# Corporate Sustainable Governance

How can the Supervisory Board oversee the transition to a new, sustainable economy?


Supervisory Directors Course

Nyenrode Business Universiteit

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Brussels, Belgium

November 2022

**Contents**

## 1. Introduction

This paper was written for Nyenrode Supervisory Directors Course 57 and aims to offer business leaders and anyone else with an interest in the subject a practical grasp of the abstract and complex transition to a sustainable economy.

One of the European Union's (EU) most pressing priorities is to tackle climate change. Many studies show that climate change, otherwise known as global warming, is caused by increased greenhouse gas emissions as a result of human activity. The EU intends to counter these emissions and has confirmed this by signing the United Nations' (UN) Paris Climate Agreement[1]. All member states of the EU, the Netherlands included, have signed up to the agreement and thereby entered into a commitment by 2030 to reduce EU greenhouse gas emissions by at least forty percent compared to 1990.

However, the EU is going a step further. In 2021 the EU made climate neutrality, or net-zero CO2 emissions by 2050, a legal requirement under the European Green Deal.[2] To make that goal more realistic an interim objective was set that requires member states to reduce their CO2 emissions by fifty-five percent by 2030. With these ambitious plans the EU aims to achieve a 'new sustainable economy', in which everyone across the EU (governments, businesses and private individuals) participates in the sustainable transition, which should not come at a cost to the European economy. The sustainable transition covers not just the environmental impact, but the human impact, and that includes human rights. To this end, the EU proposes radical measures such as a ninety percent emissions reduction in the transport sector by 2050, energy neutrality in the gas sector and the requirement that all new houses be energy efficient.

There is no lack of ambition in Europe then, but what specific action can businesses take to achieve this radical transition? At my consultancy in Brussels, where I, as a Managing Partner, head an international team of consultants, we help undertakings and organisations transition to the 'new sustainable economy'. The services we offer are in line with general sustainability trends and initiatives relating to Environmental Social Governance (ESG) and the UN Sustainable Development Goals (SDGs)[3] as well as specific, legislative initiatives arising under the European Green Deal.[4] In practice I come across companies that are wondering how to square up to the ambitions of the European Green Deal and how they will actually make that transition. As well as others that have already incorporated sustainability in their business strategies and need help to stay abreast of the rapidly evolving European sustainability agenda. That agenda is increasingly populated by legislative initiatives containing a duty of care for boards of directors to operate sustainably as regards the environment *and* society. Initiatives like these are designed to engage businesses and investors in sustainable value creation, remembering that should incentives at the top fall on stony ground, the whole of the underlying organisation will suffer.

Without getting ahead of any future legislation that would impose a duty of care on a company's board of directors (BoD), I examine in this paper the role at the top of an undertaking and ask ***how the SB might oversee the transition to a new sustainable economy.*** For that reason the study is confined to ESG.

Two research methods, a theoretical study and two interviews are used to answer this question. To begin with, in the theoretical framework, chapter two examines corporate governance trends and initiatives in

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[1] Paris Agreement (2015). Publicatieblad van de Europese Unie.

[2] European Commission (2019). *Mededeling van de Commissie aan het Europees Parlement, de Europese Raad, Het Europees Economisch en sociaal comité van de Regio's aangaande de Europese Green Deal*. Com (2019) 640 final.

[3] United Nations (2018). Transforming our world: The 2030 Agenda for Sustainable Development. A/RES/70/1.

[4] Europese Commissie (2019). *Mededeling van de Commissie aan het Europees Parlement, de Europese Raad, Het Europees Economisch en sociaal comité van de Regio's aangaande de Europese Green Deal*. Com (2019) 640 final.

the area of sustainability, including ESG, the SDGs and the Dutch Corporate Governance Code[5], as well as European legislative trends in corporate governance and sustainability reporting regulations. Further to the theoretical framework, an interview on the subject of the sustainability transition is conducted with Boudewijn Siemons, operational director (COO) and head of environmental management at the Port of Rotterdam. The interview findings are developed in chapter three. Chapter four presents the results of the research question in the shape of recommendations over the questions that an SB should ask of the BoD. In chapter five these recommendations are discussed with Ineke Dezentjé Hamming-Bluemink, who has plenty of oversight experience as a member of the SB at Vopak Nederland, at Eindhoven University of Technology and at the ANWB. Finally, the conclusions of this study are presented in chapter six.

## 2. Theoretical Framework

The purpose of the theoretical framework is to examine a number of relevant corporate governance sustainability trends and developments. These include voluntarily national and international initiatives as well as European laws and legislative initiatives. This theoretical framework is not designed to give a holistic picture, but to unpick a thread from the ball of sustainability initiatives and support companies as they structure along sustainability lines.

### 2.1 Environmental Social Governance

ESG stands for Environmental Social Governance, or sustainable, managerial and socially responsible corporate policy and can be described as an ethical movement which has become more influential in recent decades. Investors and other stakeholders expect better information on environment, society and company management (ESG) for a clearer understanding of how an undertaking performs, reaches decisions and creates value. What stakeholders want, then, is to understand an undertaking's external impact in absolute terms and by comparison with other undertakings. Consumers want to understand how their choices impact the world. And employees want to know if their company is working towards greater equality, empowerment, better working conditions and safer and more sustainable communities. The financial services sector also relies on better information to help society transition to a more sustainable economy.

