CORPORATE GOVERNANCE: THE CASE OF BELGIUM

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Abstract

This paper reviews the literature on Corporate Governance. It attempts to explain the reasons of its appearance and describe its main principles before looking into more details to the Belgian case. Indeed, the presence of holdings characterises the Belgian market, which justify the presence of specific recommendations. Results of a study on Belgian firms listed on the Stock Exchange are presented in order to show the implications of the firms in that matter.

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Corporate Governance appeared in the great transparency movements which touched companies during these last years. This is an answer to shareholders expectations who don't want any more to be suppliers of money without any other right. They wish to follow their investments more closely and check if the resources they provide are used in the right way by the managers. So, they will be able to see whether the funds invested and generated by the activity of the company are not solely used to remunerate the managers and increase their status and their prestige. Overall, Corporate Governance should not only solve the problems of the shareholders. It should fit into a definition of the function of the companies management as a whole and thus serve the interests of the Society in general. However, the improvements in favour of the employees and the economy constitute a much less developed aspect in the literature on the subject.

According to BANCEL (1997), Corporate Governance debate finds its origins in the fact that, since managers can free themselves from different mechanisms used to control them, they have the opportunity to allow themselves incomes to the detriment of shareholders and other partners of the company, the stakeholders. This is the reason why some control and incentive tools for managers had to be settled down to restore equilibrium between the different groups of stakeholders and to lead to a better distribution of wealth as well as to improve the companies' efficiency.

Even if the phenomenon of Corporate Governance is quite recent in Belgium, it appeared in the United States many years ago. And now, in Europe, companies wishing to have access to the international market of capital would have to respect the standards of Corporate Governance (NOTHOMB, 1997). For that, they have to intensify transparency with respect to shareholders about principles they apply or not; to increase their responsibility by hiring more independent directors; to respect the principle of "one share, one vote, one dividend"; and to simplify voting procedures. As the current economy becomes more internationalised, access to capital market is a main factor for companies. To obtain this access, transparency is more and more essential. Belgian companies, among others, have to enlarge their shareholding and to move towards the standards of Corporate Governance in order to integrate the world-wide aspect of the economic scene.

Other aspects that are often discussed in the specialised literature are the separation of management and control, so that the former is more autonomous from the managers, and the

creation of independent committees like the audit committee, the nomination committee and the manager's remuneration committee (De Samblanx, 1998).

The phenomenon of Corporate Governance which began during the eighties in the United States propagated very quickly in Europe. Several institutions even published recommendations or codes as Cadbury in UK, Viénot in France and Peters in the Netherlands. Belgium was not set apart, many Belgian authors turned their attention to this subject and three institutions published recommendations.. According to de Keuleneer (1997), the art of Corporate Governance, which is defined as the control mechanisms on the autonomous companies' management, consist in entrusting the supervisory power within companies to qualified people who can't misuse it. There is no real autonomy without control. Actually decisions should be taken in the social interest and not only in managers interest, that's why autonomy is an essential factor. Assuming that the number, the competition and the autonomy of companies lead to a prosperous market economy. He recommends that companies change from "entrepreneurial" to "institutional" in order to be able to survive even if shareholding varies. According to him, this continuity of the company will be ensured by the Board of directors which will be able to keep on controlling even if one shareholder decides to sell his shares. De Keuleneer deplores the lack of autonomy in Belgium due to the emphasis laid on the so-called reference shareholder, that is, a control shareholder, and on holding companies. This type of control is far from being autonomous because it is often used as a mean to make profit by making preferential transactions and by transferring this control to other companies.

Wymeersch (1997) suggests two conceptions of Corporate Governance. According to the restricted one, it the rules, structures and behaviours which govern the Board of directors' good working, including the composition rules, the rules relative to organs competence, the deliberation rules, the rules relating to the interest conflicts, etc. The good working of the Board is indeed an important guarantee for the success of the company. In the broader conception, Corporate Governance is related to the search of all bonds between a company and its environment whatever they are economic, political, social, so that they keep with products market, with capital market, with companies control market or even with the market of managers. It is a matter of seeking and identifying the elements which influence decision making within the company, the interests and factors which must be taken into account in view of an optimal management. The hard core of these research favours relationship between the central triangle of the company's life, that is, relationships between shareholders, the Board of Directors and the managers.

