

# Corporate Governance

## The Ten Principles of Corporate Governance of the Luxembourg Stock Exchange

October 2009

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<sup>1</sup> Translated from the original French text. In case of a conflict of interpretation the original French text shall prevail.

<sup>2</sup> “Executive managers” are senior managers who are not board directors but who are members of a body of executives (French: “la direction”; German: “der Vorstand”) who are charged with the day-to-day management of the company.

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## Foreword

In 2003 the European Commission launched an Action Plan primarily aimed at enhancing corporate governance within the European Union.

With this in mind, the Board of the Luxembourg Stock Exchange decided to formulate a set of corporate governance rules for Luxembourg. A “Corporate Governance” working group was set up to draft the general principles of best practice in corporate governance for all Luxembourg companies listed on the Stock Exchange. The remit of the working group was to draw up a text that would be in line with international practice and the recommendations of the European Commission, whilst taking into account the interests of all the stakeholders, i.e. shareholders, employees and customers.

After the entry into force of the Ten Principles on 1 January 2007, and after two years of experience with the application of the Ten Principles in Luxembourg, it was deemed useful and necessary to revise those Ten Principles in order to improve and adapt them to reality having regard to the initial conclusions drawn from their application.

The Luxembourg Stock Exchange thinks that it should be possible to adapt the Ten Principles of Corporate Governance to take account of the experience acquired and the evolution of legal practices and business life. Indeed, the evolution of the concept of corporate governance in neighbouring countries, the regulatory framework and the application in Luxembourg of the Ten Principles fed the reflections of the working group in revising the Ten Principles of Corporate Governance.

The Ten Principles and their Recommendations are highly flexible, which allows them to be adapted to the size, activities and culture of each company. They are based on a “comply or explain” system, which allows companies to deviate from the recommendations when this is justified by their specific circumstances, provided that adequate explanation is provided.

The monitoring of compliance with the Ten Principles of Corporate Governance relies on the shareholders and the market authorities, possibly supplemented by other mechanisms.

Finally, on behalf of the Luxembourg Stock Exchange, I would like to thank all those who have contributed to the preparation of the Ten Principles of Corporate Governance, in particular the members of the working group, who deserve great credit for their work.

Raymond Kirsch  
Chairman of the Board

Luxembourg, 15 September 2009



## Foreword

Corporate governance is based in the first instance on statute law, which in Luxembourg consists mainly of the Civil Code, the legislation concerning commercial companies and, for listed companies, Stock Exchange law. In addition there are the general principles of law, which underlie these texts, providing a framework for them and often supplementing them. To these first two classes can be added a third, which consists of the body of rules for the management of a company and the procedures for implementing the legal texts and the general principles, designed to ensure that a company is managed efficiently and that its business objectives are properly met, in the best interests of the body of shareholders and in accordance with law. Some people also consider that the company's responsibility to its customers and personnel as well as its duty to be a good corporate "citizen", should be placed on the same footing. This body of rules and the procedures for monitoring their implementation are commonly referred to as the Rules or Code of Good Governance. We have opted for the term "Principles of Governance", thereby avoiding any confusion with the many other codes that regulate our companies.

These rules should provide guidance without being overly restrictive. They should facilitate the balanced exercise of power and control within companies, without restricting freedom of enterprise, and they should encourage dialogue and transparency in the best interests of the companies concerned. For listed companies, there is also the important objective of enabling the shareholders, who may be geographically dispersed, to be actively involved in the affairs of the company of which they are ultimately the owners.

The working group set up by the Société de la Bourse du Luxembourg to revise the Ten Principles and composed of representatives of listed companies and the Stock Exchange, had the complex task, as when the Principles were initially drafted, of finding a balance between those apparent contradictions whilst giving due consideration to the international character of many companies, involving a listing on several exchanges and therefore the application of several codes of governance. The result put forward by the group constitutes a series of rules which should be strong, effective and useful. I thank my colleagues for their active and skilled participation.

It is our hope that these Ten Principles of Corporate Governance and their Recommendations will become an integral part of companies' good business practice, contributing to the quality of their management and thereby building investor confidence.

Alain Georges  
Chairman of the Working Group

Luxembourg, 15 September 2009





## Preamble

### 1. What is good corporate governance ?

In a wide sense, “corporate governance” covers the organisation of the control and management of a company. The term is also used in a narrower sense, to refer to the relationship between shareholders and management, and in particular the operation of the company’s board.

It is important for companies to develop an effective model of corporate governance that will enable them to take advantage of opportunities that may arise, whilst at the same time instituting the necessary controls over the associated risks. The rules and standards of corporate governance are considered to be important factors in the creation of prosperous market economies.

Corporate governance consists of a set of rules and conduct in accordance with which companies are managed and controlled. It usually involves the mechanisms by means of which company managers answer for the due and proper running and performance of the company. The company represents the assets of all the shareholders and in the long term the interests of the company necessarily converge with those of its shareholders.

Good corporate governance revolves around the following aspects :

- to achieve a proper balance between entrepreneurship and control, as well as between performance and compliance with the rules of corporate governance ;
- to facilitate performance-driven management, but also to provide mechanisms for management and leadership, whilst ensuring integrity and transparency in the decision-making process ;
- to determine the company’s objectives, the means through which these are to be attained and how performance is to be evaluated. In this respect, corporate governance is intended to encourage and enable the board and management to pursue objectives that are in the best interests of the company, its shareholders and other interested parties, such as the company’s customers and personnel.

“Control” implies effective evaluation of performance, careful management of potential risks, and proper supervision of agreed procedures and processes.

In this respect the emphasis here is on monitoring whether robust control systems are operating effectively, whether potential conflicts of interest are being managed and whether sufficient checks are in place to prevent abuses of power that may allow personal interests to prevail over corporate interests.

### 2. Main objective

The main objective of the Ten Principles of Corporate Governance is to contribute to the creation of long-term value.

A good corporate governance framework should create a balance between a performance-orientated strategy on the one hand, and adherence to reliable risk management systems and internal controls on the other. The latter requires responsibility, integrity and transparency.

The internal control process is defined and implemented by the company’s board, management and personnel, with the aim of ensuring that the following objectives have been achieved :

- reliability of financial and accounting information ;
- effectiveness and efficiency in the running of the company’s operations ;
- compliance with applicable laws and regulations.

An analysis of company results shows that good governance leads to the creation of wealth, not only for the shareholders but also for all the other interested parties.

A corporate governance framework based on transparency and responsibility

- will strengthen investors' confidence in companies;
- will reassure the personnel and clients of companies;
- will give companies access to lower-cost financing;
- will bring macro-economic advantages, such as an improvement in economic efficiency and growth, as well as protecting private investments.

### 3. Reference framework

These Principles of Corporate Governance should be considered as complementary to Luxembourg legislation, from which they cannot justify any exceptions. No principle or recommendation may be construed as conflicting with Luxembourg law.

When working the Principles of Corporate Governance, the working group responsible for their preparation worked on the basis of existing Luxembourg legislation relating to commercial companies, and in particular on the basis of financial regulation as applicable to listed companies.