The three pillars of ESG are often used to measure an undertaking's sustainability and ethical impact. Ernst & Young accountants (EY) describe these ESG pillars[6] as follows. An undertaking's impact on climate change is assessed on the basis of greenhouse gas emissions, waste management, use of natural resources, deforestation, energy efficiency and so on. Given the effects of global warming, reduced $CO_2$ emissions are crucial for undertakings *and* governments. Where the social aspect is concerned, i.e. human rights in the broadest sense of the words, they look at working conditions in the supply chain, exposure to illegal child labour, and more obvious issues such as health and safety compliance. They also consider integration and contribution to local communities. The final aspect, governance, deals with the method of governance, the code of conduct, and oversight of the organisation's environment and social goals. Thus, the purpose of the undertaking, the role and composition of the board of directors and the remuneration and supervision of the top managers have become the core issues in an undertaking's corporate governance structure.

In the national ESG barometer of 2022 another leading accountancy firm, KPMG, underlined the point that companies that actively focus on people, environment and society are already reaping benefits:

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[5] Corporate Governance Code (2016). Code | Monitoring Committee Corporate Governance.

[6] Oosterhof, D. (2022). *Een herbezinning op de benefit toets in transfer pricing: erkenning van het bredere ESG-belang*. Ernst & Young.

*"Three quarters of consumers think that organisations have a social role to play, and employees attach ever more value to their employers' commitment to ESG. Undertakings that have sustainability anchored in their DNA are better at attracting talent. An undertaking that prioritises non-financial values is also more attractive to investors. Not least because these undertakings have a lower risk profile and offer, on average, a higher return on investment. This is because climate-change effects and societal developments can have a detrimental effect on an undertaking's success."*[7]

### 2.2 Sustainability Reporting

Stakeholders use ESG information to make important decisions, so they expect that information to satisfy the statutory and voluntary reporting requirements and to be reliable and quantifiable. Companies use sustainability reports to communicate their performance and impact across a broad scale of sustainability themes covering environment, social and governance parameters. This allows businesses to be more transparent about the risks they run and the opportunities that come their way. Also, stakeholders get a better understanding of their performance, which goes beyond profits. Companies get to choose their own framework for the sustainability reports.

There are multiple sustainability reporting frameworks. Figure 1 shows the options, including the Sustainability Accounting Standards Board (SASB)[8], the Global Reporting Initiative (GRI)[9] and the Taskforce on Climate-related Financial Disclosures (TCFD).[10] The main thing is that organisations select one of these frameworks to set up a system of their own with which to communicate periodically their economic, environmental and social performance to internal and external stakeholders in a uniform and transparent manner.

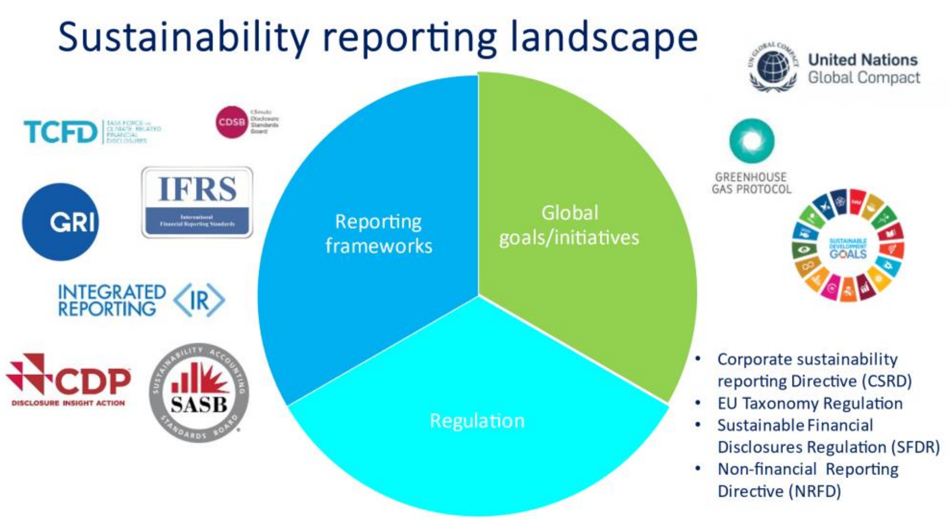


**Figure 1.** Overview of the sustainability reporting landscape.*[11]*

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[7] KPMG (2022). *De nationale ESG-barometer. Duurzaam vooruit. Status van de duurzaamheidsagenda in het Nederlandse bedrijfsleven*. KPMG.

[8] Sustainability Accounting Standards Board (2011). *Standards Overview*. SASB.

[9] Global Reporting Initiative (1997). *The global standards for sustainability reporting.* Global Reporting Initiative.

[10] Taskforce on Climate-related Financial Disclosures (2017). *Recommendations of the Task Force on Climate-related Financial Disclosures*. Final Report. TCFD.

