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Improving Proxy Materials in Europe**

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Abstract

The composition of the board of directors is considered key for the success of the company. The current approach to compose this board is to provide shareholders and investors with individual information of the skills and experience of (candidate) directors. The information is insufficient to qualify whether the candidate will enrich the board. Shareholders and investors are also deprived of information which composition the board considers appropriate to achieve the corporate goals. These problems can be solved with an appropriate disclosure framework. The skills and experience of the current board must be provided as well as the qualities that the new candidates will provide to the board. An example how a disclosure framework for competent boards must look like, is presented. It provides incentives for active ownership. Shareholders can vote for a specific board structure which in their opinion can best achieve the corporate goals.



Transparency of Directors' Attributes: Improving Proxy Materials in Europe

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INTRODUCTION

Since the start of the corporate governance era, the composition of the board of directors is considered as a key feature in the policy debate concerning best practices. Only effective board members can make the company successful. The board is the primary supervisory body for the corporation and the board should make decisions based on what they perceive to be in the best interests of the firm and its constituencies, in particular the shareholders. According to most company legislations the board of directors is entrusted with the management of the company and it is accountable to the company for this management. Companies acts provide in a number of formal board duties but the most important duty, managing the company or ensuring that the company is appropriately managed is not defined in further detail. In non-legal research the advising, networking and signaling roles of the board of directors is stressed (J. Fanto, L. Solan and J. Darley, 2011). The American Bar Association's Committee on Corporate Laws states that the board must review and approve fundamental operating, financial, and other corporate plans and strategies (Committee on Corporate Laws, 1994). The directors also serve as a sounding board for management (R. Adams and D. Ferreira, 2005).

In light of the critical role played by the board in the governance and organization of companies it can be expected that regulators and corporate governance codes have spent much attention to the appropriate composition of the board. The board must be composed so as to provide in the appropriate skills and experience for managing the company and monitoring the management. Overall it can be expected that the board has general business experience, and specific industry knowledge. Members of the board should have good understanding of business finance and financial reporting and are sufficiently diverse from one another as to provide in the diversity that guarantees better performance. The directors must have the



required professional background and the composition of the board must be homogeneous enough so that the different board members can understand the issues to be debated, discussed and decided and heterogeneous enough to match all the different skills and expertise to be successful. The wide variety of industries, lifecycles and activities of companies will result in a wide variety of boards. As a consequence the one-size fits all board is not to be expected. In this article it is questioned how company legislation and corporate governance code provide in the tools for companies to enhance the appropriate board composition.

The next sections first study the requirements for and attributes of the board of directors according to the companies acts in Belgium, France, Germany and the UK. Next this paper addresses the corporate governance recommendations to optimize the board structure as well as the best practices to select the appropriate board. The final section analyses the two missing links to develop effective boards and to make board election procedures efficient offering engaged shareholders a say on selection. The analysis focuses on the listed companies in the aforementioned different countries but excludes companies in the financial industry.

1. The “Legal” Board

While the company acts of many countries remain vague as to the duties of the board of directors, also the composition of the board to achieve its corporate goals is left to the company’s articles of association and the general meeting of shareholders. However, like the fine-tuning of a number of board duties in corporate governance codes and later in the law, corporate governance has also influenced corporate law vis-à-vis the composition of the board of directors. In many countries the board members of listed entities must comply with new (formal) requirements, of which the independence, financial expertise and a number of opposite gender are the most frequently enacted.

The board of directors of a Belgian listed company must be composed of at least three directors. In 1995 the Belgian parliament enacted that the decision of a board of directors of a listed entity that could provide in a direct or indirect financial advantage for a controlling shareholder has to be approved by a committee of three directors that are independent vis-à-vis the decision or the considered transaction.¹ This requirement was further fine-tuned and in

¹ For a detailed analysis of this provision see E. Wymeersch, *De belangenconflictenregeling in de vennootschappen*, Antwerpen, Maklu, 1996, 209 p.



