european corporate governance institute

Directors' Remuneration in Listed Companies:

CONSOLIDATED ANSWERS FOR THE 15 EU MEMBER STATES

Contact Details of Person(s) Answering and Reviewing the Questionnaire and Date of Last Review

	RESPONDENT	REVIEWER	DATE
AUSTRIA	Marco LEONARDI	Susanne KALSS	30 June 2003
BELGIUM	Sonja D'HOLLANDER	Ingrid DE POORTER	30 June 2003
DENMARK	Jan Schans CHRISTENSEN		31 December 2003
FINLAND	Ingalill ASPHOLM	Tiina VISAKORPI	31 December 2003
FRANCE	Alessandra DE CANTELLIS	Joëlle SIMON	1 August 2003
GERMANY	Marco LEONARDI	Markus ROTH	30 June 2003
GREECE	Georgios D. SOTIROPOULOS	Evanghelos Emm. PERAKIS	30 June 2003
IRELAND	Niamh MOLONEY	Kelley SMITH	30 June 2003
ITALY	Andrea ZANONI	Guido FERRARINI	30 June 2003
LUXEMBOURG	Daniel DAX	Jacques LOESCH	30 June 2003
NETHERLANDS	Steven HIJINK and Anne WILSCHUT	Jaap WINTER	30 June 2003
PORTUGAL	João SOUSA GIÃO	Paulo CÂMARA	30 June 2003
SPAIN	Jesualdo DOMÍNGUEZ-ALCAHUD and Diego ESCANERO	Jose M. GARRIDO	31 July 2003
SWEDEN	Björn KRISTIANSSON	Rolf SKOG	30 June 2003
UNITED KINGDOM	Andrea ZANONI	Niamh MOLONEY	30 June 2003

Questionnaire

Answers to this questionnaire should be given from the perspective of provisions included in national laws, regulations and exchange rules, and of best practices as recommended by either official reports or corporate governance codes.

1. General

1.1 Please indicate, as a general reference, the laws, case law, regulations, exchange rules and best practices concerning directors' remuneration in your country with respect to listed companies. Please indicate where these provisions (such as, for example, exchange rules) apply only to domestically-incorporated companies.

AUSTRIA

- Stock Corporation Act 1965 (*Aktiengesetz – AktG*) published in the Federal Gazette 98/1965 and available on http://www.ris.bka.gv.at.
- Capital Markets Act 1991 (*Kapitalmarktgesetz – KMG*) published in the Federal Gazette 625/1991 and available on http://www.wienerboerse.at.
- Stock Exchange Act 1989 (*Börsegesetz – BörseG*) published in the Federal Gazette 555/1989 and available on http://www.wienerboerse.at.
- Commercial Code 1897 (*Handelsgesetzbuch – HGB*) published in the Federal Gazette Part I 114/1997 and available on http://www.ris.bka.gv.at/bundesrecht.
- Codetermination Act 1974 (*Arbeitsverfassungsgesetz – ArbVG*) published in the Federal Gazette 22/1974 and available on http://www.ris.bka.gv.at/bundesrecht.
- Decree by the Financial Authority on Compliance of Issuers (*Emittenten-Compliance-Verordnung - ECV*), published in the *Amtsblatt für Finanzverwaltung - AÖFV* Nr. 210/2001 and available on http://www.fma.gv.at/.
- Decree by the Ministry of Finance on The Disclosure of Purchase and Selling of own shares (*Verordnung des Bundesministers für Finanzen über den Inhalt und die Form der Veröffentlichungen im Zusammenhang mit dem Rückerwerb und/oder der Veräußerung eigener Aktien sowie der Einräumung von Aktienoptionen - Veröffentlichungsverordnung*) published in the Federal Gazette Part II 112/2002 and available on http://www.fma.gv.at.
- Austrian Code of Corporate Governance (*Österreichischer Corporate Governance Kodex*), September 2002 available on http://www.wienerboerse.at/. The Code applies only to domestically incorporated companies as it provides in its foreword that " the Austrian Code of Corporate Governance provides Austrian corporations with a framework for the management and control of enterprises" and that it "primarily applies to Austrian stock listed companies".

However, the Code can only be applied if the single company is ready to accept the rules, it does express by way of self declaration to accept and to obey to the rules. There is no legal obligation to express this declaration.

BELGIUM

- The Royal Decree of 30 January 2001 (taken in execution of the Companies Code) prescribes that the notes to the financial statements (both FS of the parent and consolidated FS) should contain global information about directors' remuneration (cf. 4th and 7th Directive). These provisions apply only to domestically-incorporated companies.
- The Royal Decree of 18 September 1990 about the prospectus that has to be established for listing in Belgium imposes information about directors' remuneration, the number of shares and stock options of the company held by directors, unusual transactions between the company and her directors and loans attributed to directors.
- Best practices: the recommendations concerning Corporate Governance for listed companies (established by Euronext Brussels and the BFC in 1998) say that it is recommended to disclose the total amount of the non-executives directors' remuneration separately in the annual report and to specify both the fixed and the variable part of the remuneration. In addition, the principles underlying the calculation of the variable part, if any, should be disclosed. They also recommend to disclose the rules and procedures with regard to the determination of the total emoluments, annual fees, benefits in kind and share options granted to directors, as well as loans and advances which may have been granted to them. These provisions apply only to domestically-incorporated companies.
- Best practices: there also exist recommendations of the VBO-FEB (Federation of Belgian Entreprises) (a private business association) about "transparency of remunerations" (March 2002).

DENMARK

Article 64 of the Limited Companies Act provides that members of the board of directors and management board may receive as remuneration either a fixed payment or a payment determined on the basis of the member's or the company's performance. In any event, the compensation must not exceed what is deemed reasonable, given the nature of the tasks of the members, the amount of work involved, and the financial position of the company and, in the case of a parent company, of the group of companies.

Under the Disclosure Obligations for Issuers adopted by the Copenhagen Stock Exchange, section 19, issuers that adopt share-based incentive programs must immediately disclose a number of features with respect to such programs. For details, please see 2.1. below. Also, pursuant to section 18 of the said rules extraordinary agreements between the issuer and a member of the board of directors or management board, including on redundancy payments, must be disclosed in the annual report.

Pursuant to non-binding recommendations issued by the so-called Nørby Committee (explained further under 1.2 below), article VI, the remuneration of directors and managers should be competitive and reasonable given the assigned tasks, and the responsibilities connected thereto. The recommendations suggest that there be a relation between the aggregate remuneration on the one hand, and the performance of the directors and managers and the value they have created for the company, on the other hand. Stock option schemes are not recommended for members of the board of directors. Openness and transparency are key words regarding performance-related share-based incentive programs. Redundancy arrangements or schemes must be reasonable as set out in the recommendations by the Nørby Committee. Please see under 4.6. below.

FINLAND

Apply only to domestically-incorporated companies:

- Chapter 8 § 11 a of the Companies Act, Chapter 8 § 1 of the Company Act interpreted in the light of § 11 a (Management of a company). Chapter 4 (Raising the share capital);

- Supreme Court decision 2002:73, Supreme Court decision 1998:136 (held e.g. that the contractual relationship must be distinguished from the company law relationship, meaning that the remuneration can be based either on company law or contract);
- Chapter 2 § 8 of the Accounting Ordinance (disclosure);
- The recommendation of the Ministry of Trade and Industry on corporate governance in state-owned companies, 13 November 2000.

Apply to all companies whose securities are publicly traded in Finland or whose securities are issued to the public in Finland:

- Chapter 2 § 5 of the Regulation of the Ministry of Finance on the regular duty of disclosure of issuer of securities, 538/2002 (disclosure);
- Section 2.3.3 of the Instructions of the Accounting Board concerning the Regulation of the Ministry of Finance on the regular duty of disclosure of issuer of securities, 29.10.2002 (disclosure);
- Chapter 3 § 12 of the Regulation of the Ministry of Finance on listing particulars, 539/2002 (disclosure);
- Chapter 3 § 12 of the Regulation of the Ministry of Finance on the prospectuses, 540/2002 (disclosure);
- The rules of the Helsinki Stock Exchange (chapter 5; no material requirements beyond the legislation);
- The Corporate Governance Recommendation for Listed Companies (hereafter "Recommendation"), December 2003, proposed by a working group of experts appointed by HEX Plc, the Central Chamber of Commerce of Finland (Keskuskauppakamari) and the Confederation of Finnish Industry and Employers (Teollisuuden ja Työnantajien Keskusliitto) and. The guidelines are recommended as best practice by the Helsinki Stock Exchanges and enter into force on 1 July 2004.

FRANCE

Code de Commerce, *Partie Législative*, Art. from L225-44 to L225-46; Art. L225-53; Art. L225-102-1; Art. from L225-177, L225-187-1 (available www.legifrance.gouv.fr); *Décret* n. 67-236 du 23 mars 1967, Art. 93 and 94 (available www.legifrance.gouv.fr); COB's Regulation (available www.cob.fr), «*The board of directors of listed companies in France, Report of the committee chaired by Mr Marc VIENOT-1995*» (thereafter first Viénot report, available www.medef.fr), «*Report of the Committee on Corporate governance chaired by Mr Marc VIENOT – 1999*» (thereafter second Viénot report, available www.medef.fr), «*Promoting better Corporate governance in Listed Companies. Report of working group chaired by Daniel BOUTON, President of Société Générale Bank - 2002*» (thereafter *Code Bouton*, available www.medef.fr), "*Chairman and Chief Executive Officer and Executive Directors compensation, Report of MEDEF, Committee on Business Ethics*", May 2003 (available www.medef.fr).

GERMANY

- Stock Corporation Act 1965 (*Aktiengesetz – AktG*) published in the Federal Law Gazette Part I 1965 p. 1089. The current version is available on http://jurcom5.juris.de/bundesrecht/.
- Securities Trading Act 1994 (*Wertpapierhandelsgesetz – WpHG*) published in the Federal Law Gazette Part I 1994 p. 1749. The current version is available on the site of the Federal Financial Supervisory Authority http://www.bafin.de/gesetze/wphg_e.htm (english version) or http://www.bafin.de/gesetze/wphg.htm.
- German Corporate Governance Code, 26 February 2002 (Cromme Code) available on http://www.ebundesanzeiger.de (electronic federal gazette, in german) and on

www.corporate-governance-code.de/eng/kodex/vorwort.html (english version). The Cromme Code applies only to domestically-incorporated companies as it provides in its foreword that "the Code presents essential statutory regulations for the management and supervision of German listed companies…"

- Commercial Code 1897 (*Handelsgesetzbuch – HGB*) published in the Federal Law Gazette 1897 p. 219. The current version is available on http://jurcom5.juris.de/bundesrecht.
- Rules and Regulations Neuer Markt available on http://deutsche-boerse.com/.
- Stock Exchange Admission Regulation (*Börsenzulassungsverordnung - BörsZulV*) published in the Federal Law Gazette 1998 Part I, p. 2832, last amendment by act 21st June 2002, Federal Law Gazette 2002 Part I, p. 2010, 2070.
- *BAFin* Circular 5.9.2002 available on www.bafin.de.

GREECE

Greek company law has basically only one provision concerning directors' remuneration: article 24 of the Law 2190/1920 governing limited companies by shares (listed or not) applies to all limited companies by shares with their (real) seat in Greece. This article essentially provides that (a) payments to board members made out of net profits must be limited to the amount remaining after all reserves have been retained and the minimum dividend (6% of the capital or 35% of the profits, whichever is the higher) has been paid; that any other remuneration, if not provided by the articles, has to be approved by special resolution of the general meeting (but, if excessive, is subject to reduction at the request of a minority of 1/10 of the capital); and that the previous rule do not apply to payments made to directors on the basis of some special contractual relationship.

On the other hand, Greek securities legislation has only few provisions relating to this issue: Section 12 of Decision Nr. 5/204/14.11.2000 of the Greek Capital Market Commission about the behavioural rules applicable to companies with listed shares provides for the obligation of the Internal Control Department to control the legality of the directors' remuneration of any kind as regulated by resolutions of the relevant corporate bodies. Furthermore article 5 of Law 3016/2002 on corporate governance provides that the remuneration of non-executive directors is governed by Law 2190/1920 and has to correspond to the time they spend for the meetings of the board of directors and the performance of their duties.

IRELAND

- Companies Acts 1963-2001.
- Listing Rules, adopted by the Financial Services Authority, available on http://www.fsa.gov.uk Note: Until 1995, when separation was required as a matter of practicality (although not legally) under the Investment Services Directive, the Irish Stock Exchange operated as the Irish Unit of the International Stock Exchange of the United Kingdom and Europe and was subject to the Listing Rules. Since then, it has, however, continued to apply the Listing Rules, with a supplement adapting the Listing Rules to Irish conditions and the Irish legal context. This supplement is known as the "Green Pages". Apart for some very minor amendments (some of these are non-material, for example, "City of London" to read as "at or near the centre of Dublin" and revision of "Companies Act 1985" references to refer to the equivalent Irish rules), the Listing Rules apply as in the UK and this questionnaire should be read to incorporate the UK Questionnaire.
- Combined Code: Principles of Good Governance and Code of Best Practice, Committee on Corporate Governance, May 2000, available on http://www.fsa.gov.uk The non-statutory Code sets the principles of good corporate governance for UK listed companies, and thus, as the Listing Rules are applied by the Irish Stock Exchange, to Irish listed companies.

Note: Some Questions are cross-referenced to Questions on the UK Questionnaire which discuss the UK case law or common law. With respect to case law, while UK law is not the national law, the Irish courts will refer to UK case law on UK statutory provisions which are similar to Irish provisions in interpreting the law: many Irish statutes are based on UK statutes, particularly in the corporate field. The courts will also refer to the common law rules on company law as developed by the UK courts where relevant.
There is some overlap between general company law and the Listing Rules: all listed companies incorporated in Ireland must comply with general company law, as set out in the Companies Acts 1963 -2001 and with the Listing Rules, as supplemented by the Green Pages. The two sets of rules are complementary but there are some overlaps.
Most Listing Rules concerning directors' remuneration apply only to companies incorporated in Ireland: (Listing Rules 17.12 and 17.14).

ITALY

- Civil Code (as modified by Legislative Decree 6 of 17 January 2003, which will enter into force on 1 January 2004, available on www.giustizia.it)
- Legislative Decree 58 of 24 February 1998 (Consolidated Law on Financial Intermediation), available on www.consob.it and www.ecgi.org
- Consob Regulation 11971 of 14 May 1999 implementing the provisions on issuers contained in Legislative Decree 58 of 24 February 1998, available on www.consob.it
- Consob Communication 11508 of 15 February 2000, available on www.consob.it
- Rules of the Markets organised and managed by the Italian Exchange, adopted by the ordinary Shareholders' Meeting of Borsa Italiana S.p.A held on 29 April 2002 and approved by Consob in Resolution 13655 of 9 July 2002, available on www.borsaitalia.it (hereafter Markets Rules)
- Instructions accompanying the Rules of the Markets organised and managed by the Italian Exchange, available on www.borsaitalia.it (hereafter Markets Instructions)
- Rules of the Nuovo Mercato organised and managed by Borsa Italiana, available on www.borsaitalia.it (hereafter Nuovo Mercato Rules)
- Instructions accompaying the Rules of the Nuovo Mercato organised and managed by Borsa Italiana, available on www.borsaitalia.it (hereafter Nuovo Mercato Instructions)
- Corporate Governance Code, adopted by the Committee for the Corporate Governance of Listed Companies in October 1999 as amended in July 2002, available on www.borsaitalia.it and www.ecgi.org
- Guidelines for the preparation of the report on Corporate Governance, available on www.borsaitalia.it (Corporate Governance Code Guidelines)

Most of the rules on executive directors' remuneration apply only to domestically-incorporated companies.

LUXEMBOURG

Company law, accounting law, prospectus regulation, on going disclosure rules and regulations concern directors' remuneration. The company law and the accounting law only apply to domestically incorporated companies, whereas prospectus regulation and ongoing disclosure rules and regulations apply to all companies the securities of which are listed on the LSE.

NETHERLANDS

The Book 2 of the Dutch civil code (BW) contains the most relevant legal provisions for directors' remuneration. The articles 135 and 145[1] provide that, unless the articles of association constitute otherwise, the remuneration of the supervisory board and the management board is fixed by the general meeting of shareholders. Usually the articles of association assign the authority to set the remuneration to the supervisory board. In the majority of listed companies the supervisory board decides on the remuneration of the management board.
The remuneration of directors is determined bilaterally in a contract between company and board. The company can be represented in that contract by another body than the board.
The provisions for directors' remuneration, which are laid down in the Dutch civil code, only apply to companies that are incorporated in the Netherlands. Article 383c of the book 2 of the Dutch civil code provides that the company shall report in the annual accounts each board member's remuneration amount. This amount shall be divided into periodically paid remuneration, long term remuneration, payments for termination of contract, and profit and bonus payments to the extent these amounts have been charged to the company in the financial year.
Apart from the Dutch civil code, provisions for directors' remuneration can be found in the Act on the Notification on Control 1996 (WMZ). Regulations in this act however mainly see to the disclosure of the number of shares and the number of voting rights a director holds.
The listing rules of Euronext Amsterdam do not contain provisions on the remuneration of directors, with exception of a few clauses in (an appendix to) the Euronext Rulebook in which prospectus requirements are taken up (see also paragraph 2.6).

PORTUGAL

The Portuguese framework concerning directors' remuneration is given by the following pieces of legislation:

- Companies Code – articles 288/1/c); 399; 429 and 440. The rules foreseen in this code apply to both listed and non-listed domestic companies. Generally, one should say that these rules determine who fixes directors' remuneration and the conditions under which shareholders can control the remuneration issues of the company.
- CMVM's Regulation n. 7/2001 – article 1/1/d) and article 2. These provisions apply only to companies issuers of shares admitted to trading on a regulated market and subject to Portuguese "lex societatis" and refer to the disclosure obligations concerning remuneration that this specific companies are subject to;
- CMVM Recommendations on Corporate Governance – recommendations n. 12 and 13. The present recommendations are destined to all listed companies independently of its "lex societatis". According to recommendation n. 12 part of the remuneration of the members of the board, in particular of members involved in current management, shall depend on the results of the company. In n. 13, it is recommended that the proposal presented at the Annual General Meeting of a given company related to the approval of plans to allot shares and/or options for the purchase of shares to members of the board and workers shall include all the elements required for the correct evaluation of the proposal in question. If a regulation regarding the proposal is already available, it should also accompany the proposal.

Let us take the opportunity to enlighten that CMVM Recommendations on Corporate Governance, CMVM's Regulation n. 7/2001 as well as the Portuguese Securities Code are available in English at CMVM's website (www.cmvm.pt).

[1] Because this investigation is limited to listed companies, only regulations with regard to companies of the NV type are mentioned.

SPAIN

Spanish Law[2]

RDLeg 1564/1989, of December 22, on "*Sociedades Anónimas*", Spanish Public Limited Companies Act, (hereinafter, "LSA")[3] provides the following with regard to Directors' remuneration:

- Section 9.h of the LSA provides the following: "The by-laws which shall govern the operation of the company, must state:

  […]

  h) the structure of the body to which the management of the company is entrusted, specifying the Directors to whom power of representation is granted, as well as the rules governing its actions, in accordance with the provisions of this Act and those of the Companies Registry Regulations. The number of Directors shall also be specified being, where there exists a Board of Directors, no less than three, or, at least the maximum and minimum number, as well as the term of office and the system of remuneration, if they receive any";
- Section 130 of the LSA provides the following: "The Directors' remuneration shall be established in the by-laws. Where it consists of a share in the profits, it may only be paid out of profits after tax, after setting aside the required amounts for the statutory reserve and the reserve provided for by the articles and after declaring a dividend to the shareholders of four percent or higher, as established in the by-laws."
- Section 141.1 (1st paragraph) of the LSA provides the following: "Unless the by-laws otherwise provide, the Board of Directors may appoint its chairman, regulate its own operation, accept the resignation of its members and appoint from among its members an executive committee or one or more managing Directors without prejudice to the powers which it may grant to any person[4]".
- Section 200.12 of the LSA provides the following: "The annual report shall contain, in addition to the matters specifically provided for in the Commercial Code and in this Act, the following:

  […]

  12. The amount of salaries, allowances and emoluments of all kinds earned in the financial year by the members of the Board of Directors, on whatever basis, as well as the obligations entered into in relation to pensions or payment of life insurance premiums for former and present members of the Board of Directors.

  This information shall be given as an aggregate amount for each type of payment."

Section 124.3 of RD 1784/1996[5], of July 19, on "*Companies Registry Regulations*", provides the following:

> "In any case, it will be indicated (in the by-laws) the number of Directors or at least, the maximum and minimum number, as well as the term for which they are appointed, and the remuneration system, if they are remunerated. The remuneration correspondent to the Directors will be equal for all of them unless the opposite is expressly stated in the by-laws".

Act 26/2003, of July 17 2003, on Transparency, amends both the LSA and the Act 24/1988 on *"el Mercado de Valores"*, the Securities Exchange Act (hereinafter "LMV"). Pursuant to the Transparency Act amendments, the new section 116 of the LMV provides the following:

> "The public limited companies listed in a stock exchange shall make public annually a report on corporate governance.
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> […]

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[2] There are specific laws such as (i) the Spanish Securities and Exchange Act, (ii) RD 377/1991, on relevant shareholdings, and (iii) OM 12-7-1993, on content of prospectuses, that will be referred to in the specific questions about them.

[3] This Act applies to every "*Sociedad Anónima*" (Public Limited Company) incorporated in Spain, whether it is listed or not.

[4] This Section is the legal base for the Board of Directors Regulation "*Reglamento del Consejo de Administración*".

[5] This Act applies to companies incorporated under the laws of Spain.

4. […] In any case the minimum content of the report on corporate governance is the following one:
[…]
b) […] The identity and remuneration of the members of the Board of Directors and its committees […]".

Spanish best practices with respect to listed companies

There are two official reports:

The first one, issued by the Special Commission to Consider a Code of Ethics for Companies' Boards of Directors[6], dated as of February 26, 1998 (hereinafter "The Olivencia Report"), treats the Directors' remuneration in chapter 7, that we reproduce hereunder:

"7. Director Remuneration

7.1. Control of remuneration policies.

Director remuneration is a matter of capital importance in corporate governance and is consequently a legitimate concern for shareholders, as evidenced in our opinion survey. The available information suggests that much remains to be done in this area. Shareholders expect Directors' remuneration should not exceed the level required to attract competent persons, that it should bear some relationship to the individual and corporate performance, and that it should be disclosed for public scrutiny. And these are precisely the guidelines which this Commission feels should apply to the policies adopted by companies in this area. To facilitate implementation and control, we insist that it is advisable that the Board create a Remuneration Committee with the characteristics already detailed in 3.6[7] and formally give it the following powers: (a) to propose to the Board of Directors the amount of the Directors' annual

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[6] On February 28, 1997, the Spanish Cabinet resolved to create the Special Commission to Consider a Code of Ethics for Companies' Boards of Directors.

[7] "3.6. Board sub-committees.

The traditional structure of Boards of Directors needs to be complemented with other delegate bodies which are beginning to appear in Spanish corporate practice. The Commission feels, in effect, that the Board's general supervisory function depends to a great extent on the creation of certain supporting bodies to which the examination and permanent oversight of certain areas which are of particular relevance for good corporate governance can be entrusted; these areas are: accounting information and control, appointment of Directors and senior executives, determination and review of remuneration policies, and evaluation of the governance system and the observance of its rules.

For this reason, it is recommended that the related sub-committees be formed. The Board is responsible for determining their functions and powers, and in this task it should be guided by the criteria developed in the form of best practices in both Spain and other countries. In any event, it would be appropriate to note the basic missions of the various committees. […] The Remuneration Committee's mission is to assist the Board in setting and supervising the remuneration policy for Directors and senior executives. […] In general, these committees' role is basically informative and consultative, although they may exceptionally be given decision-making powers. The idea is not that they should supplant the Board's decisions but, rather, that they should provide it with material (information, advice and proposals) with which it can effectively develop its supervisory function and improve the quality of its performance in this area.

The efficacy of these committees depends on the quality of the information they produce and, since this depends on the rigour and reliability with which it is elaborated, they need a degree of regularity in their operation and independence in their composition. With regard to this latter aspect, we believe that sub-Committees should comprise only non-executive Directors and that their composition should reasonably reflect the ratio in the Board between domanial and independent Directors. The presence of executives in these committees might impair the credibility of their information since their mission consists, to a great extent, of evaluating the executives' performance. However, this should not prevent members of the management team from attending sub-committee meetings for information purposes.

The Board of Directors is responsible for determining the number of sub-committees and the Directors who should comprise them, depending on needs and availability. In this connection, it should be noted that a separate Committee need not be created for each area of responsibility (Audit, Nomination, Remuneration and Compliance), nor is it necessary that the Directors comprising them should be different in each case. Nevertheless, barring special circumstances, we feel that it is not advisable to combine all responsibilities in a single body, since this might reduce the latter's efficiency due to overwork, lead to an excessive concentration of power and detract from the importance of the Board of Directors. It would apparently be advisable to have at least two sub-committees, one in charge of Auditing and Compliance and the other responsible for Nomination and Remuneration. In order to ensure collegiate operation, it is also recommended that any committees which are established should have at least three members".

remuneration; (b) to periodically review the remuneration programs and consider their appropriateness and results; and (c) oversee to ensure transparency in remuneration.

7.2. The amount of remuneration.

Although the company is free to establish the remuneration, it should proceed cautiously, allowing itself to be guided by market demands and having regard to the responsibility and commitment of the role which each Director is called upon to play. Moderation should be the rule presiding over decisions in this area. Director remuneration should be set so as to offer sufficient incentives to dedication by the Director while not compromising his independence.

7.3 Remuneration structure.

In this respect, the Commission believes that it is better to use formulae which link a significant portion of Director remuneration, particularly that of executive Directors, to the company's results, since this will bring the Directors' interests more into line with those of the shareholder, which it is sought to maximise. We will not consider the advantages or disadvantages of the various forms of remuneration (incentives, payments in stock, stock options, etc.), some of which face tax obstacles in Spain which do not exist in other countries. It is the responsibility of the Remuneration Committee to consider the possibilities for configuring the remuneration and adjusting them to each company's individual circumstances. However, it should be noted that the most widespread remuneration systems in Spanish companies do not meet the above recommendation. As this Commission has discovered, the norm is for a percentage of earnings to be earmarked for Director remuneration. The problem is that this percentage acts only as an upper limit and, consequently, cannot strictly be viewed as a share in profits nor, therefore, does it achieve the desired effect.

In any event, it is important to review remuneration policies periodically in order to ensure that the amounts and structure are commensurate with the Directors' responsibilities, risks and duties. Accordingly, it is advisable for the Board itself, with the help of reports drafted for this purpose by the Remuneration Committee, to evaluate these matters at least once per year and disclose information on this area in the annual report.

7.4. Transparency in remuneration.

Because of its importance and delicacy, the matter of transparency in Director remuneration received special consideration on the part of the Commission, and it is a matter of great interest in assuring the confidence of investors and the markets in the Board of Directors.

There is a long tradition of opacity in this area in Spain, which our laws have made no effort to remove. The law requires disclosure in the annual report of the salaries, per diems and any other form of remuneration earned by the Board members and any pension or insurance premium payment obligations to former or serving Directors, but it does not impose overall disclosure of Director remuneration and, in practice, fails to fully satisfy the interest of shareholders and markets in this connection and can, in fact, create a distorted picture of the situation and give rise to frequent misinterpretations.

The Commission notes that the widespread expectations in this area and the reforming tendencies observed in Spanish corporate governance practices are tending unequivocally towards exceeding the minimum disclosure requirements, i.e. towards increasing transparency. Consequently, the Commission recommends that the policy of disclosing Director remuneration should be inspired by the principle of maximum transparency.

Application of this principle requires advancing as fast as possible from the current situation to full and detailed disclosure of the Directors' remuneration, including that arising from their positions as Directors (fixed fees, per diems, profit-sharing, bonuses, incentives, pensions, insurance premiums, payments in kind, etc.) and those other payments made by the company under other relationships (professional services, management or executive posts).

The Commission recommends that the companies to which this Report is addressed that choose not to apply full transparency immediately but, rather, implement it in stages, as well as companies which decide to apply it partially should publicly disclose their reasons in the company's annual report. In either case, companies should at least disclose each individual

Director's remuneration, for his position as such, under each of the headings listed above, and any fees collected for professional services. The remuneration of the executive Directors can be disclosed as an overall figure, indicating the number of Directors collecting them under each of the remuneration headings. All this information should be included in the annual report.

The second official report, issued by the Special Commission for the Promotion of the Transparency and the Security in the Financial Markets and in Listed Companies[8], dated as of January 8, 2003 (hereinafter, the "Aldama Report"), treats the Directors' remuneration in chapter 5.3 and 6, that we reproduce in Spanish hereunder:

5. 3. Appointment and Remuneration Commission.

"This Commission believes that all companies should have an Appointment and Remuneration Commission whose functions are to inform the Board of Directors about the appointments, reappointments, removals, remuneration and offices of directors and the general remuneration and incentive policy for directors and senior management.

[…]

The Commission's members are appointed by the Board of Directors among from external directors in the same proportion as on the Board itself. The Board must draft and approve, as part of the Board Regulation, the specific rules for this Commission, of which executive directors cannot form part."

"6.- Remuneration of the Board and senior management.

Although the Board's remuneration is a decision to be taken by each company, it is recommended, in general, that remuneration comprising shares of the company or group companies, stock options or options referenced to the share price be limited to executive or internal directors. If directors' remuneration is based on company earnings, regard should be had to any qualifications in the external auditor's report that have a material effect on the income statement.

One of the basic recommendations of the Olivencia Report in order to attain adequate transparency was for companies to disclose the individual remuneration of each director in as much detail as possible. The Commission is aware that this recommendation is being implemented at a slow pace and has deliberated on the matter, considering that this area is a clear indicator of the quality of corporate governance and that it fulfils a function of exemplarity for listed companies; accordingly, this Commission reminds companies that it is advisable to implement it.

The Commission believes firstly that the amount of remuneration received by each director should be disclosed in the notes to the accounts, and that all the items of this remuneration should be broken down, including the delivery or assignment of shares, stock options or systems referenced to the share price, which must be approved by the Shareholders' Meeting.

Regarding executive directors, the Commission believes that, provisionally and without detriment to the final objective, the remuneration corresponding to them as directors, which is disclosed in the notes to the accounts individually, could be separated from that corresponding to them as company managers, which is not disclosed individually but would be included in the information referred to in the next paragraph.

In any case, it is recommended that the remuneration and total cost of senior management (management committee or similar) and the number and identification of the positions comprising it should be disclosed in the annual report, with a breakdown of the items that correspond to them: salary in cash and in kind, stock options, bonuses, pension funds, provisions for indemnities and any other compensation.

Regarding the implementation of golden handshake or protection clauses in favour of companies' senior management in the event of dismissal or changes in control, although the Commission does not agree with any of those actions, it understands that they are difficult to

[8] On July 19, 2002, the Spanish Cabinet resolved to create the Special Commission for the Promotion of the Transparency and the Security in the Financial Markets and in Listed Companies.

regulate on a general basis and it recommends that each Board of Directors should self-regulate in order to avoid abusive or unjustifiable situations. In any case, it is considered necessary that any contract of this type should have the formal approval of the Board of Directors.
Once the Board has approved the amount of compensation that was agreed upon, if the amount exceeds two years' salary, the surplus must be booked as a provision in the balance sheet of the same year of the approval and the amount must be disclosed separately."

A non official report on best practices and corporate governance of listed companies was issued by the Circle of Businessmen "*Círculo de Empresarios*", dated as of November 14, 2002. It defends that Directors remuneration should be moderate and reasonable, giving a true and transparent information to the market, as widest as possible.

SWEDEN

Sweden has a system between the one-tier and the two-tier board system. We have a board of directors, similar to the supervisory board, elected by the shareholders at the general meeting. The board of directors' main duties is to elect one managing director and to decide on his remuneration, to supervise the managing director's running of the company and to take company strategic decisions when necessary. The Companies Act (Aktiebolagslagen, ABL) lays down the decision making process regarding remuneration to the board of directors and the managing director. The Act on Annual Accounts (Årsredovisningslagen, ÅRL) demands some information about directors remuneration. ABL and ÅRL apply to all companies limited by shares.
Listed companies are in addition subject to a wide variety of rules. The listing agreements between the company and the stock exchange/other officially authorized marketplace contain general and specific rules regarding information. A recommendation from the Swedish Industry and Commerce Stock Exchange Committee (Näringslivets Börskommitté, NBK) concerning Information about benefits for senior executives has been incorporated as a binding annex to the listing agreements (available in English at www.naringslivetsborskommitte.se). The recommendation gives detailed rules for information about benefits in the annual accounts. Foreign companies listed in Sweden can and often get an exemption from these rules.
Share based compensation has a specific set of rules. Swedish listed companies often use new issues of shares or buy backs of existing shares as a part of an incentive programme. After a company scandal in 1986, we have a special act regulating the decision making and some information aspects (lagen om vissa riktade emissioner, Leo-lagen).
Decisionmaking, information and also the material content of incentive programmes in listed companies are regulated by the Securities Council (Aktiemarknadsnämnden, AMN). AMN is a private self regulatory organ with no sanctions except publicity at its disposal. AMN make statements about listed companies behaviour or planned actions in many respects, not only in relation to incentive programmes. In 2002, AMN made a general statement summing up earlier decisions regarding incentive programmes, AMN 2002:1 (an English version is available at www.aktiemarknadsnamnden.se).

