.
The competences of the board of directors are similar to those for commercial companies. The board is authorised to take all necessary measures to accomplish the corporate purpose. In commercial companies with a two tier board most of the powers of the latter are delegated to the management committee. Due to the specific mandatory two tier regime, the board remains considerably more powerful in state owned enterprises. Only the daily management is in hands of the management committee. For all other matters excluding those explicitly

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[28] Article 15 of the Law of March 21, 1991.
[29] Article 18, §1 of the Law of March 21, 1991.
[30] Article 18, §5 and article 20, §2 of the Law of March 21, 1991.
[31] Article 18, §2 of the Law of March 21, 1991.
[32] Article 18, §3 of the Law of March 21, 1991.

mentioned in the Law of March 21, 1991, the board has the possibility to delegate tasks but it is not a mandatory requirement as for commercial companies.[33]

3.2. Position of the individual executive director

28. Contrary to the Company Code, the Law of March 21, 1991 provides a contractual framework for individual executive board members. Rights and duties, including remuneration of executive directors must be laid down in a written[34] contract. During the negotiations between the executive director and the company the latter is represented by the non-executive board members.[35] This procedure avoids any possible conflict of interest.

Further, a number of positions, like minister, member of the (European) Parliament, cannot be combined with a directorship of a state-owned enterprise. In particular the law was amended in 2004 to forbid employees of the state-owned company to be a non-executive director of the company.[36]

3.3. Management committee

29. Contrary to the general public limited liability company, the state owned company is obliged to establish a management committee. The committee is chaired by the chief executive officer, elected by the King for a period of six years. He can be dismissed if the Council of Ministers takes this decision and two thirds of the board of directors pre-approved this decision to be taken.

The non-executive directors of the board elect the members of the management. The chief executive director selects these members. The Minister responsible for the state owned enterprise has to approve this decision.[37]

Membership of the management committee is considered to be a full-time job.

The members of the management committee are elected for a renewable period of six years. A majority of two third of the non-executive board members can dismiss any ordinary member of the management committee if approved by the Minister.[38]

The management committee has the power of the daily management and can bind the company vis-à-vis third parties for matters that can be considered as daily management. Next, the management committee is responsible for the execution of decisions taken by the board of directors as well as the negotiation of the aforementioned policy contract. [39]

The board of directors can decide to empower the management committee for all matters except:

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[33] Cf. infra.

[34] The does not explicitly mention a written contract but due to the requirement that the contract must be "specific", the contract must be in writing.

[35] Article 21, §1 of the Law of March 21, 1991.

[36] Article 22 of the Law of March 21, 1991.

[37] Article 20, §3 of the Law of March 21, 1991.

[38] Article 20, §3 of the Law of March 21, 1991.

[39] Article 19 of the Law of March 21, 1991.

1° The approval of the policy contract, including all amendments;
2° The adoption of the strategic policy and business plan;
3° Control of the management committee;
4° Other competences the Company Code reserves to the board of directors.[40]

3.4. Chairman of the board of directors

30. The Council of Ministers has to select the chairman of the board of directors. The King elects the chairman. The chairman has a decisive voice in the board. In particular, he is allowed to investigate all documents, minutes, etc. of the company. He has the right to call for assistance from an accountant the company has to remunerate.[41]

3.5. The remuneration committee

31. In 2002 the legislator requires state owned enterprises to establish a remuneration committee. The remuneration committee is empowered to send the board of directors, the King or the general meeting, depending on the matter, a proposal regarding the decision of any direct, indirect or future remuneration for any member of any organ of the company. Every year the committee publishes its report in the annual report of the company.[42]

As for commercial companies, the board of directors can establish other committees.

3.6. Monitoring state owned companies

32. The organisation of the control of a state owned company does significantly differ from the control of commercial companies. In general the latter is monitored by the principals, id est the shareholders united in the general meeting and an auditor who controls the financial statements.

In state owned companies, several layers of monitoring coexist.

First, the Minister responsible for the state owned companies has a specific monitoring role.[43] The King appoints a representative of the Minister. This representative has a legal duty to control the compliance with the laws and regulations, and more in particular the compliance with the policy contract, the organic status, and the public service as defined by law. He reports to the responsible minister as well to the Minister responsible for the budget of the country for the decisions of the board and the management that influence the national budget. The representative must be invited to participate in all meetings of the board and the management committee and is empowered to control all minutes and documents of the company as well as to request for references. The company must provide the representative of any means and human capital, free of charge.