SECTION 1: GENERAL PRINCIPLES AND MAIN TRENDS OF CORPORATE GOVERNANCE.

There are three basic principles contained in the codes. First is *transparency* which introduces confidence between a company and its stakeholders. This transparency increases companies efficiency. Afterwards comes *integrity*. It implies that financial reports and any distributed information honestly and completely reflect the situation of the company. And to finish, *responsibility* which concerns Board of Directors and shareholders. Both have to play their role in order to make effective the reports on the management given by the Board to the shareholders. The responsibility of the Board relies mainly in the quality of information provided to the shareholders.

Among the recommendations suggested in Corporate Governance throughout the world, Wymeersch (1997) underlined the role of the Board and its composition. The Board settles the general direction of the company, the strategic orientations and other important matters like the major investments, mergers and acquisitions, etc. It nominates, supervises and revokes the top management of the company. It has a function of monitoring and controlling the action of the direction. It deals with communication with shareholders and the market. It must take care of the balance of the different interests present within the company. In particular, interests of staff, of creditors and other partners, called the stakeholders. All directors forming part of the Board should not be experts on the matter. They must have a rather broad vision of the problems with which company is confronted and a capacity to ensure an unbiased, critical but well-balanced evaluation of action of the direction. Board must be composed of three group of members. The first category includes *executive directors* who really manage the company. In the second one are *outside (non executive) directors* who do not take part in effective management but especially have a function of monitoring. They are interested in the company, either because they are shareholders, or because they have family bonds with it, or because they are former internal directors. Then the *independent directors* who are also outside directors, constitute the third category. They need some independence which is defined, for instance, in the statutes. So each company has to define its own criteria which should ensure the independence of the directors. A majority of outside directors, including independent directors is wishful. These directors must be able to participate to management with authority and independence. All directors are designated by the general meeting. Independent directors are nominated on proposals of the Board. This one will have beforehand determined a profile, procedures of nomination and, perhaps, will have created an ad hoc committee. Board must fix an age limit applicable to every directors.

SECTION 2: BELGIAN ECONOMIC ENVIRONMENT

Belgium is characterised by a strong shareholding concentration due namely to the existence of holdings. Majority of companies have a reference shareholder who strongly influences management via not only the number of votes that his participation give to him but also via the number of directors who represent him within the board. If one refers to de Keuleneer (1998), the meaning of reference shareholder appeared in Belgium in the 70's-80's. Actually surveillance of the managers was essential because of the lack of interest of shareholders for the management of the companies.

Let us recall that holdings are companies of which the goal is to hold participation in other companies, called subsidiary companies, to intervene in their management or to exert an influence on these. So they can control other companies and manage it. The companies which "belong" to a company-holding continue to exist but lose their autonomy. Success of this type of structure is explained by two essential advantages. On the one hand, resorting to a holding or a holding chain gives the opportunity to preserve the control of the company by gearing down number of minority shareholders. On the other hand it allows the ascent of dividends without tax cost because of the tax system applicable to "mother-daughter" and the repurchase of titles of industrial company by means of the perceived income. However several conflicts could arise with minority shareholders.

Number of votes a holding needs to lead its policy and its control depends of decision nature which is submitted to General Meeting. With half of votes, a holding can at least nominate a majority of members of the Board of directors. Shareholding structure and other partners nature also allow to obtain the control of a subsidiary with a minority interest. Actually, small holders seldom take part in the votes. Regulations preventing from taking part in the votes for more than one fifth of the votes attached to the whole of titles or the two fifths of the number of the votes attached to the titles represented, can be avoided while, for example, partially investing in a under-holding. Shareholders conventions can also constitute a means of acquiring control.

Holdings also have economic advantages. By synergies, a holding can give an added value to the whole. For that, it will coordinate for example, research and development for new products, it will set up a common team for production and marketing in the country and abroad. Use of holding also allows, when all companies of the group are subject to corporate tax, to minimise financial and tax costs (Wouters, 1998). Moreover, to settle a holding in Belgium presents of many advantages since, notwithstanding the deduction to the amount of 95% of the amount of the perceived dividends, the companies which hold a participation in

another company can deduct the interests from the loan contracted to acquire the shares. This can easily be done because of other profitable activities. In Belgian law there is also a deduction exemption on interests paid at holding company, as well as on those received. Under certain conditions, it is also the case on loan and accounts receivable non-represented by title interests paid to holding companies. All these elements, to which one needs to add the historical impact of the weight of heavy industry in Belgium explains the strong presence of holdings in Belgian industry.