UNITED KINGDOM

- Companies Act 1985 (as amended, particularly by the Directors' Remuneration Report Regulations 2002) and (with reference to the energy sector) the Utilities Act 2000
- Listing Rules, adopted by the Financial Services Authority, available on http://www.fsa.gov.uk
- Combined Code: Principles of Good Governance and Code of Best Practice, Committee on Corporate Governance, May 2000, available on http://www.fsa.gov.uk The non-statutory Code sets the principles of good corporate governance for UK listed companies

There is some overlap between general company law and the Listing Rules: all listed companies incorporated in the UK must comply with general company law, as set out in the Companies Act, 1985 and with the Listing Rules. The two sets of rules are complementary but there are some overlaps.

Most Listing Rules concerning directors' remuneration apply only to companies incorporated in the United Kingdom: (Listing Rules 17.12 and 17.14).

1.2 As to best practices, please specify whether they are described in either a private (voluntary or non-statutory) code or other official report, and whether a "comply or explain" principle is applicable to compliance with the relevant provisions by listed companies. Where the "comply or explain" principle applies, please indicate, where such evidence is available, whether companies generally comply with best practices.

AUSTRIA

The best practices are described in the Corporate Governance Code, an act of self-regulation of the Austrian business. The voluntary character of the Code is confirmed in its preface where it is stated that "this voluntary self-regulatory initiative is designed to reinforce the confidence of investors by improving reporting transparency, the quality of cooperation between supervisory board, management board and shareholders, and by taking long-term value creation into account".

As to the "comply or explain" principle the Code (Foreword) states that Companies voluntarily undertake to adhere to the principles set out in the Austrian Code of Corporate Governance as amended. All listed companies are therefore called upon (i.e. "strongly" invited) to make a public declaration of their commitment to the Code and to have their adherence to the rules stipulated therein monitored by an external institution (e.g. auditor, lawyer or consultant, but not the legal auditor responsible to testify the accounts or the Capital Market Authority) on a regular and voluntary basis, and to report the findings to the public. The public declaration does not have a mandatory content. Until the 1st of July only eighteen companies have declared to comply with the Code in general and one company made a declaration in the general meeting; eleven companies out of eighteen explained different deviations from the Code.

In addition to the most important statutory requirements under Austrian law, the Code also contains rules which are considered common international practice. Non-compliance with these rules must be explained and the reasons stated. The Code also contains rules that go beyond these requirements and should be applied on a voluntary basis (Preface).

The Code comprises different categories of rules:

- Legal Requirement (L): This rule refers to mandatory legal requirements. Certain legal provisions apply only to companies listed on the stock exchange in Austria. These rules are to be interpreted as a "comply or explain" rule for companies not listed on the stock exchange.

- Comply or Explain (C): This rule is to be followed; any deviation must be explained and the reasons stated in order to be in compliance with the Code.

- Recommendation (R): The nature of this rule is a recommendation; non-compliance with this rule requires neither disclosure nor explanation.

The obligation to comply with the Austrian Code of Corporate Governance shall be included in the annual report and disclosed on the company's website. A report shall be published once a year regarding compliance with the Code, including explanations on deviations from the Code. Every shareholder shall have the right at the annual general meeting to request information on such annual explanations (CG Code 58).

The management board shall be responsible for reporting on implementation and compliance with the Code of Corporate Governance at the enterprise. The individual bodies that are the addressees of the respective rules are responsible for compliance with the principles of corporate governance and for giving explanations on deviations there from (CG Code 59).

BELGIUM

As to the recommendations concerning Corporate Governance for listed companies (established by Euronext Brussels and the BFC) a "comply or explain" principle is indeed applicable.
As to the recommendations to disclose the total amount of the non-executives directors' remuneration etc., no specific research has been done. It is clear however that companies do not generally comply with these recommendations.
As to the information about the rules and procedures with regard to the determination of the total emoluments, annual fees, benefits in kind and share options granted to directors, as well as loans and advances which may have been granted to them: a 1999 study (based on annual accounts 1998) has shown that less than 50 % of the companies followed the recommendation.
The CBF has experienced difficulties in enforcing these recommendations, as "comply and explain" cannot be imposed.
The recommendations of the VBO-FEB do not contain a "comply or explain" principle.

DENMARK

In 2001, a committee was established at the initiative of the Danish Minister for Business and Industry and charged with examining whether there was a need for developing recommendations to promote good corporate governance and, in the affirmative case, to suggest appropriate recommendations. The committee consisted of four top executives and was headed by Mr. Lars Nørby Johansen. In December 2001 the committee released its report, known as "The Nørby Committee's report on Corporate Governance in Denmark". The recommendations in the report, which are chiefly directed at listed companies, are, indeed, non-binding and thus voluntary. However, on the day when the report was released, the Copenhagen Stock Exchange recommended that issuers with securities listed at the Stock Exchange indicate how they relate to the recommendations, cf. section 36 of the Disclosure Obligations for Issuers. Many issuers already relate to the Committee's recommendations and thus, in fact, "comply or explain". The full text of the Nørby Committee's recommendations may be found at www.corporategovernance.dk.

FINLAND

Private
The above mentioned Recommendation has reviewed the corporate governance recommendation for listed companies issued by the Central Chamber of Commerce of Finland and the Confederation of Finnish Industry and Employers in the 1997, not any more up to date and due to that quite ineffective. Since the corporate governance for listed companies in Finland is primarily based on compelling legislation and self-regulation, the Recommendation is designed to complement the statutory procedures (Recommendation 1.2).
The Recommendation has been prepared in accordance with the "comply or explain" principle. The company must give information on compliance of the Recommendation both in its annual report and on its website (Recommendation 1.4).
Official report
The recommendation of the Ministry of Trade and Industry on corporate governance in state-owned companies (13 November 2000): the "comply or explain" principle does not apply.

FRANCE

French best practices are described in several voluntary codes (Codes Viénot and Bouton) promoted by the main companies' Associations (*Mouvement des Entreprises de France*, MEDEF - French Business Confederation and *Association Française des Entreprises Privées*, AFEP).
The *Code Bouton* follows the publication of the two Viénot reports in July 1995 and July 1999, which had introduced in France a set of rules of corporate governance, promoting both efficiency and transparency.
A combined Code will be soon available.
The second Viénot report recommended that "listed corporations should specify clearly, in their annual reports, compliance with the recommendations in the 1995 report (first Viénot report) and these recommendations, and explain, if applicable, the reasons for not implementing some of them" (*Viénot report*, 1999, p. 9, available www.medef.fr). The *Code Bouton*, in accordance with the terms of the second Viénot report, recommends that the annual report of listed companied should include a discussion of to what extent its recommendations have been implemented (*Code Bouton*, p. 25).

GERMANY

The German Corporate Governance Code is an act of self-organization of the German business adopted by the Government Commission on the German Corporate Governance Code, appointed by the Federal Ministry of Justice and chaired by Dr. Gerhard Cromme.
As to the "comply or explain" principle under Article 1 of the Transparency and Disclosure Law 2002 (*Transparenz- und Publizitätsgesetz*), published in the Federal Gazette Part I 2002 p. 2681 and available on http://217.160.60.235/BGBL/bgbl1f/bgbl102s-2681.pdf, a new section 161 is added to the Stock Corporation Act which provides that the executive board and the supervisory board of exchange-listed companies shall declare once a year that the recommendations of the Government Commission on the German Corporate Governance Code have been and are being complied with or which of the Code's recommendations are not being applied. The declaration shall be made permanently accessible to stockholders. See also the governmental explanation to the Transparency and Disclosure Law (BR Drucksache 109/02 p. 51, available on http://dip.bundestag.de).
A general "comply or explain" principle is applicable also according to the Cromme Code (1) as it provides that the companies can deviate from the recommendations of the Code marked in the text by use of the word "shall", but are then obliged to disclose this annually. The Code also contains suggestions for which the text uses terms such as "should" or "can" and which can be deviated from without disclosure. On the other hand, the remaining passages of the Code not marked by these terms contain provisions that enterprises are compelled to observe under applicable law. Furthermore the Code (3.10) provides in this case a more specific disclosure requirement as it recommends the management board and the supervisory board to report each year on the enterprise's corporate governance in the annual report, including the explanation of possible deviations from the recommendations of the Code. Comments on the Code's suggestions can also be provided in the annual report.
Despite two other corporate governance codes developed in 2000, ("Code of Best Practice" by the "German Panel on Corporate Governance" and the "German Code of Corporate Governance-GCCG" by the "Berliner Initiativkreis") it doesn't exist any competition between different corporate governance codes or best practices. The tendency of companies who focus on corporate governance is to adopt the German Corporate Governance Code and to add specific rules. Deutsche Bank and Commerzbank adopted own corporate governance principles which are consistent with the recommendations of the German Corporate Governance Code but contain inter alia also a special committee called Chairman's Committee or Presiding Committee ("Präsidialausschuss", see the internet sites of the corporations). The Chairman's Committee or Presiding Committee is common to German practice and has – among others - the functions of a remuneration committee. According to Deutsche Bank Corporate

Governance Principles the Chairman's Committee has a consultative function vis-à-vis the management board, prepares the decisions to be taken by the supervisory board and has functional responsibility for concluding, amending and terminating the employment and pension agreements of members of the management board. The Presiding Committee of Commerzbank (corporate governance code of Commerzbank 5.3.1) inter alia deals with the contracts of members of the management board (Corporate Governance Code of Commerzbank 5.2).
Evidence to the corporations' declaration concerning the comply and explain principle is given on the website and, as a part of the disclosure requirements, in the commercial register and the Federal Gazette (Section 161 Stock Corporation Act and section 325 (1) 1 Commercial Code). According to Cromme Code 6.8 information which the company discloses shall also be accessible via the company's website and the publications should also be in english. Although the provisions are not yet linked, it may be of interest that since January 2003 any communication of stock corporations has to be published in the electronic Federal Gazette (ebundesanzeiger.de, see section 25 Stock Corporation Act). Service there will be improved.
Companies generally comply with the Cromme Code but even blue chips (concerning the rules of directors' remuneration inter alia Allianz, Daimler-Chrysler, Deutsche Telekom, HypoVereinsbank) explain why they do not fulfil all provisions (some companies do not only explain why they do not fulfil all recommendations, they also explain why they do not fulfil all suggestions of the German Corporate Governance Code).

GREECE

Best practices are included in the above mentioned Decision Nr. 5/204/14.11.2000 of the Greek Capital Market Commission and in the Law 3016/2002 which are (both) legally binding for companies with listed shares. Therefore a choice "comply or explain" is not available.

IRELAND

(a) Best Practices and "Comply or Explain"
See UK Questionnaire Q1.2(a).

(b) Evidence of Compliance with Best Practice
Not Available.

ITALY

The best practices are described in the Corporate Governance Code. The Code does not give rise to legal obligations. However, the Markets and Nuovo Mercato Rules include a "comply or explain" principle; in fact, listed companies are required to disclose every year their system of corporate governance and their compliance with the Corporate Governance Code; in case of non or partial compliance of these recommendations, an explanation is required.
Such information is included in a special report which is annexed to the documents for the annual general meeting available to the shareholders and sent to Borsa Italiana, which makes it available to the public. All reports are available at www.borsaitalia.it (Markets Instructions IA.2.12; Nuovo Mercato Instructions IA.2.13).

LUXEMBOURG

There does presently not exist any code or other official report issued by a Luxembourg authority and governing best practices to be complied with by listed companies. The Recommendation of the European Commission of 25 July 1977 (77/534/CEE) was published

in the Luxembourg Official Administrative Gazette ("Memorial - Recueil B") on 25 June 1997, comprising the "Code of conduct". However on 8 July 2003 the first instance court of Luxembourg ruled that that Recommendation had not been made part of the Luxembourg law and was not compulsory.

NETHERLANDS

Some non-binding reports have been published based on which certain best practices can be described for the remuneration of directors of listed companies. The report of the Committee on Corporate Governance, published in 1997 (Peters Report) contains only a few recommendations on remuneration and remuneration policy of directors. The remuneration of supervisory board members should not be dependent on the results of the company. Neither should members of the supervisory board be remunerated in stock options. Company shares held by a supervisory board member and securities held by a member of the management board are meant to be long-term investments.

Another report worth mentioning is the report of VNO-NCW (the Dutch employers association) and NCD (the Dutch centre for directors), published in 1999. The VNO-NCW and NCD recommendations more specifically see to stock option plans. These plans ought to serve to strengthen directors' long-term commitment and the allotment of options should therefore be related to certain performance criteria. The main provisions on stock option plans also ought to be verifiable to stakeholders and should therefore be disclosed in the annual financial statements.

The 1997 and 1999 recommendations on the remuneration of directors, can be seen as establishing best practice. Compliance with each of the codes is voluntary, companies are not required to "comply or explain".

A first, voluntary, monitoring exercise conducted in 1998 showed varying levels of compliance with the Peters recommendations. A second report conducted in 2002 showed that the compliance was actually less than in 1998.

PORTUGAL

The aforementioned "CMVM Recommendations on Corporate Governance" constitutes a 17-point best practice code based on OCDE Principles on Corporate Governance. It was released in 1999 by the Portuguese Securities Commission (CMVM). Since that date, CMVM also monitors the compliance of listed companies through publication of an annual report.

Listed companies must annually report the extent of compliance with the recommendations and, if they do not, to explain why that is so. Notwithstanding, the nature of the "code" remains voluntary.

The degree of compliance with the CMVM's Recommendations on Corporate Governance Practices reached its highest level ever during 2002 (56.8% in 2002, compared to 52.5% in 2001 and 42% in 1999). However, if we take into consideration only those recommendations which are common to the last four years, we observe that in 2002 there was a levelling off of compliance with the same, when compared with 2001.

Also according to the conclusions of the 2002 CMVM's survey of the corporate governance practices of companies listed on the market with official quotations of the stock exchanges of Euronext Lisbon, "an examination of companies according to their sector of activity has revealed that, as in 2001, financial intermediaries obtained the highest level of observance in 10 of the 13 recommendations, while holding companies were the highest observers of only 2 out of the thirteen recommendations. Companies not listed on the PSI-30 Index showed the lowest level of observance, obtaining the highest level in only 5 of the thirteen recommendations in question. From an individual perspective, it has been noted that none of the companies

surveyed were found to be in observance of all the recommendations issued by the CMVM, and only two companies showed a level of compliance greater than 90%."
In what concerns the two specific recommendations on directors' remuneration the degree of compliance is the following: recommendation nº12 was observed by 52,2% of the inquired companies, a figure slightly below the average degree of compliance in 2002. Regarding recommendation n. 13, among the 14 companies that feature plans and/or options for the purchase of shares by members of the board and workers the level of compliance was significative, as 78,6% of the companies followed, in 2002, CMVM's proposals.

SPAIN

See answer to point 1.1 in relation to the nature of Spanish best practice reports.
The recently passed Act 26/2003, of July 17 2003, establishes that listed companies and any entity that makes a public offer of listed securities have to make public annually a report on corporate governance. The content of this annual report will be established by the Ministry of Economy or, if expressly delegated, by the Spanish Securities and Exchange Commission (hereinafter "CNMV"). Within the minimum content of this report it is included the remuneration of the members of the Board of Directors. The new Act makes applicable the "comply or explain" principle in relation to the recommendations on corporate governance, and introduces a penalty for (i) not delivering the annual report on corporate governance, (ii) omissions and (iii) false or misleading data.
From the recommendations settled by the Olivencia Report, the one relative to transparency on the remuneration of the Directors is one of the least applied by companies, according to the information relative to the Olivencia Report addressed to the Spanish Securities and Exchange Commission by the companies that have adopted it.

SWEDEN

There are no best practices set up regarding executive remuneration except for the above mentioned rules.

UNITED KINGDOM

(a) Best Practices and "Comply or Explain"

The Combined Code does not form part of the Listing Rules but is included as an appendix to the Rules. The Rules require listed companies to make a disclosure statement in their annual report and accounts as to how they have applied the principles of the Code, whether or not they have complied with its provision and, if the recommendations have not been complied with, to provide an explanation.

(b) Evidence of Compliance with Best Practice

In July 1999, PriceWaterhouseCoopers produced a report commissioned by the Department of Trade of Industry on the "*Monitoring of Corporate Governance Aspects of Directors of Remuneration*" which examined compliance with selected aspects of the Greenbury Code on Best Practice and the Combined Code. With respect to the Combined Code, and using annual reports and accounts and notices of AGMs in respect of companies in the FTSE All-Share Index for financial period ended between 26 December 1998 and 31 March 1999, it reported the following:

(1) On the Combined Code's recommendation that remuneration committees be composed of a majority of non-executive directors (Q 4.2 below):

- Remuneration Committees with a majority of Non-Independent

Non-Executive directors 6%
- Remuneration Committees chaired by the Chairman of the Board of Directors 27%
- Remuneration Committees with Executive Directors 3%

(2) On the Combined Code's recommendation that services contracts be of one year or less (section Q4.7 below):
- No of Contracts of Employment of duration one year or less 60%
- No of Contracts of Employment of duration between more than one year and less than/equal to two 39%
- No of Contracts of Employment of duration of more than two years 1%

More generally, in 1999, a report produced by Pensions and Investment Research Consultants (*Compliance with the Combined Code*) indicated that listed companies have largely complied with the Code, although compliance rates diminish among smaller listed companies (cited in P. Davies, *Introduction to Company Law*, Oxford University Press, (2002) 131-132).

1.3 Please describe in summary: the institutional structure for adopting executive remuneration rules or best practice codes; and any major proposals for reform concerning directors' remuneration.

AUSTRIA

The Austrian Institute of Certified Public Accountants (*Institut Österreichischer Wirtschaftsprüfer - IWP*) and the Austrian Association for Financial Analysis and Asset Management (*Österreichische Vereinigung für Finanzanalyse und Asset Management -ÖVFA*) took it upon themselves to prepare drafts for an Austrian Code of Corporate Governance. An Austrian Working Group for Corporate Governance[www.corporate-governance.at] consisting of representatives of IWP, ÖVFA, listed companies, investors, Wiener Börse and academia drew up this uniform Austrian Code of Corporate Governance on the basis of these two drafts. Special attention was devoted to ensuring that all of the involved interest groups were integrated into the process through a very broad and transparent discussion of the issues. The working group was made up of 34 members and chaired by Dr. Richard Schenz. As a rule the Code will be reviewed once a year taking relevant national and international developments into consideration, and will be adapted if required (Foreword).

BELGIUM

A Parliamentary Bill seeks to impose on Belgian listed companies the obligation of publishing the remuneration of each director separately (once a year, in the directors' report accompanying the financial statements), and also individual transactions in shares by directors. It seems not unlikely that the bill will be adopted before the May 2003 elections.

DENMARK

No formal institutional structure exists for adopting such rules or codes. Upon the adoption and release of its recommendations in December 2001, the Nørby Committee had exhausted its agenda. However, in 2002 the Copenhagen Stock Exchange established a new committee (again chaired by Mr. Nørby Johansen) the purpose of which is to monitor developments within the corporate governance field and, if deemed appropriate, amend or modify the Nørby-recommendations.

FINLAND

See 1.2 about the present state of play concerning rules and best practices.

Legislation

The remuneration rules are based on the Companies Act, while the disclosure requirements are included into different regulation mentioned above as the Accounting Ordinance and several regulations of the Ministry of Finance based on the Securities Market Act.
Currently, the Ministry of Justice is working on a comprehensive amendment of the Companies Act. The disclosure issues are not, at the moment, under special revision.

FRANCE

See the answer to para 1.2.

GERMANY

Apart from general rules on executive remuneration provided by the law, on which the code is based (Code's Preface), the institutional structure which adopted the German Corporate Governance Code was the Government Commission on the German Corporate Governance Code, made up of 13 experts from many different areas of German business (directors of various business firms and financial institutions, two academics and a unionist) and appointed by the German Justice Minister. As to the members of the Commission see http://www.corporate-governance-code.de/eng/mitglieder/index.html. It is also specified that, as a rule, the Code will be reviewed annually against the background of national and international developments and be adjusted, if necessary (Cromme Code's Foreword). Anyway, change of listing rules is not common and may be not popular after the failure of Neuer Markt.

GREECE

Executive remuneration rules or best practice codes may be adopted in many different ways (i.e. by law, decision of the Board of Directors of the Athens Stock Exchange, decision of the Capital Market Commission). There is not any major proposal on the agenda for the introduction of an institutional framework regarding the adoption of remuneration rules.

IRELAND

(a) Institutional Structure

As for UK Questionnaire Q1.(3)(a).

In addition: The Listing Rules, supplemented by the Green Pages, are issued and applied by the Board of the Irish Stock Exchange Limited. The Board is the competent authority for listing, although certain of its functions are delegated to the Listing Committee, the Executive Committee, and the Specialist Products Listing Committee. The Irish Stock Exchange Limited is a company limited by guarantee and is regulated by the Interim Irish Financial Services Regulatory Authority. When the Central Bank and Financial Services Authority of Ireland Bill 2002 comes into force in early 2003, it will be regulated by the Irish Financial Services Regulatory Authority, which is a component of the Central Bank and Financial Services Authority.

(b) Reform

Any reforms to the Listing Rules on the foot of the 2002 revisions to the Companies Act 1985, described in the UK Questionnaire and requiring the production of a Directors' Remuneration Report, will apply to companies listed on the Irish Stock Exchange when and if the Listing Rules are revised.

Otherwise, the Company Law Review Group, the body set up in 2000 on a statutory basis to review company law and present proposals for its reform, has not, in its first work programme (First Report 2001), specifically addressed executive remuneration, although it has suggested reform of the declaration of interests regime (see Q2.5).

ITALY

The Corporate Governance Code was adopted by the Committee for the Corporate Governance of the Listed Companies, made up of 21 members from industry, banks and institutional investors, chaired by Prof. Stefano Preda, at that time president of Borsa Italiana and assisted by 3 academic experts and a secretary.

LUXEMBOURG

The remuneration of directors of a Luxembourg limited company ("*société anonyme*") is resolved by the annual shareholders' meeting. There does not exist any law setting forth rules for determining such remuneration and even less the amount thereof.
To the best of our knowledge, there does not presently exist any proposals for reform concerning directors' remuneration.

NETHERLANDS

There is no formal structure for adopting executive remuneration rules or best practice codes. The Committee on Corporate Governance was established in 1996 as a result of a private agreement between the Association of Securities Issuing Companies and the Amsterdam Stock Exchange.
A new Committee on Corporate Governance chaired by Mr. Tabaksblat has recently been set up to review the 1997 report in the light of recent developments, both nationally and internationally and its report is due by the end of 2003. The requirements for publication of directors' remuneration discussed below have come into force in 2002. Listed companies will have to report on individual directors' remuneration in 2003.
Further legislation is considered to give shareholders certain control rights in relation to directors' remuneration. The extent of these rights is not yet clear.

PORTUGAL

Any modification to the rules on executive remuneration foreseen in the Portuguese Companies Code depends of a legislative impulse of the Government, as it would imply the elaboration and publication of a Decree-Law.
On the other hand, CMVM's Recommendations on Corporate Governance in order to be altered would not require a formal legislative procedure. This best practice code represent an independent initiative of CMVM under it legal attributions.

SPAIN

The institutional structure in Spain to adopt executive remuneration rules is the same one that is applicable for passing any other law. For official best practices codes a resolution by the Board appointing the relevant Special Committee is needed. When the best practices codes are not official, there are not special requirements needed.

SWEDEN

The information rules introduced in NBK's recommendation 1993 was reformed in 2002 and AMN's revised it's earlier statements regarding incentive programmes in 2002. These two entities are comprised of people from the business community – lawyers, institutional owners, auditors etc. and they set their own agenda. There are no proposals of reforming today's remuneration rules.

UNITED KINGDOM

(a) Institutional Structure

The Committee on Corporate Governance's Combined Code is a development of the Committee's Final Report and from the Cadbury and Greenbury Reports. The Committee's remit was agreed with the sponsor organisations - the London Stock Exchange, the Confederation of British Industry, the Institute of Directors, the Consultative Committee of Accountancy Bodies, the National Association of Pension Funds and the Association of British

Insurers. The Combined Code, issued in final form, includes a number of changes made by the London Stock Exchange, with the Committee's agreement, following the consultation undertaken by the London Stock Exchange on the committee's original draft. (Hampel Report Annex 1; Combined Code Preamble 2)
The Listing Rules, which require listed companies to follow a "comply or explain" policy with respect to the Combined Code, are adopted and administered by the UK Listing Authority, which is the statutory UK competent authority for listing and an integral of the UK Financial Services Authority (the FSA). The FSA, and thus the UKLA, operates under the statutory framework of the Financial Services and Markets Act 2000.

(b) Reform
The July 2002 UK government White Paper "*Modernising Company Law"*, which is designed to set the parameters for a reform of UK company law which will result in "significant modernisation and reform" (White Paper, Summary, at 8), reported that the UK government remained committed to having remuneration set by the board of directors but also found that effective disclosure and accountability to shareholders was essential (White Paper, para 3.21). In August 2002 specific reforms were made to the Companies Act 1985 with respect to the enhancement of transparency and accountability for listed companies (discussed throughout this questionnaire). In particular, under the new regime listed companies will be required, as a matter of company law, to: publish a report on directors' remuneration as part of the annual reporting cycle; disclose within the report details of individual directors' remuneration packages, the company's remuneration policy and the role of the board and remuneration committee in this area; and put an annual resolution to shareholders on the remuneration report. The current Listing Rules on disclosure of directors' remuneration will be amended accordingly.
The UK government has also accepted in the White Paper that while the Combined Code should remain non-statutory, a Standards Board (developed from the current Accounting Standards Board) should be designated as responsible for keeping the Combined Code under review and for making rules requiring companies to disclose whether they have complied with the Code (White Paper, paras 5.7 and 5.11-5.14).

In August 2002 specific reforms were made to the Companies Act 1985 with respect to the enhancement of transparency and accountability for listed companies by the Directors' Remuneration Report Regulations 2002. In particular, under the new regime listed companies are required, as a matter of company law, to: publish a report on directors' remuneration as part of the annual reporting cycle; disclose within the report details of individual directors' remuneration packages, the company's remuneration policy and the role of the board and remuneration committee in this area; and put an annual resolution to shareholders on the remuneration report. The current Listing Rules on disclosure of directors' remuneration (Listing Rule 12.43A), which overlap in certain respects with the new regulations, will be revised to reflect the new Companies Act Remuneration Report regime. The UK Listing Authority has stated that the disclosure rules will probably be removed, but that any revision will be undertaken as part of the general reform of the Listing Rules which is currently underway. Until the Listing Rules are revised, listed companies will be required to comply with both regimes, notwithstanding the degree of overlap.

In June 2003, reflecting current public debate and mounting concern as to the award of rewards for failure, or valuable termination payments, to executives of failing companies, the UK Department of Trade and Industry published a consultation paper on ""*Rewards for Failure*". *Directors' Remuneration - Contracts, Performance and Severance*". The paper sets out for consultation a range of options to (i) enhance best practices and (ii) for legislative changes with respect to termination payments. Underlying the paper is the need to improve shareholder scrutiny and accountability with respect to compensation and severance payments. With respect to best

practices, the options suggested for extending current best practices (the pros and cons of which are discussed in the report) include: (i) restricting notice periods to less than one year (the industry standard is one year, although the Combined Code calls for periods of one year or less); (ii) capping the level of liquidated damages (or the payment, agreed at the time of contracting, to be paid in the event of severance); and (iii) extending best practices to cover the phasing of termination payments. The DTI has also asked for views on how best practice changes might be most effectively achieved - should review proceed through institutional shareholder guidance, for example, or via the Combined Code. The paper commends the approach taken by the Association of British Insurers and the National Association of Pension Funds, whose Guidance requires, for example, that boards of directors' calculate the potential costs of termination payments in monetary terms, particularly with respect to pension payments. With respect to legislative changes, the DTI has asked for views on the following options: (i) whether legislation should be introduced requiring contracts to include provisions which require the board to take into account underperformance when determining termination payments; (ii) whether legislation should be introduced limiting the statutory period for directors' contracts to one year (or three years on first appointment) (as discussed in Q4.7 below, directors' service contracts are subject to a five year statutory period, although this can be extended with shareholder approval); and (iii) whether legislation should introduce a prohibition on rolling contracts (rolling contracts are renewed on a daily basis and so always have a particular notice period) which have a notice period in excess of the statutory requirement.

2. Disclosure

2.1 Are listed companies required to publish a remuneration report, indicating the details of the compensation paid to the members of the Board of Directors?
How often must it be published and where is it retrievable?

AUSTRIA
There are no specific requirements.

BELGIUM
They are not required to publish a true "remuneration report".
As to best practices: see the recommendations concerning Corporate Governance (established by Euronext Brussels and the BFC). If these recommendations are followed, the information is published once a year, in the annual report, in the section about "Corporate Governance".
If the annual report constitutes a so called "reference document" (self registration-procedure), it will also contain the information required by the Royal Decree of 18 September 1990 (prospectus).

DENMARK
Under the Disclosure Obligations for Issuers adopted by the Copenhagen Stock Exchange, section 19, issuers that adopt share-based incentive programs must immediately disclose certain information with respect to such programs. The disclosure obligation must include, as a minimum, information on (i) the type of the share-based incentive program used, (ii) the categories of individuals included in the program, (iii) the time of the grant of rights, (iv) the aggregate number of shares underlying the program and the allocation of such shares among the categories of individuals included, (v) the goals pursued by the program, (vi) the period within which rights under the program may be exercised, (vii) the exercise price, (viii) any particular conditions that will have to be met in order for the beneficiaries to exercise their rights, and (ix) the market value of the share-based incentive program, including a description of the valuation method and the basic assumptions underlying the valuation. Also, the adoption of extraordinary bonus programs must be disclosed.
In addition, pursuant to article 69 of the Annual Accounts Act, the annual report must contain information on the aggregate remuneration (irrespective of the form) paid to the board of directors in the relevant fiscal year. The report must also state any incentive programs that include members of the board of directors or board of management with an indication of the categories of members included as well as the kinds of benefits involved and information necessary to evaluate the program. Also, pursuant to the above-mentioned rules issued by the Copenhagen Stock Exchange, section 19, the annual report must contain information on such part of the program that has not been exercised as per the expiry of the relevant financial year, stating the non-excercised parts related to members of the board of directors, members of the management board, and other members of senior management, respectively. According to the Nørby Committee's recommendations, the remuneration of each board member and member of management under share-based incentive programs should be disclosed in the annual report.

FINLAND

To make public a separate remuneration report is neither required nor recommended. Chapter 2 § 8 of the Accounting Ordinance and Chapter 2 § 5 of the Regulation of the Ministry of Finance (538/2002) set out that compensation paid to the Board must be disclosed in the annual accounts in the way described in answer 2.3. Also as to best practices please see 2.3.

FRANCE

French law now includes precise rules concerning transparency of compensation and benefits in kind granted to corporate officers (*mandataires sociaux*) of listed company. This information include remuneration's and advantages perceived from controlled companies. Those rules no more concern non listed companies, except if the company which pays the remuneration is controlled by a listed company.
The remuneration report is enclosed in the company's annual report of listed companies.
The MEDEF has recommended this publication before it was imposed by the law.
The annual reports of listed companies should include a chapter, drafted with assistance from the compensation committee, relating to disclosure to the shareholders of the compensation collected by the corporate officers (see *Viénot 2nd Report* p. 23 for details, and *Bouton Report* p. 13).
Moreover, according to the law every year the board of directors must submit to the shareholders general meeting a special report concerning stock options and stock grants awarded to directors. The report indicates the number of options or shares which executive directors are allowed to exercise or purchase during the year, their expiration date and exercise price. It also indicates the same information for options and shares effectively bought or subscribed by directors during the year (*Code de Commerce*, Art. L225-184).
The same rules apply to the ten top employees.
These rules concern also non listed companies.
These documents are retrievable on the COB's website in the database *SOPHIE* (http://www.cob.fr/frset.asp?rbrq=sophie).

GERMANY

There are no specific requirements.

GREECE

The publication of a special remuneration report is not provided in Greek law.

IRELAND

(a) Companies Act 1963-2001

Unlike the UK regime, a specific remuneration report is not required under general company law, although the Listing Rules do require that the Board reports, in the annual report and accounts, to shareholders on remuneration (see Q2.1(b)).
Companies must under general company law include basic remuneration information in the annual accounts. It is, however, supplied on an aggregate basis only.
The annual report and accounts, including the Directors' Report (which, as discussed in Q2.5(b), may contain disclosure on directors' interests) must be distributed to every member and debenture-holder of the company (Companies Act 1963 s159). The 2001 Act introduced

the concept of the "annual return date", being a specific date in each year within 28 days of which a company must file its annual return (s60).
Note: the option available in the UK to distribute summary financial statements does not apply as a matter of Irish company law, although the Company Law Review Group has recommended that this option be made available to companies.