2002 the legislator defined the criteria to become an independent director.² In 2008 Belgian Parliament transposed the European audit committee requirement and provided that at least one independent director must have the necessary expertise in the field of accounting and auditing. The Directive 2006/43/EC³ allows only non-executive directors as members of the audit committee. Hence, the Belgian law provides that directors that are members of the management committee and managers empowered with the day-to-day management are irrefutably considered executive board members.⁴ In 2010 the Belgian legislator made the establishment of a remuneration committee mandatory. More than half of the members of this committee must be independent board members and the committee must have the necessary expertise in the field of remuneration policy.⁵ In 2011 the Companies Code was again amended introducing the requirement to compose the board of directors of listed companies for at least 1/3 of members of the opposite gender, but a long transition period until 2018 is provided.⁶

The French Commercial Code requires a (supervisory) board of directors of not less than three and not more than 18 members.⁷ The Commercial code obliges the articles of association to provide in an age limit for either all (supervisory) board members either a per cent of all members. In case the articles do not provide in an age limit, not more than 1/3 of the board members should exceed the limit of 70 years of age.⁸ The chairman of the board must be younger than 65 years of age.⁹ He combines this position with the position of CEO unless the board elects another board member as CEO.¹⁰ An individual can only have one position as CEO or member of the management committee in French companies.¹¹ In 1994 a system was introduced providing employee representatives access to the (supervisory) board

² It was first introduced in article 524 Belgian Companies Code (enacted by Law of 2 August 2002, *Belgian Official Journal* 22 August 2002, p. 36555) and moved later to article 526ter Belgian Companies Code.

³ Article 41, § 1 Directive 2006/43/EC of 17 May 2006 of the European Parliament and of the Council 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, *OJ L* 157 of 9 June 2006, p. 87.

⁴ Article 526bis §3 in fine Belgian Companies Act.

⁵ Article 526quater, §2 Belgian Companies Act (introduced by Law of 6 April 2010, *Official Gazette* 23 April 2010).

⁶ Law of 28 July 2011, *Belgian Official Gazette* 14 September 2011 p.59600, introducing article 518, §2 Belgian Companies Act.

⁷ Article L 225-17 L 225-69 French Commercial Code.

⁸ Article L 225-19 and L 225-70 French Commercial Code.

⁹ Article L 225-48 French Commercial Code.

¹⁰ Article 225-51-1 French Commercial Code.

¹¹ Article 225-54-1 and 225-67 French Commercial Code.



of directors. If the employees hold more than 3% of the shares, the general meeting of shareholders elects one or more employee-shareholders as board members.¹² Since 2001, the articles of association can also provide in the right for the employees to elect up to five directors but limited to maximum 1/3 of the other directors. In case the employees are provided the right to elect two or more directors, one representative must be elected among the engineers, executives and similar.¹³

Since 2002 an individual is not allowed to combine more than five (supervisory) board memberships in French companies.¹⁴ Membership in a board of a consolidated company is not taken into account for the determination of the number of memberships.

In 2011 France endorsed the requirement of balanced boards and introduced for listed companies and other companies with more than 500 employees and sales or assets of more than 50 million euro¹⁵ the requirement that at least 40% of the (supervisory) board must be board members of the opposite gender from 2017 onwards.¹⁶ In companies with a (supervisory) board of up to 8 members the difference in number between the opposite sex directors must not exceed 2.¹⁷ The management board of French company that opted for a

¹² Article L 225-23 and L 225-71 French Commercial Code. In some cases, the general meeting chooses among the employee-shareholders who are members of the supervisory board of an investment trust which holds shares in the company as (supervisory) board member.

¹³ Article L 225-27 French Commercial Code.

¹⁴ Article L 225-21, L 225-77 and 225-94-1 French Commercial Code. Before 2002 the maximum number of board memberships was 8.

¹⁵ These thresholds must be passed three consecutive years.

¹⁶ Law nr. 2011-103 of 27 January 2011 *French Official Journal* n° 23 of 28 January 2011, p. 1680 (Loi n° 2011-103 du 27 janvier 2011 relative à la représentation équilibrée des femmes et des hommes au sein des conseils d'administration et de surveillance et à l'égalité professionnelle).