Whilst preparing the Principles of Corporate Governance close attention was paid to the initiatives of the European Commission, and more specifically to the initiatives designed to implement the Action Plan adopted in 2003 with a view to "modernising company law and enhancing corporate governance in the European Union", and Directive 2007/36/EC of the European Parliament and Council dated 11 July 2007 concerning the exercise of certain rights by the shareholders of listed companies. Moreover, account was taken of the new legal provisions in Luxembourg.

Corporate life will be simplified by an increased use of electronic means of information, communication and publication of relevant information for consultation by shareholders. Their participation in Annual General Meetings<sup>4</sup>, which is strongly recommended, will be facilitated by the use of electronic networks.

The Ten Principles of Corporate Governance were influenced by different factors specific to Luxembourg, such as the wide variety of companies listed for trading on the regulated market (large multinational companies, small industrial and commercial companies, companies in the investment field), the companies' shareholding structure (companies with major shareholders, companies with very dispersed share ownership, small companies with restricted share ownership and companies whose shares are mainly owned by institutional investors), and the special circumstances of certain directors. In fact, the Principles of Corporate Governance respect the Law of 6 May 1974 instituting works councils in private sector companies and organising the representation of employees in public limited companies (sociétés anonymes) and the Law of 25 July 1990 on the status of directors representing the government or a public-law corporation in a public limited company.

The Principles were drafted for limited companies relying on a unitary structure of governance with a board, which is the form most frequently adopted by companies listed in Luxembourg. They are also intended to apply to other forms of company as well as those retaining a dual structure of governance with a supervisory board and a management board. In these cases the Principles must be interpreted and applied by analogy.

<sup>4</sup> There is no English equivalent for the French term "assemblée générale", which covers all types of legally defined shareholder meetings. In this translation "Annual General Meeting" or "AGM" shall be understood to refer when relevant to all types of legally defined meetings of shareholders, where these are legally empowered to handle the subject matter in question.

#### 4. Structure, content and characteristics of the Principles of Corporate Governance

A flexible approach was chosen, based on the “comply or explain” system. Long adopted in many countries, this approach is favourably received both by boards and investors, especially by virtue of that flexibility. What is more, it is recommended by the OECD and the European Commission.

In particular, this approach enables the specific circumstances of companies - such as their size, shareholding structure, activities, exposure to risks and management structure - to be taken into account.

The Principles of Corporate Governance consist of three sets of rules: the general principles themselves (“comply”), the recommendations (“comply or explain”) and the guidelines.

The general principles form the pillars upon which good corporate governance should rest. These principles are sufficiently broad for all companies to be able to adhere to them, whatever their particular features. All Luxembourg companies the shares of which are admitted for trading on a regulated market operated by the Luxembourg Stock Exchange (hereinafter called “listed companies”) must apply them without exception.

The recommendations (some of which have been set out in more detail in Appendices A, B and C, with Appendix D being a reference source for the criteria of independence of directors) describe how the principles can be properly applied. Companies are expected to comply with the recommendations or explain why they are departing from them, taking account of their specific situation. Although listed companies are expected to comply with the recommendations for the Ten Principles of Corporate Governance most of the time, it is acknowledged that special circumstances may justify a departure from certain recommendations.

Smaller listed companies, in particular those which have recently been admitted to trading on the market, as well as young growing companies, may judge that in their case certain recommendations are disproportionate or less relevant. Similarly, holding and investment companies may need a different board structure, which may affect the relevance of certain recommendations to them. In such a case for example, a single committee may handle the tasks of the nomination committee and the remuneration committee. In these cases companies should determine which rules are most suited to their specific situation and provide an explanation in the Corporate Governance Chapter of their annual report.

The recommendations are supplemented by guidelines, providing advice as to how a company should implement or interpret the recommendations. The obligation to “comply or explain” does not apply to the guidelines.

#### 5. Disclosure of information

Transparency - achieved through the disclosure of information - is an essential ingredient of the Principles of Corporate Governance, allowing external control to function effectively. For this reason, the recommendations of the Ten Principles of Corporate Governance aim to institute a high level of transparency in the area of corporate governance, which are naturally added to legal provisions, in particular those arising from the “transparency” directive of 15 December 2004.

The disclosure of information is effected through two different documents: the Corporate Governance Charter posted on the company’s website and the Corporate Governance Chapter in the annual report.

In the Corporate Governance Charter, the company describes the main aspects of its corporate governance policy, in particular its structure, the internal regulations of the board, its committees and its management, as well as other important points (e.g. its remuneration policy). The Charter should be updated regularly.

The Corporate Governance Chapter of the annual report should especially include factual information on the corporate governance and operation of corporate bodies, including any changes that have been implemented, together with the relevant events that took place during the last financial year, such as the appointment of new directors and the appointment of committee members.

## **6. Monitoring and compliance**

Unlike in certain neighbouring countries, Luxembourg listed companies are often controlled by one or more major shareholders. It is not, therefore, possible to rely solely on market monitoring to ensure that listed companies comply with the Principles of Corporate Governance. A system of monitoring involving the shareholders, the board and the Luxembourg Stock Exchange must ensure proper observance of the principles of corporate governance. This system may be enhanced by the addition of other mechanisms.

### **- *The board***

In a unitary structure, the board plays a dual role: on the one hand to support entrepreneurship and on the other hand to ensure effective monitoring and control. In order to fulfil its role as the guardian of the company's interests, it is important for the board to be composed of experienced directors, with complementary knowledge and skills, taking into account the size and activities of the company. The board may include directors with executive power to manage and to administer the company. All directors should demonstrate a capacity for independent judgment and objectivity in making board decisions and independent directors play an essential role in this respect. The board should ensure the accuracy and completeness of the Corporate Governance Charter and the Corporate Governance Chapter in the annual report.

### **- *Shareholders***

Given the flexible "comply or explain" approach followed by the text, the shareholders, and in particular institutional investors, have a paramount role to play in carefully evaluating a company's corporate governance.

The shareholders should carefully examine the reasons provided by the company whenever it departs from the recommendations or fails to comply with these and make a reasoned judgment in each case. The shareholders should be open to dialogue in cases where they do not agree with the position taken by the company, bearing in mind, amongst other factors, the size and complexity of the company as well as the nature of the risks and challenges it faces.

Controlling shareholders (cf. Appendix A), by the representatives of the board who appointed them, may see to the internal and external monitoring of the company, with the risks and advantages which this necessarily involves. It is important that the controlling or strategic shareholders make judicious use of their power and respect the rights and interests of the minority shareholders.

### **- *Luxembourg Stock Exchange***

The Luxembourg Stock Exchange, as part of its role of monitoring compliance by listed companies with their duties to make periodic and ad hoc disclosures (as provided for by the internal byelaw, approved by Ministerial Order of 29 June 2005) will contribute to the external monitoring of the Principles of Corporate Governance. It will provide moral support and will bring its full authority

to bear in facilitating the implementation of the disclosure arrangements recommended by these principles for listed Luxembourg companies.

