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Antony Burgmans
Chairman

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Unilever's Comments on the Draft for a Dutch Corporate Governance Code

Dear Sirs,

We have taken note of the draft for the Dutch corporate governance code that your Committee presented on 1 July 2003. We are pleased to accept your invitation to submit comments on it.

Our comments are divided into a general section and remarks on certain specific principles and provisions of the draft code to which we would like to draw your attention in this response.

GENERAL COMMENTS

Introductory considerations

We greatly appreciate the dedication and energy that your Committee put into its work on the draft code and we consider that the result is positive. It is of great importance that the Netherlands has a corporate governance code that conforms to high standards. Such a code will make an important contribution to the confidence that shareholders and other stakeholders have in the functioning and the management of Dutch publicly listed companies, a confidence that has undeniably been under pressure in the recent past.

We endorse, for example, the position that your Committee takes on the issuing of depositary receipts for shares as a means of preventing a (chance) minority of shareholders from controlling the decision-making process as a result of absenteeism at the general meeting of shareholders. Your view that holders of depositary receipts who are present at the general meeting of shareholders should not face any obstacles in exercising the voting rights attached to the shares is also in line with this approach.

Furthermore, we consider it a good thing that the *one-tier* board is recognised as an effective alternative to the *two-tier* system in the structuring of good corporate governance. This viewpoint positively contributes to making Dutch company law more flexible. It links up with corporate governance structures in, for example, the United Kingdom and the United States. Moreover, it paves the way for European Companies which would like in future to opt in the Netherlands for a *one-tier* board.

Unilever will be able to comply with the code to a substantial extent. However, it is self-evident that a large multinational company like ours – also in view of its dual structure – will have to depart in certain respects from the provisions laid down in the code. We have the fullest confidence that, where such a situation arises, we will be able to provide a satisfactory explanation. None the less we take the view that a number of aspects in the draft code need to be adapted, notably in those cases where provisions deviate from what is customary on an international scale due to their degree of detail or otherwise, yet without a good reason seeming to exist for this. Some of these aspects are dealt with in more detail below.

Rules versus principles

Upon comparing the draft code with existing codes in other countries, the striking feature is the great degree of detail that is laid down in 24 principles and 124 best practice provisions. As a result the code has – unintentionally but undeniably – been given a rule-based character. This approach has inherent drawbacks which make themselves felt more strongly according as companies operate more internationally.

The impression is to some extent created that good corporate governance can only exist by virtue of compliance with a large number of specific rules. However, many roads lead to Rome. We would have preferred it if much of what is defined in the draft code as “best practice” had been described as “good practice”. That would have done more justice to the varied nature and complexity of the relevant subjects. Companies should be able to decide together with their shareholders which governance structure suits them best. The code should offer good guidance in that direction, not a blueprint that has been worked out in great detail.

The present set-up will inevitably lead to an unnecessarily large number of cases in which companies will have to explain why they depart from the specific provisions that are included in the code, yet without one being allowed to conclude from this that their corporate governance is inadequate. Foreign investors, for example, will not always be aware of the existence of the Dutch code. Their verdict on the company’s governance is based on its annual report. If an explanation has to be given fairly regularly in that report as to why the company does not comply with the highly specific provisions of the Dutch code, then the image is wrongly created of a management and supervision structure that is not so good, or at least difficult to fathom.

The best practice provisions that your Committee has formulated with regard to the remuneration policy, the holding and management of shares will, where applied, hamper multinational companies in recruiting and retaining highly qualified executive and supervisory or non-executive directors. A flexible approach that is attuned to regional market circumstances is an absolute requirement for this.

Too many and excessively detailed provisions encourage a “box-ticking” mentality that impedes a well balanced assessment of a company’s corporate governance. This does not do justice to the major differences that exist between companies in terms of structure, size, spread of share ownership, capital markets on which the company is active, stock exchanges on which its shares are listed and the rules applied by such stock exchanges.

In this context it should also be noted that the draft code is not in line with corporate governance codes and best practices in other countries. The UK Combined Code, for instance, contains 55 best practice provisions (the draft code has 124). Almost without exception, these 55 are principle-based, contrary to those in the draft code.

In our opinion it would be preferable if the principles and provisions were to be formulated less quantitatively and more qualitatively. In some cases provisions can also be omitted. Many of the detailed provisions could (if desired) be included in a guidance document accompanying the code or in explanatory texts in which suggestions can then be made about how to apply the principles and best practice provisions in a specific case.

Departures from the code; approval by shareholders and monitoring

We subscribe to the “comply or explain” rule, although – as already stated above – we would not want to see an unnecessarily large number of situations in which an explanation has to be given.

It seems to us to be perfectly justified to expect a company to explain to investors why it does not comply in a specific case with a best practice provision. However, it should be noted here that no duty of public justification should be incumbent on companies if their shareholders have laid down or approved the company’s corporate governance structure (or a certain part of it), or if they have sanctioned one or more departures from the code.