(b) Listing Rules / Combined Code
As for UK Questionnaire Q2.1(b).

ITALY
Companies are not required to prepare a remuneration report. However, the Corporate Governance Code Guidelines recommends including in the Corporate Governance report summary information on the remuneration system adopted, specifying whether the remuneration paid to executive directors and senior managers is linked to a significant extent to the company's results or the achievement of specific objectives. Analogous information should also be provided on stock option plans where these are envisaged.

LUXEMBOURG
Listed companies are not required to publish a detailed remuneration report, indicating the details of the compensation paid to the members of the Board of Directors. The annual accounts submitted for approval to the shareholders will normally contain an item which specifies the remuneration of the board as a whole without however providing details of the amount paid to each individual director. As regards the remuneration paid to executive directors, it will normally be included in the balance sheet item of "wages and salaries", subject however to what is said under 4.1.

NETHERLANDS
As of 1 September 2002 Dutch so called "open" public companies[9] have to include in the explanatory notes to their annual financial statements the amount of remuneration of each director to the extent charged to the company in the relevant financial year, 2:283c BW.
Beside the division of remuneration amounts per director, based on article 2:283c BW, the remuneration amount should also be split into *categories* of remuneration, namely: (a) periodically paid remuneration (b) long-term payable remuneration (c) payments for termination of contract and (d) profit sharing schemes and bonus payments.
In case the company has made a payment in the form of a bonus (partly) based on the achievement of certain set targets, this bonus shall be reported together with whether or not these targets have been achieved in the specific financial year. If a company has made a payment in the form of a profit share or bonus to members of the supervisory board, the reasons for the decision to grant remuneration in this form to members of the supervisory board shall be reported separately.
Article 2:283c BW also requires to report the amount of remuneration of each former director (management as well as supervisory board), to the extent charged to the company in the relevant financial year. For former members of the management board this amount needs to be split into long-term payable remuneration and termination of contract rewards.

[9] "Open" public companies include all companies of the NV type, with the exclusion of NV's who (1) only have registered shares (no bearer shares) (2) have restrictions on transfer of shares and, and (3) whose articles do not allow for the issue of depository receipts of shares in bearer form.

Apart from these requirements, a number of requirements for the company exist based on article 2:283d BW, in case the company grants one or more of its members of the management board and/or of the supervisory board a right to acquire shares in the company's capital. If this is the case, the company is required for each director or board member to report:

- the strike price of the rights and the price of the underlying shares in the company's capital[10];
- the number of unexercised right at the beginning of the financial year;
- the number of rights granted by the company in the financial year together with their conditions[11];
- the number of rights exercised during the financial year, whereby at least the number of shares involved and the strike price are to be reported;
- the number of unexercised rights at the end of the financial year[12];
- if applicable: the criteria used by the company that apply to the granting or exercise of the rights.

Article 2:283e BW, finally, provides for reporting requirements in case a company, its subsidiary company or companies of whom it consolidates the financial data, has remunerated members of the supervisory or the management board in the form of a personal loans (see also paragraph 3.3 and paragraph 4.).

PORTUGAL

As said before, the listed companies subject to Portuguese "*lex societatis*" are required to publish a report on corporate governance, to be presented either as a chapter of the annual management report of the company in question, drawn up specifically for that purpose, or in the form of an appendix to the said annual management report. One of the chapters of this report shall include details of the remuneration of the members of the board of directors as a whole for the financial year in question, distinguishing between executive and non-executive members, and between the fixed and variable parts of the said remuneration.
Additionally, under article 288/1/c) of Companies Code, any shareholder holding, at least, 1% of the company's share capital is entitled to consult the global amount of the remunerations that were paid to the members of the board of directors during the last three exercises.

SPAIN

No. See answer to point 1.2 in relation to the Transparency Act.

SWEDEN

No (see 2.3 below).

UNITED KINGDOM

(a) Companies Act 1985

Yes, as a result of the 2002 revisions to the Companies Act 1985 (set out in the Directors' Remuneration Report Regulation 2002) which come into effect for listed companies with

[10] In case the strike price is lower than the share price at the time of the granting of the rights.
[11] In case those conditions are changed during the financial year, these changes need to be reported separately.
[12] Whereby will be reported: the strike price of the rights granted, the time remaining for the unexercised rights, the main conditions that apply to the exercise of the rights, a financing arrangement that might have been reached about the granting of these rights, and (all) other data useful for the estimation of the value of the rights.

respect to the financial year ending December 31 2002. Previously, there was no such requirement under general company law.

Directors are now required to prepare a Directors' Remuneration Report for each financial year, which contains the information specified in the new Schedule 7A to the Companies Act 1985 (Companies Act s234B(1)). Where there is a failure to produce the Report in accordance with the Companies Act requirements, every person who was a director of the company immediately before the end of the period for "laying and delivering" the report and accounts for the year in question is guilty of an offence and liable to a fine (s234B(3)).The Report must be approved by the Board of Directors and signed on behalf of the Board by a director or the secretary of the company (s234C(1)).

The company's auditors must include in their report on the annual accounts a report on the auditable part of the Directors' Remuneration Report and state whether, in their opinion, that part of the Report has been properly prepared in accordance with the Companies Act (s235(3)).

The Directors' Remuneration Report must be published on a yearly basis (Companies Act s234B(1)) and laid before the general meeting of shareholders for approval (s241 and s241A). Like the annual accounts, the directors' report, and the auditor's report on the accounts, the Report must be sent to every member of the company, every holder of the company's debentures, and every person who is entitled to receive notice of general meetings, within 21 days of the general meeting before which these documents are laid (s238).

A copy of the Directors' Remuneration Report, together with the annual accounts, the directors' report and the auditors' report must be filed with the Registrar of Companies before the end of the period for "laying and delivering" accounts, which for public companies is 7 months after the relevant accounting reference period (Companies Act s242 and s244).

Note: With respect to distribution, instead of sending the accounts, directors' report, and Directors' Remuneration Report to the entitled persons listed in Companies Act s238 (see above), listed companies are permitted to send such persons a summary financial statement of the relevant documents (s251). The summary financial statement must contain the following information with respect to the Directors' Remuneration Report:

- the statement of the company's policy on remuneration (see Q2.3 below);
- the Performance Graph (see Q2.3 below).

(b) Listing Rules / Combined Code

Yes. The annual report and accounts required of listed companies must, under Listing Rule 12.43A (a) and (b), include: (a) a narrative statement of how it has applied the principles set out in Section 1 of the Code, providing an explanation which enables its shareholders to evaluate how the principles have been applied; and (b) a statement as to whether or not it has complied throughout the accounting period with the Code provisions set out in Section 1 of the Combined Code. Where the company has not complied with the Code, or complied with only some of the Code's provisions, or, in the case of ongoing requirements, complied for only a part of an accounting period, it must specify the provisions with which it has not complied, the period of time over which non-compliance continued, and give reasons for the non-compliance. In addition, the annual report and accounts must, under Listing Rule 12.43A(c) contain a report to the shareholders by the Board containing the disclosure set out in the Listing Rules (see Q2.3).

As a result, the publication and access requirements track those applicable to the annual report and accounts: Listing Rule 12.41 requires that the report and accounts be published as soon as

possible after the accounts have been approved, and in any event within six months of the end of the financial period to which they relate (in exceptional circumstances, the UK Listing Authority may grant an extension).

The auditors must review certain aspects of the financial disclosure made in the 12.43A(c) directors' report and the extent to which the statement required under Listing Rule 12.43A(b) with respect to certain aspects of the Combined Code.

Note: In light of the 2002 revisions to the Companies Act with respect to the preparation of a Directors' Remuneration Report, these provisions will change to reflect the new regime.

The Combined Code contains a number of recommendations on the publication of the remuneration report. In particular, the company's annual report should contain a statement of remuneration policy and details of the remuneration of each director (Combined Code B.3). Under B.3.1, the Board should report to the shareholders each year on remuneration. The report should form part of, or be annexed to, the company's annual report and accounts, set out the company's policy on executive directors' remuneration, and draw attention to factors specific to the company (Combined Code B.3.1 and B.3.2).

(c) Utilities Act 2000

Particular requirements apply to the energy sector (particularly gas and electricity companies) following concerns as to excessive remuneration in the privatised utilities sector. Under s61 and s97 of the Utilities Act 2000 gas and electricity companies "authorised by license to carry on activities subject to price regulation" are required to make a statement on remuneration to the Gas and Electricity Markets Authority. This statement, which is designed to show the connection, or lack thereof, between remuneration and services standards, must contain the following:

- disclosure as to whether remuneration was paid to directors as a result of "arrangements". "Arrangements" cover arrangements for linking directors' remuneration to levels of performance with respect to services standards;
- disclosure as to when the arrangements were made;
- a description of the services standards;
- an explanation of the means where by levels of performance with respect to service standards are assessed;
- an explanation of how remuneration is calculated.

Remuneration covers all forms of payment, including benefits such as share options.

With respect to publication, the statement must be published by the company in a manner as it "reasonably considers" will secure adequate publicity. The Gas and Electricity Markets Authority which receives the report (see Q 2.2) may publish the statement in such manner as it thinks appropriate.

2.2 Must these reports be submitted, or are recommended to be, to a Securities Market Regulator or to a public authority responsible for collecting these documents?

AUSTRIA
There are no specific requirements.

BELGIUM
No, with one exception: annual reports that constitute a reference document have to be "approved" by the BFC.

DENMARK
Annual reports must be filed with the Danish Commerce and Companies Agency. The reports are typically available on the company's web site as well.

FINLAND
No.

FRANCE
See the answer to para 2.1.

GERMANY
There are no specific requirements.

GREECE
See 2.1.

IRELAND
(a) Companies Act 1963-2001
Outside of the obligation to deliver the report and accounts to the Registrar of Companies, no.

(b) Listing Rules / Combined Code
As for UK Questionnaire Q2.2(b).

ITALY
The Corporate Governance report (including information on remuneration, see 2.1 above) is sent to Borsa Italiana (see 1.2 above).

LUXEMBOURG
There is no such requirement.

NETHERLANDS

Since there is no separate remuneration report, remuneration reports as such cannot be submitted to a public authority. According to proposals of the Dutch government, in the near future a requirement for listed companies will be introduced to submit their financial statements to a public supervisory authority. It is expected that this will be the Authority on Financial Markets (AFM). The supervision of the AFM will, for example, include the requirement to list the remuneration amount of each director individually in the explanatory notes to the annual financial statements.

PORTUGAL

Yes, according to article 245 of the Portuguese Securities Code, the annual report and, as a consequence, the report on corporate governance (including the remuneration details) shall be relayed to CMVM and to the managing entity of the stock exchange as soon as they are placed at the disposal of the shareholders.

SPAIN

Not applicable. The Transparency Act mentioned in point 1.2 establishes that the annual report on corporate governance has to be submitted to the CNMV and to other public authorities when applicable, such as the Spanish Central Bank or the General Direction of Insurances and Pension Schemes.

SWEDEN

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UNITED KINGDOM

(a) Companies Act 1985

See Q2.1 above on delivery of the directors' remuneration report to the Registrar of Companies.

(b) Listing Rules / Combined Code

The Listing Rule regime has not, as yet, reflected the 2002 changes to company law to which listed UK incorporated companies are, in any event, subject. All listed companies are required to publish their annual report and accounts, which will reflect the remuneration information required under Listing Rule 12.43A, as soon as possible after the accounts have been approved but no later than six months after the end of the financial period (Listing Rules 12.42).

(c) Utilities Act 2002

The remuneration statement discussed in Q2.2 must be submitted to the Gas and Electricity Markets Authority as soon as reasonably practicable after the end of the financial year.

2.3 What information on directors' remuneration, individually and collectively, and on the remuneration committee, must be included, or is recommended to be included as best practice, in the financial reports? Please include in your answer any specific requirements which apply to particular elements of remuneration, such as stock options, bonuses, and termination payments.

AUSTRIA

According to the law the annual report shall contain the total remuneration of the management board's members as a whole and of the supervisory board's members as a whole (section 239 Commercial Code). According to the Corporate Governance Code (CG Code 31) the compensation of the management board is to be reported separately for each member, but only two issuers have accepted this clause of the Code (OMV and Böler Uddeholm).The compensation comprises salary, profit participation, reimbursement of expenses, insurance premiums, commissions and additional benefits of any kind. In addition to the statutory requirement to report the total remuneration of the management board, the fixed and performance-linked components of the remuneration are also to be disclosed in the annual report (CG Code 30). If members of the management board receive a specific remuneration from a related company as employees or legal representatives the amount will have to be specifically indicated in the annual report. The remuneration report shall even contain the golden handshake, the retirement pay and similar benefits of past directors.

As to the stock options the annual report shall indicate for members of the management board and the supervisory board, employees and senior managers the number and distribution of options granted and related shares; the essence of the contracts, in particular the exercise price or how such price is to be computed and the respective estimated values at the time they are issued; the transferability of the options; the periods in which the options can be granted and exercised and the period of lock up. Further information shall be disclosed as to the number, the distribution and the exercise price of the exercised options during the period under review (CG Code 29; section 239 Commercial Code).

BELGIUM

In the notes to the FS: collective information (one single amount).

In the section about "Corporate Governance": total amount of the non-executives directors' remuneration (with specification of the fixed and the variable part of the remuneration). According to recommendations VBO-FEB: total amount of the non-executives directors' remuneration with specification of the fixed part, the variable part and the stock options; total amount of managements' remuneration with specification of the basic salary, the variable part and the long term incentives (stock options and pensions).

DENMARK

Please note that remuneration committees are not mandatory under Danish law and that, likewise, no code of best practice recommends the use of such committee. The annual report must include the aggregate remuneration paid to the board of directors as explained under 2.1. above.

FINLAND

The Accounting Ordinance applicable to all companies (including listed companies)

The following information must be given concerning members of the board of directors collectively:

- salaries and other compensation for these duties;
- the total amount of loans granted to them, with indications of the interest rates and other main conditions;
- the total amount and main contents of guarantees and contingent liabilities granted by a company
- pension commitments related to these duties.

The Regulation of the Ministry of Finance (538/2002) applicable to listed companies

The following information must be given concerning members of the board of directors collectively:

- salaries and other compensations;
- benefits in kind.

The following information collectively with corresponding bodies as the supervisory board, managing director etc:

- the total amount of holdings of the company's shares and convertible debt instruments, option loans and stock options issued by the company as well as of the portion of voting rights and share capital which they may acquire under these convertible debt instruments, option loans and warrants.

The Recommendation

The Recommendation uses the terms "describe" or "report" to describe the dissemination of information to shareholders. Unless otherwise provided, the information shall in all such cases be disclosed at least in the annual report and on the Internet website of the company. If the company does not issue an annual report, the information must be given in connection with the notes to the financial statements.

The Recommendation states that the company shall:

(i) report the fees and other benefits of the directors for their board and committee work during the reporting year;
(ii) report the number of shares and share-related rights granted to the directors in compensation during the reporting year;
(iii) describe the criteria and decision-making procedure concerning the compensation system covering the managing director and other executives;
(iv) report the economic benefits based on the service contracts of the managing director and a full-time chairman of the board:
    - salaries and other benefits granted during the reporting year;
    - shares and share-related rights granted by way of compensation;
    - retirement age and criteria for determination of pension;
    - terms and conditions of the period of notice, salary for the period of notice and other possible compensation payable on the basis of termination
(v) as to the biographical details of directors, report the holdings and rights based on a share-related compensation system of the company (Recommendation 43, 46, 47, 48 and 19).

FRANCE

The directors' annual report must contain an exposition of the total amount of compensation and benefits awarded to each corporate officer (*mandataire social*) (*Code de Commerce*, Art. L225-102-1).

COB's regulation requires that listed companies indicate in the prospectus and, eventually, in their reference documents (*document de référence*) the remuneration of corporate officers (including

members of supervisory board) in the same form provided for the annual report and the special report (*Instruction de décembre* 2001).
The "*document de reference*", which contains the same information prescribed for the company's financial report and for the prospectus, is mandatory only for companies listed in the *Nouveau Marché*, but COB recommends also to the other companies the adoption of this form of disclosure. In its guide concerning the "*document de reference*" (August 2002 - available in French on the COB's website http://www.cob.fr/docu_srp/S0120020603D0261N01.pdf) COB refers that 39 companies of the CAC40 index have already asked the registration of their "*document de reference*" (see also *Recommandation pour l'élaboration des documents de référence relatifs à l'exercice 2002*).

GERMANY

In accordance with the directive on the annual accounts (Art 43 (12)) information on directors' remuneration (management board and supervisory board) is included in the notes to the consolidated financial statements.
According to section 285 number 9 Commercial Code the company has to publish the total remuneration (salaries, profit sharing, dividend rights, expense allowances, insurance payments, commissions, and fringe benefits of every kind) of all members of the management board separately from the figure of all members of the supervisory board. Pension payments are disclosed separately for all previous members of the management and supervisory board.
The Cromme Code (7.1.3) provides that the consolidated financial statements shall contain specific information on stock option programs and similar securities-based incentive systems of the company. In particular, as to the members of the management board the Cromme Code (4.2.4) specifies that the compensation reported in the notes shall be subdivided according to fixed, performance-related and long-term incentive components and that the figures shall be individualized. Same information as recommended for the management board shall be published in the notes for the compensation of the members of the supervisory board. The whole remuneration shall be subdivided according to components and regard also the payments made by the enterprise or the advantages extended for services provided individually. These payments and advantages shall be listed separately (Cromme Code 5.4.5).
The most controversial discussed theme in the Cromme Commission were the individual figures of managing board members' remuneration in the financial reports. Even blue chips like Allianz and Daimler-Chrysler will not fulfil this provision. In Germany there was a cultural tradition not to talk about remuneration. Allianz and Daimler-Chrysler explain by publishing the individual remuneration, differentiated remuneration would be levelled or prevented. Daimler-Chrysler also refers to the principle of collective responsibility.
More transparency is required by the listing rules of Neuer Markt. Point 7.1.3 (3) 4 Rules and Regulations Neuer Markt provides that in the quarterly report, the explanatory notes of the company shall contain information about the number of the company's shares held by members of the management and supervisory board as well as any right of such persons to subscribe for such shares, separately for each member of these bodies.
The financial reports are to be submitted to the commercial register and according to Cromme Code 6.8 information disclosed by the company shall also be published on the company's website.
Apart from the information included in the notes the Cromme Code (4.2.3) provides that the salient points of the compensation system and the concrete form of a stock options scheme or comparable instruments for components with long-term incentive effect and risk elements shall be published on the company's website in plainly understandable form and be detailed in the annual report. This shall include information on the value of stock options. In addition, the Chairman of the Supervisory Board shall outline the salient points of the compensation system and any changes thereto to the General Meeting.

GREECE

Limited companies by shares (listed or not) have to include in the notes on the accounts details of the compensation paid to the members of the board of directors and of the management during the last financial year. No distinction is made as to the nature of the compensation. Termination payments have also to be indicated. This information may be omitted if through it a member of the board of directors and his income may be identified (Section 43a of the Law 2190/1920).

IRELAND

(a) Companies Act 1963-2001

Basic, aggregate disclosure with respect to directors' remuneration is required in the annual accounts under the Companies Act 1963. The information must be disclosed either in the accounts, or in a statement annexed to them. Under section 191(1) disclosure is required of: the aggregate amount of directors' emoluments; the aggregate amount of directors' and past directors' pensions; and the aggregate amount of any compensation paid to directors or past directors for loss of office.

"Emoluments" is broadly defined in s191(2) as covering fees, salaries, commissions, pension contributions made by the company in respect of the director, an estimate of chargeable non-cash benefits, and chargeable expenses. Emoluments include any amounts paid to or receivable by any person in respect of his services as director of the company (as well as services as director of any subsidiary or otherwise in connection with the management of the affairs of the company or any subsidiary (s191(2)). The accounts must also distinguish between emoluments paid in respect of services rendered/holding office as a director and payments made in respect of other services and offices (s191(2)).

With respect to the pension disclosure, the disclosure required is not to include any pension paid or receivable under a pension scheme if the scheme is such that the contributions made are substantially adequate for the maintenance of the scheme (s191(3)): contributions made to such a scheme, made other than by the director, will be covered as "emoluments" (Ussher, *Company Law in Ireland* (1986) Sweet and Maxwell 349). Section 191(3) also provides that pension payments include any pension paid or receivable in respect of any services as director or past director (the scope of these activities tracking those outlined with respect to the payment of emoluments), whether to or by him, or, on his nomination or by virtue of dependence on or other connection with him, or to any other person.

With respect to compensation for loss of office, this disclosure must include (under s191(4)) any sums paid to or receivable by a director or past director by way of compensation for loss of office as director of the company or for the loss, while director of the company, or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any company subsidiary. The disclosure must also distinguish between compensation in respect of the office of director (of the company or a subsidiary) and compensation paid in respect of other offices. Compensation in this context includes payments made in consideration for or in connection with retirement

Section 191 disclosure must include all sums paid by or receivable from the company, its subsidiaries, and any other person (s191(5)) and, with respect to compensation for loss of office payments only, distinguish between the sums paid by or receivable from the company, its subsidiaries, and other persons. The reference to "other person" ensures that it not relevant whether or not the company carries the cost of remuneration.

Remuneration disclosure is further amplified by the Companies Amendment Act 1986, Sch, Part IV, which covers the notes to the annual accounts and duplicates, in part, s191. The notes must describe the company's pension scheme (para 36), and the aggregate amount of directors'

emoluments and compensation for loss of office (para 39(6)). Para 39(6) simply states that disclosure be made of "the aggregate amounts of the emoluments of and compensation in respect of loss of office to, directors and compensation in respect of loss to past directors." The pension disclosure required is more detailed. Under para 36(4), particulars are to be given of any pension commitments included under any provision in the company's balance sheet, and any such commitments for which such provision has not been made. Where any such commitment relates wholly or partly to pensions payable to past directors of the company, separate particulars shall be given of that commitment insofar as it relates to pensions. More generally, under para 36(5), disclosure is also to be made as to: the nature of every pension scheme operated by or on behalf of the company, including information as to whether or not each scheme is a defined benefit scheme or a defined contribution scheme; whether each such scheme is externally or internally financed; whether any pensions cost and liabilities are assessed in accordance with the advice of a professionally qualified actuary and the date of the most recent relevant actuarial evaluation; and if so, whether the valuation is made available for public inspection.
Finally, under the Companies Act 1990 s63, disclosure is required of directors' interests in company shares in the notes to the accounts or in the Directors' Report (see Q2.5(b)).

(b) Listing Rules/Combined Code Requirements for Disclosure in Annual Report and Accounts
As for UK Questionnaire Q2.3.

ITALY
The companies must indicate in the notes to the accounts the remuneration paid to each director, member of the board of auditors and general manager (Consob Regulation 11971/1999 art. 78).
Such information is to be presented in tabular form and contains: fees, including those fixed by the shareholders' ordinary meeting, contingent profit sharing, attendance money, and flat expenses refunds; non-monetary benefits, including fringe benefits and insurance policies; bonuses and others rewards (stock options must not be enclosed here); other fees, including those received from subsidiaries, salaries, and retirement bonuses (Consob Regulation 11971/1999 Annex 3C Scheme 1).
The companies must indicate in the notes to the accounts details about stock options and stock grants of each director and general manager by name (Consob Regulation 11971/1999 art. 78).
Such information is to be presented in tabular form and contain: options held at the beginning of the period under review; options granted during the period under review; options exercised during the period under review, together with the spot price at the moment of the exercise; options expired in the period under review; options held at the end of the period under review.
A description is required of the major elements of the plans in order to provide a full disclosure on the principles and aims characterising them. The disclosure requirements also apply to directors and general managers employed by the company. The stock grants are to be accounted as options vested and immediately exercised with strike price equal to zero (Consob Regulation 11971/1999 Annex 3C Scheme 2).
Consob recommends that the companies indicate in the management report information concerning the adopted stock option plans, including, but not restricted to, the reasons of the operation, a short description of the plan, the amount of shares involved, the offerees, the terms and the conditions of granting and exercise; and, if the plan is particularly important, the course of it with the indication of the options held and vested at the end and beginning of the period under review, granted, exercised and expired during the period, together with the strike prices and the spot prices (Consob Communication 11508/2000).

LUXEMBOURG

Not applicable, save that in case stock options have been granted during the fiscal year covered by the annual accounts, details in relation thereto will have to be provided either in the directors' report or in the notes to the accounts.

NETHERLANDS

As mentioned above in paragraph 2.1, according to article 2:383c BW, listed companies are required to report the amount of remuneration of each individual director in the explanatory notes to their annual financial statements and to split this amount into certain categories.
Article 2:383d BW, also mentioned in paragraph 2.1, provides reporting requirements for the company in case the company remunerates directors in the form of granting rights to acquire shares in the company's capital. Finally, article 2:391 BW, subsection 2, constitutes that the company reports in its annual financial statements the policy concerning the remuneration of the directors and supervisory board members and the way in which this policy has been implemented in the financial year.

PORTUGAL

According to article 1/1/d) of CMVM's Regulation n. 7/2001, the report on corporate governance shall include details of the remuneration of the members of the board of directors as a whole for the financial year in question, distinguishing between executive and non-executive members, and between the fixed and variable parts of the said remuneration.
In addition, article 2 of the same Regulation requires Companies issuing shares admitted to trading on a regulated market to submit information to the CMVM related to plans for the allotment of shares and/or stock options among employees and/or members of the Board of Directors in the 15 days which precede the respective approval. The latter should include justification of the adoption of the plan, the category and number of persons included in the plan, conditions attached to allotment, criteria related to the price of shares and the exercise price for options, the term for exercise of options, the number of shares to be issued and characteristics of the same, the existence of incentives to purchase shares and/or stock options and the competence of the board of directors with respect to the carrying out or alteration of the plan.

SPAIN

Section 200.12 of the LSA provides that the following content relative to Directors' remuneration must be included in the annual reports of listed companies:
"The amount of salaries, allowances and emoluments of all kinds earned in the financial year by the members of the Board of Directors, on whatever basis, as well as the obligations entered into in relation to pensions or payment of life insurance premiums for former and present members of the Board of Directors. This information shall be given as an aggregate amount for each type of payment."
The Annual Reports of listed companies are retrievable by the shareholders in the Companies Register "*Registro Mercantil*", in the Spanish Securities and Exchange Commission, in the Stock Exchanges where the company is listed, and in the registered office of the listed companies.
The Olivencia Report recommended to make public the individual remunerations of the Directors breaking it down as maximum as possible. See answer to point 1.1.
The Aldama Report considers that the remuneration earned by every Director should be placed in the annual report, breaking down every concept, including the granting of shares, stock options, and schemes linked to the share quotation, that will require to be passed by the

Shareholders Meeting. With respect to the executive Directors, the Aldama Report considers that the amount received in consideration of the post of Director (that would be placed individually in the annual report) could be separated from the amount received for the managing functions in the company, that would be placed as an aggregate amount with the information referred to in the next paragraph.
The Aldama Report recommends to include in the Annual Report the remuneration and total cost of the senior management, together with the number and identification of the posts that compose it, breaking down the concepts to which would correspond cash salary, salary in kind, stock options, bonuses, pension schemes, indemnification provisions, and other compensations that might exist.
Finally, the Aldama Report recommends that remunerations consisting on share or stock options grants, or remunerations linked to the share quotation, should be only for the executive Directors. Directors remuneration, when fixed according to the company's results, should take into consideration the exceptions that figure in the external Auditor's report and that affect significantly to the profit and losses account.
As for termination payments of senior managers, the Aldama Report defends the self regulation by the Board of Directors with the aim of avoiding abusive or unjustifiable situations. The Aldama report also considers that termination payments of senior managers should be passed by the Board of Directors, and when its amount exceeds two years of the agreed remuneration, it recommends to allocate the excess in the balance sheet of the financial year where the termination payment was approved, placing down this amount separately.

SWEDEN

In the annual accounts the collective remuneration to the board decided by the GM must be stated according to ÅRL. NBK's recommendation require listed companies to disclose directors' benefits in the annual report. The recommendation is an annex to the exchange's/officially authorized marketplaces' listing agreements and therefore subject to sanctions if not followed. An excerpt from an English translation of the recommendation follows:
"*Recommendation*
1. These Recommendations shall be applied by Swedish and foreign companies whose shares or depository receipts are quoted on a Swedish stock exchange or authorized marketplace.
In accordance with these Recommendations, such companies shall provide information concerning remuneration and other benefits which senior executives receive from the company.
If the company is part of a group of companies, the benefits received from all companies within the Group shall be included.
Exemption from the information requirements stipulated in these Recommendations may be granted to foreign companies by a stock exchange or authorized marketplace on which the company's shares or depository receipts are quoted.

In these Recommendations, "senior executive" is defined as follows: the chairman of the board, other directors who receive remuneration from the company in addition to the customary director's fee and who are not employed by the company, the managing director, the group chief executive (where applicable) and, in certain cases, salaried executives in the company's senior management team. In these Recommendations, the chairman of the board, relevant members of the board, the group chief executive and the managing director are defined as "top management". The expression "other senior executives" refers to persons who are not members of this group. Normally, this applies to persons employed by the company who constitute the group management team or corresponding unit, which also includes the managing director.

A listed company is often the parent company of a group of companies. In many cases, senior executives in the parent company also have important functions in subsidiaries. Special remuneration may be paid for such assignments. Information about these executives must include remuneration and benefits provided by all group companies, whether Swedish or foreign.

2. The company shall specify the principles for the remuneration of senior executives.

In order to provide background information for reporting in accordance with items 3 and 4, below, the company must explain the principles applied by the company as regards remuneration of its senior executives. This may, for example, involve the principles for fixed and variable remuneration and the proportion of such remuneration.

3. Information shall be provided for each of the following:

- The chairman of the board.
- Board members not employed by the company who receive special remuneration in addition to the fee received for board duties.
- The group chief executive.
- The managing director.

regarding:

- The total amount of all remuneration and other benefits.
- All remuneration items which are not of minor importance.
- The fixed and variable components in remuneration, including the main principles applied for the calculation of variable remuneration.
- Holdings of financial instruments and other options or entitlements received during the year in connection with incentive programmes linked to share prices, and the estimated market value on the date of allotment and the acquisition price.
- Holdings of financial instruments and other options or entitlements received during previous years in connection with incentive programmes linked to share prices.
- The most important terms of agreements concerning future pensions.
- The most important terms of agreements concerning severance payments.

In cases in which it is impossible to indicate a specific amount in a meaningful manner, the benefit in question shall be described in greater detail in order to permit assessment of its significance.

Certain officers have a special status – the chairman of the board, other directors who receive remuneration from the company in addition to the customary director's fee and who are not employed by the company, the managing director and, where applicable, the group chief executive. This is considered to justify the provision of relatively detailed information concerning the benefits received from the company by each of these officers. In these Recommendations, the deputy managing director is not regarded as equivalent to the managing director. Deputy directors are regarded as full members of the board, however.

In addition to the total amount of all remuneration and other benefits, each remuneration item which is not of minor importance must be reported. Benefit items of limited scope may be reported as a lump sum. A guideline for reporting items in this manner is that the total benefits do not exceed 10 per cent of annual salary.

In the case of variable remuneration (bonuses, earnings-related payments and similar remuneration), the total amount is to be stated in the form of information regarding the amount charged against the company's profit for the year, and also the main principles for calculating and determining the variable remuneration.

Financial instruments are defined as instruments covered by the definition in Chapter 1, Section 1, of the Financial Instruments Trading Act (1991:980). In addition to these instruments, the Recommendations also cover other options and entitlements employed within the framework for incentive programmes linked to share prices, "employee stock options" as defined in tax legislation (see Government Bill 1997/98:133) and also "synthetic options".