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40 Article 17 of the Law of March 21, 1991.
41 Article 18, §5 of the Law of March 21, 1991.
42 Article 17, §4 of the Law of March 21, 2001
43 Article 23 of the Law of March 21, 2001.

In cases the representative considers a decision of the board or management to be in conflict with any rule, he can lodge an appeal within four days. The minister can annul the decision of the board or management committee within eight days of the decision.

Next, the state owned company has to report the Minister how the public service is organised. The minister must inform the Parliament of this organisation.[44]

Third, a board of auditors controls financial statements of the state owned company as well as the validity of the transactions to be reported in the financial statements.[45]

The board of auditors is composed of four members. Two members are statutory auditors, members of the Institute of Registered auditors. The general meeting elects these members. Two other auditors are members of the Belgian Court of Audit.[46]
The members of the board of auditors are elected for a renewable period of six years. The general meeting approves the remuneration of the members.

Finally, every year the board of directors of the state owned company adopts a business plan including the strategic policy and the targets of the company for the medium period. The minister must approve the parts of the plan related to the public services. The minister is informed about the other parts.

Figure 4 summarizes the organisational structure of state owned enterprises. As will be discussed, this legal framework of state owned enterprises offers less flexibility. Conversely, it offers more instruments to protect shareholders. However, the general framework is modified for most state owned enterprises to align the organisational structure with other requirements. Next these differences will be discussed for some of the largest state owned enterprises: the Railways, the post office, the telecommunication business and the regional broadcasting company.

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[44] Article 23, §4 and §5 of the Law of March 21, 2001.

[45] Article 25 of the Law of March 21, 1991.

[46] This Court is responsible for the financial audit of the transactions of the federal and the local governments and was established in 1846.

Figure 4: Corporate governance framework of state owned enterprises

Management committee

Daily management

management

CEO

Chairman

Remuneration committee

Max. 18 board members

Flemish speaking members

French speaking members

reporting

Policy contract

Monitor compliance

Minister/
via representative

informs

Parliament

(s)election/
dismissal

King +
Council of
Ministers

Financial control

Monitoring +
election/dismissal

reporting

Committee of auditors

auditors

Members of the Court of Auditors

General meeting

4. An analysis of the corporate governance structure of important Belgian state owned enterprises

4.1. Telecommunications: Belgacom

33. Formerly known as “Regie van telegraaf en telefoon” (RTT) Belgacom is the most well known state owned company to be turned around in the 1990’s and became a stock exchange listed company in 2004. As a listed company it has to comply with the rules of the Companies Code, the general framework of the law of March 21, 1991, company specific legal rules (article 55 to 128bis of the law of March 21, 1991), stock exchange rules, etc.

The company specific rules further develop but also complicate the governance structure of Belgacom. First, it is not mandatory to combine the membership of the management committee with a directorship. De facto and de jure only the chief executive officer is a director. Therefore the rule that non-executive members constitute two thirds of all members is not applicable. The board of directors can empower the chief executive director as if he is the management committee in the general system. The management committee of Belgacom is assisting the chief executive office.
Next, the board of directors does not have to advice the Council of Ministers before the Council of Ministers can dismiss a director or the chief executive officer.

A member of the board of directors is not allowed to accept another position in any telecommunication entity.

Belgacom is required to establish an audit, a nomination and remuneration, and a strategic committee. These rules are established in the articles of association. Hence, except for the legally required remuneration and compensation committee, the general meeting of shareholders can decide to modify the rules relating to committees.
The audit committee is responsible to assist the board of directors in its monitoring role regarding the internal audit, the quality and the integrity of the financial reports, the relationship with the auditors and the compliance with laws and regulations. The board of directors takes a decision how to compose the audit committee but it has to take into account that the majority of the members must be independent.
The nomination and remuneration committee develops the remuneration policy and strategy for employees and directors. The chairman of the board chairs this committee. Two independent directors and one board member elected by the King are the other members.
The strategic committee must develop the general policy and the strategy of the company. The board of directors has the responsibility for the composition and procedures.