The code should also reflect the fact that companies which explain departures from the code also comply with the code by doing so (“to explain is to comply”).

We wholeheartedly agree with the approach that your Committee has chosen for the monitoring of compliance with the code, in which it is left to shareholders to assess whether the company has complied properly with the code.

Entry into force of the code

The text of the draft code does not make it clear what is expected of companies in their annual report for 2003. The text could be interpreted to mean that by as early as 2004 full reporting would be required on compliance with the code with respect to the year 2003 – when the code was still not in existence. This seems paradoxical to us. We would prefer to interpret the relevant provision in the sense that companies are requested to indicate in 2004, where necessary, how they think they will apply the code.

COMMENTS ON SPECIFIC PRINCIPLES AND PROVISIONS

Limitation of severance pay; limited terms of office

- We agree with the efforts of your Committee to limit payments upon loss of office. A severance payment amounting to one year's salary is a good rule of thumb, except where it would be manifestly unreasonable. Examples are: lengthy periods of service, a relatively short term of office on the board, non-culpable dismissal and other relevant circumstances. This does not detract from the basic principle that there should be no rewards for failure. We subscribe to the limitation of terms of office. However, the complete abolition of the employee status of executive directors in order to achieve these two objectives seems to us to be too drastic a measure.

Executive and supervisory (or non-executive) directors should invest, outside their own company, solely in listed investment funds or via discretionary management of their securities; shares acquired under a share plan should be retained until the termination of the service contract

- In our opinion it ought to be sufficient if the company encouraged directors to place their securities under discretionary management and facilitated this, for example by bearing the costs. The proposed rule goes further than the international practice and might constitute an impediment to attracting and retaining Dutch and foreign executive and supervisory directors.
- The rule that executive directors should retain shares in their own company is endorsed by us. It is an effective means of bringing their interests into line with those of shareholders. None the less, the proposed rule seems to go further than is necessary: our preference would be to couple the required holding of shares to a factor of the salary.

Limiting variable pay to 50% of remuneration; unconditional nature and duration of options

- The provision that variable pay components are not allowed to account for more than 50% of the remuneration is a clear example of an unnecessary and undesirable degree of detail. We regard a variable pay component specifically as an effective means of achieving a more performance-related remuneration structure, whereby both good and not so good performances are clearly reflected in the remuneration. The relationship between the fixed and variable pay components forms part of the remuneration policy that is submitted to shareholders and this should suffice. Companies that recruit their directors and senior management internationally cannot work with this provision.
- We interpret the provisions about options to mean that these must be conditional either upon grant (performance related number of options granted) or upon vesting (performance related exercise of options). We agree with that. The practice applied internationally and also in the Netherlands for the duration of options is meanwhile 10 years, which includes a vesting period of 3 years. A limiting of the duration to 7 years is not in line with this and seems needlessly restrictive.

Maximum of five supervisory (or non-executive) directorships per person; chairmanship counts double

- Executive and supervisory directors should continuously assure themselves that they are capable of fulfilling their duties properly and are in the position to do so. However, the detailed structuring of this in the draft code, viz. limiting the number of supervisory directorships to 5 per person, is in our view too specific in terms of quantifying this principle. Besides, it offers no guarantee that the principle will be put into practice in a sufficiently responsible way. In our opinion the own sense of responsibility of the relevant persons, the company and its shareholders should take precedence, as is reflected in the UK Combined Code.

Executive directors should not hold office on the nomination committee

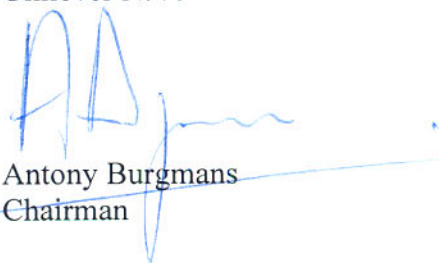
- We regard this best practice provision as incorrect. In our view there ought to be room on the nomination committee for a minority of executive directors, since they are specifically the ones who are familiar with the composition, the quality and the potential of the members of the senior management below board level. One of the principal duties of a board of directors is to ensure that the company's strategy is implemented and that the right people are selected to do that. However, the majority of the nomination committee must always consist of supervisory directors; in that way they retain a decisive vote.

IN CONCLUSION

We take the view that your Committee's work is of great importance for Dutch industry. The comments included in this letter are by no means intended to detract from the objectives and high standards of corporate governance that your Committee is seeking to achieve with the draft code. Their aim is solely to expand somewhat the framework within which good corporate governance can develop in the Netherlands, whilst taking into account the varied nature and complexity of the relevant subjects and the highly international nature of some Dutch companies. We hope in this way to make a contribution to the establishment of a code that offers effective safeguards for high-quality corporate governance in the Netherlands, with due regard for the relevant international aspects in this field.

We wish your Committee every success with the completion of its task.

Yours faithfully,
Unilever N.V.



Antony Burgmans
Chairman