[11] Figure 8 is drawn from several internet sources

Most notable is the trend to harmonise sustainability reporting. The IFRS Foundation and GRI, for example, announced recently the alignment of their operating programs and standardisation activities.[12] An important development, in that it allows businesses to function more efficiently and compare reporting practices more easily.

There is an assumption that making a sustainability disclosure yields multiple benefits. It gives the organisation an opportunity for transparency over its engagement with sustainable development, offers a better understanding of the positive or negative influence it can have on sustainable development and makes it possible to monitor performance within and between organisations in the longer term. However, a recent study shows that when businesses make voluntary sustainability disclosures they are more inclined to use a stakeholder-oriented disclosure framework, as compared to 'resisters', who gravitate towards an investor-oriented framework.[13] This undermines the comparability of non-financial information disclosed voluntarily and that disclosed by the system's opponents. The results also suggest that 'resistors' make use of standard forms as an evasive manoeuvre to conceal poor, non-financial performance, withhold information on ownership or reduce implementation workload.

### 2.3 UN Sustainable Development Goals

In international terms the United Nations' Sustainable Development Goals (SDGs) of 2015 contain a universal call to action which is also known as the 2030 Agenda for Sustainable Development.[14] However, the SDGs are not the first international development goals that we have seen. In as early as 2002 the leaders of 189 countries met to sign Millennium Development Goals (MDGs). Under this banner they committed themselves to a series of eight quantifiable goals ranging from the halving of extreme poverty and hunger to the promotion of gender equality and reduction of child mortality by 2015. Although revolutionary in 2000, it turned out that the MDGs were unachievable. The extreme poverty goal was reached by 2015, but not without a degree of inequality.[15]

The SDGs now go a step further and focus on the construction of a sustainable world in which equal weight is given to ecological sustainability, social inclusion and economic development, and in which everyone participates. Thus, the overriding goal of the SDGs is to put an end to poverty, protect the planet and ensure that all humans live in peace and prosperity to the year 2030. It should be recognised, however, that not everyone is happy with the SDGs. Researchers have warned that despite improving on the MDGs, the SDGs could have negative consequences, on biodiversity for example.[16] Then again, in a recent study. researchers have argued for a replacement of the SDGs, which they feel are no longer appropriate to the current era of escalating crises and (natural) disasters.[17]

[12] IFRS (2022). *IFRS Foundation and GRI to align capital market and multi-stakeholder standards to create an interconnected approach for sustainability disclosures.* IFRS.

[13] Breijer R. & Orij R. P. (2022). *The Comparability of Non-Financial Information: An Exploration of the Impact of the Non-Financial Reporting Directive*. (NFRD, 2014/95/EU), Accounting in Europe.

[14] United Nations (2018). Transforming our world: The 2030 Agenda for Sustainable Development. A/RES/70/1.

[15] United Nations (2015). *The Millennium Development Goals Report*. United Nations.

[16] University of Queensland. (2020). *Latest U.N. sustainability goals pose more harm than good for environment, scientists warn*. Phys.Org.

[17] Bendell, J. (2022). *Replacing Sustainable Development: Potential Frameworks for International Cooperation in an Era of Increasing Crises and Disasters*. Initiative for Leadership and Sustainability (IFLAS), University of Cumbria. United Kingdom.


**Figure 2.** Overview of the United Nation's seventeen Sustainable Development Goals of 2015.[18]

Whereas the SDGs offer a non-binding framework, countries and supranational organisations such as the EU[19] have used the seventeen goals to develop a policy with binding effect. Alongside this alignment with the relevant goals, the EU has taken steps to monitor the development through Eurostat – the European office for statistics.[20] Conversely, the EU also played a significant role in developing the goals, each of which is incorporated in EU policy, in the knowledge that measures taken in one area will affect another development's outcomes. Here, it is important to find a balance between the goals. To facilitate and operationalise this process, each goal consists of quantifiable targets and indicators.

One of the most important components in reaching the goals is to engage civil society, the private sector and other stakeholders. On the one hand, the European Commission consults stakeholders, businesses included, through open consultations during the preparations for new initiatives and evaluations of existing policy. The building of partnerships (an integral part of the SDGs which even has its own goal (SDG 17)) and the assurance of a transparent process are important parts of the European strategy designed to improve the policy's chances of acceptance and application.[21]

On the other hand, the SDGs are immensely important to businesses. This is because non-application of the goals can prove expensive for businesses if their growth prospects are limited by environmental and social charges. There is a good chance that in the long run the goals will have a growing influence on national and regional policy. Consider, for example, European legislation, such as reducing emissions by 55%, which will apply directly in the member states. Companies can also sustain reputation damage, especially given the heightened European interest in climate.[22] At the same time, society is demanding ever more transparency over sustainability risks, a fact confirmed by the recent political agreement

[18] United Nations (2018). Transforming our world: The 2030 Agenda for Sustainable Development. A/RES/70/1.

[19] European Commission. (2016). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Next steps for a sustainable European future. European action for sustainability*. COM (2016)739 final.

[20] Eurostat (2020). *Sustainable development in the European Union — Overview of progress towards the SDGs in an EU context — 2020 edition*. Eurostat.