4.2. Post Office: De Post

34. “De Post” was formerly known as “Regie der Posterijen”, “Bestuur der Posterijen” and “Bestuur der postchecks”.

The organisation of “De Post” was significantly modified in 1999 and 2000. Like Belgacom, the chief executive officer is responsible for the day-to-day management and the management

committee assists the chief executive officer. The members of the management committee are not directors.

A member of the board of directors is not allowed to accept another position in any financial institution or a competing company that provides any postal services.

The articles of association require the board to be composed of not more than fourteen members, at least eight needs to be non-executive directors and at least two must be independent.[47] The Post has a board of directors with thirteen non-executives, including the chairman. De Post does not disclose the information whom of the thirteen non-executives are independent directors.

Contrary to the articles of association of Belgacom, the De Post articles do not require the board of directors to establish an audit and a strategic committee. However, the board is allowed to do so.[48] De facto De Post has established both committees. A remuneration and nomination committee is also established, due to legal requirements. The operation and composition of the committees are similar to that of the committees of Belgacom.

4.3. Railways: N.M.B.S Holding, Infrabel and N.M.B.S.

35. As of the 1st of January 2005, the NMBS has been divided in three companies: a holding company, a company whose main activity is transport and a company whose main activity is the management of the infrastructure. Only the corporate governance framework of the N.M.B.S. Holding will be discussed, as both other companies have a similar structure.

N.M.B.S. Holding has a board of directors of 10 members including the chief executive officer. At least four of them must be of the opposite sex. The council of Ministers selects and the King elects a number of directors in relation to the relative number of shares. Those directors must be elected based on their complementary competences in financial and accounting analysis, legal knowledge, transport experience, human resources strategy and social relationships.[49] The chief executive officer and the chairman of the board must speak another native language.

The management committee is responsible for the day-to-day management of the company and the execution the decisions of the board. One member of the committee and the chief executive officer represent the company. Both must speak another native language.
The board of directors elects the members of the management committee after the chief executive officer has selected them. Membership of the management committee cannot be combined with a membership of the board.

The law of March 21, 1991 contains detailed provisions related to the committees the N.M.B.S. Holding must establish. The audit committee must be composed of four non-executive directors, two native Flemish speaking and two native French speaking members. The committee must assist the board of directors in its assessment of financial information and in its control of the integrity and reliability of the financial reports (risk management).

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47 Article 17 of the articles of association.
48 Article 35 and 36 both mention: "the board of directors can establish in its midst …"
49 Article 162bis of the Law of March 21, 1991.

The remuneration and nomination committee must be composed of the chairman of the board, the chief executive officer and two other directors. These requirements must be combined with the aforementioned language requirements. The power of this committee is identical to the power identified in the general framework of state owned companies.[50] It also has to report the board of directors of the selection of the management committee members by the chief executive officer.

A strategic committee has to give its opinion about the draft policy contracts, about the decisions that will influence the employment in the medium and long term and about strategic issues. The reports of the strategic committee are binding.
The committee is composed of all members of the board of directors, four members of the management committee and six representatives of the labour unions. The law describes how these representatives should be selected. As for the other committees the number of French and Flemish speaking members should be equal.

4.4. Broadcasting: VRT

36. Different from the aforementioned companies, the VRT is not a federal but a Flemish community owned company. The Flemish government has developed a separate legal framework, codified in the Decree of March 4, 2005.[51]

The VRT has a board of directors consisting of 12 members. The general meeting selects for each membership two candidates and elects the members. The members are elected for a period of five years. The members of the boards cannot be employees of the company and the membership is incompatible with any function in a competing company.

The power of the board of directors is limited to:
1° corporate strategy;
2° approve the policy contract and the amendments thereto;
3° approve the businessplan and the medium term goals;
4° approve the establishment of the accounts and the inventory;
5° approve the rules to engage employees;
6° approve the election and dismissal of the chief executive officer;
7° monitor the chief executive officer with respect to the execution of the policy contract, the business plan and the decisions of the board;
8° provide mediation in conflicts of the management committee;
9° approve the acquisition of shares in companies or the incorporation of companies;
10° call a general meeting and decide the agenda;
11° approve loans, monitor merchandising activities and related activities;
All the aforementioned activities have to be initiated by the chief executive officer.