¹⁷ It limits the composition of small boards as follows:

board	gender 1	gender 2
3	2	1
4	2	2
4	3	1
5	3	2
6	4	2
6	3	3
7	4	3
8	4	4
8	5	3



two-tier board must be composed of maximum 7 members not exceeding the limit of 70 years of age.¹⁸

The German Companies Act is less prescriptive than the French Commercial Code. The management board may comprise one or more members and at least two members in case the capital is more than 3 million euro, unless the articles of association provide otherwise.¹⁹ In companies which have to comply with employees co-determination acts an “employee director” is elected.²⁰ The Companies Act forbids explicitly any other position in a competing company.²¹

The supervisory board must be composed of at least three members, all natural persons. The articles of association can provide in a higher number but the number must be divisible by three, unless the co-determination laws provide otherwise. The maximum number of supervisory board members depends on the share capital of the company. Capital up to 1.5 million Euros allows for a board of nine members, capital of more than 1.5 million Euros up to 10 million Euro allows for a board of fifteen members and capital higher than 10 million Euros allows boards up to 21 members. Different co-determination requirements further structure the composition of the German supervisory board. Companies with more than 500 employees must organize a supervisory board of which 1/3 of the members are employee representatives. In companies with more than 2000 employees, half of the supervisory board must be representatives of the employees. Depending on the total number of employees, the total size of the supervisory board of the company can be 12, 16 or 20 members.²² There is a specific interlocking directorship rule. When a member of the management board of a company is member of the supervisory board of another company, a legal representative of the latter is not allowed to become a member of the supervisory board of the first company.²³ Finally, a member of the supervisory board is not allowed to take up more than ten supervisory board memberships, whilst the chairman of the boards counts for a double

¹⁸ Article L 225-58 and L 225-60 French Commercial Code.

¹⁹ Section 76 German Companies Act.

²⁰ Section 33 Employee Codetermination Act; section 13 Mountain Employee Codetermination Act and 13 Supplemental Codetermination Act.

²¹ Section 88 German Companies Act.

²² For these companies the general rule that the number of supervisory board must be divisible by three is not applicable.

²³ Section 100, (2), 3. German Companies Act.



membership and the first five memberships in the consolidated group are not taken into account.²⁴

The UK Companies Act remains silent as to the qualifications of the directors and contains only two requirements for the board of directors. First, the board must be composed of at least two directors and second, the directors must be at least 16 years of age²⁵. The FSA Listing Requirements adds an information requirement regarding the director. A Regulatory Information Service must be informed of new director appointments. The information must relate to his position in the company (executive, non executive or chairman of the board), to the other directorships in quoted companies in the previous five years, to convictions of the director, to receiverships in and liquidations of companies in which he was an executive directors or partner, to public criticisms by statutory or regulatory authorities and to court disqualifications.²⁶

Overall all company acts focus more or less on formal requirements for the composition of the board and to a lesser extent for individual board members but deny to a large extent the qualities and expertise of the board members.

2. The “Compliant” Board

Appropriately addressing the board duties incited corporate governance commissions in different countries to develop further guidelines as to the composition of the board of directors. The Cadbury Code phrased it as follows:

Every public company should be headed by an effective board which can both lead and control the business. Within the context of the UK unitary board system, this means a board made up of a combination of executive directors, with their intimate knowledge of the business, and of outside, non-executive directors, who can bring a broader view to the company’s activities, under a chairman who accepts the duties and responsibilities which the post entails. [...] Given the importance and particular nature of the chairman’s role, it should in principle be separate from that of the chief executive. [...] Non-executive

²⁴ Section 100, (2) German Companies Act.

²⁵ Section 154 and 157 Companies Act 2006.

²⁶ Financial Services Authority , LR 9 Continuing Obligations, 6 Notification, 11 and 13.



directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. We recommend that the calibre and number of non-executive directors on a board should be such that their views will carry significant weight in the board's decisions.²⁷

At the European level, the Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board²⁸ supports a proper balanced board vis-à-vis its qualifications of the members. The appropriateness should be considered in light of the company's structure and activities. Overall the (supervisory) board should meet the diversity requirements 'of knowledge, judgement and experience to complete their tasks properly.'²⁹ For the European Commission it is of importance that the competences related to the service of candidate directors are disclosed as well as a 'profile of the board's composition'³⁰.