Other entitlements which are not financial instruments and which may involve costs for the company as a result of the trend for the company's share price are also covered by the Recommendations. On the other hand, the Recommendations do not cover call options, etc. issued by a party other than the company and which do not involve any cost for the company.
Financial instruments and other options or entitlements received during the year pertaining to incentive programmes linked to share prices are to be reported with respect to the holding, the estimated market value at the date of allotment and the acquisition price for the instruments concerned. This information must indicate whether or not the allotment involves a benefit (subsidy) for the individual concerned. If there is no established market value for the instrument in question, a theoretical value should be computed, in accordance with a generally recognized valuation model. In this connection, information must be provided concerning the major assumptions that have been applied.
In the case of financial instruments and other options or entitlements received in previous years pertaining to incentive programmes linked to share prices, the holding must be reported.
As the Recommendations indicate, information must be provided concerning special remuneration to directors in addition to the fee for board duties. The amount of such remuneration and the nature of the duties is to be specified. Distinguishing between what constitutes fees for board duties, per se, and other remuneration paid by the company should not normally present any difficulty. In Sweden, the fee for board duties is determined by the general meeting of shareholders for allocation among members of the board. This fee may be determined in other ways in other countries.
Information is to be provided regarding all remuneration received from the company by board members, including payment for assignments covered by the member's normal professional field of expertise, as a practicing lawyer, scientific expert or consultant, for example. In this connection, it is irrelevant if the remuneration is paid to the board member personally, to a company wholly or partly owned by the board member, or in some other manner. Remuneration from a group company in Sweden and other countries is also covered by this obligation to supply information.
In the case of pension benefits, information is to be provided about the most important terms for future pensions, including the pensionable age and the period during which the pension is to be paid. If bonuses or other variable remuneration are payable in addition to a fixed salary, the extent to which such remuneration constitutes pensionable income is to be stated. In addition, information must be provided as to whether the pension is based on contributions or benefits.
In the case of pension schemes based on contributions, the company must provide information regarding cost for the year in relation to pensionable income.
In the case of pension schemes based on benefits, information must also be provided regarding the cost for the year. This cost may be reported in accordance with IAS 19 [2)]. In addition, in the case of schemes based on benefits the company must provide information concerning the pension level in relation to pensionable remuneration. Alternatively – where applicable – such information may be expressed in Swedish kronor. The company must also state whether or not the pension is revocable. An irrevocable pension is not dependent on future employment, but a revocable pension is governed by a clause of this nature.

In the case of severance payments, the main prerequisites and the conditions for a benefit of this nature must be reported for each executive concerned. The extent of this information may be determined from case to case. However, if the executive concerned is entitled to personally require a severance payment, this must be specifically stated, including the basis for such a request.
4 […]
5. Information shall be provided concerning the preparatory and decision-making process employed by the company when determining remuneration for top management.

It is important to provide information concerning the preparatory and decision-making process employed in order to establish confidence in companies' handling of issues involving benefits for senior executives.
Such information should include whether or not a compensation committee has been appointed and, if so, its mandate and composition. Even if a compensation committee has been established, it is appropriate that decisions regarding benefits for the managing director and, where applicable, the group chief executive are always taken by the board, and are not delegated to a committee.
6. Information covered by these Recommendations shall be presented in the annual report. If there is a significant change in the benefits received by senior executives in comparison with information supplied previously, this shall be publicly announced in the next interim report.
The information to be provided in accordance with these Recommendations must be published in a manner that ensures access for all shareholders. As a result, such information must be included in the annual report. If the benefits received by senior executives change significantly during the current year, this must be made public. Information of this nature is to be provided in the next interim report".

UNITED KINGDOM

(a) Companies Act 1985 Disclosure Requirements for Directors' Remuneration Report

(1) Information Not Subject to Audit (Companies Act 1985, Sch 7A, Part 3, s2-5)

(i) Remuneration Committee

- Directors' and Advisers

Where a committee of the directors' has considered directors' remuneration for the relevant financial year, the Directors' Remuneration Report must name each director who was a member of the committee at any time when the committee was considering remuneration (s2(1)(a)). The Report must also name any person who provided the committee with advice or services that materially assisted the committee and state the nature of any other services that person provided the company with during the relevant financial year and whether that person was appointed by the committee (s2(1)(b) and (c)).

(ii) Remuneration Policy

- Statement of Company Policy / Performance Conditions

The Directors' Remuneration Report must include a statement of the company's remuneration policy for the following financial year and for subsequent financial years (s3(1)). The statement must include the following:

- for each director, a detailed summary of any performance conditions to which any entitlement to share options or under a long term incentive scheme is subject (s3(2)(a));
- an explanation of why such performance conditions were chosen (s3(2)(b));
- a summary of the methods used in assessing whether the conditions are met and an explanation of why those methods were chosen (s3(2)(c));
- where the performance conditions involve a comparison with factors external to the company: a summary of the relevant factors; and, if any factor relates to another company or companies or an index, the identity of the companies and the index (s3(2)(d));
- a description of, and explanation for, any significant amendment proposed to be made to the terms and conditions of any entitlement of any director to share options or under a long term incentive scheme (s3(2)(e));
- if any entitlement of a director to share options or under a long term incentive scheme is not subject to performance conditions, an explanation as to why (s3(3)(f)).

The policy statement must also, in respect of each director's remuneration terms and conditions, explain the relative importance of those elements which are, and are not, related to performance (s3(3)). Finally, the statement must summarise and explain the company's policy

on the duration of contracts with directors and on notice periods and termination payments under such contracts.

- Performance Graph

The Directors' Remuneration Report must also contain a performance graph which sets out the total shareholder return of the company on the class of equity capital, if any, which caused the company to be defined as listed (s4(1)).

Under s4(1)(a) and (b), s4(2), and s4(3), the graph is to be constituted as follows:

A line graph must show for (i) a holding of shares of that class of the company's equity share capital whose listing or admission to dealing has resulted in the company being listed for the purpose of the application of the remuneration report requirement and (ii) a hypothetical holding of shares, made of shares of the same kinds and number as those by reference to which a broad equity market index is calculated, a line drawn by joining up points plotted to represent for each of the financial years over a five year period, of which the last is the relevant financial year (to which the Report relates), the total shareholder return on that holding. It must also state the name of the index used and the reasons for choosing it. Where the company has been reporting for less than five years, the period is 2, 3, or 4 years, as the case may be. In its first financial year, the period is the relevant financial year.

Total shareholder return is calculated as follows (s4(4)).

It must be calculated using a "fair method" which: takes as its starting point the percentage change over the period in the market price of the holding; makes specified assumptions as to reinvestment of income and funding of liabilities (see s4(5) and 4(7) below); and makes provision for any replacement of shares in the holding by shares of a different description. The same method must be used for each of the holdings.

The assumptions as to reinvestment of income (s4(5)) are, first, that any benefit in the form of shares of the same kind as those in the holding is added to the holding at the time the benefit becomes receivable and, second, that any benefit in cash (such as dividends), and an equivalent amount of any non-cash benefit (excluding shares) is applied, at the time the benefit becomes receivable, in the purchase, at their market price, of shares of the same kind as those in the holding, and that the shares purchased are added to the holding at that time.

The assumption as to funding of liabilities (defined as a liability in respect of any shares in the holding or arising from the exercise of a right attached to any of those shares) is that, where the holder has a liability to the company of whose capital the shares in the holding form a part, shares are sold from the holding: immediately before the time by which the liability is due to be satisfied; and in such numbers that, at the time of the sale, the market price of the shares sold equals the amount of the liability in respect of the shares in the holding that are not being sold (s4(7) and (8)).

- Service Contracts (see also Q4.7)

The following information must be provided under s5 in respect of the contract of service or contract for services of each person who served as a director at any time during the relevant financial year:

- the date of the contract, the unexpired term, details of any notice periods;
- any provision for compensation payable upon early termination;
- details of other provisions in the contract as are necessary to enable members of the company to estimate the liability of the company in the event of early termination.

(2) Detailed Audited Financial Information (with respect to emoluments, share options, long term incentive plans, pensions, compensation, and excess retirement benefits with respect to each director and, in particular cases, past directors):

(i) Emoluments (for each person who has served as a director at any time during the relevant financial year) (Companies Act 1985, Sch 7A, Part 3, s6(1)-(4))

In tabular form in respect of each director:

- total amount of salary and fees (s6(1)(a));
- total amount of bonuses (s6(1)(b));
- total amount of expenses chargeable to UK tax (s6(1)(c));
- total amount of compensation for loss of office and other payments in connection with termination of qualifying services (s6(1)(d));
- total estimated value of non-cash benefits not covered elsewhere (s6(1)(e));
- total amount of (a)-(e);
- in addition, the total amount from (a)-(e) must be shown for each director for the previous financial year (s6(2)).

The Report must also specify the nature of any non-cash elements of the remuneration package (s6(3)).

(ii) Share Options (for each person who has served as a director at any time during the relevant financial year) (Companies Act 1985, Sch 7A, Part 3, s7-9)(see also Q2.4 and 2.5)

Detailed information is required on the share options granted to each director. This information must, however, be aggregated and simplified where the directors are of the option that full disclosure would result in "excessively lengthy" reports (s7(2) and s9(1)). The rules on aggregation and simplification are set out in s9(1) which provides that: the share option information provided under s8(a)(see below) need not differentiate between share options having different terms and conditions; the disclosure required in respect of unexpired share option in relation to price paid and exercise price (8(c) below) and unexpired options (8(g) below) may be aggregated and disclosure made of weighted average prices of aggregations of share options; the disclosure required in respect of unexpired share options in relation to exercise date and expiry date (8(c) below) may be aggregated and disclosure made of ranges of dates for aggregations of share options. There are, however, restrictions on aggregations. Under s9(2), aggregation is not permitted in respect of (i) share options in respect of shares whose market price is below the option exercise price at the end of the relevant financial year and (ii) share options in respect of shares whose market price at the end of the relevant financial year is equal to, or exceeds, the option exercise price. Finally, under s9(3) full disclosure must be made in respect of share options which, during the relevant financial year, have been awarded or exercised, or been subject to a variation of terms and conditions.

In tabular form in respect of each director:

- the number of shares subject to a share option at the beginning of the relevant financial year (or, if later, on the date of the director's appointment as a director) and at the end of the relevant financial year. Differentiation should be made between share options with different terms and conditions (s8(a));
- information identifying: those share options awarded in the relevant financial year; those exercised in that year; those that have expired unexercised; and those whose terms and conditions have been varied in that year (s8(b));
- for each unexpired share option: the price paid, if any, for its award; the exercise price; the exercise date; and the expiry date (s8(c));
- a description of any variation made in the relevant year to the terms and conditions of a share option (s8(d));
- a summary of any performance criteria upon which the award of an option is conditional, including a description of any variations made to these criteria during the relevant financial year (s8(e));
- for each option exercised during the relevant financial year, the market price of the shares in relation to which it is exercised at the time of exercise (s8(f));
- FOR each unexpired option at the end of the relevant financial year: the market price at the end of the year; and the highest and lowest market price during that year of each share subject to the option (s8(g)).

(iii) Long term incentive plans (for each person who has served as a director at any time during the relevant financial year, but excluding any information already provided under the share option rules) (Companies Act 1985, Sch 7A, Part 3, s10-11)

A long term incentive scheme is essentially one under which the conditions subject to which awards are made cannot be fulfilled in one financial year. Bonuses linked to performance in a particular year, compensation for loss of office and other termination payments, and retirement benefits are excluded (s10(5)).

In tabular form for each director:

- details of scheme interests held by that person at the beginning of the relevant financial year (or, if later, on the date of the appointment of the director)(s11(1)(a));
- details of scheme interests awarded to the director during the relevant financial year (s11(1)(b)). If shares may become receivable in respect of the interest: the number of shares; the market price of the shares when the interest was awarded; and details of the qualifying conditions with respect to performance (s11(2));
- details of scheme interests held by the director at the end of relevant financial year (or, if earlier, on the cessation of the director's appointment) (s11(1)(c));
- for each scheme interest above: the end of the period over which the conditions for award have to be fulfilled and a description of any variation made in the terms and conditions of the scheme interests during the relevant financial year (s11(1)(d));
- for each scheme interest that has vested in the relevant financial year: the "relevant details" of any shares; the amount of any money; and the value of any other assets, that have become receivable in respect of the interest (s11(1)(e)). The "relevant details" required in respect of the shares covers: the number of the shares; the date on which the scheme interest was awarded; the market price of each of the shares when the interest was awarded; the market price of each of the shares when the interest vested; and details of the qualifying conditions with respect to performance (s11(3).

(iv) Pensions (for each person who has served as a director at any time during the relevant financial year) (Companies Act 1985, Sch 7A, Part 3, s12)

- Where the pension scheme is a defined benefit scheme, details of any changes during the relevant financial year in the person's accrued benefits and of the person's accrued benefits as at the end of that year (s12(2)(a)). Details must also supplied with respect to the transfer value of the accrued benefits (s12(2)(b)-(d)).
- Where the pension scheme is a money puchase scheme, details of any contributions to the scheme in respect of that person paid or payable by the company for the relevant financial year or paid in that year for another financial year (s12(3)).

(v) Excess Retirement Benefits of Directors and Past Directors (Companies Act 1985, Sch 7A, Part 3, s13)

Details must be shown in respect of each person who served as a director at any time during the relevant financial year, or at any time before the beginning of that year, of that amount of retirement benefits paid to or receivable by the person under pension schemes, as is in excess of the retirement benefits to which he was entitled on the date on which the benefits first became payable or 31 March 1997, whichever is the later (s13(1)). Disclosure is not required where the increases were paid to all members of the pension scheme and were paid without recourse to additional contributions.

(vi) Compensation for Past Directors (Companies Act 1985, Sch 7A, Part 3, s14)

Disclosure must be made of the details of any significant award made in the relevant financial year to any person not a director at the time of the award, but who was previously a director of

the company, including compensation in respect of loss of office and pensions (but excluding any information already given under s6(1)(d) (see above).
An explanation must also be given as to why such an award was made (s5(2)).

(vii) Sums Paid to Third Parties in Respect of Directors' Duties (Companies Act 1985, Sch 7A, Part 3, s15)
In respect of each person who served as a director during the relevant financial year, the aggregate amount of any consideration paid to or receivable by third parties for making available the services of the person as a director of the company or, while the person was a director of company, as a director of any of its subsidiary undertakings/as director of any other undertakings of which he was a director by virtue of the company's nomination/or otherwise in connection with the management of the affairs of the company or any such other undertaking.

(b) Listing Rules/Combined Code Requirements for Disclosure in Annual Report and Accounts
See Q2.1 for the statements required with respect to compliance with the Combined Code.

Under Listing Rule 12.43(c), the annual reports and accounts must contain a report to the shareholders by the board on directors' remuneration. This must contain:
- a statement of the company's policy on executive directors' remuneration (c (i));
- for each director by name and for the period under review, the amount of each element in the remuneration package for the period under review, including, but not restricted to, basic salary and fees, the estimated money value of benefits in kind, annual bonuses, deferred bonuses, compensation for loss of office and payment for breach of contract or other termination payments. The total amount for each director for the period under review and for the corresponding prior period must also be disclosed, together with any significant payments made to former directors during the period under review. This information is to be presented in tabular form, together with explanatory notes where necessary (c(ii));
- in tabular form and for each director by name, information on share options (including Save As You Earn schemes)(c(iii)) (see also Q2.4 and 2.5);
- details of any long term incentive schemes, other than share option schemes previously disclosed, including: the interests of each director by name in the schemes at the start of the period under review; entitlements or awards granted and commitments made to each director under such schemes during the relevant period, the disclosure to show those which crystallize either in the same year or in subsequent years; the money value and number of shares, cash payments, or other benefits received by each director under such schemes during the relevant period; and the interests of each director in the schemes at the end of the period (c(iv));
- explanation and justification of any element of salary, other than basic salary, which is pensionable (c(v));
- a statement of the company's policy on the granting of options or awards under employee share schemes and other long term incentive schemes, explaining and justifying any departure from that policy in the period under review and any change in the policy from the preceding year (c(viii));
- detailed disclosure on defined benefit pensions schemes, particularly with respect to transfer value (c(ix));
- disclosure on money purchase schemes with respect to details of the contribution or allowance payable or made by the company in respect of each director during the period under review (c(x)).

Note: as noted in Q2.1 these rules will change to reflect the 2002 changes to the Companies Act and the new requirement for a Directors' Remuneration Report. The UK Listing Authority has stated, however, that with respect to the share option disclosure required under Listing 12.43A(c)(iii), companies need only comply with the share option disclosure required under the 2002 Regulations.

The directors' report to shareholders recommended by the Combined Code should set out the company's policy on executive directors' remuneration, and draw attention to factors specific to the company (Combined Code B.3.2). It should also list the members of the remuneration committee (Combined Code B2.3). Full details should be supplied of all elements in the remuneration package of each individual director by name, such as basic salary, benefits in kind, annual bonuses and long term incentive schemes, including share options. Share option information should be given with respect to each director and, where grants are awarded under executive share option or other long term inventive schemes in one block, rather than in a phased fashion, the report should explain and justify this practice. Also included in the report should be pension entitlements earned by each individual director during the year: if annual bonuses or benefits in kind are pensionable, the report should explain and justify this practice. All of these elements of remuneration should be subject to audit (Combined Code, Schedule B 1, 2, 3, 6).

2.4 Is timely disclosure required with respect to stock options, their vesting, exercise, and the sale of the relevant shares to third parties?

AUSTRIA
There are no specific requirements.

BELGIUM
No. However, when warrants are created, the board of directors has to establish a special report (according to the Companies Code) relating to terms and conditions. Disclosure could also have to be made under the law concerning disclosure of significant shareholdings (first threshold: 5% of the shares or 3% of the shares in case of a provision in the articles of association).

DENMARK
Like other share-based incentive programs, the adoption of stock option programs must be disclosed as explained under 2.1. above. No particular disclosure obligations apply to the vesting or exercise of stock options. However, the obligations under the Securities Trading Act referred to under 2.5. may lead to (indirect) disclosure. In addition, article 29 of the Securities Trading Act requires anybody who acquires shares in a listed company to disclose this if the holding of shares reaches 5 per cent of the votes or nominal value of the shares of the company. Also, changes that lead to thresholds of 5 per cent (i.e. 10, 15, 20 etc.) as well as one-third and two-thirds being reached or not being reached any more must be disclosed.

FINLAND
See above 2.3 requirements relating to the board. The disclosure requirements concerning stock options and own shares generally are defined in detail in legislation.

FRANCE
COB's regulation does not require timely disclosure with respect of vesting and exercise of stock options. In fact rules on disclosure of shares transactions executed by the company's insiders expressly exclude the exercise of stock options from their area of application (*Recommendation COB* n. 2002-01, p. 2).

GERMANY
Section 15a Securities Trading Act provides that transactions (purchase or sale) in securities (even those which assign the right to buy or dispose of shares) of their own company - or of a parent company of the issuer - carried out by members of the management or supervisory board of exchange-listed companies shall be reported to the issuer and the German Financial Supervisory Authority and published without delay. The disclosure requirement applies also to spouses, registered partners and relations in the first degree of the members of the management or supervisory board.
On the other hand, the same section makes an important exception as it provides that the disclosure requirement does not exist if the purchase is carried out on the basis of an employment contract or as part of the remuneration. On this particular point the supervisory authority states that exemptions from the disclosure and publication requirement therefore exist

for the purchase of staff shares, e.g. in the context of an equity participation program; that the granting of stock options on the basis of an employment contract such as stock appreciation rights is also exempt from the disclosure requirement. However, the same document provides that their future exercise is in fact subject to the disclosure requirement (*BAFin* Circular 5.9.2002).
This is reflected by the Cromme Code (6.6) which provides that the purchase or sale of shares in the company or of related purchase or sale rights (e.g. options) and of rights directly dependent on the stock market price of the company by members of the management board and supervisory board of the company or its parent company and by related parties shall be reported without delay to the company. However, purchases based on employment contracts, as a compensation component as well as immaterial purchase and sale transactions (EURO25,000 in 30 days) are excepted from the reporting requirement. It is also specified that the company shall then publish the disclosure without delay.

GREECE

No.

IRELAND

Yes. For the disclosure required with respect to options, see Q2.5 and Q2.6.

ITALY

The companies must offer timely disclosure of the stock option (or stock grant) plans.
A stock option plan can be executed by means of several operations (i.e. increase of capital stock with exclusion of the pre-emption right, sale of own shares or sale of shares of controlling companies or of subsidiaries, see 4.4). As a matter of practice, the shareholders' meeting usually determines the general terms of the stock option plan and gives power to the board to execute it. Where a resolution by the shareholders' meeting is required, a directors' report on the relevant operations must be available to the public at the registered office of the company and at the stock exchange company at least fifteen days before the shareholders' meeting. Consob recommends that the report specify the reasons for the transaction, the offerees, the price of the issue, the specific conditions of the plan, and the amount of the increase, enclosing the plan, where available, in the report (Consob Regulation 11971/1999 artt. 66, 72, 73, Annex 3A Schemes 2-4; Consob Communication 11508/2000).
In any case, where a resolution by the board of directors is adopted, either as execution of the stock option plan approved by shareholders' meeting or as independent (autonomous) decision (i.e. sale of shares of controlling companies or of subsidiaries), Consob recommends disclosure of the resolution and full details of the operation approved, as a significant fact, by issuing a press release to the stock exchange company, which shall immediately make it available to the public, and to at least two news agencies. The press release shall be simultaneously sent to Consob (Consob Communication 11508/2000).

LUXEMBOURG

Yes, if it is deemed to be price sensitive information.

NETHERLANDS

As described above in paragraph 2.1, according to article 2:383d BW, a listed company is required to report for every director his remuneration in stock options in the explanatory notes to the annual financial statements.
Further regulations on the timely disclosure of possession of shares and voting rights in companies can be found in article 2a WMZ. According to article 1, subsection 3, WMZ, shares include: (contractual) rights to acquire shares in the company's capital. Consequently, stock options are also covered by the reporting requirements of the WMZ.
Article 2a WMZ provides that each member of the supervisory board and each member of the management board is to disclose his possession of shares and voting rights in the company, or in an affiliated company, immediately. Every change in the number of shares and voting rights a director holds must also be disclosed (by the director). Disclosure takes place by a notification to the AFM. Notifications are filed in a public register.

PORTUGAL

Yes. Article 3 of CMVM's Regulation n. 7/2001 states that CMVM must be informed of the acquisition and disposal of listed shares by members of the board of directors of the company issuing the shares in question; by members of the board of directors of the parent company of the issuer of the shares in question; by companies controlled by one of the above-referred persons; and persons acting on behalf of the above-mentioned persons.
The announcement on the matter shall be made by the respective its respective author within five working days of the date of verification of the legal fact relating to the same. Such announcement shall indicate the following elements:

- The legal nature of the event leading to the acquisition or disposal and the date on which the said event was verified;
- The number of shares acquired or disposed and the number of shares owned by the declarer subsequent to the acquisition or disposal in question;
- The price for purchase or disposal of the shares in question.

SPAIN

No. See paragraph 3 of answer to point 2.5 below. The minimum content of the annual report on corporate governance established in the Transparency Act does not include expressly information with respect to stock options. See answer to point 1.2. Nevertheless, this minimum content has to be further developed in regulation from the Ministry of Economy or if expressly delegated, by regulation from the CNMV.

SWEDEN

The listing agreements require disclosure of all material transactions between the company and the directors. If the stock option plan has been decided by the GM or has been made public, no information about vesting, exercise or sale is necessary in relation to the listing agreements.
A specific Act demands directors' to report all trading in the company's shares (lagen om anmälningsskyldighet) to a register run by the Swedish Financial Supervisory Authority (Finansinspektionen, FI). Vesting, exercise and sale of the relevant shares shall all be reported by the director. The register is public.

UNITED KINGDOM

Yes. For the disclosure required with respect to options, see Q2.5.

2.5 What are the rules on disclosure of share transactions executed by the company's insiders (such as directors, officers, auditors, etc)?

AUSTRIA

Members of the management board, the supervisory board and senior management shall report any purchases or sales of shares in the company within seven days to the company and to the financial market authority, stating the volume held. The buying and selling of stocks where the market value of the change in the portfolio does not exceed EUR 10,000 is exempt from this rule; all stocks bought or sold within one calendar year shall be added together (section 91a Stock Exchange Act; CG Code 19). However, according to the law, there is no obligation to disclose these facts also to the public; only the Financial Authority has to be informed. Only according to the Corporate Governance Code the management board shall disclose without delay any ad hoc report received pursuant to section 91a of the Stock Exchange Act regarding the acquisition and sale of shares by management board members or supervisory board members on the company's website. This information shall remain on the website for at least three months (CG Code 69).

As a measure to prevent insider dealings, the company shall issue internal guidelines governing the passing on of information and shall monitor compliance with the said rules. The company shall apply the provisions of the Compliance Decree for Issuers promulgated by the Financial Market Authority (CG Code 20).

All transactions between the company or a group company and the members of the management board or any person or company with whom the management board members have a close relationship must be in line with common business practice. The transactions and their conditions must be approved in advance by the supervisory board with the exception of routine daily business transactions (CG Code 24).

BELGIUM

There are no specific rules.

DENMARK

Pursuant to article 37 of the Securities Trading Act, shares of a company held by individuals considered insiders (including members of the board of directors and the management board) as well as persons associated with any of these, as defined, must be reported to the company. Likewise, changes in the holding of such shares must be reported to the company immediately. Every day of trading the company must prepare a statement showing the net result of acquisitions and disposals that day by insiders of the company. In the event the net result of trading by insiders exceeds DKK 50,000 in market value, the company shall report the information received to the stock exchange.

Moreover, on a quarterly-year basis, the company shall prepare a statement showing the holdings of shares of insiders and those associated with insiders as well as the aggregate holdings of shares held by members of the board of directors and the board of management, respectively. The statement shall show both the numbers of shares and the market value of the shares in question.

FINLAND

The disclosure rules that apply to directors as other shareholders are included in the Securities Markets Act (Chapter 2 Section 9). They must disclose information of their shareholdings

without undue delay if their portions exceeds or falls below certain threshold starting from one-twentieth and ending up to two-third. Furthermore, in the Chapter 5 of the Securities Markets Act there are rules about the registers of insider holdings and about the duty to declare information to the register.
Financial Supervision Authority has issued regulation on declaration of insider holdings and on registers. In addition the companies must comply with the Guidelines for Insiders issued by the Helsinki Exchanges and describe its essential insider administration procedures (Recommendation 52).

FRANCE

COB's regulation requires that company's insiders (directors, supervisory board's members, general managers) report to the company every transaction executed on its financial instruments. The procedure concerning this type of communications is fixed by the company.
At the end of every half-year companies must declare to the market and to the Commission (COB) the total amount of transactions executed by their insiders.
Recommendation COB n. 2002-011. It is also now a legal obligation (see: *Loi n. 2003-706 du 1er aout 2003 de sécurité financière*).
Company's insiders must not execute transactions on company's shares in the following period:

- 15 market days before and after the publication of the company's financial statements;
- from the date in which a price sensitive information comes to the company's bodies knowledge to the moment of its publication (*Règlement COB* n. 90-04).

GERMANY

As to the timely disclosure see question 2.4.
Corresponding information shall be provided in the notes to the consolidated financial statements. In comparison with the first version of the Cromme Code 6.6 and Rules and Regulations of Neuer Markt Point 7.2 (from 2001 to 2002), the current version of Cromme Code 6.6 and the new section 15a Securities Trading Act provide less information. Neither the original version of the Cromme Code 6.6 nor the Rules and Regulations of Neuer Markt Point 7.2 knew an exception for shares and options received as a part of remuneration. This exception was not contained in the first draft of the *4. Finanzmarktförderungsgesetz* which introduced section 15a Securities Trading Act. The governmental draft explains that the selling of shares by members of the management board should not be ruled out (BT-Drucksache 14/8017, available at http://dip.bundestag.de). In the light of the introduction of section 15a Securities Trading Act, Rules and Regulations of Neuer Markt 7.2 was deleted.
The Cromme Code (6.6) also provides that the shareholdings, including options and derivatives, held by individual management board and supervisory board members shall be reported if these directly or indirectly exceed 1% of the shares issued by the company. If the entire holdings of all members of the management board and supervisory board exceed 1% of the shares issued by the company, these shall be reported separately according to management board and supervisory board.

GREECE

Members of the board of directors and high ranking employees are required to inform the company and the Board of Directors of the Athens Stock Exchange of any transaction leading to a change of the number of the voting rights held by each of them equal to or higher than 3% on the total voting rights in the issuer company. Furthermore the above persons have to inform the Athens Stock Exchange about any share transaction if within one day the total amount involved is higher than 100.000.000 GrDr (293.470,28 EURO) (Section 5 of Presidential Decree

51/1992). Members of the board of directors being compensated by the company, the general director, the financial director, the accounting director, the person responsible for the internal control, the director of the shareholders service department and the director of the department of corporate announcements are required before they transact in company's shares during the first 30 days following the period to which the quarterly financial statements refer or during the shorter period till the publication of these statements or after they have obtained insider information, to notify the board of directors of the company and to wait until this notification is officially published by the Athens Stock Exchange (Section 8 of the Decision Nr. 5/204/14.11.2000 of the Greek Capital Market Commission).

IRELAND

(a) Companies Act 1963-2001/Listing Rules

The disclosure rules with respect to share and share option transactions arise from a combination of the disclosure required of directors for all companies under ss53-66 Companies Act 1990 (as strengthened by s66 of the Company Law Enforcement Act 2001 which sets out the enforcement regime) and the Listing Rules (16.3-16.17).

The rules are the same as apply to UK listed companies (see UK Questionnaire Q2.5 and Q2.6), as ss53-66 Companies Act 1990 have the same effect as ss324-329 Companies Act 1985. Section 53 sets out the basic obligation to notify interests in shares, this is extended by section 64 to spouses and children and by s76 of the Company Law Enforcement Act 2001 to connected body corporates, and the obligation to make certain entries in the company's register is covered under s59. The definition of interest covers, as in the UK, almost all possible legal or equitable interests.

Note: Notification is to the Company Announcement Office of the Irish Stock Exchange, rather than to a "Regulatory Information Services", as in the UK Questionnaire. Also, the Green Pages exclude from the definition of "connected persons", for the purposes of Listing Rule 16.13(b) and (c), the parents, brothers, sisters, or adult child of a director or secretary. Finally, unlike the UK position, company secretaries are explicitly brought within the range of the company law/Listing Rule disclosure obligation: sections 53-66 apply to persons who are a director or secretary of the company.

Note: The Company Law Review Group has recommended that the obligation to make a notification be disapplied where the interest falls short of 1% of the company in which the interest is held and that the disclosure obligation be a general one, as, for example, with the disclosure of interests in company contracts (First Report, para 11.10.8). It has also suggested simplification of the rules concerning what is an "interest" in shares (First Report, para 11.10.8). The Group has, however, stated that this reform would operate "without prejudice" to the Listing Rules.

(b) Companies Act 1963-2001/Listing Rules and the Directors' Report

Broadly as for UK Questionnaire Q2.5(b). Companies Act 1990 s63, requires that the Directors' Report, or the notes to the company's accounts, include disclosure as to the interests of directors. In particular, under s63(1) the Report, or the notes, must state whether or not the director was interested in shares in the company, in any of the company's subsidiaries or its holding company, or in any subsidiary of the company's holding company at the end of the year and, in each case, the number of shares involved. The disclosure must also state whether or not the director was, at the beginning of the year (or if he was not then a director, when he became a director) interested in shares in the company (as defined above) and, if he was, the number of shares in which he was interested.

This company law requirement is also reflected in the Listing Rules which require the issue of a report and accounts which comply with the issuer's national law. More specifically, Listing Rule 12.43(k), as amended by the Green Pages, requires that the report and accounts include, by way

of note, any change in the interests of each director of the company disclosed to the company under Companies Act 1990 s53 as extended by s64, together with any right to subscribe for shares in the company, distinguishing between beneficial and non-beneficial interests, occurring between the end of the period under review and a date not more than one month prior to the date of the notice of the general meeting at which the annual accounts are to be laid before the company or, if there has been no such change, disclosure of that fact.

(c) Listing Particulars and Prospectuses

Disclosure is also required in the listing particulars/prospectus. See Q2.6.

ITALY

According to Markets Rules each company must adopt a code of dealings by insiders. This code is binding and gives rise to legal obligations in order to comply with the disclosure requirements in case of operations carried by or on behalf of the directors, the auditors, the general managers of the company, and any persons with access to, under the position in the company or in its major subsidiaries, such information on events as to determine significant variations on the financial and economic prospective of the company and of the group and that, if made public, would be likely to have a significant effect on the price of the listed financial instruments (henceforth termed relevant persons).

The company must identify the relevant persons and the person in charge of the receipt, management and diffusion of the information to the market, specify the conduct and disclosure requirements, and set out the terms and the conditions of the transmission of the information to the company.

The Code or the board of directors, where permitted by the latter, can prohibit or limit in specific periods of the year the dealings of the relevant persons and prescribe a mandatory disclosure for the exercise of stock options and options rights (Markets Rules art. 2.6.3; Nuovo Mercato Rules art. 2.6.3).

Companies must inform the market, in accordance with the filing model available on the NIS (Network Information System), about all operations executed by the relevant persons and communicated to the company on: listed financial instruments issued by the company or its subsidiaries, excluding non convertible bonds; financial instruments, listed or not, vesting the right to underwrite, purchase or sell the above-mentioned instruments; derivatives and covered warrants on the underlying instruments.

If the total amount of the operations for each relevant person is under 50000€ in the quarter, there are no disclosure requirements to comply with; if the total amount of the operations is between 50000€ and 250000€, the company must inform the market by the tenth business day following the end of the quarter; if the total amount of the operations exceeds 250000€, the company must inform the market so far as such information is known to it, without delay. The companies can choose whether the dealings on stock options are to be computed in the amount of the operations. If so, companies must indicate the dealings concerning stock options.