The existence and acceptance of a single set of Principles of Corporate Governance (instituted by the Luxembourg Stock Exchange, in close collaboration with the principal Luxembourg issuers listed on the Luxembourg Stock Exchange) will contribute to a strengthening of the financial centre and to increased investor confidence.

The Luxembourg Stock Exchange recommends that listed companies disclose significant information about their corporate governance rules and practices in compliance with the Principles of Corporate Governance. Listed companies are themselves responsible for determining whether they comply with the recommendations issued for each of the principles, or for justifying their non-compliance. In the event that, contrary to Principle 1 and Appendices B and C, a specific item referred to in the Principles of Corporate Governance has not been disclosed, the Luxembourg Stock Exchange will draw the attention of the listed company to this fact and, where necessary, will invite it to explain why it has failed to comply with this specific provision of the Principles of Corporate Governance. The Luxembourg Stock Exchange will limit its role to verifying whether the “comply or explain” principle is being applied and recommending that companies follow it. The Luxembourg Stock Exchange reserves the right to publish from time to time general comparisons of the corporate governance practices within listed Luxembourg companies.

However, with regard to items for which the laws or regulations in force require disclosure, whether or not this information is dealt with in the Principles of Corporate Governance, the jurisdiction of the CSSF (Commission de Surveillance du Secteur Financier - [www.cssf.lu](http://www.cssf.lu)), including its authority to impose sanctions, will remain unchanged. The Stock Exchange’s role in the external monitoring of compliance with the Principles of Corporate Governance does not affect the CSSF’s legal responsibility as a regulator.

## **7. Follow-up**

What constitutes good corporate governance may need to evolve in step with changes in business circumstances, the requirements of the international financial markets, and company law. It is therefore interesting to take note of the ongoing discussions regarding the Law of 10 August 1915 relating to Luxembourg commercial companies. These discussions relate to a body of measures - such as the possibilities offered by telecommunications for holding the AGM and board meetings, the possibility of postal voting, the reduction of the shareholding threshold required to convene an Extraordinary General Meeting (EGM) or contribute items to the AGM or EGM agenda, or the right to consult the management report in advance of the AGM - which can all be related to the wider context of corporate governance.

It is therefore important to ensure that the Principles of Corporate Governance are regularly reviewed and the recommendations adapted. This will require that an appropriate mechanism be set up. While awaiting the setting up of a mechanism for the follow-up of the Principles of Corporate Governance, the “corporate governance” working group of the Luxembourg Stock Exchange will continue to be active. It is in this role that it prepared this second revised edition of the Ten Principles of Corporate Governance.

## **8. Scope and entry into force**

These Principles apply to companies the shares of which are listed on a regulated market operated by the Luxembourg Stock Exchange. Given their flexibility, however, the Ten Principles of Corporate Governance could also serve as a reference framework for all other companies, including those governed by non-Luxembourg law and which are subject to a corporate governance code of

conduct in their country of incorporation (although compliance with these Principles of Corporate Governance is not compulsory for the latter) and for companies governed by Luxembourg law which have applied for listing on a foreign regulated market. When Luxembourg companies, listed on various regulated markets, are faced with several codes of conduct in relation to corporate governance, they are invited to follow the present Principles of Corporate Governance and their recommendations carefully, but this does not prevent them if necessary from observing different provisions in codes of conduct applicable in other regulated markets.

The second edition of the Ten Principles of Corporate Governance will enter into force on 1 October 2009 and relate to annual reports for financial years closed after that date.

## 9. Participants in the “Corporate Governance” working group

<b>Alain Georges,</b> Chairman of the working group	Chairman of the Board	BIP Investment Partners S.A.
<b>Maurice Bauer</b> Spokesperson for the working group	Vice President	Société de la Bourse de Luxembourg S.A.
<b>Edouard de Fierlant,</b>	Company Secretary	RTL Group
<b>Alain Huberty,</b>	Director	Luxempart S.A.
<b>Christophe Jung,</b>	General Counsel Luxembourg	ArcelorMittal
<b>Michel Maquil,</b>	President and CEO	Société de la Bourse de Luxembourg S.A.
<b>Pierre Margue,</b>	Vice President Legal and Corporate Affairs	SES
<b>Caroline Glodt,</b>	Secretary of the working group	Société de la Bourse de Luxembourg S.A.

The working group expresses its gratitude to Professor André Prüm, Dean of the Faculty of Law, Economics and Finance at the University of Luxembourg, who assisted in working the Principles.

The draft amendments to the Ten Principles of Corporate Governance were submitted for opinions to all the companies listed on a regulated market, as well as to several people whose opinion, in view of their office and interest, was considered particularly pertinent. All these parties were invited to a meeting during which the opinions, comments and proposals received were discussed and, on a case by case basis, integrated into the text.

The working group thanks, Thierry Grosjean and Renaud Labye of Acheron Portfolio Corporation SA, Solène Vincens, Carole Wintersdorff and Henk Scheffer of ArcelorMittal SA, Viviane Graffé of BIP Investment Partners SA, Daniel Haas of the Compagnie Internationale de Cultures SA, Paul Junck of Ernst & Young, Marcel Majerus of Foyer SA, Jean-Noël Lequeue of ICE SA, Marie Chambourdon and Patrick Zurstrassen of ILA, Françoise Dumont, Johan Nelis and Alain Renard of Jabelmalux SA, Jeannot Wengler of Plantations des Terres Rouges SA, Manuel Fischer and Jean-Benoît Lachaise of Quilvest SA, Klaus Brucherseifer and Claude Strasser of Société Electrique de l’Our SA, Professor Pierre-Henri Conac of the University of Luxembourg and Sandra Pasti and Claude Meiers of Ventos SA and all the contributors, for their support and advice in working the second edition of the Ten Principles of Corporate Governance.





**Principle 1 – Corporate governance framework**

*The company will adopt a clear and transparent corporate governance framework for which it will provide adequate disclosure.*

**Recommendation 1.1.** The corporate governance framework should be defined in the company's articles of association and the internal regulations of the board and of the management.

**Guideline** The corporate governance framework should take account wherever possible of the characteristics, activity and needs of each company.

**Recommendation 1.2.** The corporate governance framework should set out the respective functions of the board and management, as well as their powers and obligations. These should be described in the internal regulations of the board and of the management.

**Recommendation 1.3.** The executive management of the company should be entrusted to a management body, headed by an individual other than the chairman of the board. The board should make a clear distinction between the duties and responsibilities of its chairman and of the chief executive officer and set this out in writing.

**Recommendation 1.4.** The company should draw up a CG Charter describing the main aspects of its corporate governance, including the items referred to in Appendix B.

**Recommendation 1.5.** The CG Charter constitutes the company's commitment to comply with the principles of corporate governance laid down by this text.

**Recommendation 1.6.** The CG Charter should be updated as often as necessary to accurately reflect at all times the company's corporate governance framework. It should be posted on the company's website, with an indication of when it was last updated.

**Recommendation 1.7.** The company should publish a Corporate Governance Chapter (hereinafter, the "CG Chapter") in its annual report, describing all the relevant events connected with corporate governance that took place in the preceding financial year. This document should at least include the items cited in Appendix C. If the company does not fully implement one or more of the recommendations, it should explain its decision in the CG Chapter of its annual report.

