

A Difficult Conversation

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On 11 September 2013 in Netherlands, the Committee on Good Governance in the Semi-Public Sectors¹ presented its report 'A Difficult Conversation' (*Een lastig gesprek*)² to the Minister for Economic Affairs. The Minister had established this advisory Committee on 16 May 2013. The principal remit of the

Committee was to draft best practice provisions on professional and ethically responsible management and supervision in the semi-public sectors. In its report, the Committee described the semi-public sectors as primarily those institutions that are responsible for education, social housing, health care and public transport services. Surprisingly, the Committee did not draft a code of best practice provisions for the semi-public sectors as a whole, but argued that the semi-public sectors would be better served by the introduction of separate codes or the continuation of already existing codes for each of the constituting parts. In the opinion of the Committee, one uniform code of best practices would not do justice to the complicated and often bureaucratic structure that characterizes organizations in the semi-public sectors. As for the separate codes, the Committee drew up a number of broad suggestions. Among these are the following. Semi-public sector institutions should define their mission, vision and strategy in terms of their role in society. In particular, the defined mission should guide organizations in their decision making. Executive directors of semi-public sector institutions are ultimately responsible for the functioning of the organization. They should regularly consult with relevant stakeholders (among others the organization's managers, both internal and external supervisors, and client councils). Non-executive directors of semi-public sector institutions should take on the role of 'employer' and as such evaluate periodically the functioning of both the executive directors and the organization. Also, they should talk with the organization's stakeholders. Furthermore, both executive directors and non-executive directors should strive for permanent education. Semi-public sector institutions should draw up realistic long-range budgets, and – when lending money – should restrict themselves to 'treasury lending', meaning lending from government agencies. The external accountant should not only evaluate the annual

accounts of a semi-public sector institution, but should also issue a forward-looking public statement on the organization's prospects and risks.

The Committee on Good Governance in the Semi-Public Sectors explains the title of its report, 'A Difficult Conversation', as follows: 'Executive and non-executive directors willing to take on responsibilities in the semi-public sector may benefit from a code that explicitly states their role in society and allows the quality of their functioning to be testable and transparent; a code that offers guidance in evaluation and self-evaluation, giving the onset for conversation. Because if anything is needed for the improvement of behaviour, it is an open culture in which people call each other into account if things start to go wrong; a culture in which they do not shy away from what today internationally is called 'A Difficult Conversation': *een lastig gesprek*'.

In the Netherlands, semi-public sector institutions are for the most part organized either as associations or foundations under private law or as part of government. In the latter case, they sometimes are simply branches of government or have legal personality under public law. Semi-public sector institutions are for the most part funded from public means. In a number of cases, they have run into trouble as a result of *inter alia* operational mismanagement, paying out excessive remunerations and the use of risky financial hedging techniques. The fact that they have run into trouble whilst receiving public funds has been at the root of much discontent. This makes it all the more regrettable that the Committee on Good Governance in the Semi-Public Sectors declined from drafting a code of best practices for these organizations.

Semi-public sector institutions exist in other countries too. They go by names like quasi-autonomous non-governmental organizations (QANGOs, comparable to organizations under private law) and quasi-autonomous governmental organizations (QUAGOs, comparable to organizations that are part of government, either as branches of government or as legal persons under public law). Their common characteristic is that they are for the most part publicly funded. By that characteristic, they stand out from other organizations. At the same time, listed companies, banks and insurance companies are also being recognized as standing out from other organizations. Nation-wide governance

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1 The 'Commissie Maatschappelijk verantwoord bestuur en toezicht in semipublieke sectoren'.

2 Available (in Dutch) at [www.rijksoverheid.nl](http://www.rijksoverheid.nl/documenten-en-publicaties) / documenten en publicaties.

codes for listed companies, banks and insurance companies do exist: examples are *The UK Corporate Governance Code* and the *Dutch corporate governance code* for listed companies, and the *Banking Code* for banks and the *Governance Principles* for insurers in the Netherlands. Compliance with the *Dutch corporate governance code*, the *Banking Code*, and the *Governance Principles* for insurers is monitored by Monitoring Committees. These Committees also evaluate these codes and draft updated version of

the codes from time to time. Semi-public sector institutions would be served by a similar approach. Such an approach would start with drawing up a nation-wide ‘semi-public sector governance code’ in the first place. In the aftermath of the report of the Committee on Good Governance in the Semi-Public Sectors, the real question is to what extent drawing up such a code is ‘a difficult conversation’.