[21] Europese Commissie (z.d.). *Betrokkenheid van het maatschappelijk middenveld, de particuliere sector en andere belanghebbenden*. Europese Commissie.

[22] European Commission. (2021). *Eurobarometer Survey: Europeans consider climate change to be the most serious problem facing the world.* European Commission.

between the EU institutions over the directive on corporate sustainability reporting.[23] [24] However, when companies include the SDG's in their development of sustainability strategies they can stay ahead of the competition and nurture confidence with other parties such as governments, shareholders and customers. Furthermore, a good understanding of the goals assists in the development of a business model that is more resilient in the face of future policy changes. The SDGs are also helpful to companies' worldwide communication of the work they do in the area of sustainability.

## 2.4 European Green deal

The European Commission has set itself the target of reducing greenhouse gas emissions by at least 55% by 2030 and becoming climate neutral by 2050. In its European Green Deal the European Commission proposes a comprehensive plan from accelerating sustainable and smart mobility to mobilising business and industry to create a clean and circular economy, and from providing clean, affordable and safe energy to developing a fair, healthy and environment-friendly food system.[25]

From that sizeable package I will examine two specific proposals (sustainable corporate governance and sustainable corporate reporting) which tie-in with the current trend of the political undertaking described by Prof L. Timmerman.[26] Timmerman describes four eras in which the undertaking has influenced company law. In the fourth phase (post 2015) the undertaking acquires a political dimension. Out of dissatisfaction with the functioning of undertakings and the vast power they wield, legislators have used company law to impose what amount to public duties on corporate entities. One example of this is the fight against climate change. With the legislators' intervention, undertakings no longer focus solely on their shareholders' profit motives. According to Prof Timmerman, the coronavirus crisis has lent extra weight to this.

### *2.4.1 Sustainable Corporate Governance*

In February 2022 the European Commission proposed a directive on sustainable corporate governance.[27] In the coming months the proposal will come before the European Parliament and Council, followed by trilogues in advance of potentially finalising a directive. Though we are not yet sure what form the legislation will take, the European Commission takes the view that in practice corporate interests and governance are expressed only in terms of short-term financial results due to shareholder pressure and the directors' remuneration associated with these financial results.[28] One of the directive's aims is therefore to improve corporate governance practices to ensure that risk management and risk limitation processes relating to human rights and environment risks and effects, including those arising from value chains, are better integrated in business strategies.

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[23] Europese Raad (2022). *Nieuwe regels voor duurzaamheidsrapportage door ondernemingen: Raad en Parlement bereiken voorlopig politiek akkoord*. Raad van de Europese Unie.

[24] Europese Commissie (2021). *Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting*. 2021/0104(COD). Europese Commissie.

[25] European Commission (2019). *Mededeling van de Commissie aan het Europees Parlement, de Europese Raad, Het Europees Economisch en sociaal comité van de Regio's aangaande de Europese Green Deal*. Com (2019) 640 final.

[26] Timmerman, L. (2020). *Uitdagingen voor het ondernemingsrecht; op weg naar een echt ondernemingsrecht?* Maandblad voor Ondernemingsrecht. Numbers 5 & 6.

[27] European Commission (2022). *Voorstel voor een richtlijn van het Europees Parlement en de Raad inzake passende zorgvuldigheid in het bedrijfsleven op het gebied van duurzaamheid en tot wijziging van Richtlijn (EU) 2019/1937*. COM(2022) 71 final.

[28] Jong, B.J. de, (2021). *Duurzame corporate governance: Europese en Nederlandse ontwikkelingen.* Ondernemingsrecht, pp 195-204.

Article 5 of the directive describes the integration of appropriate due diligence in company policy. Undertakings are expected to put measures in place to prevent detrimental sustainability impacts. Directors are expected to weigh all relevant sustainability interests in the long term. Undertakings are required to incorporate appropriate due diligence in all policy guidelines and to have an appropriate due diligence policy that contains a) a description of the undertaking's long-term approach in the area of appropriate due diligence. And b) a code of conduct in which the undertaking sets out the rules and principles to be observed by the employees and subsidiaries. And finally c) a description of the processes that have been introduced to apply appropriate due diligence, including measures put in place to check compliance with the code of conduct and extend its application to established business relations.

*2.4.2 Sustainable Corporate Reporting*

The European Commission has decided to produce its own sustainability standards as part of the Green Deal. The existing Non-Financial Reporting directive (NFRD)[29] of 2014 is amended by the Corporate Sustainability Reporting Directive (CSRD)[30]. On 21 June the European Parliament and the European Council reached a provisional political agreement, and the final agreement is expected for October 2022.

The reviewed directive introduces a certification requirement for sustainability reporting as well as better access to the information by prescribing that this be published in a special section of the business reports. In addition, the European Financial Reporting Advisory Group (EFRAG) is to be given responsibility for putting European standards in place after taking technical advice from a number of European agencies. The Commission's current proposal will be mandatory for undertakings in Europe that satisfy at least two of the following three criteria: they either have more than two hundred and fifty employees or annual turnover of at least €40 million or assets of €20 million. Under the reviewed directive, therefore, many more undertakings and not just the big, exchange-listed undertakings, banks and insurers, as is the case under the present NFRD, will be required to report their sustainability. In Europe, the number of undertakings with a duty to report will rise from about 11,600 to 49,000.