**Principle 2 – Duties of the board**

- *The board will be responsible for the management of the company. As a collective body, it will act in the corporate interest and serve the common interests of the shareholders ensuring the sustainable development of the company.*

**Recommendation 2.1.** The board, as well as each of its members, should be bound by a duty of loyalty towards the company and all of its shareholders.

**Recommendation 2.2.** The board should be organised in such a way that it is able to perform its tasks effectively.

**Guideline** The board should meet as often as is necessary for the effective discharge of its obligations. It would be appropriate for the board to meet at least once a quarter, in order to monitor the development of the company's activities.

**Recommendation 2.3.** The board should in particular decide on the values and objectives of the company, its strategy and key policies in implementing them and the level of risk acceptable to the company. It draws up the annual and periodic accounts.

**Guideline** The board should ensure that the necessary financial and human resources are available to allow the company to reach its objectives.

**Guideline** It is good governance for companies to establish rules of professional ethics, approved by the board.

**Guideline** When determining the company's values, the board should give proper consideration to its staff policy and code of business ethics.

**Guideline** When determining the company's values, the board should take into consideration all the aspects of the corporate responsibility of the company.

**Recommendation 2.4.** The board should appoint a chairman who prepares the agenda for board meetings after consultation with the chief executive officer. The chairman should ensure that the procedures for the preparation of meetings, deliberations, decision-making and the implementation of decisions, are correctly applied. He<sup>5</sup> should take the necessary steps to create a climate of trust within the board, contributing to open discussion, the constructive expression of opinion of each of its members and support for decisions taken by the board.

**Guideline** The chairman should see to the proper application of the rules of governance and establishes a close relationship with the management, giving it his<sup>5</sup> advice and opinions, respecting the executive responsibilities of the latter.

**Recommendation 2.5.** No single director or group of directors should dominate the board's decision-making process. The decision-making process should allow each director to express his point of view.

**Guideline** All the directors should contribute to the development of the strategy and the key policies in a critical and constructive discussion of proposals submitted.

<sup>5</sup> Throughout this text the words "his" and "he" shall be understood to refer to both men and women.

**Recommendation 2.6.** Directors are bound to keep confidential any information they acquire in their capacity as directors and should not use it for any purpose other than the exercise of their duties.

**Recommendation 2.7.** The board should adopt appropriate rules in order to avoid its members or the company's employees becoming guilty of insider dealing or market manipulation of its securities. Management should regularly provide the members of the board with information on the provisions governing these areas.

**Recommendation 2.8.** The board of directors should formulate a set of rules (hereinafter called the "Rules") relating to the behaviour and notification obligations in relation to transactions in the company's shares or other financial instruments (hereinafter called the "company's securities") carried out for their own account by directors, persons bearing executive responsibilities and persons with a close link to them, as well as all other persons bound by these obligations. The Rules should specify the information in relation to those transactions which must be disclosed to the market.

**Guideline** The Rules should set limitations on the carrying out of transactions in the company's securities for a designated period prior to the publication of its financial results ("closed periods") and all other periods considered to be sensitive ("prohibited periods").

**Guideline** The board should ensure that a compliance officer is appointed, whose duties and responsibilities should be defined by the Rules. The compliance officer's mission is, inter alia, to monitor compliance with the Rules. The compliance officer has access at all times to the chairmen of the board and the audit committee.

**Guideline** When a director or other individual bound by the obligations mentioned in this recommendation carries out a transaction in the company's securities and the compliance officer has been informed, the transaction should be made public in accordance with the Rules.

**Recommendation 2.9.** Each director should undertake to devote the necessary time and attention to his duties and to limit his other professional commitments (in particular directorship held with other companies) to the extent necessary for him to be able to properly discharge his duties.

**Guideline** A director should only accept a limited number of directorships in listed companies.

A director who is a full-time member of executive management (hereinafter "executive director") should accept no more than one other non executive directorship in a listed company. An individual should not be chairman of the board of more than one listed company.

Each year the company should publish information on directors' mandates in other listed companies in its annual report and on its website.

The director should inform the secretary of the board of all subsequent changes in his commitments.

**Recommendation 2.10.** The board should appoint a company secretary to ensure, under the authority of the chairman, the implementation of the rules and procedures regulating the functioning of the board. The company secretary, in conjunction with the chairman of the board, should prepare minutes summing up the deliberations, noting any resolutions passed and indicating the votes cast by the directors.

**Principle 3 – Composition of the board and the special committees**

*The board will be composed of competent, honest and qualified persons. Their choice will take account of the specific features of the company.*

*The board will ensure that any special committees necessary for it to properly fulfil its duties are set up.*

**Recommendation 3.1.** In their diversity, members of the board represent a complementarity of experiences and knowledge. A list of the board members should be disclosed in the Corporate Governance Chapter of the annual report (hereinafter, the “CG Chapter of the annual report”).

**Guideline** In order to ensure a balanced composition of the board, account should be taken of the specific features of the company and its activities, and particularly the various business lines of the company and their geographic diversity.

**Guideline** Insofar as possible the board should have an appropriate representation of both genders.

**Recommendation 3.2.** The board should be of an appropriate size in order to facilitate effective decision-making. It should be large enough for its members to contribute experience and knowledge from different fields and for changes in its composition not to create undue disruption. To ensure effective deliberation and decision-making, the number of directors should remain limited.

**Guideline** A maximum of 16 board members can be considered a reasonable limit.

**Recommendation 3.3.** The board should be organised so that the executive and non executive directors have equivalent access to the information and resources necessary for them to discharge their duties.

**Recommendation 3.4.** Every board should have a sufficient number of independent directors.

**Guideline** The number of independent directors will depend inter alia on the nature of the company’s activities and its share ownership structure.

**Recommendation 3.5.** To be considered independent, a director must not have any significant business relationship with the company, close family relationship with any executive, or any other relationship with the company, its controlling shareholders or executives which is liable to impair the independence of the director’s judgment.

The company should draw up a detailed list of the criteria for assessing independence on the basis of the above. The list of criteria should be disclosed in the CG Chapter. To this end, the company may make use of the independence criteria appearing in Annex II of the European Commission Recommendation of 15 February 2005 on the role of non executive directors (and members of the supervisory board) of listed companies and on the committees of the board (or supervisory board). These criteria appear in Appendix D of this text.

**Recommendation 3.6.** The company should ensure that new directors receive an induction into the way the company functions, enabling them to contribute in the best possible manner to the work of the board.

**Guideline** The company should provide its new directors with training in governance offered either internally or by specialist external institutions.

**Guideline** For directors called upon to join a committee of the board, this induction should include a description of the committee's remit, together with all other information regarding the specific role of that committee.

**Guideline** For new members of the audit committee, this training programme should include an overview of the company's organisation of internal control and of its risk management systems. In particular, they should receive comprehensive information on the company's accounting, financial and operational features. This programme should also involve contact with the external and internal auditor.