Along the lines of the Cadbury recommendations many corporate governance codes further developed the best board composition. The commissions developing the corporate governance codes took into consideration the legal requirements to compose the board of directors. Countries within which the company act provides more detailed prescriptions on board composition, like Belgium, seem to be more general in providing composition recommendations in their corporate governance codes than countries with minimal legal provisions, like the UK.

The Belgian code supports the aforementioned Cadbury approach. The code requires a board composition that ensures 'that decisions are made in the corporate interest. It should be determined on the basis of the necessary diversity and complementary skills, experience and knowledge'³¹. Also Belgian boards should not be dominated in any manner. 'No one individual should have unfettered powers of decision-making. At least half the board should comprise non-executive directors and at least three of them should be independent'³².

²⁷ The Committee on the Financial Aspects of Corporate Governance, *Financial Aspects of Corporate Governance*, London, 1992, Principle 4.1, 4.9 and 4.11.

²⁸ *Pb. L* of 25 February 2005 nr. 52, p. 51.

²⁹ Recommendation 11.1.

³⁰ Recommendation 11.4.

³¹ Belgian Corporate Governance Commission, *Belgian Code on Corporate Governance*, 2009, Provision 2.1.

³² *Ibid.* 2.2.



The French corporate governance code adds that the directors must be honest and competent which includes the understanding of the corporation's operations.³³ The directors must be involved in the strategy development of the company. The composition of the boards depends on the shareholder structure, the size and the business of the company.³⁴ While the code recognizes the different representatives of both shareholders and employees in the board of directors of large companies, it emphasizes the importance of untied board members, avoiding the board to become a battleground for vested interests, and 'representing all shareholders'³⁵ and act accordingly'.³⁶ Boards should be balanced with respect to gender and competencies. Apart from the legal requirements regarding board composition, independent directors are the appropriate approach to take into account the different interest of corporate incumbents. Companies with a dispersed ownership structure must be composed of 50 per cent independent directors, companies with a controlling shareholders should strive for a board with at least 1/3 independent members.³⁷

The German corporate governance code adds a number of best practices to the list of corporate formalities that are structuring both the management and the supervisory board. The German code recommends a management board composed of several members and the bylaws shall provide the division of powers between the members.³⁸ The supervisory board must respect diversity, including gender diversity and an age limit in the (s)election procedure of the members of the management board.³⁹ Diversity recommendations are more specific for supervisory boards. The supervisory board must provide in 'knowledge, ability and expert experience [...] to properly complete its tasks'. The supervisory board must assess the required features taking into account the 'international activities of the enterprise, potential conflicts of interest, the number of independent supervisory board members [...], an age limit to be specified for the members of the supervisory board and diversity'⁴⁰. Management board members of a listed company shall not accept supervisory board memberships in more than

³³ MEDEF-AFEP, *Code de Gouvernement d'Entreprise des Sociétés cotées*, principe 6.1.

³⁴ Ibid. principe 1.3.

³⁵ The Code explicitly refers to the interests of all shareholders and not to the interests of the company.

³⁶ MEDEF-AFEP, *Code de Gouvernement d'Entreprise des Sociétés cotées*, principe 7.

³⁷ Ibid, principe 8.2.

³⁸ Government Commission, *German Corporate Governance Code*, May 2012, Recommendation 4.2.1.

³⁹ Ibid. Recommendation 5.1.2.

⁴⁰ Ibid. Recommendation 5.4.2.



three other listed companies (of other groups)⁴¹. Former management board members must respect a cooling off period of at least two years before standing up for election as a supervisory board member of the company where they were member of the management board.⁴² To this end the supervisory board must provide in objectives which must be published in the corporate governance report. Personal and business relationships with the company must be disclosed in the proxy materials.