In addition, the reviewed directive contains new reporting obligations for undertakings such as a brief description of the business model and company strategy, goals relating to sustainability aspects and the progress already made, descriptions of the roles of governance, managerial and supervisory bodies and a description of the policy relating to sustainability.

## 2.5 Dutch Corporate Governance Codes

Article 1.1 of the Dutch Corporate Governance Code gives an explanation of the term value creation. The directors are responsible for the continuity of the company and its affiliated undertaking: “The directors focus on the long-term value creation of the company and its affiliated undertaking, and to this end weigh any relevant stakeholder interests. As regards defining the strategy it states that consideration must be given to aspects of business that are of relevance to the company and its affiliated undertaking, such as environmental, social and human-resource matters, the chain in which the undertaking operates, compliance with human rights and the fight against corruption and bribery, or the ESG goals in other

[29] European Commission (2014). *Directive 2014/95/EU of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups*. Official Journal of the European Union.

[30] European Commission (2021). *Voorstel voor een richtlijn van het Europees Parlement en de Raad tot wijziging van Richtlijn 2013/34/EU, Richtlijn 2004/109/EG, Richtlijn 2006/43/EG en Richtlijn (EU) nr. 537/2014 betreffende duurzaamheidsrapportage door ondernemingen*. COM (2021) 189 final.

words".[31] The supervisory board is responsible for overseeing the directors where these matters are concerned.

The Monitoring Committee Corporate Governance Code organised consultations from 21 February to 17 April 2022 on a review of Code.[32] The aim is to update the Code on the basis of input and findings obtained during the consultation phase. The proposal for updates reveals that ESG will be given a more prominent role. Companies would then be compelled to define an ESG strategy containing specific goals and justify it in the directors' report. The interests of the relevant stakeholders are taken into consideration when defining the ESG strategy and a policy for stakeholder dialogue is devised. That dialogue is facilitated by the directors. In addition, the directors' report gives the reasons for the company culture, the values and conduct rewarded within the undertaking and the reasons why this represents a contribution to long-term value creation. The Commission, having considered the responses, aims to establish a reviewed Code in 2022 with a view to forwarding this to the cabinet for enshrinement in law. The Code would then come into effect in the financial year that opens on or after 1 January 2023.

## 3. Interview with Boudewijn Siemons, COO Rotterdam Port Authority

Further to the theoretical framework, an interview was conducted with the COO of the Port of Rotterdam, Boudewijn Siemons, on the subject of ESG. Siemons occupies an important role as a member of the Board for a Dutch undertaking that directly and indirectly accounts for 8.2% of gross national product and 15-16% of national CO2 emissions in the Netherlands. The interview was conducted by means of a Teams call in July 2022 and was semi-structured in that Siemons received the questions in advance of the interview but was also given the chance to raise other issues and subjects. In the paragraphs that follow the main findings are developed in line with Siemon's general experience of ESG as well as more specific subjects including sustainability ambitions, governance, SDGs, sustainability disclosures and appointment and remuneration policies.

### 3.1 ESG

ESG is a matter of the greatest urgency and highest importance - it is about corporate social responsibility, the energy transition, indeed the very reasons why Boudewijn Siemons came to work for the port eighteen months ago. The port is privatised and at arm's length from the shareholders, which places the business in a unique position to play a leading, driving and stimulating role in that energy transition.

In recent years there has been a complete mind shift at the port. From a site that revolved entirely around fossil fuels, with a Russian oil terminal on the *Kop van de Beer*, to one at which the energy transition is centre-stage. The world has completely transformed, but the responsibility for running a port, for how it functions, and for its safety, still exists, and money is still being earned in the old economy in the process. The Wuppertal Institute was commissioned by the port authority to investigate how business and industry in Rotterdam might drastically reduce their CO2 emissions but at the same time continue to make the products demanded by society, such as fuels and chemicals.[33] The first transition pathway postulated by Wuppertal concerns improved efficiency and a reduced CO2 footprint.

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[31] Corporate Governance Code (2016). Code | Monitoring Committee Corporate Governance. Article 1.1.

[32] Corporate Governance Code (2016). Code | Monitoring Committee Corporate Governance.

[33] Lechtenböhmer, S., Schostok, D., Kobiela, G., Knoop, K., Pastowski, A. & Heck, S. (2018). *Deep Decarbonisation Pathways for Transport and Logistics Related to the Port of Rotterdam*. Synthesis Report. Wuppertal Institut & Port of Rotterdam.

### 3.2 Sustainability Ambitions

Siemons says that the sustainability agenda is largely the brainchild of the executive officer (CEO), Allard Castelein, who has steered the business towards the energy transition with ample inspiration and ambition in recent years. This means that the job of the port is not to become the biggest port possible but to optimise its contribution to society. That can mean different things at different times.