**Recommendation 3.7.** Directors should update their skills and improve their knowledge of the company with a view to fulfilling their role both on the board and, where relevant, on committees of the board.

**Guideline** The chairman of the board should ensure that the necessary resources are available for improving and updating the knowledge and skills of the directors.

**Recommendation 3.8.** All of the directors should be provided with timely information necessary for the proper performance of their duties.

**Guideline** The chairman of the board should ensure, with the assistance of the company secretary and management, that directors receive timely and adequate information enabling them to perform their duties in an informed manner.

**Guideline** Directors should fully acquaint themselves with the information received. In addition, they may request additional information via the chairman of the board whenever they consider it to be appropriate.

**Recommendation 3.9.** The board should ensure that special committees are constituted to examine specific topics chosen by the board and to advise the board about them. It should choose each committee's chairman and members with due regard to the need to ensure that the committee membership is refreshed and that undue reliance is not placed on particular individuals. Decision-making will remain a collective responsibility of the board, which remains fully answerable for decisions taken within its field of competence.

**Guideline** Special committees should ideally be composed of four members.

**Recommendation 3.10.** The committees of the board should discharge their duties within the framework of the terms of reference that they have been given and ensure that they report regularly on their activity and on the results of their work to the board.

**Recommendation 3.11.** The committees may seek expert assistance in obtaining the necessary information for the proper fulfilment of their duties. The company should provide each committee with the financial resources it needs for this purpose.

**Principle 4 – Appointment of directors and executive managers<sup>6</sup>**

*The company will establish a formal procedure for the appointment of directors and executive managers.*

**Recommendation 4.1.** The board should establish criteria and nomination procedures for directors, where appropriate formulating specific rules for executive directors, subject to the legal provisions in force concerning the status of directors representing the government or a public-law corporation in a public limited company and those concerning works councils in private sector companies and organising the representation of employees in public limited companies.

**Guideline:** A nomination procedure should define where nomination proposals should be sent, any deadlines to be complied with and the arrangements for disclosure.

**Recommendation 4.2.** The board should establish a nomination committee from amongst its members to assist in the selection of directors. It should define the committee's internal regulations.

If the company does not have a nomination committee, the need to create one should be assessed annually.

**Recommendation 4.3.** The nomination committee should be composed of a majority of non executive directors. It should contain a sufficient number of independent directors.

The chairman of the board or another non executive director should chair the nomination committee.

The board should ensure that the nomination committee has access to the necessary skills and means to effectively fulfil its role.

The chairman of the nomination committee should prepare minutes of its meetings.

**Recommendation 4.4.** The nomination committee should regularly evaluate its own effectiveness and make recommendations to the board for the necessary adjustments in its internal regulations.

**Recommendation 4.5.** The nomination committee should meet as often as it considers necessary.

**Recommendation 4.6.** After each meeting of the nomination committee, its chairman should make a report to the board.

**Recommendation 4.7.** For every position to be filled, an evaluation should be made by the nomination committee of the existing and required skills, knowledge and experience. On the basis of this evaluation, a description of the role, together with the skills, knowledge and experience required, should be drawn up.

**Guideline** The nomination committee may seek assistance from external experts in the performance of its duties.

**Guideline** The nomination committee should prepare plans for the succession of directors. It should ensure that a balance of skills is maintained within the board at all times. It should ensure that there is a sufficient number of independent directors.

<sup>6</sup> "Executive managers" are senior managers who are not board directors but who are members of a body of executives (French: "la direction"; German: "der Vorstand") who are charged with the day-to-day management of the company.

**Guideline** When dealing with a new appointment, the chairman of the nomination committee should ensure that, prior to considering the approval of an application, he has received sufficient information about the candidate, including his curriculum vitae and, where relevant, the necessary information for evaluating the candidate's independence.

**Recommendation 4.8.** The nomination committee should consider all proposals submitted by the shareholders, the board or executive management. It is also entitled itself to suggest candidates for appointment to the board.

**Guideline** The chief executive officer should be consulted by the nomination committee and should be authorised to submit proposals, in particular when executive directors are under consideration.

**Recommendation 4.9.** The board should draw up the list of applications to be submitted to the Annual General Meeting<sup>7</sup>.

**Recommendation 4.10.** If a director is co-opted when a director's directorship becomes vacant, the above recommendations should remain applicable.

**Recommendation 4.11.** All proposals for the appointment of a director submitted to the Annual General Meeting should be accompanied by a recommendation from the board. The proposal should specify the proposed term for the directorship. It should be accompanied by relevant information on the professional qualifications of the candidate as well as a list of the positions and directorships held by the candidate. The board should indicate whether the candidate meets the independence criteria set by the company.

**Guideline** Nomination proposals should be communicated within a reasonable time before the Annual General Meeting at the same time as useful information is provided on the candidate's professional qualifications, the list of posts and mandates already exercised by the candidate and a declaration concerning his independence.

**Recommendation 4.12.** The nomination committee should likewise assist the board with the procedure for appointing executive managers, applying the recommendations 4.1 and 4.7 above.

The chief executive officer should be consulted ex officio as part of this procedure.

<sup>7</sup> There is no English equivalent for the French term "assemblée générale", which covers all types of legally defined shareholder meetings. In this translation "Annual General Meeting" or "AGM" shall be understood to refer where relevant to all types of legally defined meetings of shareholders, where these are legally empowered to handle the subject in question.



**Principle 5 – Conflicts of interest**

*The directors will take decisions in the best interests of the company. They will warn the board of possible conflicts between their direct or indirect personal interests and those of the company or an entity controlled by it. They will refrain from taking part in any deliberation or decision involving such a conflict, unless they relate to current operations, concluded under normal conditions.*

**Recommendation 5.1.** In accordance with the Law of 10 August 1915 on commercial companies, as amended, each director should take care to avoid any direct or indirect conflict of interest with the company or any subsidiary controlled by the company. He should inform the board of conflicts of interest when they arise and, except for current operations concluded under normal conditions, refrain from deliberating or voting on the issue concerned in accordance with relevant legal provisions. Any abstention motivated by a conflict of interest should be indicated in the minutes of the meeting and disclosed in accordance with applicable legal provisions.

**Guideline** Each director should inform the chairman of the board of any other directorship, office or responsibility - including executive positions - that he takes up outside the company during the term of his directorship.

**Guideline** Each director should consult the chairman of the audit committee or, if not, the chairman of the board in the event of uncertainty as to the nature of an operation or transaction likely to result in a conflict of interest.

**Recommendation 5.2.** In the event of a declared conflict of interest, the operation or transaction concerned should be submitted by the director concerned, after the chairman of the board, the audit committee, the auditor or an external expert have been informed, if possible prior to its realisation. The opinion of the latter should be communicated to the board.

**Principle 6 – Evaluation of the performance of the board**

*The board will regularly evaluate its performance and its relationship with the executive management<sup>8</sup>.*

**Recommendation 6.1.** In the evaluation of its operation, the board should in particular examine its composition, its organisation and its effectiveness as a collective body.

It should draw the necessary conclusions from this evaluation and, where necessary, take appropriate steps to improve its performance.