Since 1992 the UK has fine-tuned the requirements of a balanced board in Cadbury Code's successors. The main code 2012 principle requires a 'balance of skills, experience, independence and knowledge of the company'⁴³. The board must be sufficient in size to manage the business and board changes adequately and 'should include an appropriate combination of executive and non-executive directors (and, in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking'⁴⁴. The code prescribes the independent requirements⁴⁵ and states that with the exception of the smaller companies for which the minimum number is two, 'at least half the board, excluding the chairman, should comprise nonexecutive directors determined by the board to be independent'⁴⁶. Directors have a time commitment. An executive director should not take more than one non-executive directorship in a FTSE 100 company and should not accept to become the chairman of the board.⁴⁷ The nomination committee of the board is in charge to provide in an appropriately balanced board. According to the UK Corporate governance code it is the nomination committee task to make sure that the aforementioned

⁴¹ Ibid. Recommendation 5.4.5.

⁴² Ibid. Recommendation 5.4.4. If shareholders with more than 25 per cent of the voting rights present a motion to elect a former member of the management board, this recommendation must not be applied.

⁴³ FRC, *UK Corporate Governance Code*, London, Main principle B 1.

⁴⁴ Ibid., Supporting principle B.1.

⁴⁵ A board member should comply with the following requirements to be considered independent (Code provision B.1.1): he has not been an employee of the company or group within the last five years; he has not, or has not had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company; he has not received or receives additional remuneration from the company apart from a director's fee, does not participate in the company's share option or a performance-related pay scheme, or is not a member of the company's pension scheme; he has no close family ties with any of the company's advisers, directors or senior employees; he holds no cross-directorships or has no significant links with other directors through involvement in other companies or bodies; he does not represent a significant shareholder; or he has not served on the board for more than nine years from the date of their first election. The board can overrule the list and determine a director that does not comply with one or more requirements to be independent.

⁴⁶ Code provision B.1.2.

⁴⁷ Code provision B.3.3.

balance is assessed, to ensure progressive refreshing of the board, to make use of objective criteria taking into account the benefits of diversity. The nomination committee must ‘prepare a description of the role and capabilities required for a particular appointment’⁴⁸. The Code Supporting Principle adds that 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.’

While the different corporate governance codes provide in many recommendations on the composition of the board, they only generally refer to the skills and experiences of directors and leave it at best to the nomination committee how the composition of the board of directors can appropriately support the interests of the company.

3. The “Selected” Board

Company acts only provide rules for the election of directors and leave the selection procedure to the company. Generally speaking the general meeting of shareholders elects the (supervisory) board members, the supervisory board elects the management board. The selection process of new board candidates as well as the assessment of the effectiveness of the incumbent board members is left to the discretion of the company. Some corporate governance codes address this issue as it is in many countries recommended that a subcommittee of the board of directors, the nomination committee is established of which the main task is the selection of new candidates for the board. The approach is in line with the European Recommendation which advises the nomination committee to ‘evaluate the balance of skills, knowledge and experience on the board, prepare a description of the roles and capabilities required for a particular appointment, and assess the time commitment expected’⁴⁹. The committee must also assess the skills, knowledge and experience of the incumbent directors.

Belgium copied the European Recommendation and complemented the recommendations. While the Belgian corporate governance Code does not explicitly mandate the nomination

⁴⁸ Code provision B.2.2.

⁴⁹ 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, *Pb. L* of 25 February 2005 nr. 52, p. 51.