I. Belgian Corporate Governance recommendations

To promote transparency and to limit the influence of holdings and of plurality of mandates, three Belgian institutions published Corporate Governance Recommendations. Given that they converge, we only develop Brussels stock exchange Corporate Governance Belgian Commission recommendations. As for the other two, Banking and Financial Commission and Belgian Companies Federation recommendations, specificities will only be mentioned.

A. Brussels Stock exchange Corporate Governance Belgian Commission's reporting

These recommendations are very similar to "Cadbury Code" ones particularly aim at avoiding abuses of management, which is very self-sufficient in Anglo-Saxon companies, even if the latter are not very adapted to Belgian. Let us remind that, in Belgium, it is reference shareholder predominance which should be limited. Let us also recall that recommendations of Brussels stock exchange commission are only addressed to listed companies and are not mandatory.

The main points of these recommendations concern limitation of directors number as well as presence and role of independent directors. Companies should indicate in their annual report the measures they implement about Corporate Governance. They don't have to exactly follow that recommendations, but everything must be justified. Corporate Governance Belgian Commission's objective is to promote an improvement of Belgian companies' Corporate Governance standards in order that they strengthen their competition capacities on the capital market. That's why commission emphasises the clear repartition of competencies between several organs participating in Corporate Governance and strengthens rules of financial reporting and of auditing. It turns out that Belgian law already contains some basic concepts of Corporate Governance. For example, the one share/one vote principle, Board of directors responsibility uniqueness one and the requirement for directors to act in the exclusive interest of the company, as well as recent articles settling interest conflicts within the Board of

Directors. The Commission thinks then that it is not necessary to legislate about Corporate Governance since bases already exist.

Recommendations are composed of four parts: the first concerns Board of directors, the second is about non executive directors, the third about company management and the fourth about information and control of company.

According to the Commission the Board of directors is the highest organ of management in a company. It must then exercise a complete and efficient control over it and must steadily meet to be able to control management effectively. Board of directors role is defined more precisely than in the corporate law. Actually it must establish strategic objectives and general management plan on proposal of management, it must appoint this management, approve means that will be used to obtain these objectives, attend to management program and company control implementation and inform the shareholders about it. Minimal prerogatives of Board of directors are essential elements of management and control power. If there is a management committee, some elements can be delegated.

The Commission strengthens the fact that a Board of directors must be composed of three categories of directors, it's to say executives, non-executives and independents, with limitation to 12 directors and with a minimum of 6 to ensure efficiency of meetings. Indeed, if they are too numerous it is much rather a disguised General Meeting where decisions taken in advance by the executive are only ratified. It must be a majority of non-executive directors, that is, who do not assume a management function in the company or in any subsidiaries, but linked with shareholding and having a competence such that their opinions can have a significant weight in decision making. On the other hand, independent directors are linked neither to management nor to shareholders. Their number should be at least two and be sufficient to exercise a significant influence. One of the five most general conditions of the independent director definition is: "He or she does not have any connection with company that can influence autonomy of his or her judgement power; remuneration that he (she) receive as well as having a limited number of company's shares are not considered like having such influence". These directors must be motivated but their remuneration must not be linked to the results, thus no stock option; they can, however, be paid in shares. Their remuneration should correspond to the time they devote to the company. It is also important to note that all members of lawyer chamber or auditors must be excluded from independent directors. From a legal point of view, a director does not represent anybody, he should only take care of company's interest, it is a "intuitu personae" contract, thus all directors have the same responsibility.

In order to make all these structures efficient, relevant internal information must be given to directors so that they can efficiently manage. And they must have these information before meetings. According to "the laws coordinated on the business corporations" mandates are for six years maximum and are not automatically renewable. The entire Board must define a nomination procedure for the non executive directors. A nomination Committee mostly composed of non executive directors must be set up and it must be chaired by the Chairman of the Board or a non executive director. In the same way a remuneration committee, mainly formed of non executive directors will be also set up. Its role will be to fix manager's remuneration taking care that a part of manager's remuneration will be related to performance and/or value of the company. Finally, it is recommended to create an audit committee, especially in Board where a significant number of directors sit. At least three non executive directors must belong to this committee that is mostly composed of independent directors. Recommendations define clearly what each committee must do, documents it must submit and deadlines in which it must meet directors.