Contrary to the other companies, the residual power belongs to the chief executive officer. The latter is assisted by a management committee of two to five members.

Only one auditor, member of the Institute of Registered Auditors must be elected and to control the financial statements of the company. Yearly the company has to report to the Flemish Parliament on how the policy contract was executed.

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50 Cf. supra nr. X.
51 Official Gazette of April 8, 2005, p. 14652.

V. Assessment of the corporate governance framework of state owned enterprises

37. In 1991 the Belgium government developed a common corporate governance framework for state owned enterprises. One of the major advantages was the harmonisation of all different frameworks. Although complex, the system allowed all persons concerned to get familiar with the new common features.
The system contains proper checks and balances. First, the government can continue to develop its public policy in the policy contracts. For a recent example we can refer to the government policy to involve the Post in collecting (traffic) fines. This state owned company must autonomous develop an efficient and appropriate framework to execute this new government policy.
The policy contract offers the government the means for the development of a stakeholder model. Especially, the employment policy needs to be taken into account.

Next and contrary to the rules in the Company Code, the majority stakeholder – the government - cannot (s)elect all members of the board of directors. The government can only elect a number of board members relative to its stake. The proportionate representation guarantees the involvement of other directors to monitor the interests of other stakeholders and in particular minority shareholders.

However these advantages are overshadowed by many shortcomings.

First the development of a federal state has the important consequence that the regions and communities can incorporate state owned companies and these state owned companies are not governed by the law of March 21, 1991. The "local" governments have developed a proper framework that diverges (significantly) from the federal system. The broadcasting company VRT serves as a good example. The VRT's governance framework has almost nothing in common with the general framework and almost nothing with the framework is presented in the Company Code. It is doubtful that the purpose of this company requires a governance system that diverges completely from both aforementioned systems. The first difficulties are already highlighted in the press.[52] The Flemish Parliament created a company that is legally comparable with the average American company with a widely dispersed ownership structure. The chief executive officer has all powers. The board of directors has only a limited number of responsibilities and can only take a decision after the matter has been lodged by the chief executive officer.
The alignment of the governance structure of the VRT with the two tier commercial code structure should be encouraged.

Next both the law of March 21, 1991 and the Company Code were regularly and significantly modified. As a result both legal frameworks substantially differ from one another. A commercial company can opt for a two tier structure with a management committee and a board of directors. The law of March 21, 1991 requires state owned enterprises to establish a board of directors and a management committee. The management committee in state owned enterprises has the power over daily management, whereas the management committee of a commercial company is delegated with all the residual power excluding the strategy and the

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[52] See B. Haeck, "We gaan toch geen 250 miljoen euro geven en zeggen: doe maar" (we are not going to give 250 mio. Euro and simply say: go ahead), *De Tijd*, September 8, 2005, p. 2 and BH, "Raad van bestuur VRT krijgt meer macht" (The VRT's board of directors will be empowered), *De Tijd,* September 3, p. 3.

specific powers the company code attributed to the board of directors. The latter system seems appropriate for state owned enterprises. The board of directors should be empowered to take the strategic decisions, to negotiate the policy contract and monitor the management committee. Within this framework the management committee can develop the commercial policy.