committee to consider the composition requirements, it can be argued it is its role to take into account provision 4.3. of the code that candidate board members must provide in the needed skills, knowledge and experience in light of the present composition of the board. One of the chairman's tasks is to make sure that the board of directors receives sufficient information of the candidate, including a CV, an assessment of the interview and information on other positions.⁵⁰ Indeed, it is the board's duty to provide in a recommendation to the general meeting of shareholders based on the advice of the nomination committee.⁵¹ The French code adds to the European recommendation that the nomination committee must consider a gender balanced composition and must take into account the changes in the ownership structure for the nomination of the directors.⁵² Both the notice of the general meeting and the annual report should contain a biography of the candidate director sketching his or her CV as well as the number of shares the (candidate) director holds.⁵³ The German code contains a similar gender requirement for the supervisory board, adds the age limit and an disclosure requirement of the objectives of the composition.⁵⁴ The general meeting of shareholders must be informed of the 'personal and business relations of each individual candidate with the enterprise, the executive bodies of the company and with a shareholder holding a material interest in the company'⁵⁵. The UK corporate governance code further develops both the balanced board requirement as well as the disclosure requirement. Before making an appointment for the board of directors the nomination committee should evaluate 'the balance of skills, experience, independence and knowledge on the board and, in the light of this evaluation, prepare a description of the role and capabilities required'⁵⁶. In the section on the work of the nomination committee, the annual report should include 'a description of the board's policy

⁵⁰ Belgian Corporate Governance Commission, *Belgian Code on Corporate Governance*, 2009, Provision 4.4.

⁵¹ Belgian Corporate Governance Commission, *Belgian Code on Corporate Governance*, 2009, Provision 4.6.

⁵² MEDEF-AFEP, *Code de Gouvernement d'Entreprise des Sociétés cotées*, 2010, principe 15.2.1.

⁵³ MEDEF-AFEP, *Code de Gouvernement d'Entreprise des Sociétés cotées*, 2010, principe 12.

⁵⁴ Government Commission, *German Corporate Governance Code*, May 2012, Recommendation 5.1.2.

⁵⁵ Government Commission, *German Corporate Governance Code*, May 2012, Recommendation 5.4.1.

⁵⁶ *Ibid.*, principe B.2.2.



on diversity, including gender, any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives'⁵⁷.

4. The Competent Board

While the legislations focus on the formal requirements to become or remain a director, like age in the UK, employee representatives in Germany and France and gender in Belgium and France, the corporate governance codes more emphasize that the individual board members provide the necessary skills and expertise to the board. It resulted every year in more detailed information on the previous positions of the directors on which shareholders can rely for their vote. As an example we refer to mr. Jacques Calvet, a director of the French Foncière Lyonnaise. In 2001 shareholders of Foncière Lyonnaise, a large French real estate investment trust were informed that mr. Jacques Calvet, director of the company, combined his position with the position of chairman of the supervisory board of Bazar de l'Hôtel de Ville, deputy chairman of the supervisory board of Galeries Lafayette, member of the supervisory board of Axa, Cottin Frères and Groupe André, and member of the board of directors of Société Générale and Société Européenne de Participations Industrielles. He was for the first time elected in 1999. In the annual report of 2011 of Foncière Lyonnaise the shareholders were informed that mr. Jacques Calvet reached the age of 80 years, is a French citizen and an independent board member of the company. He started his career as an auditor at the French Court of Auditors (1957-1959) after which he had different positions as employee at the cabinet of the then Minister Valéry Giscard d'Estaing combining that position with the position of deputy director and later head of the department of the Central Administration of the French Ministry of Finance. He got several times promoted at the Ministry of Finance and ended as Director of Finance. In 1974 he moved into business and became deputy director at BNP and later was chairman of the board. He is now an honorary chairman of BNP. He has held several management positions and later board positions at Peugeot. He is still combining his position as independent director of Foncière Lyonnaise with many other directorships like Laser Cofinoga, Laser, Cottin Frères and Le Meilleur Holding, deputy chairman of the supervisory board of Galeries Lafayette, chairman of the supervisory board of Bazar de l'Hôtel de Ville, censor of EPI and Afence and advisory consultant to the French National Bank. Further the annual report provides information of the positions of mr. Calvet over the last five years.

⁵⁷ FRC, *UK Corporate Governance Code*, London, Main principle B 1.