Companies must inform the market promptly regarding adoption of the dealings' code, the decided timing of the disclosure, if different from that required under law, and the eventual close period; they are also to send the stock exchange company of the market a copy of the code (Markets Rules art. 2.6.4; Nuovo Mercato Rules art. 2.6.4; Markets Instructions art. IA.2.13.1; Nuovo Mercato Instructions art. IA.2.14.1).

LUXEMBOURG

Insider trading is governed by the law of May 3, 1991. That law implements Directive 89/592 CE on the subject matter.

NETHERLANDS

As described above, based on article 2a, subsection 4, WMZ, each director or board member has to notify a change in the number of shares of the company (or allied companies) to his company and to the AFM immediately. Also, transactions in securities are to be reported based on The Securities Markets (Supervision) Act 1995 (Wte 1995). Because of the concurrence of these regulations as of September 1st, 2002, it is provided that disclosures of securities transactions that should be made based on article 46, subsection 3, Wte 1995, are assumed to be made in case a notification is filed based on article 2a WMZ.

PORTUGAL

See above 2.4.

SPAIN

RD 377/1991, of relevant shareholdings, establishes that the Directors of listed companies will communicate to the relevant company, to the Stock Exchanges where the company is listed, and to the Spanish Securities and Exchange Commission, any shares and stock options that they hold in the company, including any acquisition or transfer thereof. The communication will have to be performed within seven days from the appointment as Director, acquisition, transfer, or contract that grants the stock options.

This communication will not be applicable to EU companies incorporated under the laws of a member state that are listed in one or more EU Stock Exchanges and in a Spanish Stock Exchange. Nevertheless, these companies will have to forward the communications that have been adopted pursuant to EU Directive 88/627/CEE in their home countries within seven days from the reception of such communications.

In addition, the managers[13] of a listed company will communicate to the Spanish Securities and Exchange Commission and disclose to the market any granting in their favour of stock option schemes or other schemes related to shares of the company, and modifications thereof. This information will have the consideration of relevant information pursuant to Section 82 of the Spanish Securities Exchange Act, that establishes how to disclose this kind of information.

SWEDEN

See 2.4 above. The general transaction disclosure rules may also demand disclosure to the market if the director passes upwards or downwards a threshold of five percent of the votes or equity of a company (from 5 to 90 percent) – these rules apply for all shareholders in all listed companies.

UNITED KINGDOM

(a) Companies Act 1985/Listing Rules

The disclosure rules with respect to share and share option transactions arise from a combination of the disclosure required of directors for all companies under ss324-328 Companies Act 1985 and the Listing Rules (see also Q2.6).

Listing Rule 16.13 requires that a company must notify a Regulatory Information Service of any information relating to interests in securities that are, or are to be, listed which is disclosed to

[13] RD 377/1991 includes in "managers" general Directors or other persons that perform senior management that report directly to the Board of Directors.

the company in accordance with the duty of directors to disclose shareholdings in own company under Companies Act s324 (which is extended by s328 to spouses and children) or which is entered in the company's register in accordance with Companies Act s325(3) or (4).

Section 324 (1) and (6) require that any person who becomes a director of a company at a time when he is "interested in" shares in the company (or a subsidiary of the company, or its holding company, or any other subsidiary of its holding company) commits an offence unless he discloses his interests, and the number of shares, to the company by written notice. Under s324 (2) and (6) such a person must also notify the company of any alteration (via: an event occurring while that person is a director in consequence of which the person ceases to be interested in the shares; that person entering into a contract to sell any such shares; the assignment by the person of a right granted by the company to subscribe for shares (ie: share option disclosure); and the grant to that person by another company in the group of a right to subscribe for its shares and the exercise of such rights (ie: share option disclosure)) in his interest in shares in the company (as defined previously) within five working days of the alteration. The notification must state the number or amount and class of shares involved and, under the Companies Act Sch 13, Part III, the price.

Very detailed and all-encompassing rules apply to the determination of whether a director has an "interest" in shares under Companies Act Sch 13. In effect it is: "defined elaborately and widely. In general, it includes an interest of "any kind whatsoever [Sch 13, Part I, para 1)]" and whether actual or contingent [Sch 13, Part I, para 1-8]" (P. Davies, Gower's Principles of Modern Company Law, 6th edition, (1997) 448). Exceptions apply where shares are held by nominees or trustees: a nominee for a director will not be "interested", for example, but the director who uses a nominee will, although a director will not be "interested" when acting as a nominee for another person.

Failure to notify is an offence (with a possible prison sentence of two years) (s324(7)).

Share option disclosure is more specifically addressed by s325. Under s325, the company is required to keep a register for the purpose of s324: but, in addition, 325(3) and (4) address share option disclosure. In particular, the company is required, whenever it grants a director a right to subscribe for shares, to record against the director's name:

- the date on which the right was granted;
- the period during which, or time at which, it is exercisable;
- the consideration (where applicable for the grant);
- the description of the shares involved, the number, and price to be paid.

Under s325(4), disclosure is required by the company, against the name of the director on the register, whenever the right is exercised, of the number of shares in respect of which the right was exercised, the names of the persons in whose names the shares are registered, and the number held in the name of each person.

In addition to the s324/325 disclosure incorporated in Listing Rule 16.13(a), disclosure is also required under Listing Rule 16.13(a) of

- the date on which the disclosure was made to the company;
- the date on which the transaction giving rise to the interest (or cessation of interest) was effected;
- the price, amount, and class of securities concerned, the nature of the transaction, and the nature and extent of the director's interest in the transaction.

Listing Rule 16.13(b) addresses disclosure by "connected persons" (defined very extensively in Companies Act s346 to cover, inter alia, spouse, children, a body corporate with which the director is associated, and trustees of a trust the beneficiaries of which include the director and any of the aforementioned) of directors. It provides that such a person must, unless the disclosure is already covered by 16.13(a), provide such disclosure as would be required under 16.13(a) were that person a director. The disclosure provided must track Rule 16.13(a) and identify the director, the connected person, the connection between them, and state the nature and extent (if any) of the director's interest in the transaction.

Share options are covered again under Rule 16.3(c). This provides that, unless the disclosure has already been provided under Rule 16.3(a) and (b), companies must notify a Regulatory Information Service of the following information:

- details of the grant to, or acceptance by, a director or a person connected with a director of any option (whether for the call or put or both) relating to securities of the company or of any other right or obligation, present or future, conditional or unconditional, to acquire or dispose of any securities in the company which are or will be listed or any interest of whatsoever nature in such securities;
- the acquisition, disposal, exercise or discharge of, or any dealing with, any such option, right or obligation by a director or a person connected with a director.

As with 16.3(b), the notification by the company must identify the director and, where relevant, the connected person and the nature of the connection between them, give the particulars specified above and state the nature and extent of the directors' interest (if any) in the transaction. Any notification required must be made without delay (by the end of the business day following the receipt of the information by the company).

In general, under Listing Rule 16.14, any notification required must be made without delay (by the end of the business day following the receipt of the information by the company).

Listing Rule 16.16 extends the disclosure required under 16.13 where dealing has occurred in a "close period", but is permitted under the exceptional circumstances exemption set out in the Model Code: companies must include in the 16.3 notification a statement of the exceptional circumstances in the light of which dealing was permitted. The Model Code is attached to the Listing Rules and sets out a code of dealing rules designed to ensure that directors, certain employees and persons connected to them do not abuse price sensitive information, and place themselves "above suspicion", particularly during the time leading up to a results announcement. As part of this dealing code, directors are prohibited from dealing in "close periods", as defined in the Model Code.

Finally, under Listing Rule 16.17, a company must require each of its directors to disclose to it all information which the company needs in order to comply with the requirements above (so far as that information is known to the director or could with reasonable diligence be ascertained by the director), as soon as possible and not later than the fifth business day following the day on which the existence of the interest to which the information relates comes to the director's knowledge. A company must require each of its directors, at such times as it deems necessary or desirable, to confirm that he has made all due enquiry of those persons who are connected with him. A company is not required to notify a Regulatory Information Service information which, notwithstanding compliance by it with these provisions, it does not have.

(b) Companies Act 1985 / Listing Rules and the Directors' Report

The Directors' Report required of companies in their annual report and accounts as a matter of company law must, under Companies Act 1985, Sch 7, 2A, include disclosure as to the interests

of directors, reflecting the Companies Act s324 disclosure. In addition, it must, under Sch 7, 2B contain basic disclosure on the grant of stock options. In particular, the Directors' Report must state with respect to each director whether, according to the register, any right to subscribe for shares of the company or another body corporate in the same group was, during the financial year, granted to, or exercised by, the director or a member of his immediate family. The disclosure must include the number of shares in each body in respect of which the right was granted.

This company law requirement is also reflected in the Listing Rules which require the issue of a report and accounts which comply with the issuer's national law. More specifically, Listing Rule 12.43(k) requires that the report and accounts include, by way of note, the beneficial and non-beneficial interests of each director of the company disclosed to the company under the Companies Act 1985 together with any changes in those interests occurring between the end of the period under review and a date not more than one month prior to the date of the notice of the general meeting at which the annual accounts are to be laid before the company.

(c) Listing Particulars and Prospectuses

Disclosure is also required in the listing particulars/prospectus. See Q2.6.

2.6 What information on directors' remuneration must be included in public offer prospectuses and listing particulars?

AUSTRIA

According to the Capital Markets Act (Schemes A and B, Chapter 3 n. 17-18) the public offer prospectus shall contain individualized information on the remuneration of each member of the management and the supervisory board. The fixed income is separated from the variable components of the salary; in particular stock options have to be disclosed and described separately. The same information shall be comprised in the listing particulars (Scheme A, Chapter 6.2a Stock Exchange Act).

BELGIUM

The Royal Decree of 18 September 1990 about the prospectus that has to be established for listing in Belgium imposes information about directors' remuneration, the number of shares and stock options of the company held by directors, unusual transactions between the company and her directors and loans attributed to directors.

DENMARK

Under the listing rules issued by the Copenhagen Stock Exchange, section 34, issuers that have decided to adopt share-based incentive programs must provide certain information with respect to such programs when issuing prospectuses. The obligation to disclose includes information on (i) the type(s) of the share-based incentive program(s) (ii) the categories of individuals included in such programs, (iii) the time of the grant of rights, (iv) the aggregate number of shares underlying the programs and the allocation of such shares among the categories of individuals included, (v) the goals pursued by the programs, (vi) the period within which rights under the programs may be exercised, (vii) the exercise price, (viii) any particular conditions that will have to be met in order for the beneficiaries to exercise their rights, and (ix) the market value of the share-based incentive programs, including a description of the valuation method and the basic assumptions underlying the valuation. The prospectus must contain information on incentive instruments granted to each member of the board of directors and management board. Such parts of the programs that have not been exercised must be disclosed. Also, the adoption of extraordinary bonus programs must be disclosed.

FINLAND

Following information concerning the board is required in both public offer prospectuses and listing particulars based on regulation of the Ministry of Finance (see 1):

- total salaries and remuneration paid and benefits in kind collectively;
- total number of shares, convertible debt securities, option loans and option rights issued by a company and owned by the board members and corresponding persons;
- total of loans or guarantees granted by the issuer to the board members and corresponding persons;
- a description of the incentive schemes or other corresponding arrangements involving issues directed or to be directed to the board or other in legislation determined bodies.

FRANCE

COB's regulation (*Instruction de décembre 2001*) provides that prospectuses and listing particulars must include:

- the total amount of remuneration paid and benefits in kind granted – directly or indirectly – by the company and by its subsidiaries to each corporate officer (by name) (*mandataire social*);
- the number of stock options granted and the number of options exercised by each corporate officer (by name) during the previous financial year; the information must include the exercise price, the expiration date and the type of plan;
- the number of stock options granted and the number of options exercised by the ten most paid (with regard to these instruments) employees (non corporate officers) during the previous financial year; this information must be given in aggregated form and must include both the average of the exercise price and the type of plan.

GERMANY

Information on directors' remuneration in public offer prospectuses is subject to section 28 of the Stock Exchange Admission Regulation. The prospectus shall (inter alia) contain the aggregate remuneration (salaries, profit participations, expense allowances, insurance premiums, commissions and fringe benefits of any kind) paid to the members of management and supervisory bodies during the last financial year; such amounts shall be stated separately for each body (section 28 (2) number 2); the total number of the issuer's shares held by members of the management and supervisory bodies in the aggregate and any rights to subscribe for shares granted to such persons (section 28 (2) number 4) and the aggregate amount of any loans granted by the issuers to members of the management or supervisory bodies which have not been repaid, and of any guarantees or other warranties given by the issuer for the benefit of such persons (section 28 (2) number 6).

GREECE

The listing prospectus has to include information on directors' remuneration during the last financial year (Presidential Decree 348/1985). Public offer prospectuses have also to include information on directors' remuneration (Section 12 of the Presidential Decree 52/1992).

IRELAND

Where a listing particulars has been approved by the Stock Exchange in conjunction with an offer to the public, a prospectus is not required. The approved listing particulars is deemed to be a prospectus (Statutory Instrument No. 282 of 1994, Regulation 12 (2) and 12(3)).
The disclosure for the listing particulars is as for UK Questionnaire Q2.6. References to the UK Companies Acts are revised by the Green Pages to reflect the parallel provisions in the Companies Act, 1990.

ITALY

The contents of the public offer prospectus are the same as those applicable to the admission to listing prospectus. The prospectus must contain:

- the total amount of remuneration under any kind or any form granted to each member of the board of directors and board of auditors (*collegio sindacale*) and to each general manager during the last financial year, distinguishing the sum paid by the company from the sum paid by its subsidiaries;

- the amount and the type of financial instruments, including the stock options granted, of the company and its subsidiaries held by each member of the board of directors and board of auditors (*collegio sindacale*) and by each general manager, or by connected persons; any options on the above-mentioned instruments, distinguishing for each person the instruments held at the beginning of the financial year, the instruments purchased and sold during the year, the instruments held at the end of the year;
- all relevant particulars regarding the nature and extent of any interests of each member of the board of directors and the board of auditors (*collegio sindacale*) and by each general manager of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and which were effected by the issuer during the current or immediately preceding financial year, or during an earlier financial year and remain in any respect outstanding or unperformed;
- any interests of the managers of the company in any member of the group;
- the total of any outstanding loans granted by any member of the group to the members of the board of directors and the board of auditors (*collegio sindacale*) and to the general managers and also of any guarantees provided by any member of the group for their benefit (Consob Regulation 11971/1999 art. 4, Annex 1B Schemes 1-2).

LUXEMBOURG

See chapter 6 schedule A of the Grand-Ducal decree of December 28, 1990 on the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published where transferable securities are offered to the public or of listing particulars to be published for the admission of transferable securities to official stock exchange listing enclosed hereunder.
"Information concerning administration, management and supervision
6.1. Names, addresses and functions in the issuing company of the following persons, and an indication of the principal activities performed by them outside that company, where these are significant with respect to that undertaking:
- members of the administrative, management or supervisory bodies;
- partners with unlimited liability, in the case of a limited partnership with a share capital;
- founders, if the company has been established for fewer than five years.

6.2. Interests of the members of the administrative, management and supervisory bodies in the issuing company.
6.2.0. Remuneration paid and benefits in kind granted, during the last completed financial year for any reason whatsoever, and charged to overheads or the profit appropriation account, to members of the administrative, management and supervisory bodies, these being total amounts for each category of body.
The total remunerations paid and benefits in kind granted to all members of the administrative, management and supervisory bodies of the issuer by all the dependent undertakings with which it forms a group, must be indicated.
6.2.1. Total number of shares in the issuing company held by the members of its administrative, management and supervisory bodies and options granted to them on the company's shares.
6.2.2. Information about the nature and extent of the interests of members of the administrative, management and supervisory bodies in transactions effected by the issuer which are unusual in their nature or conditions (such as purchases outside normal activity, acquisition or disposal of fixed asset items) during the preceding financial year and the current financial year. Where such unusual transactions were concluded in the course of previous financial years and have not been definitively concluded, information on those transactions must also be given.
6.2.3. Total of all the outstanding loans granted by the issuer to the persons referred to in heading 6.1. (a), and also of any guarantees provided by the issuer for their benefit.
6.3. Schemes for involving the staff in the capital of the issuer".

NETHERLANDS

The requirements relating to the content of the prospectus of listed companies or companies requesting a listing (IPO) are laid down in the Euronext rulebook (FR). Article 8 of this rulebook refers to appendix A of the FR which requires that the prospectus shall report: (i) the remuneration and benefits in kind of the complete management board and the complete supervisory board in the most recent financial year (ii) the total amount of loans made by the company to members of the management and supervisory board and (iii) the total amount of company shares owned by all members of the management and supervisory board together and their option rights granted on the shares of the company. This requirement clearly has not yet been brought in line with the new disclosure requirements of individual directors' remuneration of art. 2:283c BW.

In case of a public take-over bid, The Securities Markets (Supervision) Act (Wte) applies. The Resolution of the Finance Minister (Bte) based on article 6a of The Securities Markets (Supervision) Act provides that in an offer document the total amount shall be reported of eventual remuneration to members of the management and the supervisory board of the target company who will resign in case the offer is sustained. Again, this provision has not yet been aligned with the new disclosure requirements on individual director's pay.

PORTUGAL

None of the rules that define the minimum content of public offer prospectus requires specific information on director's remuneration.

SPAIN

OM of July 12, 1993, relative to Prospectuses, in Annex A establishes the model of prospectus for IPOS of equities. The content of chapters VI.2.3 and VI.2.4 is the following one:

"VI.2.3. Amounts of salaries, allowances, and emoluments of all kinds earned by the referred persons[14] during the last financial year closed, on whatever basis.

When the issuer is the head of a group obliged to consolidate its Annual Accounts, the amounts for the concepts established in the paragraph above earned by the referred persons[14] in the whole of the dependent companies will be placed on record.

This information shall be given as an aggregate amount for each type of payment, distinguishing between Directors, managers and founders.

VI.2.4 Amounts of the obligations undertaken regarding pension schemes or life insurances respect to the founders, to the former and current members of the Board of Directors, and to the former and current managers. This information shall be given as an aggregate amount and separating the assistances."

SWEDEN

The same information for the last financial year as is necessary in the annual accounts according to NBK's recommendation (see 2.3 above).

UNITED KINGDOM

[14] Members of the Board of Directors, managers and other persons that undertake the management of the company in the highest level and founders of the company if it was incorporated less than five years ago.

With respect to listed companies, the disclosure required in the public offer prospectus tracks that required by the listing particulars (subject to the adaptations appropriate to the circumstances of a public offer).

The prospectus and the listing particulars must include:

- the total aggregate of the remuneration paid and benefits in kind granted to the directors by any member of the group during the last completed financial year under any description whatsoever;
- in the case of an issuer which is a company subject to the Companies Act 1985, interests (distinguishing between beneficial and non-beneficial interests) relating to securities which: (a) have been notified by each director to the issuer pursuant to section 324 or section 328 of the Companies Act 1985 (see Q2.5); (b) are required pursuant to section 325 of that Act to be entered in the register referred to therein (see Q2.5); or (c) are interests of a connected person of a director which would, if the connected person were a director, be required to be disclosed under (a) or (b) above, and the existence of which is known to or could with reasonable diligence be ascertained by that director (see Q2.5); or an appropriate negative statement;
- all relevant particulars regarding the nature and extent of any interests of directors of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and which were effected by the issuer during the current or immediately preceding financial year, or during an earlier financial year and remain in any respect outstanding or unperformed; or an appropriate negative statement;
- the total of any outstanding loans granted by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit (see Q3.3);
- details of any schemes for involving the staff in the capital of any member of the group;
- particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments which occurred during the past financial year;
- an estimate of the amounts payable to directors of the issuer, including proposed directors, by any member of the group for the current financial year under the arrangements in force at the date of the listing particulars;
- details of existing or proposed directors' service contracts including the matters specified in paragraph 16.11, or an appropriate negative statement (see Q4.7);

a summary of the provisions of the memorandum and articles of association of the issuer with regard to any power enabling a director to vote on a proposal, arrangement, or contract in which he is materially interested; any power enabling the directors, in the absence of an independent quorum, to vote remuneration (including pension or other benefits) to themselves or any members of their body; borrowing powers exercisable by the directors and how such borrowing powers can be varied; and retirement or non-retirement of directors under an age limit.

3. Remuneration of The Board of Directors

3.1 Who fixes the board of directors' remuneration? What are the relevant procedures? (In two-tier systems, please refer to the supervisory board.)

AUSTRIA

The remuneration of the members of the supervisory board is fixed by the general meeting or in the articles of association (section 98 Stock Corporation Act; CG Code 50), regardless whether the remuneration is a fixed salary or includes variable elements. If the compensation is fixed in the articles of association it can be decreased by the general meeting with a simple majority. The compensation of the members of the first supervisory board can be fixed only by the general meeting and such resolution may be adopted only in the shareholders' meeting resolving on ratification of the acts of the members of the first supervisory board (section 98 Stock Corporation Act).

According to section 159 Stock Corporation Act the general meeting may adopt a resolution on a contingent capital increase also to grant rights to members of the supervisory board (as well as to employees and senior management) to new shares. At least 14 days before the general meeting the management board shall inform the shareholders at any rate on the principles and the related performance requested; the number and distribution of the options granted and the related shares; the essence of the contracts, in particular the exercise price or the criteria adopted to calculate it; the transferability of the options; the periods in which the options can be granted and exercised and the period of lock up.

The same report must be submitted if the under laying for the stock options are own shares of the company or even shares held by a third person but which are dedicated for the stock-option-program (section 98 Stock Corporation Act).

BELGIUM

As far as the directors proper are concerned, the remuneration is fixed by the general meeting. Often in practice the decision is imprecise, and *de facto* delegated to the board.

DENMARK

The remuneration of the board of directors is fixed (approved) by the annual general meeting of shareholders.

FINLAND

The company has a supervisory board:

Remuneration paid to members of the board in that capacity: the general meeting or the supervisory board unless otherwise stipulated in the articles of association.

Remuneration paid to members of the board in the capacity of employees: the board, the managing director, any other person having authority depending on the seniority of the employee in question.

The Recommendation provides that company shall describe the duties and the operation principles of the supervisory board as well as the criteria for compensation of the members of the supervisory board (Recommendation 6).
In addition, the articles of association may set out that the supervisory board will decide on the benefits of senior management. Some members of the supervisory board and members of the board may in practice belong to senior management.

Right to subscribe for new shares (share options):
The general meeting of shareholders will always decide on the right to subscribe for new shares.

FRANCE

One-Tier System
The board of directors' remuneration is fixed by the shareholders' general meeting (*Code de Commerce*, Art. L225-45). The shareholders' general meeting can fix the total amount of the directors' remuneration as attendance money (jetons de présence). The board of directors determines the distribution of this amount among its members and fixes the remuneration of its chairman (*Code de Commerce*, Art. L.225-45).
The board of directors may allocate to members of the board exceptional compensation for specific missions or mandates (Art. L. 225-46).

Two-Tier System
The supervisory board's remuneration is fixed by the shareholders' general meeting (Code de Commerce, Art. L225-83). The shareholders' general meeting can fix the total amount of the members of the supervisory board's remuneration as attendance money. The supervisory board determines the distribution of this amount among its members and can fix a special remuneration of its chairman and deputy chairman (Code de Commerce, Art. L. 225-83).
The supervisory board may allocate to members exceptional compensation for specific missions or mandates (Art. L. 225-84).

GERMANY

The remuneration of the members of the supervisory board is fixed by the general meeting with the simple majority or in the articles of association (section 113 Stock Corporation Act; Cromme Code 5.4.5). The remuneration of the supervisory board is to be set on the agenda of the general meeting by the management board. As provided for each item that must be resolved by the general meeting, the management board and the supervisory board (only the supervisory board in case of election of members of the supervisory board and auditors) shall make proposals for the text of the resolution in the notice publishing the agenda (section 124 (3) 1 Stock Corporation Act).
If the compensation is fixed in the articles of association it can be decreased by the general meeting with a simple majority. The compensation of the members of the first supervisory board can be fixed only by the general meeting and such resolution may not be adopted until the general meeting resolving on ratification of the acts of the members of the first supervisory board (section 113 Stock Corporation Act).
Besides, discussion on directors' remuneration concerning the supervisory board in the nineties was to improve the payments made by the corporations to find better supervisors: Average payment in the biggest firms was about 17.500 Euro per annum. The traditional low level of supervisory board remuneration is in part due to the German model of codetermination in the supervisory board (codetermination law is available under http://www.bma.de/download/broschueren/a741.pdf). Employee members of the supervisory board who are members of an union organized in the German Trade Union Federation

(*Deutsche Gewerkschaftsbund - DGB*) are expected and indeed do give their remuneration exceeding DM 6.000 (about Euro 3.000) per annum to a trade union foundation, the Hans Böckler Stiftung (See Prigge, "A Survey of German Corporate Governance" in Hopt/Kanda/Roe/Wymeersch/Prigge (eds.), *Comparative Corporate Governance*, 1998, p. 964, for current data see also http://www.dai.de/internet/dai/dai-2-0.nsf/dai_publikationen.htm).

GREECE

Such remuneration may be fixed either by the articles of association or by resolutions of the general meeting. On the other hand it may consist in fixed payments or payments taken out of profits. As mentioned above (1.1), any compensation paid out of the company's profits is to be taken out of the balance of the net profits after the deduction of the amounts contributed to ordinary reserves and the distribution of the so-called first dividend. Any other remuneration not defined in the statutes of the company is chargeable to the company if approved by specific resolution of the ordinary general meeting of the shareholders. Any excessive remuneration may be reduced by the court (article 24 of the Law 2190/1920).

IRELAND

As for UK Questionnaire Q3.1 The Irish equivalent of art 82 is art 76 of Table A (the statutory default form of Articles of Association) which provides that: "The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day."

ITALY

The shareholders' ordinary meeting fixes the remuneration of the members of the board of directors, if not determined in the articles of incorporation (Civil Code artt. 2364, 2389).
The remuneration of those directors who are appointed to particular positions in accordance with the articles of association is fixed by the board of directors, after consultation with the board of auditors (Civil Code art. 2389). This applies, in particular, to executives directors, whose remuneration is therefore fixed by the board.
New Italian Corporate Law (effective from 1 January 2004)
The reform (Legislative Decree 6 of 17 January 2003, Riforma organica della disciplina delle società di capitali e delle società cooperative) provides three corporate governance systems from which the companies are allowed to choose. The first is the traditional Italian system, made up of a board of directors and a board of auditors (collegio sindacale). The second is a two-tier system, consisting of a management board and a supervisory board, along the German model. The third is a one-tier system of Anglo-Saxon inspiration, consisting of a unitary board and an audit committee.
Traditional system
The provisions are similar to those already in force (Civil Code new artt. 2364, 2389, 2402).
Two-tier system
In companies with a supervisory board, the shareholders' ordinary meeting fixes the remuneration of the members of the supervisory board, if not set out in the articles of association (Civil Code new artt. 2364-bis).
One-tier system
The remuneration of the members of the board of directors is fixed by the shareholders' ordinary meeting (Civil Code new artt. combined 2389 and 2409-noviesdecies).
There are no rules concerning the remuneration of the members of the audit committee. However, in practice their remuneration is fixed by the shareholders' meeting. In fact, the art. 223-septies of the implementing provisions of the Civil Code refer to the provisions regulating the traditional system where no rules are provided for the one- or two-tier system (Civil Code art. 2402 is not quoted in art. 2409-noviesdecies).

LUXEMBOURG

As already mentioned under 1.3, the remuneration of the directors is in the competence of the shareholders. It is made at the annual ordinary shareholders' meeting which convenes for the purpose of approving the annual accounts.
The Luxembourg unlimited company ("*société anonyme*") is administered by a Board of Directors. There does not presently exist a two-tier system for that type of company. However a draft bill which is expected to come into force in a foreseeable future grants that type of company the option between a one-tier and a two-tier system.

NETHERLANDS

Article 2:145 BW provides that, unless the articles of association constitute otherwise, the remuneration of the supervisory board is fixed by the general meeting of shareholders. As mentioned already in paragraph 1.1, the articles of association usually assign the authority to set the remuneration to another body. It is allowed that the supervisory board decides on its own remuneration. In some listed companies the authority tot set the remuneration is assigned tot the meeting of priority-shareholders[15], it's also possible that the remuneration of the members of the supervisory board is provided for in the articles of association.
The remuneration of members of the supervisory board is determined bilaterally in a contract between company and board. The company can be represented in that contract by another body than the board.

PORTUGAL

The procedure for adopting executive remuneration depends on whether the company adopts unitary or two-tier board structure. According to the Companies Code (article 278), the management of the company can be structured in one of the two following ways: a unitary structure consisting only in the board of directors, or a dual structure consisting of a supervisory and a management board.
When the company adopts the unitary system, article 399 of the Companies Code foresees that the remuneration of all the members of the board (including executive directors) shall be approved by the shareholders, in a general meeting, or by a special shareholder's committee constituted to the effect.
In case the company adopts the two-tier structure, article 429 of the Companies Code states that the supervisory board determines the remuneration of the members of the management board. In what concerns the remuneration of the members of the supervisory board, article 440 foresees that members the supervisory board are not necessarily paid. Whenever such retribution is established in the articles of association, the rules of article 399 apply.

SPAIN

The corporate body in charge of fixing the Directors remuneration in Spain is the Shareholders Meeting. Pursuant to Section 130 of the LSA, Directors remuneration shall be established in the company by-laws.

SWEDEN

The board's remuneration is decided by the AGM with single majority, usually after a proposal from the largest shareholder or a nomination committee (nomination committees in Swedish

[15] Priority-shares are shares with special rights on

companies are normally not comprised of members of the board but of the three to five largest owners of the company together with the chairman of the board). Usually a collective sum for the whole board is decided upon by the AGM, the distribution between different board members is a matter for the board. Even if the managing director usually has a place on the board (as the only representative from management), he will not be given special remuneration for this work.
Incentive programmes for board members require GM approval. Board members (except for the managing director if he is a member of the board) may not take part in an incentive programme for the employees – the programme has to be exclusive for the board members. The proposal may not be prepared by the board or management. Usually the largest owners of the company prepare the proposal. If the programme involves a share issue or buy back of shares, a 9/10 majority of the GM is required, otherwise a single majority is sufficient.

UNITED KINGDOM

Decision-making on remuneration under the articles of association of most companies is left with the board itself. Articles can also provide that the directors shall be entitled to such remuneration as shall be voted to them in the general meeting, in which case there must be a resolution duly passed by the company (Companies Act 1985 Table A art. 82).
It is not normally sufficient to show the figure taken by directors in the accounts, and the acceptance by the company of the accounts will not in itself authorise remuneration which has not otherwise been authorised. Exceptionally, however, a resolution of the members approving the accounts may be a sufficient authorisation, if all the members are aware that, by being asked to approve the accounts, they are being asked also to approve the remuneration (***Felix Hadley & Co. Ltd. v. Hadley,*** 1897, 77 L.T. 131).
Note: The relevant provisions deal in terms of directors, rather than the board of directors, as a general rule (see Q4).

3.2 Are there provisions and/or practices as to the amount of the remuneration and its distribution (for example, as to whether distribution should be proportionate) among board members? What types of remuneration are allowed?

AUSTRIA

The compensation of supervisory board members shall be commensurate with the responsibilities and scope of work of the members as well as with the economic situation of the enterprise (section 98 Stock Corporation Act; CG Code 50). The remuneration does not need to be at the same level for all members. Those members who are appointed by the representatives of the employees do not receive any remuneration (section 110 Par 3 sentence 1 of the Codetermination Act).

BELGIUM

The distribution of the global amount among board members can be decided by the board of directors.
All types of remuneration are allowed. There is no strict proportionality rule, as the chairman in practice gets somewhat more (+/- 20%).

DENMARK

Under Article 64 of the Limited Companies Act, remuneration of the board of directors and management must be reasonable, as explained under 1.1. above. It has been established by the Danish courts that board members (whether elected by the shareholders or appointed by the employees under the rules on co-determination) must receive equal payment, unless a different treatment is justified, given differences in workload. For the same reason, the chairman of the board, who normally spends more time preparing for and following up on board meetings than the average board member, typically receives an amount which is considerably higher than the amount paid to the other board members.
The law does not restrict the types of remuneration that could be paid to the members of a board of directors. However, in its recommendations the Nørby Committee proposes that no stock option programs be adopted which include members of the board of directors.

FINLAND

There are no rules on proportionality. However, measures which are likely to cause unjust enrichment to a shareholder or a third person at the cost of the company or another shareholder are generally invalid under Chapter 8 § 14 and Chapter 9 § 16 of the Company Act.
There are no rules on the types of remuneration allowed. As to best practice, Recommendation states that the shareholdings of the directors can be increased by paying the fees or part of the fees for board and committee work in the form of shares of the company (Recommendation 44).

FRANCE

The distribution of the remuneration's amount among board members can be not proportional.
For instance, the board of directors can create special committees, for example audit, compensation or nomination committees for specific purposes and award a particular compensation to their members (*Décret* n. 67-236, Art. 93). The allocation process should take

into account the attendance record of each director at board and committee meetings, and therefore compensation should include a variable portion (*Code Bouton*, p. 17).
French law allows the following types of remuneration: fixed remuneration in the form of attendance money (*Code de Commerce*, Artt. L225-45); stock options (*Code de Commerce*, Art. L225-177); stock grants (*Code de travail:* Art. L .442-1 to L. 442-17).