A similar evaluation should be carried out by each committee.

**Guideline** The board may instruct an external expert to perform the evaluation.

**Guideline** In its evaluation, the board should

- consider the terms of its operation;
- check that the items on the agenda are sufficiently documented and prepared;
- assess the involvement of each director in the work and the discussions.

**Recommendation 6.2.** The board should disclose the method of evaluation and, where relevant, any changes made to its mode of operation.

<sup>8</sup> The “executive management” consists of executive directors and / or executive managers. Executive directors are board members who have functional management responsibilities within the company.

**Principle 7 – Management structure**

*The board will set up an effective structure of executive management. It will clearly define the duties of executive management and delegate to it the necessary powers for the proper discharge of these duties.*

**Recommendation 7.1.** The board should establish organisational and operational principles to govern the executive management, in particular its responsibilities, obligations and powers, and record these in the internal regulations for management. These principles should be revised and adapted, if required, for the effective exercise of the respective powers and obligations of the board and management.

**Guideline** The management structure may be based either on a collective delegation of powers to an executive committee, or on one or more delegations of power to individual executives.

**Guideline** When establishing the organisational and operational principles governing the executive management, the board should work closely with the chief executive officer or the general director.

**Guideline** Internal regulations for management, detailing the responsibilities, obligations, composition and operation of management, should be submitted to the board by the executive management.

**Recommendation 7.2.** The board should grant executives, including where relevant, any executive directors, the necessary powers enabling them to fulfil their responsibilities and obligations.

**Recommendation 7.3.** The executive management should

- be entrusted with the day-to-day running of the company;
- be responsible for preparing complete, timely, reliable and accurate financial reports in accordance with the accounting standards and policies of the company;
- submit an objective and understandable assessment of the company's financial situation to the board;
- regularly submit proposals to the board concerning strategy definition;
- participate in the preparation of decisions to be taken by the board;
- supply the board with all information necessary for the discharge of its obligations in a timely fashion;
- set up internal controls (systems for the identification, assessment, management and monitoring of financial and other risks), without prejudice to the board's monitoring role in this matter;
- regularly account to the board for the discharge of its responsibilities.

**Guideline** The executive management, through its chairman, should establish close relations with the chairman of the board with a view to the organisation and coordination of the above duties.

**Recommendation 7.4.** The board should establish procedures for evaluating and examining the performance of the executive management as a whole and of the individual executives.

**Guideline** The remuneration committee should assist the board with this task.

**Principle 8 – Remuneration Policy**

*The company will secure the services of qualified directors and executive managers by means of a suitable remuneration policy that is compatible with the long-term interests of the company.*

**Recommendation 8.1.** In its CG Charter, the company should describe its policy for remunerating members of the board and the executive management. That description should specify the balance sought between the fixed and variable parts of the remuneration and exhaustively cover the different elements entering into the remuneration such as share options or company shares, directors' fees, retirement and departure conditions and specific benefits, whether attributed by the company itself or its subsidiaries or members of the same group.

**Recommendation 8.2.** The board should draw up simple, transparent and precise rules to determine the remuneration of its members and those of the executive management.

It should define significant, demanding and objective performance criteria respecting the policy fixed by the company regarding the variable part of that remuneration including bonus and share allocations, share options or any other right to acquire shares.

These criteria should be in line with the medium and long-term objectives of the company and take account of its effective and potential development, the wealth created for the company and its shareholders and the individual and collective performances of the board or the executive management respectively. The criteria should also take into consideration the appropriate level of risk defined by the board.

**Guideline** The board should ensure that the rules for the attribution of bonuses to members of the executive management take account of their medium-term performances.

**Guideline** Redundancy compensation or that for amicable termination of a contract of employment of company executives together with any other benefit granted by virtue of the redundancy or in relation to an amicable termination should be limited to a maximum of two years of annual fixed remuneration. Any additional compensation should be in relation to the company's results.

**Recommendation 8.3.** The criteria for directors' remuneration as well as share attribution schemes, share options or any other right to acquire shares in favour of members of the board and the executive management should be subject to the approval of the Annual General Meeting of shareholders.

All discounts on share option plans, giving the right to subscribe to shares at a price lower than the quoted price on the date the exercise price is set, or an average of the quoted prices over a certain number of days just prior to the date on which the exercise price is set, should be disclosed to at the Annual General Meeting of shareholders.

**Guideline** The conditions of a share attribution scheme, share options or any other right to acquire shares should not in principle be liable to be re-valued after implementation.

Sshares cannot be permanently granted any earlier than three years after their initial allotment.

**Recommendation 8.4.** The remuneration of non executive directors should be proportional to their responsibilities and the time devoted to their functions.

**Guideline** Non executive directors should neither receive remuneration linked to their individual performance, nor bonuses, long-term incentive plans, benefits in kind or benefits linked to pension plans.

**Recommendation 8.5.** The board should establish a remuneration committee from among its members, to assist in formulating a remuneration policy for directors and managers. It should define the committee's internal regulations.

If the company does not have a remuneration committee, the need to create one should be assessed annually. Until a remuneration committee has been set up, the board should deal with these tasks and responsibilities at least once a year.

**Recommendation 8.6.** The remuneration committee should be composed exclusively of non executive directors. It should contain a sufficient number of independent directors.

The board should ensure that the remuneration committee has access to the necessary skills and means to effectively fulfil its role.

The chairman of the remuneration committee should prepare minutes of its meetings.

**Guideline** The remuneration committee should be chaired by the chairman of the board or by an independent director.

**Guideline** The remuneration committee may seek assistance from external experts for the fulfilment of its duties.

**Guideline** The remuneration committee should hear the chief executive officer.

**Recommendation 8.7.** The remuneration committee should meet as often as it considers necessary, but at least once a year.

After each meeting of the remuneration committee, its chairman should make a report to the board.

**Recommendation 8.8.** The remuneration committee should regularly evaluate its own effectiveness and make recommendations to the board for the necessary adjustments in its internal regulations.

**Recommendation 8.9.** The remuneration committee should submit proposals to the board regarding the remuneration of executive managers, ensuring that these proposals are in accordance with the remuneration policy adopted by the company and the evaluation carried out of the performance of the person concerned. To that end, the committee should be informed of the total remuneration paid to each member of the executive management by other companies affiliated to the group.

**Recommendation 8.10.** At least once a year, the remuneration committee should discuss with the chief executive officer the performance of executive management and of the individual executives. The chief executive officer should not be present for the discussion on his own evaluation. The evaluation criteria should be clearly defined.

**Recommendation 8.11.** Individuals should not be involved in decisions regarding their own remuneration.

**Recommendation 8.12.** The overall amounts of direct and indirect remuneration, on the one hand of non executive directors and on the other hand of all the executive directors and executive managers by virtue of their position should be disclosed in the annual report. A distinction should be drawn between the fixed and the variable part of that remuneration. The company should disclose the number of shares and options and the conditions of their exercise granted to those same groups of people.