*"Ten years ago the port was much more concerned with big size, big quantities, growth and entrepreneurship. The entrepreneurship has remained but is much more concerned about what is good for society; what should the world look like and how does the port contribute to that." – Boudewijn Siemons.*

Although the port authority does not have a separate sustainability strategy, it does have a separate sustainability statement.[34] The port authority needn't concern itself with getting people interested in sustainability; it's more about supplying the tools with which it can be done. These days, if you work for the port authority it goes without saying that you will have that intrinsic motivation. In that case, the most important thing is to agree about how the sustainability ambitions should be interpreted. The port authority commissioned CO2 measurements, for example, which showed that the business is already CO2 neutral. Nonetheless, there is still a need to offset things that cannot be mitigated. For everyone employed in the business it is crystal clear what path the port is on, and the young employees are even asking if there is anything more that can be done.

### 3.3 Governance

The port has been privatised and turns a good profit - and for that reason it has no need to go cap in hand to the shareholder. Dividends are paid out to the shareholder, and resources are plentiful enough to invest in the energy transition. This is why the port was privatised, to enable it to invest effectively as a business, and why the port has remained an attractive place. The governance requirement in that case is that the port reports back to an SB. All supervisory directors are drawn from the private sector and from a broad range of experiences, such as directorships at companies with state-owned shares, experience of the energy sector or financial sector, but no alderman or Director General. The port has regular meetings with the shareholders, the Ministry of Finance and the municipality of Rotterdam. The rules state clearly when and with whom the BoD should consult, and for strategy and the first governance layer that is always the SB. Shareholders enter the picture when the port authority is dealing with certain major projects and important strategic documents. Furthermore, meetings with shareholders take place at a more abstract level than those with the SB. You can also see that the SB is influenced by what the shareholders want.

### 3.4 UN Sustainable Development Goals

The port authority has embraced five SDGs (3, 7, 8, 9 and 13) over which it can exert the most influence, but Siemons stresses that this is not to say that the other twelve are unimportant. Within the port authority they are currently assessing whether to focus in on those five SDGs or take a broader view of the goals with the ultimate aim of expanding to all SDGs. For that reason, the port authority is now looking at how it might further incorporate the SDG's in the organisation, because, as Siemons says, there is still room for improvement.

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[34] Castelein, A. (z.d.). *Corporate Social Responsibility Statement. Building a Sustainable Port. Make it Happen*. Port of Rotterdam.

Now that the SDGs can be quantified with ever greater precision, the KPIs are becoming clearer, which helps when it comes to giving justification and setting clear objectives. Whenever an investment proposal is made the SDG's have to be incorporated, and that is easier now that the goals are quantifiable. The gains can then be taken into consideration when weighing up the investment. Siemons confirms that the shareholders and supervisory directors are in fact showing more interest in how far the business adopts the SDGs. Nonetheless, he also stresses that the port authority itself already has an intrinsic drive to integrate the goals in its activities. Corporate social responsibility is catching on, and that is a good thing, says Siemons.

### 3.5 Sustainability Reporting

The port authority has signed up to the Science Based Targets Initiative (SBTi).[35] This concerns science-based targets that offer businesses a clearly marked path to reduce emissions in line with the Paris Agreement objectives. More than three thousand businesses around the world have signed up to the Science Based Targets Initiative. The port authority aims to embrace the SBTi and is also looking at how it might bring in its suppliers with a view to consolidating the figures. With this, Siemons is confirming that the port authority is looking for strict quantifiability, to involve the accountants in the assessment of sustainability outcomes. For the time being, however, there are no clear frameworks through which they can achieve this, and this is part and parcel of the learning curve that they are on.

### 3.6 Sustainability of Appointment and Remuneration Policy

Finally, Siemons confirmed that sustainability was a prominent aspect of the process surrounding his appointment as COO of the port authority. Targets are agreed with the SB annually, and sustainability is certainly a part of that. However, there is room for improvement, says Siemons. Once the targets are easier to quantify, they will be easier to implement. Where the remuneration policy is concerned, sustainability is a part of the variable component.

Siemons says that it is good for the BoD’s and the SB's ambitions to be of a similar quality and for their thoughts to coincide over the dot on the horizon. However, Simon's is convinced that the SB and BoD both play an important role when it comes to the shape and the urgency behind these ambitions. Here, the SB has the role of setting challenges and the BoD has the role of balancing the ambitions as best it can. Added to that is the fact that sustainability goals are not necessarily mutually reinforcing: sustainability relates to both CO2 and nitrogen, and one erodes the other at the present time. It is not a linear process, and sometimes the BoD has to pick the lesser of two evils. Furthermore, sustainability is not on the agenda in its own right, but crops up in lots of areas including investment issues such as the carbon storage project and a query from the commissioners as to the sustainability of a particular quay wall.

Finally, it is important to recognise that the ambitious plans for the port authority's energy transition and digitisation can sometimes lead to tensions. One customer thinks that the berthing dues are excessive, the other wants improvements in efficiency. Despite these tensions there is a general realisation within the port community of the side to be taken, and that it is a matter of survival, especially as regards the port's long-term right to exist.

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[35] Science Based Targets (2015). *Transport*. *Guidance for the transportsector.* Science Based Targets.