GERMANY

The compensation of the members of the supervisory board takes into account the duties, responsibilities and scope of tasks of the members of the supervisory board as well as the economic situation and performance of the enterprise (section 113 Stock Corporation Act, Cromme Code 5.4.5). The exercising of the chair and deputy chair positions in the supervisory board as well as the chair and membership in committees shall also be considered (Cromme Code 5.4.5).
Members of the supervisory board shall receive fixed as well as performance-related compensation. Performance-related compensation should also contain components based on the long-term performance of the enterprise (Cromme Code 5.4.5). Although section 192 Stock Corporation Act names only the management board of the company, the allowance of stock options is discussed. The Baums Commission on Corporate Governance stated in accordance with the literature that stock options can't be part of the supervisory board remuneration (see T. Baums (ed.), *Bericht der Regierungskommission Corporate Governance*, p. 104, 236). It is argued for restriction that stock options for members of the supervisory board were discussed before introducing the Supervisory and Transparency Law (*Gesetz zur Kontrolle und Transparenz im Unternehmensbereich - KonTraG*, published in the Federal Gazette 1994, Part I p. 786 and available on http://www.ecgi.org/codes/country_documents/germany/gkontrag.pdf). In the *KonTraG* the members of the management board were added to section 192 Stock Corporation Act, but not – as foreseen in the first draft - the members of the supervisory board. Anyway, the limitation of types of remuneration is not undoubted. It may be of interest that there is no expressis verbis restriction to the remuneration of the members of the supervisory board. Neither section 113 nor section 192 Stock Corporation Act expressly rule out stock options as an element of remuneration of members of the supervisory board. The focus of section 192 is that the corporation may enforce a contingent capital increase only if these stock options are given to the management and the employees or are needed in case of a merger or to issue convertible bonds.
Convertible bonds which contain a credit to the corporation are accepted as a type of remuneration for members of the supervisory board (see Baums (ed), *Bericht der Regierungskommission Corporate Governance*, p. 104). The general question whether a convertible bond requires that a credit of the buyer is converted into a share is not resolved yet. Section 221 Stock Corporation Act defines a convertible bond as a bond which provides holders with a right to convert it into or to subscribe shares. This may support the view that a convertible bond in German stock corporation law does not require an element of lending and may give only an option to buy shares. Anyway, phantom stocks (to be paid in cash) are accepted as a type of remuneration for members of the supervisory board
The remuneration could also be comprised of a profit sharing and in such case the share of the annual profit granted shall be computed on the basis of distributable profit, reduced by an amount of not less than four per cent of the contributions made on the par value of the shares (section 113 Stock Corporation Act).

GREECE

See 3.1. Other rules (such as a rule of proportionality) are not provided.

IRELAND
As for UK Questionnaire Q3.2.

ITALY
In practice, it is standard for directors' remuneration to be adopted by shareholders' meeting, which may either directly fix the amount for each director or a total amount to be distributed by the board of directors.
The board of directors shall allocate, where the shareholders' meeting has not already done so, the total amount to which the members of the board and of the executive committee are entitled (Corporate Governance Code art. 1.2).
The shareholders' ordinary meeting can determine a ceiling to the total remuneration of the directors, including those who are appointed to particular positions (i.e. executive directors), where permitted by the articles of association (Civil Code new art. 2389).
Various types of remuneration are permitted either for the executive or the non-executives directors (see 4.3).

LUXEMBOURG
There are no provisions as to the amount of the remuneration and its distribution among board members. Usually, the amount of remuneration is the same for all the directors. However, it is not uncommon that the chairman, and sometimes the vice-chairman, receive a somewhat higher amount.
There are no rules governing types of remuneration. In former times, it was not uncommon that the overall remuneration allocated to the board as a whole represented a given percentage of the net annual profit. That type of remuneration is not any longer practiced. Nowadays the amount of remuneration is generally a fixed one.
In the case of banks whose shares are listed, the banking supervisory authority, which is the "Commission de Surveillance du Secteur Financier" ("CSSF"), might recommend a reduction of the remuneration of the board as a whole if it deems such remuneration disproportionate to the bank's size, activities, profits and to the time directors spend on performing their duties.

NETHERLANDS
There are no legal provisions on that limit the amount of remuneration members of the supervisory board could receive. As became clear of the description of 'best practices' (paragraph 1.2) it is generally recommended that the remuneration of supervisory board members should not be (fully) dependent on the results of the company.

PORTUGAL
No.

SPAIN
Section 130 of LSA establishes that when the remuneration consists of a share in profits, it may only be paid out of profits after tax, after setting aside the required amounts to the statutory reserve and the reserve provided for by the articles and after declaring a dividend to the shareholders of four percent or of such higher rate as is established in the by-laws.

Section 124.3 of RD 1784/1996, on "*Companies Registry Regulations*", provides that the remuneration correspondent to the Directors will be equal for all of them unless the opposite is expressly stated in the by-laws.
There are not legal provisions in Spain as to what types of remuneration for the Board of Directors are allowed.

SWEDEN

There are no such provisions. Some large institutional owners (not all) have made recommendations that a certain part of the remuneration should be in company shares.

UNITED KINGDOM

Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose. A proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance (Combined Code B.1).
Many types of remuneration are permitted either for the executive or the non-executives directors (See Q4.3).

3.3 Are personal loans to the company's directors and officers allowed?

AUSTRIA

The granting of loans by the enterprise to members of the supervisory board shall not be permitted outside the scope of its ordinary business activity with the exception of routine daily business transactions (CG Code 47).
On the other hand, personal loans are allowed to members of the management board pursuant to a resolution of the supervisory board. Such consent may be granted only for specific credit transactions or kinds of credit transactions, and for not more than three months in advance. The resolution on such consent shall make provision as to the payment of interest on, and repayment of, any loan (section 80 Stock Corporation Act).

BELGIUM

Yes. But these are subject to procedures on conflict of interests, i.e. the conflicting interest should be disclosed, the directors cannot take part in the vote (unless the company is unlisted) and the auditor must report on the effect of the contract to the company. This information is made public. As it only relates to board decisions, it would not apply when the decision is taken by the general meeting.

DENMARK

Loans granted by the company to members of the board of directors or management board would violate the prohibition in Article 115, subsection 1, of the Limited Companies Act. The said provision also prohibits the company from offering any security to a third party in favour of any board member or member of the management board. Officers who are not member of any of the boards may receive loans from the company to the extent this is in the interest of the company.

FINLAND

Yes. Loans to persons belonging to the inner circle as defined in the Companies Act are as a rule permitted under Chapter 12 § 7 provided that the loans are granted within the limits of the distributable assets (profits) of the company and against a safeguarding collateral.

FRANCE

Companies are strictly prohibited from making loans to their executive managers or directors, whether for the purpose of exercising options or for any other purpose. To do so, or to receive such loans, would represent a misappropriation of corporate assets which carries criminal liability (*Code de Commerce*, Art. L225-43).

GERMANY

Yes, they are allowed. According to the Stock Corporation Act (section 115) and the Cromme Code (3.9) the company may extend credit to members of the supervisory board but only with the consent of the supervisory board. Section 115 also provides that a controlling company may extend credit to members of the supervisory board of a controlled enterprise with the consent of its supervisory board and a controlled company, on the other hand, may extend credit to members of the supervisory board of the controlling enterprise with the consent of the

supervisory board of the controlling enterprise. Such consent may be granted only for specific credit transactions or kinds of credit transactions, and for not more than three months in advance. The resolution on such consent shall make provision as to the payment of interest on, and repayment of, any loan. If the member of the supervisory board carries on a business as a sole proprietor, such consent shall not be required if the credit is extended to finance the payment of goods which the company supplies to his business (Cromme Code 3.9 does not mention this exception).
Personal loans are also allowed to members of the management board pursuant to a resolution of the supervisory board (section 89 Stock Corporation Act; Cromme Code 3.9).

GREECE

No, such contracts are null and void (Section 23a of the Law 2190/1920).

IRELAND

Originally, the Companies Act 1963 did not prohibit loans to directors from the company. Section 192 simply specified the disclosure which was to be made in the annual accounts in relation to any loans made to any director.
A much stricter regime now applies. As with UK Questionnaire Q3.3, detailed and complex rules are now applied to the provision of personal loans to directors under Companies Act 1990 ss31-38 in order to prevent abuse. In essence, under s31, companies cannot make a loan to a director, guarantee a loan to a director made by a third party, provide security for such a loan, or enter into a credit transaction with a director. The prohibition extends to the company's holding company and covers any transactions of a similar nature with persons "connected" with the director. As with the UK regime, some exemptions are provided which cover transactions below a certain value, intra-group loans and transactions, business transactions on a normal basis, and advances on directors' expenses. Part IX of the Company Law Enforcement Act 2001 provides further exceptions to the s31 rule. In particular, s78 permits a company to enter into guarantees or provide security in the context of loans, quasi-loans or credit transactions in favour of directors or persons connected with directors. Certain conditions must be met prior to entering into the arrangement.
Criminal sanctions follow a breach of s31 (Companies Act 1990 s40): an officer of a relevant company who authorises or permits the company to enter into a prohibited transaction, knowing, or having reasonable cause to believe the company was breaching s31, is guilty of an offence. Under s38(1), the transaction is voidable by the company, unless restitution is impossible, a third party has acquired an interest, or the company has been indemnified. The director concerned and any director who authorised the transaction is liable to account to the company for any gain made directly or indirectly from the transaction, and to indemnify the company for any loss or damage (s38(2)).

ITALY

Yes, they are allowed, but were forbidden until 2001 (Civil Code, deleted art. 2624).
However, a special regime applies to banks under art. 136 of Consolidated Law on Banking. In particular, who is in charge of management, supervision or control of a bank can not contract obligation (take on debt) of any kind or trade, neither directly nor indirectly, with the bank, unless the operation is approved by all the members of the board of directors and board of auditors. Regular provisions as being under obligation to abstain apply.
The same provisions apply to any member of the banking group but in that case an approval by the holding (parent company) is required (Legislative Decree 385 of 1 September 1993).

LUXEMBOURG

In a general way personal loans to the company's directors and officers are allowed. However if granted to directors they create a situation of conflict of interest. The law provides that that situation is to be dealt with in the following way: the director involved must abstain from taking part in the board's deliberation on the subject matter, and its conflict and corresponding abstention must be reported to the next following shareholders' meeting.

NETHERLANDS

No provision prohibits the granting of personal loans to members of the supervisory board.[16] In case a company, its subsidiary company or companies of whom it consolidates the financial data, has made a payment to members of the supervisory board in the form of a personal loan, the company has to report the amount of personal loans of every member of the supervisory board in the explanatory notes to the annual financial statements. Reported shall be the amounts still due, the interest rate, the main other stipulations and the repayments during the financial year (article 2:383e BW).

PORTUGAL

No. Article 397 of the Companies Code prohibits companies from extend loans or any kind of credit facility to members of the board of directors.

SPAIN

There is not a specific legal provision in Spain about the subject. Therefore, it should be studied case by case taking into consideration the conditions and disclosure of the personal loan and its treatment it the balance sheet and in the profit and loss account.

SWEDEN

The Companies Act (ABL) contains a very complicated ban on loans to directors. These rules have their origin in Swedish tax law, but the simple answer is that loans to directors are forbidden.

UNITED KINGDOM

Detailed and complex rules are applied to the provision of personal loans to directors under Companies Act 1985 s330 in order to prevent abuse. In essence, companies cannot make a loan to a director, guarantee a loan to a director, provide security for such a loan, or enter into a credit transaction with a director. The prohibition extends to the company's holding company and covers any transactions of a similar nature with persons "connected" with the director. Some exemptions are provided (see also Q2.6).

Criminal sanctions follow a breach of s330 (Companies Act s342): a director of a relevant company who authorises or permits the company to enter into a prohibited transaction, knowing , or having reasonable cause to believe the company was breaching s330, is guilty of an offence. Under s341, the transaction is voidable by the company, unless restitution is impossible, a third part has acquired an interest, or the company has been indemnified. The director concern and any director who authorised the transaction is liable to account to the

[16] Neither there exists provisions prohibiting the granting of personal loans to members of the supervisory board (see also paragraph 4.3).

company for any gain made directly or indirectly from the transaction, and to indemnify the company for any loss or damage.

4. Executive Directors' Remuneration

4.1 Who fixes the executive directors' remuneration? What are the relevant procedures? Are shareholders required to approve directors' remuneration, the remuneration policy, or the remuneration report (see question 2) on an annual or other basis?
(In two-tier systems, please refer to the management board.)

AUSTRIA
The remuneration of the members of the management board is fixed by the supervisory board which shall guarantee that the compensation is proportional to the scope of the member's tasks and the economic situation of the company. Compensation consists of a fixed salary and a performance-linked component (section 78 Stock Corporation Act, CG Code 27). The shareholder meeting is required to approve directors' remuneration (see question 4.4).

BELGIUM
Executive directors' remuneration is fixed by the board (within the limits of the decision of the shareholders meeting). In practice, the remuneration is agreed before the executive enters into function, by the board: this would not trigger the rules on conflicts of interest, as the executive is not yet a directors. Once he has been appointed director, the rules on conflicts will apply. The latter is important if the board wants to grant perks, options, etc. Sometimes, with stock options, the decided is therefore submitted to the general meeting, as in that case the cumbersome rules on conflicts are not applicable.

DENMARK
The remuneration of the management board is fixed by the board of directors. Typically, the board of directors will enter into a contract with each member of the management board in which the remuneration is stipulated. No particular procedures apply, and shareholders are generally not required to approve the policy or any specific remuneration. However, an exception applies in the event a remuneration program requires a change of the company' s articles of association in which case the program would have to be approved by the general meeting of shareholders. Consequently, warrant programs require the approval of the general meting. Similarly, the approval of the general meeting of shareholders would have to be obtained if the program requires that the company buy back its own shares (treasury shares).

FINLAND
The company does not have a supervisory board:
Remuneration paid to members of the board in that capacity: the general meeting who also elects at least the majority of the members to the board of directors. The general practice has been that the general meeting decides on the remuneration to the board members even though it is not stipulated in the Companies Act. The principle is included in working documents of the Companies Act.

Remuneration paid to members of the board in the capacity of employees: the board, the managing director, any other person having authority depending on the seniority of the employee in question.
Finnish company law does not distinguish between executive members of the board of directors and non-executive members. However, Recommendation stresses that the compensation committee is designed to improve the effective handling of matters relating primarily to the appointment and compensation of the managing director and other executives (Recommendation 34).

FRANCE

One-Tier System

The executive directors' remuneration is fixed by the board of directors on a proposal by the compensation committee (*Code de Commerce*, Art. L.225-45, L.225-47 and 225-53, *Décret* n. 67-236, Art. 93, *Code Bouton, p.13 and s.*).

Two-Tier System

See para. 3.1.
The "*directoire*" members' remuneration is fixed by the supervisory board when they are appointed on a proposal by the competition committee (art. L. 225 63).
The information related to compensation is included in the annual report presented every year by the board of directors to shareholders' general meeting.
There is no obligation of a specific approval of the remuneration by shareholders.

GERMANY

The remuneration of the members of the management board is fixed by the supervisory board at an appropriate amount based on a performance assessment in considering any payments by group companies. Criteria for determining the appropriateness of compensation are, in particular, the tasks of the respective member of the management board, his personal performance, the performance of the management board as well as the economic situation and the performance and outlook of the enterprise taking into account its peer companies (section 87 Stock Corporation Act; Cromme Code 4.2.2). Nevertheless, if the condition of the company deteriorates to such a substantial extent that continuation of payment of the remuneration originally fixed would constitute a hardship for the company, the supervisory board shall be authorized to make a reasonable reduction. The reduction shall not affect the other terms of the contract of employment (section 87 Stock Corporation Act).
The supervisory board may delegate this issue (not the appointment or the revoke of appointment of the members of the management board, section 107 (3) 2 Stock Corporation Act) to a committee.
According to section 119 (2) Stock Corporation Act the general meeting may decide on matters concerning the management of the company only if requested by the management board. On the other hand, if the management board is to be remunerated in stock options, the general meetings' power to raise capital will have to be taken into account.

GREECE

There are no specific provisions about the executive directors' remuneration. Regarding the approval by the general meeting see above, 1.1 and 3.1.

IRELAND

(a) Procedures

(i) Company Law

Note: The rules broadly track the UK position, although the Irish Table A (statutory default form of Articles of Association) does not provide for an equivalent of art 85 (the power of the board of directors to set remuneration with respect to particular executive functions). Such a power is granted under art 110, but only in respect of the managing director. Because of this, slightly more information is given here, than in the UK Questionnaire, on the procedures applicable to company resolutions on the fixing of remuneration.

As part of the company law rule that directors' may not make a profit from their activities as directors unless this has been expressly sanctioned by the company (the secret profit rule), the director of a company does not have a right to remuneration for services performed for the company, unless its payment has been provided for in the company's constitutional documents or approved by its members (***Hutton v West Cork Railway Co*** (1883) 23 ChD 654).

In practice, however, is it is standard for directors' remuneration to be covered in the articles of association. Where the statutory form is adopted (Table A), as noted in Q3 above, art. 76 provides that the directors are entitled to such remuneration as the company may, by ordinary resolution, determine.

Where the articles of association provide how remuneration is to be determined, the court will not usually make a determination of its own with respect to remuneration, by, for example, granting an "equitable allowance" (***Guinness plc v Saunders*** [1990] 2 AC 663). As a result, where a company has adopted Table A, art. 76 and where the members do not determine remuneration, the directors are not entitled to receive any remuneration. In certain circumstances the courts may grant a *quantam meruit* payment on the basis of an implied obligation to pay arising from the performance and acceptance of services (***Craven-Ellis v Canons Ltd*** [1936] 2 KB 403).

A company will usually also, however, adopt a provision in its articles providing that a director can be appointed to an executive office carrying particular executive responsibilities in excess of what would normally be expected of a director, and thus paid a salary in respect of those functions. Art. 110 of Table A provides that: "the directors may from time to time appoint one or more of themselves to the office of managing director for such period and on such terms as to remuneration and otherwise as they think fit…."

Therefore, where art. 76 and art 110, are adopted by the company (as would be common as they are the statutory form), the shareholders in general meeting determine the fees of directors as director but the board of directors determines the remuneration of the managing director. Where the company sets remuneration under art 76, it is usual for this business to be regarded as "ordinary business" of the annual general meeting, and thus not in need of disclosure under Table A art 51 as to its "general nature" in the notice convening the meeting (failure to make the disclosure renders resolutions concerned with special business invalid and ineffective ***Roper v Ward*** [1981] ILRM 408, 415). Art 53 lists the type of business covered at an annual general meeting which is to be regarded as ordinary (eg re-appointment of auditors) and is commonly amended by companies in Ireland to include, as ordinary business, directors' remuneration. Under s141(8) of the Companies Act 1963, a resolution in writing signed by all the members for the time being entitled to attend and vote on the resolution is valid and effective as if it had been passed at a general meeting. In the English case of ***Re Duomatic*** [1969] 2 Ch 365 however, directors paid themselves remuneration without obtaining the formal approval of the general meeting, as required by the articles. For one of the years in question, two directors, who were also the only shareholders with voting rights, signed the accounts which showed the remuneration. This was regarded by the courts as a resolution in general meeting, but it is not clear whether this would suffice in Ireland, given s141(8). In a second year, the accounts were neither drawn up nor approved, but all the voting shareholders informally agreed on remuneration for a director. This was found to be sufficient authorisation but, again, the absence of a formal resolution suggests that it would not be sufficient in Ireland.

It should be noted that excessive remuneration, where Table A is adopted, cannot be struck down as ultra vires the company (***Re Halt Garage 1964 Ltd*** [1982] 3 All ER 1016). With respect to the power of the general meeting in this regard (as under art 76), it has been stated that: remuneration "whether it be mean or generous, must be a matter of management for the company to determine in accordance with its constitution which expressly authorises payment for directors' services. Shareholders are required to be honest but…there is not a requirement that they must be wise and it is not for the court to manage the company" (***Re Halt Garage***, 1039). Similarly, with respect to the power of the Board of Directors in this area, the court found in ***Guinness v Saunders***: "The shareholders…run the risk that the board may be too generous to an individual director at the expense of the shareholders but the shareholders have…..chosen to run this risk and can protect themselves by the number, quality and impartiality of the members of the board who will consider whether an individual director deserves special reward"(***Guinness plc v Saunders*** 686).

(ii) Listing Rules/Combined Code
As for UK Questionnaire Q4.1(a)(ii).

(b) Approval
As for UK Questionnaire Q4.1(b)(ii) (4.1(b)(i) does not apply).

ITALY

The board of directors shall determine, after examining the proposal of the remuneration committee and consulting the board of auditors, the remuneration of the managing directors (and of those directors who are appointed to particular positions within the company) and, where the shareholders' meeting has not already done so, allocate the total amount to which the members of the board and of the executive committee are entitled (Corporate Governance Code art. 1.2).
The remuneration of the members of the management board is fixed by the supervisory board or, where permitted by the articles of association, by the shareholders' meeting (Civil Code new article 2409-terdecies).
The Corporate Governance Code does not yet cover the one-tier and two-tier systems adopted by the Reform.

LUXEMBOURG

The executive directors' remuneration is fixed by the board of directors.
In case the board delegates to one of its members the day to day management of the company, which customarily boards do, the law requires that the amount of remuneration paid to such director(s) be disclosed to the annual shareholders meeting which is to approve the annual accounts.
It is quite common that that remuneration is fixed in an employment agreement between the company and the executive director concerned.
That agreement is governed by the provisions of labour law.

NETHERLANDS

Article 2:135 BW provides that, unless the articles of association constitute otherwise, the remuneration of the management board is fixed by the general meeting of shareholders. As mentioned already in 1.1, the articles of association usually assign the authority to set the remuneration of the management board to the supervisory board.
The remuneration of members of the management board is determined bilaterally in a contract between company and board. The company can be represented in that contract by another

body than the board. According to some, it is not yet clear whether the body that, based on article 2:135 BW, is authorized to fix remuneration, can alter this remuneration by itself. It is argued as well that unilateral alteration is only possible for as far as the contract between company and director permits this.
At present there is no legal obligation to have the remuneration of directors and the remuneration policy (annually) approved by shareholders. The general meeting of shareholders does have the authority to adopt or approve the financial statements. Implicitly, the general meeting of shareholders therewith has the opportunity to review the remuneration and the remuneration policy of the directors. The government has indicated that it plans to introduce a right of approval for shareholders concerning directors' remuneration policy in general and directors' remuneration through stock options specifically.

PORTUGAL

See above 3.1.
In addition, please note that according to article 376 of the companies Code the annual report (hence, the report on corporate governance) elaborated by the management is subject to shareholders approval.

SPAIN

The corporate body in charge of fixing the Executive Directors' remuneration in Spain is the Shareholders' Meeting. Shareholders are not required to approve Directors remuneration periodically, but only by means of establishing remuneration in the company's articles (Section 130 of the LSA). In any case, the articles contain only the basic system of remuneration, and, therefore, the board of directors sets the concrete terms for remuneration of directors.

SWEDEN

In a Swedish company limited by shares there is only one executive director – the managing director. The managing director's remuneration is proposed and decided by the board of directors – some boards have a compensation/remuneration committee, comprised of a number of board members, even though it is not mandatory. The GM is not involved in the managing director's remuneration.

UNITED KINGDOM

(a) Procedures

(i) Company Law

As part of the company law rule that directors' may not make a profit from their activities as directors unless this has been expressly sanctioned by the company (the secret profit rule), the director of a company does not have a right to remuneration for services performed for the company, unless its payment has been provided for in the company's constitutional documents or approved by its members (***Hutton v West Cork Railway Co*** (1883) 23 ChD 654).
In practice, however, is it is standard for directors' remuneration to be covered in the articles of association. Where the statutory form is adopted (Table A), as noted in Q3 above, art. 82 provides that the directors are entitled to such remuneration as the company may, by ordinary resolution, determine.

Where the articles of association provide how remuneration is to be determined, the court will not make a determination of its own with respect to remuneration, by, for example, granting an "equitable allowance" (***Guinness plc v Saunders*** [1990] 2 AC 663). As a result, where a

company has adopted Table A, art. 82 and where the members do not determine remuneration, the directors are not entitled to receive any remuneration.
A company will usually also, however, adopt a provision in its articles providing that a director can be appointed to an office carrying particular executive responsibilities in excess of what would normally be expected of a director, and thus paid a salary in respect of those functions. The statutory form of articles of association, Table A, provides, for example, in art. 84, that: "the directors may appoint one or more of their number to the office of managing director or to any other executive office in the company…and they may remunerate any such director for his services as they see fit".
Therefore, where art. 82 and art. 84 are adopted by the company (as would be common as they are the statutory form), the shareholders in general meeting determine the fees of directors as director but, more importantly, the board of directors determines the remuneration of executive directors.
The directors may remunerate any executive director as they think fit. Normally such remuneration (whether by way of salary, commission, participation in profits, or partly in one way or partly in another) will be fixed in the service contract of the director in question. Where, however, the procedures set out in the articles is not followed, for example because the contract is entered into by a committee of the board in circumstances in which this power has not been delegated to the committee, the resulting contract will be void for want of authority and the normal equitable rule will re-assert itself (***Guinness plc v Saunders*** [1990] 2 AC 663). Directors must, however tailor remuneration to the company's resources. Failure to do by a director can provide evidence of unfitness and be a ground for a disqualification order (***Secretary of State for Trade and Industry v Van Hengel*** [1995] 1 BCLC 545).

(ii) Listing Rules/Combined Code
Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration (Combined Code B.2).
The remuneration committee should make recommendations to the board, within agreed terms of reference, on the company's framework of executive remuneration and its cost and should determine on behalf of the board of directors specific remuneration packages for each of the executive directors (Combined Code B.2.1). More generally, the chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration, in the same way as for other matters (Combined Code B.2.6)

(b) Approval
(i) Companies Act 1985
For financial years ending December 31 2002, under general company law, the Directors' Remuneration Report must be laid before the general meeting of the company before which the company's account for the relevant financial year are to be laid, for the approval by the general meeting via an ordinary resolution (Companies Act s241A (3)). As discussed in Q2.3, the Report sets out disclosure on individual directors' remuneration as well as on general remuneration policy and performance standards.

(ii) Listing Rules/Combined Code
Under the Combined Code, the board's annual remuneration report to shareholders need not be a standard item of agenda for Annual General Meetings. But the board should consider each year whether the circumstances are such that the Annual General Meeting should be invited to approve the policy set out in the report and should minute their conclusions (Combined Code B.3.5).
Note: This recommendation should now be read in light of the new 2002 company law requirements with respect to the Remuneration Report.

Shareholders should be invited specifically, and in some cases are required (see Q4.4), to approve all new long term incentive schemes save in the circumstances permitted by the Listing Rules (Combined Code B.3.4; Listing Rules 13.13).

4.2 Is the board required, or recommended as best practice, to create a remuneration committee?

AUSTRIA
The board is not required to create a specific remuneration committee. The Code (CG Code 39) generally provides that the supervisory board shall set up expert committees from among its members depending on the specific circumstances of the enterprise and the number of supervisory board members. It is then specified that the supervisory board shall set up an accounting committee (audit committee) irrespective of statutory regulations and responsible for the accounting and auditing issues of the company and of the group (40); a strategy committee, which shall prepare decisions of fundamental significance in cooperation with the management board, and if necessary also consult with experts, and present these decisions to the entire supervisory board (42); and a human resources committee, also responsible for the remuneration of the management board (CG Code 43).

BELGIUM
A recommendation as best practice exists. It is increasingly practised.
The recommendations concerning Corporate Governance for listed companies (established by Euronext Brussels and the BFC) state: "The executive management's pay should be subject to the recommendations of a remuneration committee, where such exists, made up of a majority of non-executive directors. In case no remuneration committee is created, the board of directors should decide on the principles of the remuneration of the executive management, in the absence of the executive directors".
The committee is a committee of the board and should report to the board.

DENMARK
No, please see 2.3. above.

FINLAND
The Recommendation provides that the board may establish a compensation committee to improve the transparency and systematic functioning of the compensation systems of the company. The company reports the composition of the committee (Recommendation 34 and 26).

FRANCE
The board of directors can create special committees for specific purposes (*Décret* n. 67-236, Art. 93).
The *Codes* recommend the creation of a remuneration committee (*See Code Bouton*, p. 14).

GERMANY
The Cromme Code does not expressly require to create a remuneration committee, but indicates that this is good practice for many corporations. Depending on the specifics of the enterprise and the number of its members, the supervisory board shall form committees (5.3.1 Cromme Code) and the subjects which can be delegated to and handled by one or several committees include the compensation of the members of the management board (Cromme

Code 5.3.3). Furthermore, the Code (4.2.2) refers to a committee dealing with management board contracts, on which proposal the full supervisory board shall discuss and regularly review the structure of the management board compensation system.

GREECE

A legal obligation to create such a committee does not exist.

IRELAND

As for UK Questionnaire Q4.2.

ITALY

Yes, the board is recommended to create a remuneration committee (Corporate Governance Code art. 8.1).

LUXEMBOURG

The board is not required to create a remuneration committee. However in large companies, whether listed or not, the setting up of such a committee becomes more and more common. For listed companies it is strongly recommended by the LSE.

NETHERLANDS

There is no legal requirement to set up a remuneration committee. However, the 1997 Peters report recommends forming a remuneration committee out of members of the supervisory board. This committee ought to deal with (i) the periodical evaluation of the remuneration scheme, (iii) the periodical evaluation of option rights, pension rights, redundancy pay plans, and other remunerations to be granted, (iii) the periodical evaluation of liability insurances.
The remuneration committee reports its findings and makes recommendations to the full supervisory board. The existence of a remuneration committee should be reported in the annual financial report, according to the 1997 recommendations. It is expected that the 2003 Corporate Governance Committee will elaborate on the role of the remuneration committee and its membership.

PORTUGAL

No. As mentioned before, the Companies Code determines that shareholders shall always, even if indirectly in case the company adopts a two-tier structure, set director's remuneration.
Regarding the distribution of the remuneration among directors, to the moment there are no specific rules or recommendations applicable.

SPAIN

It is considered best practice that the Board of Directors creates a remuneration committee.
See footnote 6 in page 3 relative to the recommendations settled by the Olivencia Report in relation to the remuneration committee.
The Aldama Report recommends listed companies in Spain to establish a remuneration committee called "*Comisión de Nombramientos y Retribuciones*" whose members should be designated by the Board of Directors from the non executive Directors, following the

proportion of non executive Directors (Domanial and Independent) that exists in the Board of Directors. Executive Directors will not be able to be members of the remuneration committee.
There are not special procedures for the appointment of independent non-executive Directors.
The main purpose of this remuneration committee is to report to the Board of Directors about appointments, re-elections, dismissals and remuneration of the Board of Directors and its members, as well as about the general policy on remuneration and incentives for the Board of Directors, its members, and the senior management.
There are no recommendations about how the committee should operate.
Finally, the Aldama Report states that the Board of Directors will pass specific rules for the remuneration committee, which will be included in the Board of Directors Regulation "*Reglamento del Consejo de Administración*". See answer to point 1.1 in relation to the Aldama Report recommendations regarding the remuneration committee.

SWEDEN

No, but some boards have created remuneration committees anyway. There are no special legal rules for board committees in Swedish company law.

UNITED KINGDOM

Yes. The board of directors should set up a remuneration committee to avoid potential conflicts of interest. The committee should operate within agreed terms of reference and make recommendations to the board on the company's framework of executive remuneration (Combined Code B.2.1).

If yes, please specify:

(i) the committee's composition (if independent directors should be appointed to this committee, please give the relevant definition and indicate whether any special procedures apply to the appointment of independent non-executive directors)

AUSTRIA

The chairperson of human resources committee shall always be the chairperson of the supervisory board. Where supervisory boards have fewer than six members (including employees' representatives) this function may be assumed jointly by all members. The human resources committee may be identical with the strategy committee. The Code (note 3) provides that the rights of co-determination of employees' representatives shall apply to all committees of the supervisory board, but the only committee that may be set up without employees' representatives is the committee responsible for the employment contracts with the management board members.

BELGIUM

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DENMARK

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FINLAND

The board elects from among the directors the members and the chairman of the committee. The managing director and other executives must not be members of the compensation committee. The independency[17] of directors is not specifically recommended but should be assessed and reported. (Recommendation 35, 25 and 18[17]).

FRANCE

The remuneration committee should not include any corporate officers *(mandataires sociaux*) and should include a majority of independent directors. (*Code Bouton*, p. 14).

A director is independent when he or she has no relationship of any kind whatsoever with the corporation, its group or the management of either that is such as to colour his or her judgment. (*Code Bouton*, p. 9).

The *Bouton Report* enumerates criteria that the committee and the board should examine in order to determine whether a director can be called independent and help avoid the risk of conflict of interests between the director and executive management.