B. Recommendations of the Banking and Financial Commission[1]

BFC recommendations relate to Board of directors composition and its functioning, its various committees, its relationships with dominant shareholders as well as to daily management and income allocation.

According to that Commission, there is no need to legislate because companies are under market sanction. At present, an increased transparency is essential. That's why companies must give information over their dominant shareholders, over possible conventions between these shareholders and over the content of these conventions. They must also justify and explain independence of some directors. When a director fulfil others functions, some information must be given about it. Briefly, Commission's recommendations are rather an inventory of all information listed companies must provide.

C. Recommendations of the Belgian Companies Federation[2]

These recommendations concern the Board of directors, non-executive directors, executive directors and reports. They are not only limited to listed companies although they especially concern large companies. They are also inspired by Cadbury Code but they are adapted to the Belgian system. They focus on optimal rules and structures of Corporate Governance, that is, Board of Directors composition and functioning, shareholders role, and report to be presented. It must be noted that many companies have already applied recommendations beforehand, but any additional improvement in these matters can again increase efficiency of companies

functioning and favour their development. The originality of these recommendations is that they concern any kind of companies because any firm should be in a growth prospect.
FEB is also opposed to legislation because it would make system too rigid and would not allow to make profit out of all opportunities and evolutions in this matter. It advises then companies to apply recommendations which especially concern them.

II. A Belgian case

The Société Générale de Belgique (S.G.B.) is one of our main holding company. In 1989 SGB, was the second worldwide holding (Morgan Stanley Capital International). This company exists since 1822 and holds a great number of shares in important companies on the Belgian and the International economic scene. Companies are present in fields like electricity (Tractebel), Industry (Union Minière, Recticel), and financial sector (Fortis/AG),…
Its business, clearly defined in statutes, is to hold shares in any companies, associations, institutions, having industrial, financial, property, commercial or civil activities. It also concerns their management, as well as the purchase, sale or trade off of all transferable or real estate values[3]. Companies of the group can benefit from SGB services. Like often, holding are linked, they have shares in other holding which themselves have shares in others and so long. In our example, we can see that Tractebel is a under-holding of SGB.
A chapter dedicated to Corporate Governance appears in the annual report of SGB. The firm has integrated some principles of Corporate Governance like the creation of special committees, the presence of independent directors at the Board of directors, the role of this Board, etc. Unfortunately we notice that its Board is composed of 23 members out of which 5 are independent[4], that it meets only 4 times a year except due to exceptional circumstances (8 times in 1997), and that the same persons sit in all special committees, etc.
This is consistent with the results of the survey we discuss further. Corporate Governance philosophy begins to imbue Belgian companies but practice is still far from theory. For instance SGB has an executive committee, an audit committee, a remuneration committee, a group committee and a management committee as recommended by the codes. Since the Corporate Governance principle underlying the creation of such committees is the surveillance of management, these should be composed of people as independent as possible or, certainly not of managers. One can therefore regret that, at the SGB, the Board of directors president, the vice-chairman and the managing directors notably sit in all of these committees except the audit committee.

Section 3: Survey on Belgian companies' involvement in Corporate Governance

A survey by questionnaire was carried out to management committee's presidents of 132 companies listed on Brussels stock exchange to find out real involvement of Belgian companies in Corporate Governance. This questionnaire focus on whole Corporate Governance principles inspired by Belgian and foreign recommendations. The objective is mainly to analyse to what extent Belgian listed companies are concerned with Corporate Governance and to identify which principles they apply or pay attention to. For that reason, we prefer to look at many questions with the point of view of the principles and not of the companies. That is, we carry out a classification of these principles according to the number of times they are evoked. The number of filled out questionnaires that we received is 57, that which implies a rate of participation of 43,2%.

Only listed companies were contacted, because they are certainly among the companies for which information is most available. They are also more suitable for applying the principles of Corporate Governance, since they have a more adequate structure. Indeed, most of the time, these companies already have a Management Committee in addition to the Board of directors which, itself, is an effective body of management.

The results of the investigation into the implication of the Belgian companies in Corporate Governance will be presented in three topics.