Third, the framework for state owned companies is too rigid. The law or the articles of association require a board with a fixed number of directors, there are parities regarding the language of the members, etc. To illustrate the rigidity we focus on the audit committee of the N.M.B.S. Holding. It is a legal requirement that the audit committee is composed of four non-executive directors, two native Flemish speaking and two native French speaking members. The committee is required to assist the board of directors in its assessment of financial information and in its control of the integrity and reliability of the financial reports.
In recent economic literature performance of the audit committee was measured. There are significant indications that the audit committee members must be, in the first place, financially literate. Independence or other requirements are subordinate. Agrawal and Chadha found that firms with audit committees without financial or accounting expertise restate the earnings more frequently than firms with audit committees with a financial or accounting expert.[53] In the research report of McMullen and Raghunandan it turned out that in 51 firms facing financial reporting problems only 6% had an accountant as a member of the audit committee, while in the sample of other companies 25% had a chartered accountant on board.[54] Related to fraud companies, Farber found significantly less financially experienced members one year before the SEC released the accounting and auditing enforcement report than in no-fraud companies.[55] This result persisted three years after the report was issued. In an audit committee experiment, DeZoort, Hermanson and Houston concluded that members with accounting or greater expertise in general provide greater support for the auditor in case of auditor-management disagreements.[56] However, the context must be taken into account. The auditor must justify his position with quantitative and qualitative arguments. The membership of financial experts as defined in the Sarbanes-Oxley Act positively influences analysts' perception of reporting quality. Felo, Krishnamurthy and Solieri's results suggest that having more than one expert in accounting and/or in finance may be beneficial.[57] Xie, Davidson III and DaDalt add the negative relationship of members with a corporate background, other than investment bankers, and abnormal accruals.[58] However, other directors with a financial background are not associated with abnormal accruals. In sum, all studies, except one, indicate that general financial expertise, or in particular financial expertise in audit or accountancy reduces the likelihood of earnings restatements, abnormal accruals, reporting irregularities, and financial expertise enhances the stock performance of the share.

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[53] A Aggrawal and S Chadha, "Corporate Governance and Accounting Scandals" (October 2005) to be published in *Journal of Law and Economics*, 32 p.

[54] D McMullen and K Raghunandan, "Enhancing Audit Committee Effectiveness" (August 1996) *Journal of Accountancy*, 80-2.

[55] D Farber, *Restoring trust after fraud: Does corporate governance matter?* (October 2004) working paper Michigan State University, 1-41.

[56] F DeZoort, D Hermanson and R Houston, "Audit committee support for auditors: The effects of materiality justification and accounting precision" (2003) 22 *Journal of Accounting and Public Policy*, 2003, 175-199.

[57] A Felo, S Krishnamurthy and S Solieri, *Audit committee characteristics and the perceived quality of financial reporting: an empirical analysis* (2003) working paper Penn State Great Valley, 1-39.

[58] B Xie, W Davidson III and P DaDalt, "Earnings management and corporate governance: The role of the board and the audit committee" (2003) 9 *Journal of Corporate Finance*, 295-318.

The N.M.B.S. Holding's audit committee should be composed in accordance with these economic findings.

Fourth, the large number of checks and balances are unbalanced. The court of auditors, the King and the Council of Ministers, the Minister and its representative more or less permanently monitor the operational activities of the state owned company as well as the financial reporting regarding these activities. Conversely the control of the policy contract is almost non existent. Conflicts of interest might occur due to the fact that both negotiating parties in the policy contract have a close relationship with political parties and groups. In light of the detailed framework of the policy contract, reducing the degrees of freedom to develop the strategic policy, an appropriate system of control of the policy contract is required.

Fifth, the general framework is, fourteen years after the enactment, totally "excavated". For all state owned companies the general corporate governance framework was modified. Aforementioned we illustrated the divergent system for "De Post", "N.M.B.S. Holding", and "Belgacom" but other state owned companies have other governance frameworks. The general framework seems to be outdated and needs to be reassessed. The optional two tier board structure of the Company Code can replace the present state owned companies system and serves as an appropriate balance for the combination of public services and commercial activities.

Finally, for most state owned companies the system became ambiguous: listed state owned companies like "Belgacom" have to comply with the rules of the law of March 21, 1991, the Company Code, the Corporate Governance Code and the policy contract. An alignment of the former two laws – the Company Code two tier system and the law of March 21, 1991 – simplifies the legal framework of state owned companies and can enhance efficiency.

VI. Conclusion

Long before the corporate governance movement hit the European coasts, Belgium developed a comprehensive and coherent corporate framework for state owned companies. Due to constitutional developments – from a unitary state to a federal state - and the involvement of successive governments, this framework evolved to a patchwork. The organisational structure of all existing state owned companies were modelled on different lines. The framework of new state owned companies diverged from the existing entities. In the mean time new corporate governance rules and guidelines aligned the governance structure of Belgian listed companies with international practices.
This paper illustrates the major differences and provides arguments to align the corporate governance structure of state owned enterprises with the Company Code optional two tier structure. This system offers state owned enterprises the necessary comprehensive framework for the new European competitive environment.

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