Concerning the appointment of independent directors, the *Code Bouton* recommends that the board of directors should always create a nominating committee, that may or may not be distinct from the remuneration committee, which "should organize a procedure designed to select future independent directors, and carry out its own research on potential candidates before they have been approached in any way" (*Code Bouton*, p. 17).

The board of directors should review on a case by case basis the situation of each member with regard to the criteria mentioned above, then make know to the shareholders, in the annual report and at any general meeting of shareholders at which any directors are to be elected, the results of its review, so that the designation of independent directors is not carried out only by the company's executive management but by the board itself (*Code Bouton*, p. 8).

GERMANY

All members of the supervisory board are independent according to German law. Independence means that the members of the supervisory board can't be members of the management board. Also former members of the management board or employees may be member of the supervisory board. According to the Cromme Code (5.4.2) not more than two former members of the managing board shall be members of the supervisory board and members of the supervisory board shall not

[17] A director is not independent of the company if he (i) has an employment relationship with, or holds a position in, the company; (ii) has had an employment relationship with, or held a position in, the company during the last three years prior to the inception of the board membership; (iii) receives from the company or from a member of its operative management not insignificant compensation for services or other advice not connected with the duties of the board, e.g. if the director works on consulting assignments for the company; (iv) belongs to the operative management of another company, and the two companies have a customer, supplier or cooperation relationship significant to the other company; (v) belongs to the operative management of another company whose director is a member of the operative management in the first company (interlocking control relationship). In addition, the board can on the basis of its overall evaluation determine that a director is not independent of the company if he (vi) participates in a performance-based or share-related compensation system of the company. The financial significance of the compensation system shall be taken into account; or (vii) the company is aware of other factors that may compromise the independence of the director and the directors ability to impartially represent all shareholders. Furthermore, a director is not independent of a significant shareholder of the company if he (viii) exercises dominant influence such as referred to in Chapter 1, Section 3 of the Companies Act1, in the company, or has a relationship such as referred to in sub-sections a) - b) above to a party who exercises dominant influence in the company; or (ix) is a significant shareholder of, or has a relationship such as referred to in sub-sections a) – b) above to, a significant shareholder of the company. Significant shareholder means a shareholder who holds at least 10 % of all the shares or of the aggregate votes in the company.

exercise directorship or similar positions or advisory tasks for important competitors of the enterprise.
Besides, committees that handle contracts with members of the management board shall be chaired by the chairman of the supervisory board (Cromme Code 5.2).

GREECE

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IRELAND

As for UK Questionnaire Q4.2(i).

ITALY

The Corporate Governance Code provides that the majority of the remuneration committee's members are non-executive directors. Therefore, also executive directors can be members of the committee. However, they will abstain from voting on resolutions concerning their own remuneration. As a matter of practice, in some companies most of the remuneration committee's members are independent[18], in the sense that they have no material relationships with the company which may influence their autonomous judgement (Corporate Governance Code artt. 3.1, 8.1).

LUXEMBOURG

It comprises one or more independent directors, being directors who do not directly represent the controlling shareholder(s). No special procedures apply to the appointment of independent non-executive directors; they would be selected by the controlling shareholder(s) though they would be independent.

NETHERLANDS

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PORTUGAL

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SPAIN

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SWEDEN

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UNITED KINGDOM

Remuneration committees should consist exclusively of non-executive directors who are independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement (Combined B.2.2).

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[18] A director is independent if he has, or has recently had, no direct or indirect business relationships, also on behalf of third parties, with the company, its subsidiaries, the executive directors or the shareholder or group of shareholders who controls the company of a significance able to influence his autonomous judgement; furthermore he should not own, directly or indirectly or on behalf of third parties, a quantity of shares enabling him to control the company or exercise a considerable influence over it nor participate in shareholders' agreements to control the company; he is also not allowed to have immediate family relations with members of executive directors of the company or of persons in the situations referred above (Combined Code 3.1).

(ii) the committee's competences and which company body it reports to

AUSTRIA

The human resources committee shall deal with human resources issues of the management board members and also with successor planning. The human resources committee shall decide on the content of employment contracts with management board members and on their compensation. Moreover, the human resources committee shall be responsible for reaching decisions on any sideline business of management board members.

BELGIUM

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DENMARK

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FINLAND

The board defines the duties of the compensation committee, which regularly reports on its work to the board (Recommendation 36 and 22).

FRANCE

The main task of the remuneration committee concerns the determination of the performance-related directors' compensation. It should fix general rules for the determination of this part of the directors' remuneration and verify every year if these rules are followed by the board of directors. The *Code Bouton* recommends that the general policy governing the granting of options be discussed within the remuneration committee and that this committee issue recommendations to the board of directors. This policy, which should be reasonable and suited to the needs of the company, should be presented in the annual report and during a general meeting of shareholders when a resolution on the granting of stock options is on the agenda (*Code Bouton*, p. 16).

A recent Report of MEDEF Committee on Business Ethics recommends to Remuneration Committees that the compensation paid to corporate officers (*mandataires sociaux*) "must at all times be justified and justifiable in view of relevant criteria: competitive practices in the industry concerned, international comparisons for multinational enterprises, enterprise's size and complexity, etc. and must take into consideration risks incurred, knowing that each employee is facing risks. The compensation policy must thus be moderate, balanced and fair and must strengthen solidarity within the enterprise. Vis-à-vis shareholders, it is also necessary to prove that compensation is fair and duly justified" ("*Chairman and Chief Executive Officer and Executive Directors compensation, Report of MEDEF, Committee on Business Ethics*", May 2003, p. 2).

Further, the committee should be kept informed of policy governing remuneration of the main executive managers who are not corporate officers. Naturally, the committee may call upon the participation of the corporate officers in this area. (*Code Bouton*, p. 15).

GERMANY

The committee may not appoint or revoke the appointment of members of the management board (section 107 (3) 2 Stock Corporation Act), but the supervisory

board may delegate to a committee to prepare the appointment of members of the management board which also determines the conditions of the employment contracts including compensation (Cromme Code 5.1.2). In general, the supervisory board can arrange for committees to prepare supervisory board meetings and to take decisions in place of the supervisory board (Cromme Code 5.3.4).
The Cromme Code (5.3.1) generally provides that the chairman of each committee reports regularly to the supervisory board on the work of the committee.

GREECE
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IRELAND
See Q4.2.

ITALY
The committee submits proposals to the board for the remuneration of the managing directors and of those directors who are appointed to particular positions and for the criteria to be used in determining the remuneration of the company's senior management (Corporate Governance Code art. 8.1).

LUXEMBOURG
The committee will either make proposals to the board or, if so entrusted by the board, directly fix the remunerations and report to the board.

NETHERLANDS
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PORTUGAL
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SPAIN
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SWEDEN
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UNITED KINGDOM
See Q4.2(a).

(iii) how the committee operates

AUSTRIA
It is generally provided (CG Code 39) that the committees shall serve to improve the efficiency of the work of the supervisory board and shall deal with complex issues. Each chairperson of a committee shall report periodically to the supervisory board on the work of the committee. The supervisory board shall ensure that a committee has the authorisation to take decisions in urgent cases.

BELGIUM
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DENMARK

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FINLAND

The board approves a written charter for the committee's work and describes its essential content (Recommendation 23).

FRANCE

The remuneration committee should set internal rules and submit them to the approval of the board of directors. It should report periodically to the board.
The directors' annual report (to the shareholders) should contain an exposition of the remuneration committee activity (*Code Bouton*, p. 14).

GERMANY

The committee is a part of the supervisory board and the procedure is the same. The single rule providing the way all the committees shall operate refers to the committee chairmen, who are called to report regularly to the supervisory board on the work of the committee (Cromme Code 5.3.1, see also section 107 (3) 3 Stock Corporation Act).

GREECE

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IRELAND

As for UK Questionnaire Q4.2(iii).

ITALY

The committee may employ external consultants at the company's expense (Corporate Governance Code art. 8.1).

LUXEMBOURG

The committee operates according to internal rules which would be set by the board or by the committee itself pursuant to a delegation from the board.

NETHERLANDS

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PORTUGAL

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SPAIN

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SWEDEN

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UNITED KINGDOM

The remuneration committee should consult the chairman and/or managing director about its proposal relating to the remuneration of other executive directors

and have access to professional advice inside and outside the company (Combined Code B.2.5).

With regard to remuneration policy, the remuneration committee should provide the packages needed to attract, retain and motivate executive directors without paying more than is necessary for this purpose, and should be aware what comparable companies are paying and take account of relative performance (Combined Code B.1.1). Remuneration committees should judge where to position their company relative to other companies. They should be aware what comparable companies are paying and should take account of relative performance. But they should use such comparisons with caution, in view of the risk that they can result in an upward ratchet of remuneration levels with no corresponding improvement in performance (Combined Code, B.1.2). Remuneration committees should be sensitive to the wider scene, including pay and performance conditions elsewhere in the group, especially when determining annual salary increases (Combined Code B.1.3).

The performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels (Combined Code B.1.4).

4.3 Which types of remuneration are permitted?

AUSTRIA

According to section 78 Stock Corporation Act the aggregate remuneration of any member of the management board comprises salary, profit participation, reimbursement of expenses, insurance premiums, commissions and additional benefits of any kind. Furthermore the Code provides that compensation consists of a fixed salary and a performance-linked component. The performance-linked component shall be geared, above all, to long-term performance measurements. These principles shall also apply to the compensation paid to senior management accordingly (CG Code 27).

BELGIUM

All the types of remuneration referred to *infra* are permitted. For warrants, specific rules exist (special report of the board of directors). The rules about conflicts of interest also have to be complied with (when applicable). In practice, due to high taxation, it often happens that part of the salary is paid abroad, often by a subsidiary. The practice is recognized in tax law, if proportionate to foreign activity.

DENMARK

Please see 3.2. above.

FINLAND

As a rule, all of these types of remuneration may be permitted under some circumstances. One must nevertheless take into account the basis of remuneration (e.g. remuneration for board membership v remuneration on the basis of service contract), the party granting remuneration (e.g. a shareholder or a third party v the company) and the type of remuneration (e.g. rights to subscribe for new shares v money).

In theory, discounted stock options may be used under some circumstances. However, the pre-emptive subscription rights of existing shareholders and the requirement of a weighty financial reason to deviate from that right (see below) and on the other hand, the general principles of company law protecting shareholders and a company from unjust benefits permit the use of discounted stock options only rarely. According to one view, discounted stock options may be used for the benefit of the personnel but discounted stock options will be very difficult to apply in practice.

FRANCE

See *infra* for each type of remuneration.

GERMANY

Neither the Cromme Code nor the German Stock Corporation Act expressis verbis restrict the types of remuneration. According to section 87 Stock Corporation Act the aggregate remuneration of any member of the management board comprises salary, profit participation, reimbursement of expenses, insurance premiums, commissions and additional benefits of any kind. In the Cromme Code (4.2.3) it is furthermore specified that the overall compensation of the members of the management board shall be comprised of a fixed salary and variable

components. Variable compensation should include one-time and annually-payable components linked to the business performance as well as long-term incentives containing risk elements, and all compensation components must be appropriate, both individually and in total. In particular, company stocks with a multi-year blocking period, stock options or comparable instruments (e.g. phantom stocks) serve as variable compensation components with long-term incentive effect and risk elements. Stock options and comparable instruments shall be related to demanding, relevant comparison parameters. Changing such performance targets or the comparison parameters retroactively shall be excluded. For extraordinary, unforeseen developments a possibility of limitation (Cap) shall be agreed for by the Supervisory Board.
Pension payments, ruled in section 87 (1) 2 Stock Corporation Act, are common.

GREECE

See 3.1. All the infra are generally permitted. About the stock option program: such a program for the members of the board of directors and the employees of the company and its subsidiaries may be adopted by a resolution of the statutory general meeting in the form of on option to purchase shares. A summary of this resolution has to be published and it must include provisions about the maximum number of shares to be issued which may not exceed the 1/10 of the existing shares, the purchase price and other conditions while all other relevant details are determined my a resolution of the board of directors (section 13 of the Law 2190/1920). Furthermore section 16 of the Law 2190/1920 provides that the company may acquire its own shares with the purpose of distributing them to its personnel or to the personnel of its subsidiaries. Such distributions must be effected within 12 months from the date of the acquisition, otherwise they must be sold within the next year.

IRELAND

As for UK Questionnaire Q4.3, with reference to Companies Acts 1963-99, rather than Companies Act 1985, and to Table A, art 76 for Table A, art 83. Expenses are specifically excluded from the ban on loans to directors by Companies Act 1990, s36. The power of the Board of Directors to grant pensions is covered by Table A, art 90.

ITALY

See *infra* for each kind of remuneration.

LUXEMBOURG

Obviously the first type of remuneration will be in form of cash.
Executive directors will normally be entitled to cash bonuses.
In large companies, whether listed or not, it becomes more and more common that they be granted stock options, more exceptionally stock grants.
Profit sharing in one or the other way is also practiced. The amount of cash bonus normally takes into account the profit generated during the past financial year.
Benefits in kind are not common, though executives may be entitled to the use of a company car, free accommodation for the executive and his family, etc.

NETHERLANDS

There are no legal restrictions on the types of remuneration which can be granted. In case the directors' remuneration consists of different types of remuneration, the amount of remuneration should be split into categories of remuneration per director and should be

reported in the explanatory notes to the annual financial statements (article 2:283c BW, see also paragraph 1.2).

PORTUGAL
Under Portuguese company law all the infra mentioned types of remuneration are allowed. CMVM, in its best practice code, recommends that part of the remuneration of the members of the board, in particular of members involved in current management, depend on the results of the company.

SPAIN
There are no legal provisions in Spain as to what types of remuneration are allowed for the Board of Directors. All types of remuneration are possible.

SWEDEN
There are no restrictions on different types of remuneration, but the different types may demand different types of decision making, i.e. involving the GM.

UNITED KINGDOM
Many types of remuneration are permitted, including benefits in kind, annual and deferred bonuses, share options, stock grants and long term incentive schemes, termination payments, and defined benefit schemes (Companies Act 1985 passim; Listing Rules 12.43A, 13.13; Combined Code passim).
For companies who adopted Articles of Association in the statutory form, Table A, Art 83 expressly authorises the payment of all travelling, accommodation and other expenses incurred by directors in connection with the pursuit of their duties.

In answering, please consider each of the following:

(a) bonuses

AUSTRIA
There are no specific requirements.

BELGIUM
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DENMARK
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FINLAND
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FRANCE
There are not provisions concerning bonuses. However, the Report of MEDEF Committee on Business Ethics describes bonuses as a component of corporate officers compensation, not related to the share price, which rewards short-term performance

and progress made by the enterprise in the short or medium term. The Report recommends that the relationship between bonuses and salary must be clear and be defined either as a warning signal requiring a renegotiation between the parties or as a cap related to the base salary. The bonus may be awarded on the basis of quantitative and qualitative criteria, common to the entire management team, that must always be specific and predetermined ("*Chairman and Chief Executive Officer and Executive Directors compensation, Report of MEDEF, Committee on Business Ethics*", May 2003, p. 4-5).

GERMANY
Yes (one-time payable components). See Cromme Code 4.2.3. Furthermore, according to section 87 (1) 1 Stock Corporation Act (additional benefits of any kind) different forms of bonuses may be chosen but a critical view is taken to bonuses who refer to the sales of the corporation.

GREECE
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IRELAND
As for UK Questionnaire Q4.3(a).

ITALY
They are permitted, as also shown by the fact that the required disclosure on directors' remuneration must include also bonuses (Consob Regulation 11971/1999, Annex 3C, Scheme 1).

LUXEMBOURG
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NETHERLANDS
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PORTUGAL
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SPAIN
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SWEDEN
Can be decided by the board.

UNITED KINGDOM
Remuneration committees should consider whether the directors should be eligible for annual bonuses. If so, performance conditions should be relevant, stretching, and designed to enhance the business. Upper limits should always be considered and bonuses should not be pensionable (Combined Code Schedule A 1, 7).

(b) stock options, including discounted stock options

AUSTRIA
Yes. See question 4.4. stock grants

Although there are no specific requirements the Code (27) provides that compensation shall consist of fixed salary and not specified performance-linked components.

BELGIUM

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DENMARK

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FINLAND

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FRANCE

The shareholders' general meeting can allowed the board of directors to award stock options to the generality of the employees or to a part of them (*Code de Commerce*, Art. L225-177).

GERMANY

Yes. See Cromme Code (4.2.3) and Stock Corporation Act (section 192).

GREECE

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IRELAND

As for UK Questionnaire Q4.3(b).

ITALY

Stock option or equity based remuneration plans are recommended for listed companies. And, in determining the total remuneration payable to the managing directors, the board of directors of these companies shall provide for a part to be linked to the company's profitability and, possibly, to the achievement of specific objectives laid down in advance by the board of directors itself (Corporate Governance Code artt. 8.1,8.2).

The directors' remuneration can consist of, totally or partially, options on shares to be issued (Civil Code new art. 2389).

Admission to listing in the Star sector of the Italian Stock Exchange is reserved to issuers with high-profile corporate governance and disclosure systems. To gain admission, companies seeking listing have to provide that a significant extent of the remuneration of the executive directors and senior managers be linked to the achievement of individual targets laid down in advance and/or the company's profitability, *inter alia* by means of stock options or profit sharing (Markets Rules art. 2.2.3).

LUXEMBOURG

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NETHERLANDS

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PORTUGAL

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SPAIN

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SWEDEN

Can be decided by the board, unless it involves a new issue of shares, convertibles or warrants or a buy back of shares, when GM approval with a 9/10 majority is required.

UNITED KINGDOM

Remuneration committees should consider whether the directors should be eligible for benefits under long-term incentive schemes. Traditional share option schemes should be weighed against other kinds of long-term incentive scheme. In normal circumstances, shares granted or other forms of deferred remuneration should not vest, and options should not be exercisable, in under three years. Directors should be encouraged to hold their shares for a further period after vesting or exercise, subject to the need to finance any costs of acquisition and associated tax liability (Combined Code Schedule A 2).

Payouts or grants under all incentive schemes, including new grants under existing share option schemes, should be subject to challenging performance criteria reflecting the company's objectives (Combined Code Schedule A 4).

Grants under executive share option and other long-term incentive schemes should normally be phased rather than awarded in one large block (Combined Code Schedule A 3).

Executive share options should not be offered at a discount save as permitted by the Listing Rules (see 4.4) (Combined Code B.1.5; Listing Rules 13.30, 13.31).

(c) stock grants

AUSTRIA

Although there are no specific requirements the Code (27) provides that compensation shall consist of fixed salary and not specified performance-linked components.

BELGIUM

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DENMARK

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FINLAND

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FRANCE

The shareholders' general meeting can allowed the board of directors to award stock grants to the generality of the employees (*Code de Commerce*, Art. L225-187 for the past and *Code du travail*: Art. L. 443-5 and s. since the law of 19 February 2001).

GERMANY

Yes (stock options or comparable instruments serve as variable compensation components with long-term incentive effect). See Cromme Code 4.2.3. Furthermore, according to section 71 Stock Corporation Act acquisition by the company of company shares is allowed to offer the shares for purchase to persons who are in an employment

relationship with the company. The acquisition by the company of company shares is not allowed to offer the shares to members of the management or the supervisory board. Phantom stocks are allowed as a type of remuneration for members of the management and members of the supervisory board.

GREECE
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IRELAND
See Q4.3(b).

ITALY
Stock grants are expressly permitted only to employees (Civil Code art. 2349).
They are allowed to executive directors if they are also employees.

LUXEMBOURG
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NETHERLANDS
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PORTUGAL
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SPAIN
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SWEDEN
GM approval with a 9/10 majority.

UNITED KINGDOM
See Q4.3(b).

(d) profit sharing

AUSTRIA
Yes. Members of the management board may be granted for their services a right to participate in profits. Such participation shall consist of a share in the company's annual profit (section 77 Stock Corporation Act; see also section 78 Stock Corporation Act).

BELGIUM
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DENMARK
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FINLAND
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FRANCE

Labour Code contains provisions concerning a mandatory regime of profit sharing for employees (*Code du travail*, Art. from L442-1 to L442-17).

GERMANY
Yes. According to section 87 Stock Corporation Act the aggregate remuneration of any member of the management board includes profit participation. Section 86 Stock Corporation Act providing particular rules on the management's profit participation has been repealed by section 1 of the Transparency and Disclosure Law 2002 (*Transparenz- und Publizitätsgesetz*).

GREECE
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IRELAND
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ITALY
Profit sharing is expressly permitted (Civil Code art. 2389).
The directors' remuneration can consist of, totally or partially, profit sharing (Civil Code new art. 2389).

LUXEMBOURG
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NETHERLANDS
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PORTUGAL
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SPAIN
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SWEDEN
Can be decided by the board.

UNITED KINGDOM
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(e) benefits in kind

AUSTRIA
Yes (benefits of any kind). See section 78 Stock Corporation Act.

BELGIUM
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DENMARK
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FINLAND

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FRANCE

They are implicitly permitted, on the basis that the required disclosure on directors' remuneration is supposed to include also benefits in kind (*Code de Commerce*, Art. L225-102-1).

GERMANY

Yes. Section 87 Stock Corporation Act names reimbursement of premiums, insurance premiums, commissions and additional benefits of any kind.

GREECE

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IRELAND

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ITALY

They are permitted, as also shown by the requirement that disclosure on directors' remuneration includes benefits in kind (Consob Regulation 11971/1999, Annex 3C, Scheme 1).

LUXEMBOURG

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NETHERLANDS

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PORTUGAL

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SPAIN

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SWEDEN

Can be decided by the board.

UNITED KINGDOM

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4.4 Are there specific rules, including shareholder approval requirements, as to these different types of remuneration?

AUSTRIA

Stock options: If a stock option scheme is proposed, the parameters of comparison to be applied shall be defined in advance and may include, for example, the performance of stock indices, share price targets or other suitable benchmarks. Retroactively changing performance goals (repricing) is to be avoided. All changes are to be disclosed and explained. Blocking periods and exercise periods as well as the timeframe for exercising stock options are to be defined. When defining a stock option scheme, the goal of achieving sustainable value creation by the enterprise shall be kept in mind. Decisions on the introduction of stock option schemes and any changes relating to such schemes shall be taken at the general meeting (CG Code 28).
Section 159 Stock Corporation Act provides that the general meeting may adopt a resolution on a contingent capital increase also to grant rights to members of the management board to new shares. The supervisory board shall then inform the general meeting at least on the principles and the performance that shall be achieved; the number and distribution of the options granted and of the related shares; the essence of the contracts, in particular the exercise price or how such price is to be computed; the transferability of the options; the periods in which the options can be granted and exercised and the period of lock up.
In case of a contingent capital increase to be distributed among members of the management board (as well as members of the supervisory board, employees or senior management) the par value of the share capital can not be more than 20%. On the other hand, if the options are assigned to the management board, employees or senior management the general meeting will then be allowed to fix a total amount.
Besides, section 160 Stock Corporation Act provides that in case of a contingent capital increase the general meeting (majority of not less than three fourths of the share capital represented at the passing of the resolution, although the articles may provide for a larger capital majority and additional requirements) determines the purpose of the contingent capital increase, the persons entitled to subscribe and the issue price on the basis on which such price is to be computed.
If own shares are used for the stock option program, the general assembly will not be competent to decide upon the stock-option program. However, the report described above must be at least disclosed before the supervisory board decides.

BELGIUM

Yes for directors, in principle no for executives. Not even in case of conflict of interest are the shareholders involved.

DENMARK

Please see 4.1. above.

FINLAND

The use of stock options and stock grants are not possible without the consent of the general meeting of the shareholders.
According to Chapter 4 § 2 of the Companies Act, when stock options are issued the existing shareholders shall have the pre-emptive subscription rights to stock options and it is only the general meeting of the shareholders who has right to decide on the deviation from that right. In

addition, the decision on deviation shall be justified of a weighty financial reason of the company. The general meeting may authorise the board to decide on granting stock options providing that it is not a question of remuneration of board.
To grant stocks is very difficult for the company due to the limitations on the purchase and sale of the company's own shares according to the provisions of Chapter 7 in the Companies Act.

FRANCE

Stock options are awarded by the board of directors on a proposal by the remuneration committee (*Bouton Report*). The shareholders' general meeting, on the basis of the auditors' report, can authorise the board of directors to award these types of compensation to employees or some of them.
The deadline of the authorisation to the board is fixed by the shareholders' general meeting. In any case, the authorisation must be exercised within 38 months.
Only the general meeting of shareholders has the power to authorize the granting of options, to set their maximum number and to determine the main conditions of the granting process (Art. L. 225-177) (*Code Bouton*, p. 15).
The board of directors fixes the conditions of the stock options program; these conditions can prohibit the immediate resale of the shares or a part of them. However, the prohibition must not be longer than three years from the exercise of the options (*Code de Commerce*, Art. L225-177).
The shareholders' general meeting fixes the term within which options must be exercised (*Code de Commerce*, Art. L225-183).
The board of directors fixes the exercise price of the options, based on stock prices at the time of granting, according to the conditions determined by the shareholders' general meeting. For listed companies, the strike price can not be lower than the 80% of the average of the spot prices in the last 25 business days (Art. L. 225-177).
Stock options can not be granted before 20 market days from the payment of the dividends or from a capital increase. Furthermore, stock options of listed companies can not be granted in the following periods:

- from 10 business days before to 10 business days after the publication of the company's financial statements;
- from the date in which a price sensitive information comes to the company's bodies knowledge to 10 business days after its publication (*Code de Commerce*, Art. L225-177).

The strike price can not be modified during the stock options program.
The holding period of options – the time between the granting of the options and the sale of the shares subscribed for or purchased upon exercise of the options – is directly determined in practice by tax rules: five years minimum from the date of grant for options granted prior to April 2000, four years minimum for options granted after that date (*Code Bouton*, p. 16).
To improve further on existing practices, the *Bouton Report* (*p. 15*) recommends:

- rejection of discounts in the granting of options, particular for options granted to the company's corporate officers;
- discussion of the general policy governing the granting of options within the compensation committee and issuing of recommendations by this committee to the board of directors;
- granting of options at set intervals to avoid opportunistic granting of options during an exceptional drop in stock prices.

GERMANY

Profit sharing: The resolution on the appropriation of distributable profits shall be made by the general meeting (section 119 Stock Corporation Act; Cromme Code 2.2.1) on the proposal submitted by the management board to the supervisory board (section 170 Stock Corporation

Act), which shall examine the proposal (together with the annual financial statements and the annual report) and report on the results of its examination to the shareholders' meeting (section 171 Stock Corporation Act).

Stock options: To stock options, there is a special requirement due to the power of the general meeting to raise capital. Section 192 Stock Corporation Act provides that the general meeting may adopt a resolution on a contingent capital increase also to grant rights to employees and members of the management board to new shares. Only in this case the par value of contingent capital may not exceed ten per cent of the share capital as at the date of the adoption of the resolution. In fact, if the purpose of the contingent capital increase was different the par value could not exceed one half of the share capital. Besides, section 193 generally provides that in case of a contingent capital increase the general meeting (majority of not less than three fourths of the share capital represented at the passing of the resolution, although the articles may provide for a larger capital majority and additional requirements) determines the purpose of the contingent capital increase, the persons entitled to subscribe, the issue price on the basis on which such price is to be computed and, if the persons entitled to subscribe are directors, the performance that shall be achieved, the periods in which the options can be granted and exercised and the period of lock up (at least two years).
In case of acquisition by the company of own shares (section 71 Stock Corporation Act) when the acquired shares are then not offered on the stock exchange but sold otherwise and the pre-emptive rights excluded, the general meeting shall approve the proposal of exclusion with a majority of not less than three fourths of the share capital represented at the passing of the resolution and determine the performance that shall be achieved, the periods in which the options can be granted and exercised and the period of lock up (at least two years). In such case the acquisition of the shares by the company can be made within a period of eighteen months after a shareholders' authorization who are called to determine the minimum and maximum purchase price for the shares and the par value of the share capital (not more than 10%, a percentage that can not be exceeded taking into account the aggregate par value of shares acquired and of any other company shares which the company has already acquired and continues to hold). The management board shall then inform the next shareholders' meeting as to the reasons for and purpose of the acquisition, the number of the shares acquired, their percentage of the share capital and the purchase price for the shares.
The annual financial statement, which is relevant for profit sharing and may be for bonuses, does not have to be established by the general meeting. According to section 172 (1) 1 Stock Corporation Act, if the financial statement is approved by the supervisory board, it will have to be considered as already established unless the management and the supervisory boards have resolved that the annual financial statements are to be established by the general meeting.

GREECE

See 3.1.

IRELAND

As for UK Questionnaire Q4.4.
Note: references to the City of London are to "at or near the Centre of the City of Dublin; references to the FSA are to the "Central Bank" (shortly to be revised to Irish Financial Services Regulatory Authority).

ITALY

With regard to stock option plans, they can be executed in several ways. In case of an increase of capital stock with an exclusion of the pre-emption rights, the latter considered in the best interests of the company, the shareholders' meeting shall approve, by a extraordinary resolution, the proposal of exclusion with a majority of not less than half of the share capital. In the case of stock grants, the approval of an extraordinary shareholders' meeting is required. For the sale of own shares, approval by the ordinary shareholders' meeting is necessary. In case of sale of shares of controlling companies or of subsidiaries, no decision on the part of the shareholders' meeting is required.
However, the shareholders' meeting usually grants the board of directors powers, within certain limits, to carry out any one transaction (Civil Code artt. 2349; 2357-ter, 2441 c. 5-6-8, 2443; Consolidated Law on Financial Intermediation artt. 126, 134).
Profit sharing shall be computed on the amount of net profits shown in the balance sheet, after deduction of the portion set aside for the legal reserve fund (Civil Code art. 2432).

LUXEMBOURG

See under 4.1 above.

NETHERLANDS

The only specific rules on the different types of remuneration are already described in paragraph 2.1. Particularly article 2:283d BW, applicable in case the company grants one or more members of the management board a right to acquire shares in the company's capital and article 2:283e BW, applicable in case a company remunerates members of the management board in the form of a personal loan, give specific rules for different reporting requirements[19].

PORTUGAL

No.

SPAIN

Article 130 of the LSA establishes that profit sharing can only be possible where there are liquid profits, reserves by law or by statutes are fully covered, and the shareholders are given a dividend of 4%, or a higher dividend fixed in the statutes.

Additional Disposition 4 of LSA provides that the implementation of remuneration systems consisting on share or stock option grants, and any other remuneration system linked to the share quotation, addressed to general Directors or other persons that perform senior management reporting directly to the Board of Directors, executive commissions or managing Directors of the listed company, needs be passed by the Shareholders Meeting.

SWEDEN

See 4.3.

UNITED KINGDOM

The Listing Rules govern this area.

[19] To be included in the explanatory notes to the annual financial statements of the company.

With regard to employees' share schemes and long-term incentive schemes, the Listing Rules provide that the following schemes must be approved by an ordinary resolution of the shareholders of the company in general meeting prior to their adoption: (i) an employees' share scheme if the scheme involves or may involve the issue of new shares; and (ii) a long-term incentive scheme in which one or more directors of the issuer is eligible to participate (Listing Rule 13.13; see also Q2.6).

These requirements do not apply to the following long-term incentive schemes: (i) an arrangement under which participation is offered on similar terms to all or substantially all employees of the issuer or any of its subsidiary undertakings whose employees are eligible to participate in the arrangement (provided that all or substantially all employees are not directors of the issuer); and (ii) an arrangement in which the only participant is a director of the issuer (or an individual whose appointment as a director of the issuer is in contemplation) and the arrangement is established specifically to facilitate, in unusual circumstances, the recruitment or retention of the relevant individual.
Where the above two circumstances apply the following information must be disclosed in the first annual report published by the issuer following the date on which the relevant individual becomes eligible to participate in the arrangement: the information required under Listing Rule 13.14 (a)-(d)(see below); the name of the sole participant; the date on which the participant first became eligible to participate in the arrangement; explanation of why the circumstances in which the arrangement was established were unusual; the conditions to be satisfied under the terms of the arrangement; and the maximum award(s) under the terms of the arrangement or, if there is no maximum, the basis on which awards will be determined (Listing Rules 13.13A).

With respect to the schemes specified in Listing Rule 13.13, a number of disclosure rules apply under Listing Rule 13.14. The circular to shareholders in connection with the approval of an employees' share scheme or a long-term incentive scheme must: include either the full text of the scheme or a description of its principal terms (13.14(a)); include, where directors of the company are trustees of the scheme, or have a direct or indirect interest in the trustees, details of such trusteeship or interest (13.14 (b)); state that the provisions (if any) relating to: the persons to whom, or for whom, securities, cash or other benefits are provided under the scheme (the "participants"); limitations on the number or amount of the securities, cash or other benefits subject to the scheme; the maximum entitlement for any one participant; the basis for determining a participant's entitlement to, and the terms of, securities, cash or other benefit to be provided and for the adjustment thereof (if any) in the event of a capitalisation issue, rights issue or open offer, sub-division or consolidation of shares or reduction of capital or any other variation of capital: cannot be altered to the advantage of participants without the prior approval of shareholders in general meeting (except for minor amendments to benefit the administration of the scheme, to take account of a change in legislation or to obtain or maintain favourable tax, exchange control or regulatory treatment for participants in the scheme or for the company operating the scheme or for members of its group) (13.14(c)); state whether benefits under the scheme will be pensionable and, if so, the reasons for this (13.14(d)); if the scheme is not circulated to shareholders, include a statement that will be available for inspection: from the date of the dispatch of the circular until the close of the relevant general meeting, at a place in or near the City of London or such other place as the FSA may determine; and at the place of the general meeting for at least 15 minutes prior to and during the meeting (13.14(e)); and comply with the relevant requirements of the contents of all circulars (13.14(f)).