I. The composition of the Board of directors

It arises from the investigation that Boards of directors of the Belgian companies questioned comprise more or less twelve members, which is exactly the limit the various recommendations proposed. On the other hand, concerning the presence of non-executive directors, 91% of the studied companies have some in their Board, but only 33% of these 52 companies reach the majority of non-executives. For the remainder, those constitute on average a third of the Board. The investigation does not allow to determine what is their true role within the Board, but a study carried out in Great Britain by Pettygrew and McNULTY in 1995 showed that it is often difficult for the non-executive directors to really have some real power. They often do not contribute to the management of the firm, their role is limited to the approval or not of decisions without direct intervention in the management of the company.

The external directors are also quite present in the 81% Boards of directors of the listed Belgian companies of our sample and their number is on average three. However, given the lack of information about them, it is impossible to affirm that these directors are independent in the point of view of the recommendations. These directors come from varied sectors. So

one can find just as well architects, doctors that politicians, but they are especially professors of university (18,18%), or from the financial (15,91%) or industrial (15,91%) sectors.

As one could expect, the majority shareholders are best represented in the Board with, on average, 50% representatives. Indeed, one of the reasons for which Corporate Governance appeared in Belgium is the reduction of the influence of the majority shareholder, unlike the United States where the tendency rather aims at attenuating the capacity of the very powerful managers. On the other hand, the minority shareholders are very badly represented in the Board of directors since they have on average only 13% representatives.

Concerning the separation of the functions of Chairman and Chief Executive Officer or Managing Director, the Belgian companies are also tend to follow the recommendations. In the sample, 77% of the firms separate these functions and, among the thirteen other companies (23%), ten have external directors who counterbalance this capacity.

The Management committees are also very widespread; 74% of the companies have one of them and 58% of them also have an executive committee.

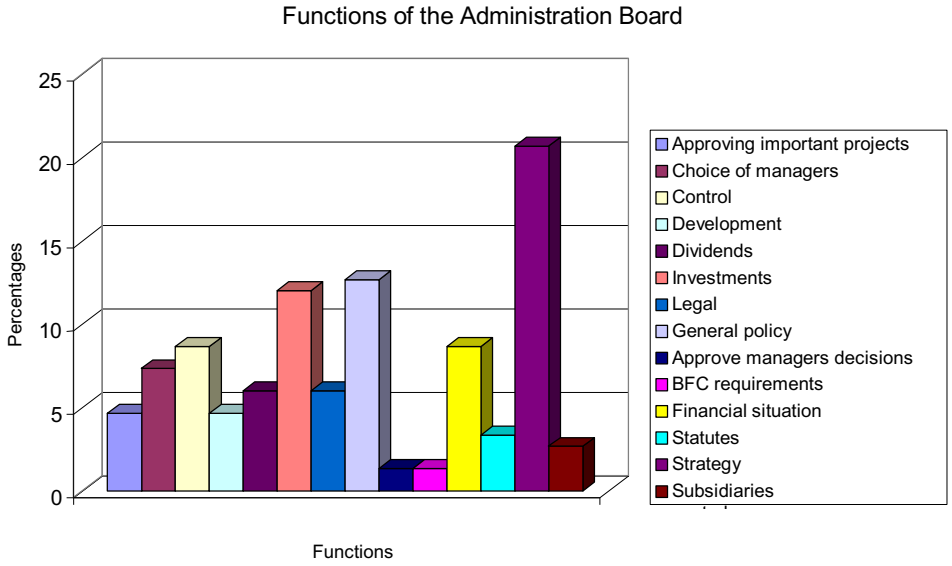
The specialised committees have only a relative success since only 65% of the companies have one of them and among those, hardly 40% have a committee of audit, 46% a committee of remuneration and 16% a committee of nomination. One can also observe that some companies created other committees like, for example, permanence, strategy, financial or company committees, as well as an office of the Board or a special committee for the “poison pills”.

II. The operation of the Board of directors

The recommendations achieved their goal as regards information is concerned, at least in theory, since 72% of the companies provided some information on the running and the composition of their Board of directors. In the annual reports we received there is, indeed, a chapter entitled Corporate Governance which includes information concerning, in particular, the composition, operation, the role, and the remuneration of the Board of directors. It is only a beginning for it is not yet possible to know if, for example, of true independent directors are present. But one can already appreciate the efforts carried out by the companies in this field.