# 4. Recommendations

Further to the theoretical framework and the interview with Boudewijn Siemons, COO of the Port of Rotterdam, this chapter sets out a number of recommendations on how the SB might oversee the transition to a new sustainable economy through corporate governance. As described in the theoretical framework, the G in ESG relates to the method of governance, the code of conduct, the oversight of organisations in terms of environmental (E) and social (S) goals. Focusing on the research question, this chapter supplies recommendations for the SB in relation to important questions that would enable it to contribute to an undertaking's environment goals (E). These recommendations relate to the three essential functions of the SB; oversight function, advisory function and employer function.

## 4.1 Oversight Function

*Long-term value creation*

The SB is responsible for the undertaking's long-term value creation, and sustainable enterprise is part and parcel of that. This implies that the stakeholders' interests will also be taken into consideration. If we refer to the interview with Boudewijn Siemons, the port is undergoing a transition from the old economy to a new one, by investing in renewable energy sources for example. The dot on the horizon is there, the will is there (also on the part of the stakeholders), although it can bring tensions, meaning that customers will need to engage too. The role of the SB is to oversee the undertaking's sustainability activities, which are backed by a strategy.

The questions that the SB should ask in its oversight of long-term value creation are:

- *What are the most important issues affecting our long-term value creation?*
- *What is our business model, including in terms of 'non-financial' value?*
- *In what way do we create social value?*
- *Do we know what our stakeholders see as the most important aspects of sustainability?*

*(Sustainability) Strategy*

Besides its responsibility for long-term value creation, the SB has a responsibility to defend the interests of the undertaking, in consideration of the interests of all associated with it and not, therefore, just the shareholders' interests. The BoC oversees the directors in this matter, as well as the sustainability strategy, which may or may not be incorporated in the organisation's overall strategy. Boudewijn Siemons says that while the Port of Rotterdam does not have a separate sustainability strategy, it does have a separate sustainability statement. The point of contact for the BoD in cases involving strategy is always the SB.

The questions that the SB should ask in its oversight of (sustainability) strategy are:

- *What are our sustainability ambitions? What are the priority areas for action, given our values and ambitions?*
- *What is our position relative to the rapidly evolving European legislative agenda?*
- *What is our position relative to the 17 SDGs? What are we doing?*
- *How has the (sustainability) strategy been integrated in the organisation?*
- *What is the quality of our sustainability reporting?*

### 4.2 Advisory Function

The SB has, as its second most important function, the task of acting as a soundboard or sparring partner for the BoD. In his interview Boudewijn Siemons said that all supervisory directors at the Port authority are drawn from the private sector and bring different experience to the table: experience of directorship in companies with a state-owned share, experience of the energy sector, financial sector, etc. That experience is highly valuable and keeps the management on the course that was set.

To perform its advisory function well, the SB should ask itself the following questions

- *Are we knowledgeable about the rapidly developing European legislative sustainability agenda in relation to our strategy, and are we capable of fulfilling our advisory role?*
- *Do we share enough information in our organisation to give us an adequate understanding of the implementation of our sustainability strategy and its accompanying culture and business conduct?*
- *Do we have the necessary sustainability expertise in-house, or do we need to hire (temporary) external expertise?*

### 4.3 Employer Function

Finally, the SB is responsible for setting and implementing the remuneration policy. More specifically, in accordance with the Dutch Corporate Governance Code: “The supervisory board determines the remuneration of individual directors within the limits of the remuneration policy set out by the general meeting. The remuneration committee prepares the supervisory board's decision on the determination of the remuneration. An inadequate fulfilment of duties will not be remunerated.” [36]

It is becoming more common for ESG developments to be linked to the remuneration policy, and this is a point on the shareholders' agenda. Boudewijn Siemons says that sustainability is covered by the port authority's appointment and remuneration policy. Targets are agreed with the SB annually, some of which relate to sustainability. Obviously, there is room for improvement: the targets would be easier to implement if the method of quantification were more accurate. Where remuneration policy is concerned, sustainability is covered under the variable component.

Questions which the BoD might ask are:

- *Do we have a remuneration policy designed around more than financial performance?*
- *Which of the ESG themes are important to our organisation and would we like to see reflected in the remuneration policy as a directors' incentive? Consider environment and climate, culture, remuneration, position of employees, diversity, etc.*
- *Do we know what the top executives earn in comparison to the organisation’s average employee?*
- *How do we define the performance criteria and how do we measure the result?*

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[36] The Dutch Corporate Governance Code 2016, Article 3.2

## 5. Consideration of the recommendations by supervisory director Ineke Dezentjé Hamming-Bluemink

Further to the recommendations in chapter 4, an interview was conducted with Ineke Dezentjé Hamming-Bluemink, who fulfils an important role as a member of the supervisory board for a variety of Dutch organisations. The interview was conducted person-to-person in August 2022 by means of a Team's call, and it was semi--structured in that Hamming-Bluemink received the recommendations along with a number of questions prior to the interview. The interviewee was also given the opportunity to raise other questions and issues. In the paragraphs that follow we provide a summary of the conversation.