The resolution contained in the notice of meeting accompanying the circular must refer either to the scheme itself (if circulated to shareholders) or to the summary of its principal terms included in the circular (Listing Rules 13.15).

A resolution approving the adoption of an employees' share scheme or long-term incentive scheme may authorise the directors to establish further schemes based on any scheme which has previously been approved by shareholders but modified to take account of local tax, exchange control or securities laws in overseas territories, provided that any shares made available under such further schemes are treated as counting against any limits on individual or overall participation in the main scheme (Listing Rules 13.16).

A circular to shareholders in connection with any proposed amendments to an employees' share scheme or a long-term incentive scheme (if the scheme would require shareholder approval) must: include an explanation of the effect of the proposed amendments; include the full terms of the proposed amendments, or a statement that the full text of the scheme as amended will be available for inspection; and comply with the relevant requirements of the contents of all circulars (Listing Rules 13.17).

With regard to discounted option arrangements, a listed company may not, without the prior approval by an ordinary resolution of the shareholders of the listed company in general meeting, grant to a director or employee of the issuer or of any subsidiary undertaking of the issuer an option to subscribe, warrant to subscribe or other similar right to subscribe for shares in the capital of the issuer or any of its subsidiary undertakings, if the price per share payable on the exercise of such an option, warrant or other similar right to subscribe is less than whichever of the following is used to calculate the exercise price: the market value of the share on the date when the exercise price is determined; the market value of the share on the business day before such date; or the average of the market values for a number of dealing days within a period not exceeding 30 days immediately preceding such date (Listing Rules 13.30).

These provisions do not apply to the grant of an option to subscribe, warrant to subscribe or other similar right to subscribe for shares in the capital of the issuer or any of its subsidiary undertakings: under an employees' share scheme pursuant to the terms of which participation is offered on similar terms to all or substantially all employees of the issuer or any of its subsidiary undertakings whose employees are entitled to participate in the scheme; or following a take-over or reconstruction, in replacement for and on comparable terms with options to subscribe, warrants to subscribe or other similar rights to subscribe held immediately prior to the take-over or reconstruction in respect of shares in either a company of which the issuer thereby obtains control or in any of that company's subsidiary undertakings (Listing Rules 13.31).

Where shareholders' approval is required, the following information must be circulated to shareholders: details of the persons to whom the options, warrants or rights are to be granted; a summary of the principal terms of the options, warrants or rights; and details of the relevant requirements of the contents of all circulars (Listing Rules 13.32).

4.5 Are there any restrictions on how payments are made?

AUSTRIA
There are no specific requirements.

BELGIUM
No.

DENMARK
Please see 1.1. and 4.1 above.

FINLAND
No.

FRANCE
There are neither provisions nor recommendations concerning this aspect.

GERMANY
The provisions of the Stock Corporation Act concerning the management board contain no specific rules on how payments to the members of the management board are to be made. Variable compensation is subject to the power of the general meeting as described in answer 4.4.

GREECE
See 3.1.

IRELAND
As in the UK, it is not lawful for a company to pay a director remuneration free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax (Companies Act 1963 s185). Companies are not, therefore, permitted to vary a director's remuneration to track changes in income tax levels.

ITALY
There are no specific provisions.

LUXEMBOURG
Subject to what has been said so far, there are no special restrictions on how payments are made.

NETHERLANDS

No legal restrictions exist on how payments are made.

PORTUGAL

Yes. Articles 399 and 429 of Companies Code while determining that director's remuneration can consist partially in a percentage of the company's profit, also establish that in such event the global percentage destined to director's remuneration shall be authorised by a specific clause of the articles of association. Paragraph 3 of both articles contain an additional restriction: from the calculation of the global percentage of the profit destined to the variable remuneration of directors are excluded the amounts allocated to company reserves as well as any part of the profit that, under the law, cannot be distributed among shareholders.

SPAIN

There is no specific legal provision in Spain on how payments should be made.

SWEDEN

No.

UNITED KINGDOM

It is not lawful for a company to pay a director remuneration free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax (Companies Act 1985 s 311). Companies are not, therefore, permitted to vary a director's remuneration to track changes in income tax levels.

4.6 Are there any specific requirements for termination payments made on loss of office, whether through dismissal, retirement, on a takeover, or otherwise?

AUSTRIA
There are no specific requirements. Contracts signed up by the management board's members are so called free services contracts (*Freie Dienstversträge*) and generally neither the labour law nor collective agreements are applicable to them. Management board's members are even explicitly excluded by law from the scope of general agreements. The Employees' Act (Angestelltengesetz) is only applicable in order to interpret contract clauses when they are not clear or infringe basic principles of contract law.

BELGIUM
No, but it's practice.

DENMARK
No specific legal requirements apply. According to the Nørby Committee's recommendations any redundancy arrangement for managers should be reasonable and reflect the results which the individual manager has achieved, the cause of the resignation and the manager's responsibilities, as well as the remuneration which the manager has received. This probably reflects the same type of reasoning that a court would apply. The Nørby recommendations also suggest that the main contents of the arrangement be included in the company's annual report. Pursuant to article 69 of the Annual Accounts Act the value of any redundancy arrangement would have to be included in the annual report.

FINLAND
There are no such rules in the Company Act. Such rules may be based on contract.

FRANCE
Not in the law. However, the Report of MEDEF Committee on Business Ethics recommends that "the retirement terms offered to the chairman and chief executive officer and executive directors should not extend to the retirement period the highly special benefits that were granted to him because of his exceptional responsibilities. Pension benefits should be carefully monitored by compensation committees, and their determination or review must take into account the position of the group employing the chairman and chief executive officer and executive directors. It is logical to calculate pension benefits on a pro rata basis of the length of the term of office" ("*Chairman and Chief Executive Officer and Executive Directors compensation, Report of MEDEF, Committee on Business Ethics*", May 2003, p. 5).

GERMANY
Section 87 Stock Corporation Act provides that pension payments shall bear a reasonable relationship to the duties of the member of the management board and the condition of the company.

GREECE

No.

IRELAND

(a) Companies Act 1963-2001

As noted in Q4.3 above, where a company has adopted articles of association in the form of Table A (the statutory model) the directors may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any director who has held but no longer holds any executive office or employment with the company and may contribute to any fund and pay premiums for the purchase or provision of any such benefit (art 90). This may be done without the approval of the shareholders in the general meeting, in spite of the potential conflicts of interest that may arise in some circumstances (for example, when the question of "golden parachutes" for directors is before the board).

As with UK Questionnaire Q4.6, the equitable principle of shareholder approval is, however, partly restored by the Companies Act 1963 which provides that it is not lawful for a company to make to a director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars of the proposed payment (including its amount) being disclosed to members of the company and the proposal being approved by the company (s186). A similar provision applies under s187 to payments made on loss of office where the company is wound up or sold off: shareholder approval is required for any payment made to a director in connection with the transfer of the whole or any part of the undertaking of a company by way of compensation for loss of office or as consideration or in connection with his retirement from office. Takeovers are addressed by s188(1) which provides that shareholder approval is required for payments made as compensation/consideration in connection with a "transfer" of all or any of the company's shares, as defined in section 188(1)**.** Under s188(1), the director is subject to a duty to take all reasonable steps to secure that information relating to the payment is included with any notice of the offer sent to shareholders. The ss186-188 requirements do not apply, however, to any bona fide payments by way of damages for breach of contract or by way of pension for past services (s189(3)). As s186 thus applies only to voluntary payments, controversially, the section does not apply to payments which the company is contractually bound to make. Thus, in ***Taupo Totara Timber Co. Ltd v. Rowe***, [1987] AC 537, the contract of employment of a managing director which allowed him to terminate his contract in the event of a takeover of the company and to claim a lump sum payment was found to escape the section's protection of shareholder approval.

Section 182 of the Companies Act 1963 governs the removal of directors by shareholders. Under section 182(7), the shareholders' power of removal cannot deprive a director of a claim for damages in respect of the termination (the Irish Supreme Court confirmed in ***Carvill v Irish Industrial Bank Ltd*** [1968] IR 325) that dismissal under s182 was without prejudice to any rights the director may have had to damages for breach of contract of employment). The terms of the director's service contract may provide a basis for such a claim. Where these terms are set by the directors, if the company's Articles of Association so provide, they can entrench their position and make their removal potentially financially onerous for the company. The five year limit on the term of directors' service contracts (without shareholder approval) (see Q4.7), acts as a restriction, however, on the quantum of damages payable.

(b) Listing Rules/Combined Code

As for UK Questionnaire Q4.6(b)

(c) Listing Particulars/Prospectuses

Disclosure as to termination payments is required in listing particulars and prospectuses. See Q2.6.

ITALY

With regard to termination payments there are no specific requirements under general company law as to disclosure or shareholders' approval. Detailed and complex rules are applied to this area under labour law if the contract covers director's services as an employee. Collective national contracts provide minimum conditions as to salary, retirement allowances and compensation in lieu of notice.
In practice, stock option plans specify whether the director may still exercise the options granted in case of dismissal, voluntary or mandatory retirement, resignation, or rescission of contract.

LUXEMBOURG

According to the company law a director may be dismissed any time with or without cause. In principle he is not entitled to any kind of compensation. However in the case of executive directors the position is different in as much as they usually have an employment contract governed by labour law. In that case termination can only be made as provided in the contract and as permitted by labour law.

NETHERLANDS

A few specific requirements for termination payments can be found in article 2:238c, subsection 2, BW (see also paragraph 2.1). This article requires (i) to report the amount of remuneration of each former member of the management board and (ii) to split this amount out into long-term payable remuneration and termination of contract rewards[20].
Special requirements for termination payments can also be found in article 9i, subsection p, Bte, which is applicable in case of a public offer (see also paragraph 2.6). This article contains the provision that in an offer document the total amount shall be reported of eventual remuneration to members of the management (and the supervisory) board of the target company who will resign in case the offer is sustained.

PORTUGAL

Yes. In case companies adopt the two-tier structure, article 430/3 of the Companies Code establishes that dismissal without cause entitles the director to an indemnity which is determined in the articles of association or according to the general principles of law, considering that in any event it exceeds the amount of the remuneration he would presumably earn until the end of the term of office.
The legal provisions applicable to the unitary management structure do not contain a similar rule. However, we are of the opinion that the above-referred limitation on the amount of the indemnity would apply also, by means of analogy, to the dismissal without cause of a member of the board of directors.

SPAIN

See last paragraph of the answer to point 2.3.

[20] To the extent charged to the company in the relevant financial year.

SWEDEN

No. Termination payment deals must be made public, see 2.3 above.

UNITED KINGDOM

(a) Companies Act 1985

Where a company has adopted articles of association in the form of Table A (the statutory model) the directors may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any director who has held but no longer holds any executive office or employment with the company and may contribute to any fund and pay premiums for the purchase or provision of any such benefit (art 87). This may be done without the approval of the shareholders in the general meeting, in spite of the potential conflicts of interest that may arise in some circumstances (for example, when the question of "golden parachutes" for directors is before the board).

The equitable principle of shareholder approval is, however, partly restored by the Companies Act which provides that it is not lawful for a company to make to a director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars of the proposed payment (including its amount) being disclosed to members of the company and the proposal being approved by the company (s312). A similar provision applies under s313(1) to payments made on loss of office where the company is wound up or sold off: shareholder approval is required for any payment made to a director in connection with the transfer of the whole or any part of the undertaking of a company by way of compensation for loss of office or as consideration or in connection with his retirement from office. Takeovers are addressed by ss314 and 315 which provide that shareholder approval is required for payments made as compensation/consideration in connection with a "transfer" of all or any of the company's shares, as defined in section 314(1). Under s314(2), the director is subject to a duty to take all reasonable steps to secure that information relating to the payment is included with any notice of the offer sent to shareholders. The ss312-315 requirements do not apply, however, to any bona fide payments by way of damages for breach of contract or by way of pension for past services (s316(3)) As s312 applies only to voluntary payments, controversially, the section does not apply to payments which the company is contractually bound to make. Thus, in ***Taupo Totara Timber Co. Ltd v. Rowe***, [1987] AC 537, the contract of employment of a managing director which allowed him to terminate his contract in the event of a takeover of the company and to claim a lump sum payment was found to escape the section's protection of shareholder approval.

Section 303 of the Companies Act governs the removal of directors by shareholders. Under section 303(5), the shareholders' power of removal cannot deprive a director of a claim for damages in respect of the termination. The terms of the director's service contract may provide a basis for such a claim. These terms are, however, usually set by the directors (Table A, art 84) who can, as a result, entrench their position and make their removal potentially financially onerous for the company. The five year limit on the term of directors' service contracts (without shareholder approval) (see Q4.7), acts as a restriction, however, on the quantum of damages payable.

Detailed disclosure with respect to termination payments is now required in the Directors' Remuneration Report. See Q 2.1 and Q2.3 above.

(b) Listing Rules/Combined Code

Termination payments, as an element of directors' remuneration, are to be disclosed in the annual report and accounts (see Q2.1 and Q2.3). In particular, disclosure must be made in

respect of each director by name of any compensation for loss of office, payment for breach of contract, or other termination payment (Q2.3).
Under the Combined Code, remuneration committees should consider what compensation commitments (including pension contributions) their directors' contracts of service, if any, would entail in the event of early termination. They should in particular consider the advantages of providing explicitly in the initial contract for such compensation commitments except in the case of removal for misconduct (B.1.9).
Where the initial contract does not explicitly provide for compensation commitments, remuneration committees should, within legal constraints, tailor their approach in individual early termination cases to the wide variety of circumstances. The broad aim should be to avoid rewarding poor performance while dealing fairly with cases where departure is not due to poor performance and to take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss. (Combined Code B.1.10).
Remuneration committees should consider the pension consequences and associated costs to the company of basic salary increases and other changes in remuneration, especially for directors close to retirement. (Combined Code Schedule A 6), while in general, neither annual bonuses nor benefits in kind should be pensionable.

(c) Listing Particulars/Prospectuses
Disclosure as to termination payments is required in listing particulars and prospectuses. See Q2.6.

The treatment of termination payments is currently under review: see UK Q1.3(b) above.

4.7 Are there any specific requirements concerning directors' service contracts with respect to, for example, their duration and disclosure?

AUSTRIA
The members of the management board shall be appointed by the supervisory board for a period not exceeding five years. The maximum period of the contract is also 5 years. If the duration of the contract is longer than five years, is indefinite or not specified the appointment will be automatically of five years. The appointment may be renewed only with a written approval of the supervisory board's chairman (section 75 Stock Corporation Act).

BELGIUM
No.

DENMARK
With respect to members of the board of directors no service contract is entered into. Under article 49 of the Limited Companies Act members of the board of directors are elected by the general meeting for a period stipulated in the company's articles of association, however in no event for a period longer than 4 years. However, reelection may take place. Members of the board of directors elected by employees under the co-determination rules serve for 4 year terms. In any event, those who elected a member of the board of directors may remove such member at any point in time (observing the relevant procedural rules regarding the convening of the general meeting) and without cause.
As regards members of the management board service contracts are used. No particular requirements apply to such contracts in addition to those mentioned under 1.1. and 2.1. above.

FINLAND
Not as such prior to the Recommendation. The service contracts might not contain clauses which do not comply with the Company Act or the articles of association. For example, the company might not validly agree on a term of a board member exceeding the maximum term set forth in the articles of association.
With the introduction of the new guidelines, the general recommendation is that the directors should be elected for a term of one year. The managing director's service terms and conditions are to be specified in writing in the managing director's service contract approved by the board. Moreover, the company discloses the biographical details and the holdings of the managing director (see 2.3) (Recommendation 12, 38, 39 and 48).

FRANCE
French law requires that duration of directors' service contract must not exceed six years (*Code de Commerce*, Art. L225-18). The second Viénot report recommends that the duration of the Directors' term of office should not exceed a maximum of four years, in order to enable the shareholders to rule upon their appointment with sufficient frequency. The annual report should specify precisely the dates of the initiation and expiry of each director's term, so as to highlight the staggering.
COB's regulation requires a specific disclosure about directors' service contracts (duration, qualification, number of service contracts in other companies, etc.) in the "*document de reference*"

or in the prospectus (*Recommandations pour l'élaboration des documents de référence relatifs à l'exercice 2002*).

GERMANY

The members of the management board shall be appointed for a period not exceeding five years. On the other hand, for first time appointments the maximum possible appointment period of five years should not be the rule (Cromme Code 5.1.2). The appointment may be renewed or the term of office may be extended, provided that the term of each such renewal or extension shall not exceed five years. Such renewal or extension shall require a new resolution of the supervisory board which may be adopted not earlier than one year prior to the expiration of the current term of office, or at least only under special circumstances (Cromme Code 5.1.2). The term of office may be extended without a new resolution of the supervisory board only in the case of an appointment for less than five years, provided that the resulting aggregate term of office does not, as a result of such extension, exceed five years. The foregoing shall apply analogously to the contract of employment; such contract may, however, provide that in the event of an extension of the term of office, the contract shall continue in effect until the expiry of such term (section 84 Stock Corporation Act).
The disclosure is subject to section 285 Commercial Code (see answers above to disclosure).

GREECE

No.

IRELAND

(a) Companies Act 1963-2001

As in UK Questionnaire Q4.7(a), directors' contracts of employment of more than five years which contain a term providing that during its term the contract cannot be terminated by the company or can only be terminated in specified circumstances, must receive prior approval from the general meeting via a resolution (Companies Act 1990 s28). Approval must be given on a case-by-case basis: the board may not be given a general consent from the shareholders to appoint directors beyond five years. Approval must be received before the contract is made (***Atlas Wright (Europe) Ltd v Wright*** [1999] BCC 163). If approval is sought, a memorandum setting out the proposed agreement must be made available for inspection by company members not less than 15 days before the meeting and at the meeting itself (s28(4)). Any such term is void unless approval is received and the appointment can then be terminated by the company giving reasonable notice (s28(5)).
Service contracts (ie, contracts covering services as an employee, such as, as a managing director, but not contracts for services, such as contracts covering service as a director) for each director must be made available for inspection by the members of the company (Companies Act 1990 s50) in an "appropriate place", such as the company's registered office, the place where the register of members' is kept, or its principal place of business (s50(3)). All copies or memoranda must be kept in the same place and the company must notify the Registrar of Companies where the contracts are kept (s50(4)). Where the contract is not in writing, a memorandum of its terms must be made available. The copies and memorandum must be open to inspection to members of the company without charge.

(b) Listing Rules / Combined Code

As for UK Remuneration Questionnaire Q4.7(b).

(c) Listing Particulars / Prospectuses

Disclosure as to service contracts is required in listing particulars and prospectuses. See Q2.6.

ITALY

The directors cannot be appointed for a period exceeding three years. The appointment may be renewed where permitted in the articles of association and the directors may be revoked at any time by the general meeting, with no loss of entitlement to damages in case of unfair dismissal (Civil Code art. 2383).

LUXEMBOURG

See under 4.1 and 4.2 above.

NETHERLANDS

Specific requirements concerning directors' service contracts do not exist. The practice is that members of management boards have service contracts for indefinite periods. In only a few companies directors have one year service contracts.

PORTUGAL

The Companies Code establishes rules concerning directors' performance of other activities during their mandates. Notably, article 398 determines that members of the board of directors cannot engage in any competing business without prior authorization of the shareholders. Members of the management board (two-tier structure) cannot engage in any business – even if not competing with the company – without consent of the supervisory board (article 428 of the Companies Code).

In order to prevent situations of conflict of interest, the Companies Code also establishes the situations where the members of the board may deal with the company: article 397 of Portuguese Companies Code declares null and void all the agreements entered into between the company and members of the board, directly or indirectly, without previous deliberation of the board of directors, in which the interested director is unable to vote, and a previous favourable opinion of the board of auditors.

SPAIN

There are no legal provisions in Spain that restricts this extent.

SWEDEN

No. See 2.3 above.

UNITED KINGDOM

(a) Companies Act 1985

Directors' contracts of employment of more than five years which contain a term providing that during its term the contract cannot be terminated by the company or can only be terminated in specified circumstances, must receive prior approval from the general meeting via a resolution. (Companies Act s319). Approval must be given on a case-by-case basis: the board may not be given a general consent from the shareholders to appoint directors beyond five years. Approval must be received before the contract is made (***Atlas Wright (Europe) Ltd v***

Wright [1999] BCC 163). If approval is sought, a memorandum setting out the proposed agreement must be made available for inspection by company members not less than 15 days before the meeting and at the meeting itself (s319(5)). Any such term is void unless approval is received and the appointment can then be terminated by the company giving reasonable notice (s319(6)).

Service contracts (i.e., contracts covering services as an employee, such as a managing director, but not contracts for services, such as contracts covering service as a director) for each director must be made available for inspection by the members of the company (s318) in an "appropriate place", such as the company's registered office, the place where the register of members' is kept, or its principal place of business (s318(3)). All copies or memoranda must be kept in the same place and the company must notify the Registrar of Companies where the contracts are kept (s318(4)). Where the contract is not in writing, a memorandum of its terms must be made available. The copies and memorandum must be open to inspection to members of the company without charge (s318(7)). This right of inspection, which is limited to members, is not, however, widely exercised.

Disclosure with respect to service contracts is required in the Directors' Remuneration Report (see Q 2.3).

(b) Listing Rules / Combined Code

The Listing Rules impose additional disclosure requirements for listed companies. Listing Rule 16.9 requires that: copies of each director's service contract be made available for inspection by any person (i) at the registered office of the company, or in the case of an overseas company, at the offices of any paying agent in the United Kingdom during normal business hours on each business day; and (ii) at the place of the annual general meeting for at least 15 minutes prior to and during the meeting.

Under Listing Rule 16.10, where one directors' service contract covers both directors and executive officers, the company may make available for inspection a memorandum of the terms of the contract which relate to the directors only.

Listing Rule 16.11 requires that the directors' service contracts available for inspection must disclose or have attached to them the following information: (i) the name of the employing company; (ii) the date of the contract, the unexpired term and details of any notice periods; (iii) full particulars of the director's remuneration including salary and other benefits; (iv) any commission or profit sharing arrangements; (v) any provision for compensation payable upon early termination of the contract; and (vi) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company upon early termination of the contract. This last requirement therefore extends the Companies Act disclosure requirement from service contracts to "any other arrangements".

Specific reference is made in the Listing Rules to disclosure of notice periods. Under 12.43A (c)(vi) and (vii) the annual reports and accounts must disclose: details of any directors' service contract with a notice period in excess of one year or with provisions for pre-determined compensation on termination which exceeds one year's salary and benefits in kind, giving the reasons for such notice period; and the unexpired term of any directors' service contract of a director proposed for election or re-election at the forthcoming annual general meeting and, if any director proposed for election or re-election does not have a directors' service contract, a statement to that effect [Note: these rules will change to reflect the 2002 revisions with respect to the Directors' Remuneration Report.]. This provision is reflected in the Combined Code which states that any service contracts which provide for, or imply, notice periods in excess of one year (or any provisions for predetermined compensation on termination which exceed one year's salary and benefits) should be disclosed and the reasons for the longer notice periods explained (Combined Code Schedule B 7). The Combined Code also states, however, that there is a strong case for setting notice or contract periods at, or reducing them to, one year or less. Boards should set this as an objective; but they should recognise that it may not be possible to

achieve it immediately (Combined Code B.1.7). It goes on to state that if it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should reduce after the initial period (Combined Code B.1.8).

(c) Listing Particulars/Prospectuses

Disclosure as to service contracts is required in listing particulars and prospectuses. See Q2.6.

5. Non-executive Directors' Remuneration

5.1 Are non-executive directors separately paid for their participation in committees of the board of directors? Do any restrictions apply to the payment of non-executive directors' *via* stock options?

AUSTRIA

Often the chairman of the board is granted the double of the amount of the other members. Increasingly additional work of members in different committees will be paid separately – the law does permit such different remunerations.

As to the payment of non-executive directors' *via* stock options section 159 Stock Corporation Act expressly includes members of the supervisory board among those to whom rights to new shares can be granted in case of a contingent capital increase (see question 3.1).

According to section 65 (1) number 4 Stock Corporation Act own shares of the company are also available for a stock option program in favour of non executive directors.

BELGIUM

The recommendations concerning Corporate Governance for listed companies (established by Euronext Brussels and the BFC) state: "The remuneration received by the non-executive directors should reflect the amount of time which they commit to the company. Their remuneration should not be performance-related, but may be related to the evolution of the value of the company. Therefore, remuneration can take the form of company shares. However, it is recommended that the remuneration of non-executive directors should not take the form of stock options, nor of a participation in the pension scheme of the company. It is recommended to disclose the total amount of the non-executives directors' remuneration separately in the annual report and to specify both the fixed and the variable part of the remuneration. In addition, the principles underlying the calculation of the variable part, if any, should be disclosed".

Payment for committee work is not unusual.

The CBF objects to paying independent directors by way of stock options. It's action is not always successful.

DENMARK

As a point of departure non-executive directors (board members) must receive the same payment as other board members. However, it is possible to increase payment to members whose workload is increased due to membership of a committee. Non-executive directors may receive stock options just as it is the case with executive directors. Please also refer to 3.2. above.

FINLAND

Finnish company law does not distinguish between executive directors and non-executive directors. However, the new Recommendation specifies that it is not recommended that a non-executive director should participate in a share-related compensation system (Recommendation 45).

FRANCE

The board of directors can award special compensation to the members of the board's committees (*Décret* n. 67-236, Art. 93). Non-executive directors are not allowed to be assigned either receive stock options or stock grants as compensation (Article L. 225-177 al. 1er , *Code Bouton*, p. 15).

GERMANY

According to Section 113 Stock Corporation Act the remuneration shall bear a reasonable relationship to the duties of the members of the supervisory board and to the condition of the company. According to the Cromme Code (5.4.5) the exercising of the chair and membership in committees should also be considered in the determination of the remuneration.
The allowance of stock options is controversy discussed as section 192 Stock Corporation Act which rules the contingent capital increase names only the members of the management board (see above answer 3.2). Phantom stocks and convertible bonds are allowed.

GREECE

See 3.1. and 1.1.

IRELAND

As for UK Questionnaire Q5.1.

ITALY

As mentioned above (see 3.2), the shareholders' meeting may fix the total amount for the remuneration of all directors, which the board distributes among its members, taking into account the participation in committees. The shareholders' meeting may also fix the amount of the remuneration of each director, including non-executive directors, and the relevant amount for participation in committees. However, if the formation of committees is contemplated by the company's articles of association, the committee members' remuneration will be fixed by the board of directors (Civil Code art. 2389).
No restrictions apply to stock option grants to non-executive directors.

LUXEMBOURG

Absent any provision in any law or regulation, there are no rules commonly applicable in the case non-executive directors participate in committees of the board of directors: it all depends on the policy which individual companies apply in that respect.
Whilst there are no restrictions applicable to the payment of non-executive directors via stock options, such type of payment is in practice not used.

NETHERLANDS

In case a supervisory board member participates in one of the committees of the supervisory board, in many cases specific remuneration is granted. This specific remuneration is also determined as described under 3.1.

There are no legal regulations prohibiting the remuneration of supervisory board members via stock options. However, in the recommendations made in 1997 and 1999 (described in paragraph 1.2) it is indicated that remuneration of supervisory board members through stock options is found undesirable.
If stock options are granted to members of the supervisory board, for each member a report of the options granted to him together with the reasons underlying the decision to grant these options is required (in the explanatory notes to the annual financial statement) (article 2:283d, subsection 2, BW). Besides this, the information as described under 2.1 (such as strike price) is to be reported separately for each member of the supervisory board in the explanatory notes to the annual financial statement.

PORTUGAL

There are no specific rules applicable to these topics.

SPAIN

There is no specific legal provision in Spain on the remuneration of non-executive Directors, although usually they are paid separately.
There is no specific legal provision in Spain that restricts the use of stock options to remunerate non-executive Directors, although in the Aldama Report it is recommended that remunerations consisting on share or stock options grants, or remunerations linked to the share quotation, should be used only for the executive Directors.

SWEDEN

A Swedish company board is usually made up of nothing but non-executive directors, except for the managing director. They are not separately paid for their participation in committees, even though the internal distribution of the annual board remuneration from the GM may take the time spent in to account. A separate stock option programme can be introduced for non executive directors. See 3.1 above.

UNITED KINGDOM

The board itself or, where required by the articles of association, the shareholders should determine the remuneration of the non-executive directors, including members of the remuneration committee, within the limits set in the articles of association. Where permitted by the articles, the board may however delegate this responsibility to a small sub-committee, which might include the managing director (Combined Code B.2.4).

5.2 May a company make payments to non-executive directors, additional to their directors' fees, for services, such as legal or brokerage services, outside the usual scope of directors' duties?

AUSTRIA
There are no special rules in the Stock Corporation Act. However, such contracts are only permitted outside the common duties of the board members. Only the Code includes now some rules: Contracts, in particular consulting contracts concluded by the enterprise with individual members of the supervisory board or with companies closely related to the members of the supervisory board, shall require the approval of the entire supervisory board with the exception of routine daily business transactions. The content of any such contracts and fees shall be reported in the annual report (CG Code 49).

BELGIUM
Yes, but rather unusual.

DENMARK
Danish law does not prohibit these kinds of payments. However, in the case of the chairman of the board article 51 of the Limited Companies Act provides that he may not carry out tasks that are not a natural part of his duties as chairman. Irrespective of this, the board may ask the chairman to carry out specific tasks for the board.

FINLAND
Yes.

FRANCE
The board of directors or the supervisory board can fix special remuneration for particular mission given to the directors (*Code de Commerce*, Art. L225-46, L. 225-86). This special compensation should be approved by the board but the involved director can not take part to the decision. The decision should be submitted to the auditors (*Commissaires aux comptes*) which have to prepare a special report for the shareholders' general meeting. Shareholders should agree to this special remuneration on the basis of the auditors report (*Code de Commerce*, Art. from L225-38 to L225-42).

GERMANY
Yes. Both the law (section 114 Stock Corporation Act) and the Cromme Code (5.5.4) provide that advisory and other service agreements and contracts for work (different from the ordinary activity as a member of the supervisory board) between a member of the supervisory board and the company are admitted after a supervisory board's approval. The duty of the supervisory board and its members is to control but also to advise the management board. This and the personal duty to use special knowledge in controlling and advising the management board leads to difficulties in determining the scope of possible contracts with members of the supervisory board. A contract which is already covered by the duty as a member of the supervisory board is void. Service agreements and contracts for work are remunerated and the payments made by

the enterprise or the advantages extended for services provided individually shall be listed separately in the notes to the consolidated financial statements (Cromme Code 5.4.5).

GREECE

Yes, but the contract is subject to a specific authorisation of the shareholders' meeting preceding and referring to the contract and to its specific terms unless the contract entered into is within the limits of current transactions of the company (Section 23a of the Law 2190/1920).

IRELAND

The statutory form of Articles of Association (Table A) provides in art 87 that: "Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director."

ITALY

Yes, these services can be remunerated, subject to disclosure provisions (see 2.3).

LUXEMBOURG

If a non-executive director provides to the company special services in his capacity as professional, he is entitled to appropriate compensation additional to his directors' fees, because it is considered that he then acts in a different capacity. Such services typically are those provided by a member of the legal profession (lawyer, notary), or of the financial profession (banker, broker, consultant). It is understood that such compensation must correspond to real services and cannot represent a disguised director's remuneration.

NETHERLANDS

There exist no legal prohibitions for the separate remuneration of members of the supervisory board for services provided by them to the company outside the usual scope of their directors' duties. In the 1997 Peters report however, it is recommended that it is not desirable tot remunerate supervisory board members separately for their advice. The Peters report also recommends that the explanatory notes to the annual financial statements should state separately whether and, if so, what other business relationships exist between the company and a supervisory board member.

PORTUGAL

Please see above 4.7.

SPAIN

There is no specific legal provision in Spain that restricts this possibility.

SWEDEN

Yes. If the sums are material, they have to be disclosed according to the listing agreements. Also see 2.3 above.

UNITED KINGDOM

The articles usually authorise the payment by the directors to one of their number of extra remuneration for special services outside the scope of the usual duties of a director. For companies which adopted the statutory form, Table, A art 84, for example, provides that the directors may enter into an agreement or arrangement with any director for that director's employment by the company and that the directors may enter into an agreement/arrangement with any director for the supply by that director of services outside the scope of the ordinary duties of a director. The directors are to set the terms of any such agreement and remuneration may be set as the directors think fit.