In the part " Corporate Governance " of the annual reports as well as in the questionnaires, we discover that the principal roles of the Board of directors are to define the strategy (21%) and the general policy (13%) of the company, to make the decisions of investment (12%), to determine the budgets and to follow the financial situation (9%), to control the company as a whole (9%), to choose the leaders and the members of the Management committee (7%), etc.

The Board of directors is thus the supreme body of management as it is defined by the Banking and Financial Commission and it exercises quite well the functions this commission recommends.



If the Board of directors has to play an effective role, it must meet regularly. The investigation denounces a deficiency on this subject since the boards meet on average only 6 times per annum. A large number (25%) meets only four times per annum and only 16% meet more than ten times per annum. One can consequently ask questions about the effectiveness of the management of a company carried out by the Board of directors.

In addition, one can also raise the problem of the availability of the directors, the time they are ready to devote to the company and their competence to do it. Unfortunately, it is not possible to obtain this kind of information. One could be happy to see that the directors are selected for their personal competence or qualities, but it should be remembered that it is the case in only 7%.

III. Specific aspects

The principle of " same return for each share ", defined by Daems (1998), means that each shareholder must be treated in the same way. A shareholder does not have, for a reason or another, to receive perquisites. The Board of directors has to control that. The results show that this principle is applied by 58% of the companies of the sample. The aim is to avoid that a shareholder, because he detains the major part of the capital, can use that advantage to control some elements as, for example, allocating to himself a part of the profit which is not proportional to the number of shares he possesses. This relatively small percentages shows,

once more, that in Belgium, Corporate Governance is not useless and that it remains inequalities.

The nature of the control of the companies also influences the application of the recommendations as regards to Corporate Governance. The investigation reveals that 54% of the companies of the sample are controlled by another company and that they are, most of the time (71%), completely controlled by them. These results are not surprising in Belgium.

In Corporate Governance, a solution recommended to avoid the problems of agency, is to interest the leaders in the maximization of the value of the company by giving shares to them. This is not a new. The study of Jensen and Meckling, in 1976, shows that the greater the percentage of capital held by the leader is, the smaller the variation compared to the traditional objective of maximization of the firm value and the more successful the firm. In our sample, hardly 35% of the companies see their leaders having shares of the capital. More generally, to give shares to the employees, so that they can really better enjoy participating in the life of the firm, is not a new idea either. It appears that employees have shares in 32% of the cases but, very often, it is not due to an initiative of the company which is not necessarily informed about it. The employees do it in 83,33% of the cases as individual investors.

Finally, concerning the question about the appreciation of the Belgian recommendations on Corporate Governance, less than 30% of the companies answered to it, and half only of them found these excellent. Broadly it shows the ignorance or the disinterest of the companies for the recommendations. In addition, the fact that three quarters of the firms affirm they already apply recommendations could let believe that the existence of recommendations is not an essential element. In fact, firms seem to apply measures according to the particular difficulties they encounter. Nevertheless, the most cited principles are the detailed information for the shareholders and the appointment of independent directors, even if, once again, it could be noticed that hardly half of the companies answered to this question. As for the principles the companies do not apply, it consists in the committee of remuneration, the committee of nomination and the number of 12 directors.

CONCLUSION

Presently, Corporate Governance is a world phenomenon. It concerns all economies and it is adapted to each of them according to their specificities. It appeared first in the United States in order to react against the management abuses. For the other countries, it could especially help to settle problems related to the globalisation and the internationalisation of the markets.

Its purpose is to balance the various powers of the firms and to structure their management. Even if the hard core of Corporate Governance concerns the Board of directors, its means of action are quite various.

In general, recommendations are preferred to a formal legislation as far as application of the principles of Corporate Governance is concerned. Thanks to this, each company can approach the "ideal" situation while preserving its specificities.

The investigation allowed us to evaluate the implication of the listed Belgian companies in Corporate Governance. The results show that the principle of Corporate Governance starts to infiltrate the companies but they are not yet applied with a sufficient rigour.

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[1] Comments by Jean-Louis DUPLAT, Chairman of the Banking and Financial Commission.
[2] Comments by Guy KEUTGEN, General Secretary-director of the Belgian Federation of the Firms.
[3] SOCIETE GENERALE DE BELGIQUE, Annual report 1997, Shareholders information, p.95.
[4] We don't have any information about independence of these directors in the report.

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