



Catherine Horton

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Via e-mail: codereview@frc.org.uk

The Hague, 27 February 2018

Ref: B18.07

Subject: Eumedion's response to the proposed Revisions to the UK Corporate Governance Code

Dear Ms. Horton,

We welcome the opportunity to submit a response to the FRC consultation document on the proposed revisions to the UK Corporate Governance Code (hereinafter: the Code). By way of background, and to put our comments in context, Eumedion is the Dutch based corporate governance and sustainability forum for institutional investors. Our 65 Dutch and non-Dutch participants – all with a long term return focus – have together more than € 5 trillion assets under management. Participants include a wide range of institutional investors; pension funds, mutual funds, asset managers and insurance companies. Our participants also invest in UK listed companies.

The proposed amendments to the Code will hopefully contribute to the development and further improvement of corporate governance practices in the UK. Eumedion aims to contribute to this

development and improvement by making some general remarks. As our policy engagement is focused on new European and Dutch – hard and soft – regulation and not on regulation of other individual EU Member States, we will refrain from responding to all the questions raised in the consultation document.

1. Structure and content of the revised Code contributes to better corporate governance practices in the UK

We very much welcome that the review of the Code has been wide-ranging and that its structure, content and balance have been considered. We believe that the revised Code rightly pays attention to current national and international topics and developments in the field of corporate governance. Against this background, Eumedion particularly supports the emphasis on long-term value creation and stakeholder interests (Section 1, principle A), the attention that is paid to corporate purpose and culture (Section 1, provision 2), the proposal to broaden boards' perceptions of diversity (Section 3, principle J) and the proposal that non-executive directors may not be granted share options or other performance-related elements (Section 5, provision 34). Furthermore we welcome the fact that the revised Code has become more streamlined, shorter and concise. We believe that a more principle-based Code will stimulate the debate on good governance within the board and between the board and the company's stakeholders. Besides that it can also encourage companies to avoid a 'tick-the-box approach' and to adopt thoughtful corporate governance practices that will best support the companies' long-term strategy and objectives.

2. Directors should promote the long-term success of the company and should be responsible for weighing the interests of all stakeholders

Eumedion is pleased that the revised Code encourages boards of companies to a) take a long-term view on creating value for the company and b) balance the interests of all stakeholders, including those of employees and the wider society, when making important decisions. This is – amongst others – reflected in the proposal to extend the duty of the board to “promote the long-term sustainable success of the company, generate value for shareholders and contribute to wider society” (Section 1, principle A) and the new provision that the board should establish a method for gathering the views of the workforce which would normally be a director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director for the workforce (Section 1, provision 3). Although we understand these proposals in the UK context, we believe that these proposals can have unintended consequences as they can increase tensions between stakeholders themselves and between the board and the various groups of stakeholders. Those tensions will typically appear in stretching situations, such as in the situation of an unsolicited takeover proposal or in the situation of pressure from specific short-term

oriented shareholders to change the company's strategy and policy. The primary duty of directors is to promote the long-term sustainable success of the company. In order to fulfill this duty it is important that the board has a relative autonomous position in weighing the interests of the various stakeholders of the company, in particular the company's shareholders, employees, creditors, suppliers, clients and the wider society. Especially in the stretching situations mentioned above, directors should not be bound by specific instructions and should not be guided by the interests of one specific party or group. It is the responsibility of the board to carefully weigh the interests of all stakeholders with a focus on preserving and promoting the long-term sustainable success of the company. The board is ultimately accountable to the general meeting for how it has discharged its role via the annual re-election system (Section 3, provision 18).

In order to reflect this position in the revised Code we recommend to:

- a) Clarify that the board's only function is to "promote the long-term sustainable success of the company" and to delete the (sub)function to "generate value for shareholders and contribute to wider society" (Section 1, principle A). This position should also be reflected in the revised guidance on board effectiveness (e.g. provision 10).
- b) Clarify that in discharging their role board members shall be guided by the interests of the company and not by the interests of one specific party or group. Against this background the options i) to appoint a director from the workforce and ii) to appoint a designated non-executive director for the workforce (Section 1, provision 3) should be deleted.
- c) Further strengthen the accountability of the board for the realisation of the company's long-term strategy by describing in the annual report which contributions were made to long-term value creation in the past year. The board should report on both the short-term and long-term developments (addition to provision 1).
- d) Underline that remuneration schemes should promote long-term value creation for the company and should not only support alignment with long-term shareholder interests, but also with long-term interests of other stakeholders. The first sentence of Section 5, provision 36 should therefore be rephrased to: "Remuneration schemes should promote long-term shareholdings by executive directors that support alignment with long-term stakeholder interests".

3. Final remarks

Section 3, provision 19

We do not consider it to be a best practice that any executive director will be appointed as non-executive director of the same company. This could distort effective internal supervision as such a non-executive director could feel the urge to constantly look over the shoulder of his successor and perhaps to disagree with any departure from past policies. We therefore recommend to rephrase the first sentence of Section 3, provision 19 by: "An executive should not go on the board of the same company".

Section 4, provision 26

According to provision 26 the annual report should include an explanation for the absence of an internal audit functions if there is none. We argue to state the alternative measures that have been taken in the annual report and recommend to adjust provision 26 accordingly.

Eumedion would appreciate it greatly if our remarks were taken into consideration in the adoption of the final version of the revised UK Corporate Governance Code. If you would like to discuss our views in further detail, please do not hesitate to contact us.

Yours sincerely,

Rients Abma
Executive Director Eumedion

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