**Guideline** The company should specify the number of members of the executive management concerned.

**Principle 9 – Financial reporting, internal control and risk management**

*The board will establish strict rules, designed to protect the company's interests, in the areas of financial reporting, internal control and risk management.*

**Recommendation 9.1.** The board should establish an audit committee from among its members to assist in the discharge of its responsibilities in the areas of financial reporting, internal control and risk management. It should define the committee's internal regulations.

If the company does not have an audit committee, the need to create one should be assessed annually. Until an audit committee has been set up, the board should deal with these tasks and responsibilities, in close collaboration with the internal and external auditors.

**Guideline** Until such time as the board sets up an audit committee, it should meet at least twice a year with the internal and external auditors to discuss issues connected with financial reporting, internal control and risk management.

**Recommendation 9.2.** The board or, where relevant, the audit committee, should regularly examine the effectiveness of the financial reporting, internal control and risk management system adopted by the company. It should make sure that the audits carried out and the subsequent audit reports conform to the audit plan approved by the board or the audit committee.

**Recommendation 9.3.** The audit committee should be composed exclusively of non executive directors. It should contain a sufficient number of independent directors.

The chairman of the board should not chair the audit committee.

The board should ensure that the audit committee has access to the necessary skills and means to fulfil its role effectively, particularly in matters of finance.

The chairman of the audit committee should prepare minutes of its meetings.

**Guideline** The audit committee should be chaired by an independent director.

The audit committee should be composed of a majority of independent directors.

At least one of the members of the audit committee should have had training in finance or accounting.

**Recommendation 9.4.** The audit committee may invite any other person whose collaboration it deems to be advantageous to assist it in its work and to attend its meetings. In addition, it should be authorised to meet with any individual outside the presence of any executives. It should meet with the internal and external auditors at least once a year without the presence of any executives.

**Recommendation 9.5.** The audit committee should regularly evaluate its own effectiveness and make recommendations to the board for the necessary adjustments in its internal regulations.

**Recommendation 9.6.** The audit committee should meet as often as it deems necessary, but at least twice a year.

**Guideline** The audit committee should normally meet four times a year. Two of its meetings should deal with the half-yearly and yearly results and their disclosure to the shareholders and the public.

**Recommendation 9.7.** After each meeting of the audit committee, its chairman should make a report to the board, identifying the issues in respect of which he considers that action or improvement is called for and making recommendations on the measures that should be taken.

**Recommendation 9.8.** An independent internal audit function should be established.

Its resources and skills should be appropriate to the nature, size and complexity of the company.

**Recommendation 9.9.** The audit committee should assist the board in monitoring the reliability and integrity of the financial information provided by the company, in particular by reviewing the relevance and consistency of the accounting standards applied by the company (including the consolidation criteria).

**Recommendation 9.10.** The audit committee should assist the board to formulate a description of the risks specific to the company and to implement a system of risk control to monitor the latter so that the main risks are correctly identified, managed and disclosed appropriately to the board.

**Recommendation 9.11.** The internal and external auditors should, in addition to maintaining an effective working relationship with management, have free access to the board. To this end, the audit committee should act as principal contact point.

The internal and external auditors as well as the compliance officer may at all times approach the chairman of the audit committee or the chairman of the board directly.

The audit committee should receive timely information regarding any issue raised by the internal or external auditor.

**Recommendation 9.12.** The audit committee should be informed of the internal auditor's work programme and should receive periodic summaries of his work. It may make recommendations regarding the internal auditor's work programme.

It should monitor the effectiveness of the internal audit function and make sure that the internal auditor has adequate resources for the performance of the tasks entrusted to him.

In the event of the resignation of the internal auditor it should investigate the issues leading to this and make recommendations concerning any measures that are needed.

**Recommendation 9.13.** The audit committee should be informed of the external auditor's work programme and receive a report from the auditor describing all existing relationships between the external auditor on the one hand and the company and its group on the other hand. It may make recommendations regarding the external auditor's work programme.

The audit committee should make recommendations to the board regarding the selection, appointment, reappointment and removal of the external auditor and, in addition, the terms and conditions of their remuneration.

It should monitor the independence and objectivity of the external auditor, in particular by monitoring the rotation of the partners of the audit firm.

It should examine the nature and scope of non-audit services provided, with a view to avoiding any conflict of interest. To this end, the audit committee should establish a policy specifying which non-audit services shall be (a) prohibited (b) authorised after consideration by the committee and (c) authorised ex officio without the need for consultation of the committee.

In addition, the audit committee should monitor the effectiveness of the external audit process and check that the executive management acts on the letter of recommendations from the external auditor.

In the event of the resignation of the external auditor, it should investigate the issues leading to this and make recommendations concerning any measures that are needed.

**Guideline** The audit committee should regularly evaluate the work of the firm of external auditors and consider the term of the mandate of the firm and/or partners responsible for certification of the accounts.



**Principle 10 – Shareholders**

*The company will respect the rights of its shareholders and ensure they receive equitable treatment.  
The company will establish a policy of active communication with the shareholders.*

**Recommendation 10.1.** The company should disclose its share ownership structure. Such disclosure should in particular specify the number of shares issued, the number of shares with voting rights, the number of shares the company holds in itself and insofar as the company is aware the identity of the shareholders with a holding of 5% or more of the voting rights. Whilst fulfilling legal advertising obligations, the company should use the most appropriate media most effectively to disseminate this information and to keep it regularly updated.

**Recommendation 10.2.** The company should ensure that its shareholders receive equitable treatment, by providing them with useful and pertinent information enabling them to exercise their rights.

**Guideline** The board should ensure that the interests of all the majority and minority shareholders are respected.

**Recommendation 10.3.** The company should dedicate a specific section of its website to its shareholders, on which they should be able to find inter alia the provisional timetable of meetings and periodic information, convocations to Annual General Meetings, the conditions of access and terms of voting for shareholders, downloadable registration and proxy forms, and any relevant documentation for Annual General Meetings of shareholders.

**Guideline** Wherever possible, the company should give shareholders the option to raise issues via the company's website.

**Recommendation 10.4.** The company should encourage the participation of shareholders at meetings and take the necessary measures to facilitate that participation taking account of the composition of its share ownership structure. Shareholders who cannot be present must be able to vote *in absentia*, whether by proxy, correspondence or remote participation via electronic means.

**Guideline** The company should also take into account the situation of shareholders who are not resident in the Grand Duchy of Luxembourg but who wish to exercise their rights. Subject to compliance with the existing legal framework, the company should make use of modern technology to facilitate shareholders' participation in Annual General Meetings. It should also do its best to use languages appropriate to its shareholders.

**Recommendation 10.5.** In the convocation to an Annual General Meeting, the company should, in good time and taking account of the geographic dispersion of its shareholders, send all the shareholders the items on the agenda and the resolutions to be put to the vote.

**Guideline** For particularly complex issues, the company should provide adequate explanations via its website.

**Guideline** The company should place an item on the agenda for the Annual General Meeting on directors' remuneration.

**Recommendation 10.6.** The company should acknowledge the right of any shareholder or group of shareholders holding at least 5% of the capital to ask for items to be placed on the agenda for the Annual General Meeting and to lodge draft resolutions on the items on the agenda on the day of the Annual General Meeting.