While this information provides evidence that the board member is exceptionally experienced, it only allows to appreciate the qualities of the board member, but not the qualities in relationship to the actual board of directors and neither the qualities that the company - as it stands today - requires. Shareholders, investors and other stakeholders miss pertinent information. First, the knowledge and experience of this member of the board is presented isolated from the overall board's competences. Second, as boards must uniquely fit with the company's size, industry, lifecycle, and other company characteristics, the director's attributes must fit in the mix of skills and experience the board should provide to the company. Achieving these two additional corporate governance features, the board of directors or its subcommittee, the nomination committee will have to prioritize those skilled and experienced directors for the future board which are lacking or underrepresented at the current board. This prioritization exercise can only take place after the skills and experience which the company needs at board level are identified. Optimization of the board structure will need a strategic plan which must be presented to and voted at the general meeting of shareholders. A procedure that integrates these feature in the (s)election of board candidates has many advantages.

First it emphasizes the board's duty to and interest in the identification of the most appropriate board skills and expertise. When the company's strategy and business has been determined, it follows from the strategy which board fits best in monitoring the company's choices. The selection procedure will have to focus on these experiences, expertise and skills which are lacking or are underrepresented in the board. This method will be in conformity with the demand of (institutional) shareholders. In a recent report of the Association of British Insurers it is recommended that companies 'seek to provide more forward-looking and candid disclosures on the steps they are taking to ensure they have the right balance of skills and experience in their boardrooms' (Association of British Insurers, 2012).

Second and in combination with the appropriate involvement of the shareholders, it reduces the pressure on the short termism of boards. In some countries directors must stand up for reelection each year. While it is many times a mere formality, board members experience the current pressure for more short term behavior when they retrieve their names in the company proxy materials each year. Aligning board composition with the corporate strategy alleviates this pressure as the alignment of the board's composition with the corporate goals reduces the



need for affirmative votes for the individual director but increases the need for affirmative votes for best board composition.

Third a strategic composition board plan will foster companies and consultants to go beyond the mere static fact finding on boards of directors. Up till now most corporate governance studies and board composition studies do not go beyond “formalities” like size, number of independent directors, non-executive directors, woman directorships and foreign directors, age of directors, tenure and number of meetings. In the most recent board index report of Spencer Stuart a comparison is provided on the main features of the board in a number of European countries and the US.⁵⁸ The results of the comparison, in the order of the report can be found in table 1. It is striking that none of the criteria provide insights in skill or expertise of board members. It is informative but improvements are certainly possible.

Table 1. Board composition in six countries

	France	Germany	Italy	Spain	UK	US
board size	14	14,8	12,8	11,6	10,4	10,7
foreign directors	27%	22,8%	6,5%	11,4%	34%	9%
at least one woman	95%	92%	53%	71%	84%	91%
woman	22%	17%	5,7%	10%	15%	17%
avg. age of NED	59,7	61	61	59	59	62,6
meetings	8,95	6,3	10,2	10,3	8	8,3

Source: Spencer Stuart, UK Board Index Report 2012, December 2012, 44 p.

There are examples of a method that is useful to identify and (s)elect competent boards. The Canadian financial services group Manulife Financial provides in its Proxy Circular good insight of the skills and expertise of the candidate board members and the directors that were elected over the last years as well as of the experiences of the individual board members. Table 2 summarizes the information disclosure of the recently elected board members of the Manulife Corporation. This information is provided next to the individualized information for each director allowing the shareholders to assess the conformity of the CV with the board’s assessment of the experience.

⁵⁸ It should be noted that the Spencer Stuart reports are very informative as they also contain the individual results of the companies in the study which allows for more detailed assessments than many other corporate governance reports.



Table 2: Expertise of recently elected board members of Manulife Financial

experience	director 1	director 2	director 3	director 4	director 5	director 6	director 7
senior executive	x	x	x	x	x	x	x
human resources		x	x	x	x	x	x
financial	x	x	x	x	x	x	x
global financial, investments	x				x		x
risk management	x		x		x	x	x
Asia		x		x	x	x	
public sector		x	x			x	

Source: Manulife Corporation, *Proxy circular Annual Meeting 3 may 2012*, p. 8

Following the information on the experience of the directors which were elected over the most recent years, the company discloses the full scale of director's expertise and skills in an elaborated matrix which is provided in table 3. Next to the general professional skills and experience as senior manager and understanding of finance, risk and remuneration, the company's board focuses on the experience of the American and Asian market and global financial services in light of the corporate goals and industry in which the company operates.