Dezentjé Hamming-Bluemink fully endorses the recommendations above. She emphasises that businesses are faced with an enormous task in which they are required to innovate, digitalise, attract personnel and make investments in a highly unpredictable and dynamic environment. On top of that, they are required to satisfy the environment standards, and, where sustainability is concerned, customers are becoming ever more demanding. This will only continue into the future in terms of innovation, compliance with ESG and the SDGs, says Dezentjé Hamming-Bluemink. More than ever, supervisory directors are expected to have their house in order when it comes to governance, and to ask the right questions. The transition is one that focuses on the societal positioning of the organisation, which will need to respond to what customers expect of it in sustainability terms. Also, the question is one of how you achieve these objectives, the people you will need to do that, and, of course, it is extremely important that the sale goes ahead during the construction phase. You have to oversee the organisation as it stands, and you have to prepare the self-same organisation for the future.

To begin with, the composition of the SB is crucial when it comes to helping businesses through the transition. Dezentjé Hamming-Bluemink argues that the board and management should contain people who think differently (from a younger generation for example, or on a temporary basis), to help the organisation through the transition. That improves your brainpower and innovative capabilities. Another point for discussion these days is that of setting up, alongside a remuneration and audit committee, a transition committee to keep major issues such as the transition to another business model with massive organisational implications on the right track. Dezentjé Hamming-Bluemink is of the opinion that the big transition subjects should always be handled by joint committees and not by a separate committee. A transition calls for the sort of extra consideration from an SB that you cannot bring about with four to six regular meetings a year. On the other hand, there is a need to plan multiple strategic meetings involving expertise from outside, to provide inspiration, and to be certain that the right choices are made. It is not unimportant to consider that these plans should be achievable by competent people, or the objectives may never be achieved and this can have a knock-on effect for the economy.

Also, the oversight role is changing, which drives up the call for risk management, because you cannot always tell where the innovation ends. What is needed is an open and transparent relationship with management as a means of sharing potential concerns. Dezentjé Hamming-Bluemink does not see it as essential for the BoD and SB to conceive of the energy transition in the same way. Provided that space is created for good strategic conversations based on well substantiated arguments and consensus is reached in the end . A director must be in a position when faced with an uncertain future to gather the expertise needed to sail a well-planned course. If you innovate, and you find yourself in a transition, you cannot possibly know everything with certainty because assumptions are also at play. The business models and the organisations themselves must be agile in order to adapt to new conditions and stay ahead of the competition.

Finally, anticipating the transition could deliver countless benefits, says Dezentjé Hamming-Bluemink. It is important to know the developing areas of legislation in order to keep a close eye on things and respond appropriately. Here, she is advising that as a business you should operate on the offensive to stay competitive. The biggest challenge facing the SB is that of overseeing a complex whole of developments in the outside world by which the business could be influenced. To that end, it is important to develop a long-term strategy to adhere to and adjust. Personally, Dezentjé Hamming-Bluemink sees affecting the course of business on the strength of innovative ideas as a challenge.

The inclusion of sustainability goals in remuneration policies for directors is expected to develop further, says Dezentjé Hamming-Bluemink.

## 6. Conclusion

Though businesses may integrate ESG in their operations voluntarily and, as the research shows, derive countless benefits from it, company law is imposing an increasing number of duties on undertakings, including environmental responsibilities. This is giving directors and supervisory directors farther-reaching responsibilities, one example being the current European legislation on sustainable corporate governance, under which directors are expected to weigh all relevant interests in decisions concerning long-term sustainability. This means business operations that are geared towards the organisation's sustainability. It is not merely concerned with the short-term (financial) results, but considers the interests of multiple stakeholders as well as the environmental and social aspects. The SB oversees the undertaking's business operations as a supervisor.

It is important for the SB to exercise the right focus in its oversight. Among other things, today's supervisory director must have a good picture of how the undertaking's business model bears up to the exceptionally dynamic sustainability agenda at international, European and national level. The SB must also know the most important issues affecting the undertaking's long-term value creation.

In the interview with Boudewijn Siemons it emerged that the Port of Rotterdam has placed sustainability to the fore. On the subject of sustainability, the SB and the directors are contemplating the same dot on the horizon. The company has written a sustainability statement, integrated five of the SDGs and signed up to the Science-Based Targets Initiative. The members of the Port Authority’s SB are from diverse backgrounds, and the SB challenges the BoD to implement its sustainability ambitions. Sustainability comes into play in the appointment of directors, and specific targets are agreed in this area. That is not to say that quicker or better action is possible, says Siemons, where, for example, the accuracy of CO2 measurements or the integration of more SDGs are concerned. The main thing is that the business sees sustainability as a duty, and there is an intrinsic motivation underpinning this.

In conclusion, the SP has an important role to play in the transition to a new economy. From the approval of the (sustainability) strategy to the appointment of directors capable of shaping and implementing the undertaking's sustainability ambitions, the SB has it in its hands the key with which to unlock sustainable value creation in the undertaking on the basis of its oversight, advisory and employer functions. As Ineke Dezentjé Hamming-Bluemink has emphasised, companies are faced with an enormous task in which they are required to innovate, digitalise, attract personnel, invest in a highly unpredictable and dynamic environment and satisfy environment standards. Given the growing expectation for supervisory directors to have their house in order when it comes to governance, it is crucial for the SB to ask the right questions.

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