**Recommendation 10.7.** The company should guarantee its shareholders the power to play their role fully at meetings and to enter into dialogue with the board and the executive management. The chairman of the board should ensure that relevant questions raised by shareholders at the general meeting receive the appropriate answers, provided that they are not liable seriously to harm the company, its shareholders or personnel.

**Recommendation 10.8.** Several resolutions, if they are of the same nature, must not be grouped together in one resolution, in order not to constrain the shareholder to pass or not all those resolutions en bloc. Likewise the appointment and renewal of mandate of several members of the board must not be presented in one single resolution in order that shareholders can rule separately on each application.

**Recommendation 10.9.** The company should post the detail of the results of votes and the minutes of an Annual General Meeting on its website without delay after this meeting.

**Recommendation 10.10.** Annual General Meetings should be privileged occasions when the board accounts to the shareholders for the performance of its tasks. The company should ensure that the board and the executive management are represented there by the largest number of their members.

**Appendix A: Definition of control (Preamble)<sup>1</sup>**

Pursuant to European Union Directive 83/349/CEE, a shareholding is said to be “controlling” in the following situations, i.e. in the case of a shareholder who:

- a) has a majority of the shareholders’ or members’ voting rights in an undertaking (a subsidiary undertaking); or
- b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of an undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking; or
- c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in the articles of association of the latter, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions. Member States need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for such contracts or clauses shall not be required to apply this provision; or
- d) is a shareholder in or member of an undertaking, and:
  - aa) a majority of the members of the administrative, management or supervisory body of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or
  - bb) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders’ or members’ voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements.

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<sup>1</sup> The references in parentheses refer to the relevant provisions of the text of European Union Directive 83/349/CEE.

**Appendix B: Transparency requirements****Corporate Governance Charter (the CG Charter)** (Recommendation 1.4.)

The company should describe and disclose all the main aspects of its corporate governance policy, including at least the items listed below, in its Corporate Governance Charter (CG Charter):

With regard to the board, the company should disclose:

- a description of the company's governance structure;
- the essential aspects of the corporate governance framework as set out in the internal regulations of the board;
- the policy implemented by the board for transactions in the company's securities and other contractual relations;
- the existence and nature of the risk management system in place.

With regard to committees, the company should disclose the essential aspects of the internal regulations of each committee.

With regard to the executive management, the company should disclose the essential aspects of the internal regulations of the executive management.

With regard to the remuneration policy for board members and the executive managers, the company should disclose information relating thereto observing the requirements of the Ten Principles of Corporate Governance.

With regard to the shareholders, the company should disclose information relating thereto observing the requirements of the Ten Principles of Corporate Governance.

## Appendix C: Transparency requirements

### Corporate Governance Chapter (the CG Chapter) (Recommendation 1.7.)

The company should describe and disclose all the main aspects of its corporate governance for the year, including at least the items listed below, in a Corporate Governance Chapter (CG Chapter) in its annual report.

The company declares that it follows the Principles of Corporate Governance of the Luxembourg Stock Exchange, if not indicating which principles it applies.

Where relevant, it should specify which Recommendations it has departed from during the financial year and provide reasons for these deviations. Where there has been a deviation, it should explain how the solution it has adopted nevertheless allows it to reach the objective sought by the underlying principle.

With regard to the board, the company should disclose:

- a list of the board members, indicating which of them are independent directors;
- a presentation of each new director, including a justification if the director is deemed to be independent, even if the director fails to meet one or more of the criteria appearing in appendix D;
- information about directors who no longer meet the conditions for independence;
- a list of other positions held by directors in other listed companies;
- a summary curriculum vitae for each director;
- an activity report about board meetings, including the number of meetings and the average attendance by the directors;
- how the board carried out its own evaluation and the evaluation of the committees, indicating to what extent the evaluation carried out has led to important changes.

With regard to committees, the company should disclose:

- a list of members of board committees;
- an activity report about committee meetings, including the number of meetings and the average attendance by the directors,

With regard to executive management, the company should disclose:

- a list of executives;
- a summary curriculum vitae for each executive manager.

With regard to remuneration, the company should disclose information relating thereto observing the requirements of the Ten Principles of Corporate Governance.

With regard to shareholders, the company should disclose information relating thereto observing the requirements of the Ten Principles of Corporate Governance.

**Appendix D: Independence criteria** (Recommendation 3.5.)

*(Appendix II - Profile of non executive and supervisory directors - from the European Commission Recommendation of 15 February 2005 on the role of non executive directors (and members of the supervisory board) of listed companies and on the committees of the board (or supervisory board)).*

“It is not possible to list comprehensively all threats to directors’ independence; the relationships or circumstances which may appear relevant to its determination may vary to a certain extent across Member States and companies, and best practices in this respect may evolve over time. However, a number of situations are frequently recognised as relevant in helping the board or supervisory board to determine whether a given non executive or supervisory director is independent or not, even though it is widely understood that assessment of the independence of any particular director should be based on substance rather than form. In this context, a number of criteria, to be used by the board or supervisory board, should be adopted at national level. Such criteria, which should be tailored to the national context, should be based on due consideration of at least the following situations:

- a) a non executive or supervisory director is not an executive director (or manager) of the company or an associated company, and has not been in such a position for the previous five years;
- b) is not an employee of the company or an associated company, and has not been in such a position for the previous three years;
- c) does not receive, and has not received, significant additional remuneration from the company or an associated company apart from a fee received as a non executive or supervisory director. Such additional remuneration covers in particular any participation in a share option or any other performance-related pay scheme; it does not cover the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the company (provided that such compensation is not contingent in any way on continued service);
- d) is not and does not represent in any way a strategic shareholder with a 10% or greater holding;
- e) does not have, and has not had within the last financial year, a significant business relationship with the company or an associated company, either directly or as a partner, shareholder, director or senior employee of a body having such a relationship. Business relationships include the situation of a significant supplier of goods or services (including financial, legal, advisory or consulting services), of a significant customer of the company, and of organisations that receive significant contributions from the company or its group;
- f) is not, and has not been within the last three years, a partner or employee of the present or former external auditor of the company or an associated company;
- g) is not an executive director (or manager) in another company in which an executive director (or manager) of the company is a non executive or supervisory director, and does not have other significant links with executive directors (or managers) of the company due to positions held in other companies or bodies;
- h) has not served on the board or supervisory board as a non executive (or supervisory) director for more than twelve years;

- i) is not a close family member of an executive director or manager, or of persons in the situations referred to in points (a) to (h).

The independent director undertakes:

- a) to maintain in all circumstances his independence of analysis, decision and action;
- b) not to seek or accept any unreasonable advantages that could be considered as compromising his independence, and
- c) to clearly express his opposition in the event that he finds that a decision of the board (or supervisory board) may harm the company. When the board (or supervisory board) has made decisions about which a non executive or supervisory director has serious reservations, then that non executive or supervisory director should draw all the appropriate consequences from this. If he were to resign, he should explain his reasons in a letter to the board or the audit committee.”









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