The Proxy Circular further elaborates on the development of the skills of the director with an overview of the training sessions board members attended. In order to reduce the possible deficiencies of members of the board of directors, the board received training sessions through the year on global restructuring of financial services, derivatives, China-Canada relations, China economics, branding, etc.⁵⁹ It is a good example of embedded corporate governance practices. Many (formal) features that are less relevant according to abundant academic research are no longer prominently present.

⁵⁹ Manulife Corporation, *Proxy circular Annual Meeting 3 may 2012*, p. 62



Table 3: Skills and expertise of board members of Manulife Corporation

experience	director 1	director 2	director 3	director 4	director 5	director 6	director 7	director 8	director 9	director 10	director 11	director 12	director 13	director 14	director 15	director 16	director 17
Senior executive (all)																	
Broad business experience as a senior officer or chair of the board of a major organization (public, private, non-profit)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Other directorships (Majority)																	
Director of a major organization		X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Public sector (minimum 2)																	
Including a Crown Corporation, educational institution, or any other non-commercial organization	X		X	X	X			X						X	X		X
Financial experience (majority)																	
Based on the definitions of financial literacy or expert for members of the audit committee under securities laws	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Risk management experience (minimum 4)																	
Experience in identifying principal risks of an organization and the oversight or management of risk management system - may have been gained as a CEO, risk management executive or member of a board risk committee of a public company		X	X	X		X		X	X	X	X		X	X	X	X	X
Global financial services executive, knowledge of investment management (minimum 4)																	
Experience in the financial services industry or experience overseeing complex financial transactions and investment management				X	X					X	X		X				X
Asia operations/governance (minimum 3)																	
Experience gained through direct involvement with business or regulatory operations in Asia	X			X	X		X		X		X	X	X		X		
U.S. operations/Governance (minimum 4)																	
Experience gained through direct involvement with business or regulatory operations in the United States		X		X		X	X		X	X	X		X				X
Human resources management & executive compensation (minimum 3)																	
Experience in overseeing compensation design either as a CEO, CFO, senior human resources executive or consultant, or member of a board compensation committee of a public company		X	X	X	X	X			X	X		X	X	X	X	X	X

Source: Manulife Corporation, *Proxy circular Annual Meeting 3 may 2012*, p. 9

Fourth, the procedure requires shareholders to consider and assess the best board proposals and it invites them to monitor and evaluate the board structure in relationship to the company strategy. It is our believe that this information would not only encourage shareholders to vote but more importantly to vote diligently upon the information provided. Information from the voting poll shows that the shareholders individually assess the qualities of the directors as the opposition – votes withheld- against the director starts at less than 1% for 5 directors and soars to more than 12% for three other directors.



Table 4 Voting results of the election of the 17 board members in Manulife in 2012

director	votes withheld	director	votes withheld	director	votes withheld	director	votes withheld
1	5,02%	6	8,60%	11	8,35%	16	0,85%
2	13,39%	7	0,64%	12	5,35%	17	12,98%
3	8,83%	8	7,90%	13	0,83%		
4	12,99%	9	12,98%	14	12,88%		
5	8,39%	10	0,94%	15	0,75%		

Source: Manulife Corporation, minutes of the meeting 2012.

5. CONCLUSION

The composition of the board is pivotal for the success of the company. The (s)election procedure for new members of the board must emphasize that the candidates will enhance (the probability of) this success. However, the current approach in many countries and companies is to provide shareholders and investors with individual information of the skills and experience of (candidate) directors. The information is insufficient to qualify whether the candidate has the experience and skills that will enrich the board. Shareholders and investors are also deprived of information of the experience and skills that the board of directors must present to achieve the corporate goals. These problems can be solved with an appropriate disclosure framework. The skills and experience of the current board must be provided as well as the qualities that the new candidates will provide to the board. Examples how a disclosure framework for competent boards must look like, can easily be found. It provides incentives for active ownership. Shareholders can vote for a specific board structure which in their opinion can best achieve the corporate goals.



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