

Belgium



GLASS LEWIS

2027 Benchmark Policy Guidelines

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# Table of Contents

|                                                                      |    |
|----------------------------------------------------------------------|----|
| About Glass Lewis .....                                              | 4  |
| Preface: Benchmark Policy 2027.....                                  | 5  |
| Purpose .....                                                        | 6  |
| Guidelines Introduction .....                                        | 6  |
| Corporate Governance Background .....                                | 6  |
| Prior Regulatory Updates.....                                        | 7  |
| A Board of Directors that Serves the Interests of Shareholders ..... | 8  |
| Election of Directors.....                                           | 8  |
| Independence.....                                                    | 8  |
| Other Considerations for Individual Directors.....                   | 11 |
| External Commitments .....                                           | 11 |
| Board Structure and Composition .....                                | 12 |
| Separation of the Roles of Board Chair and CEO .....                 | 12 |
| Board Diversity.....                                                 | 12 |
| Director Attendance Records .....                                    | 12 |
| Board Oversight of Environmental & Social Issues .....               | 12 |
| Board Committees .....                                               | 13 |
| Committee Composition and Performance .....                          | 13 |
| Election Procedures .....                                            | 14 |
| Classified Boards and Term Lengths .....                             | 14 |
| Transparency and Integrity in Financial Reporting.....               | 15 |
| Accounts and Reports .....                                           | 15 |
| Allocation of Profits/Dividends .....                                | 15 |
| Appointment of Auditor and Authority to Set Fees.....                | 15 |
| The Link Between Pay and Performance .....                           | 16 |
| Vote on Executive Remuneration (Say-on-Pay).....                     | 16 |
| Short- and Long-Term Incentives .....                                | 17 |

|                                                            |    |
|------------------------------------------------------------|----|
| Post-Employment Benefits .....                             | 17 |
| Equity-Based Incentive Plan Proposals .....                | 18 |
| Employee Savings Plans.....                                | 18 |
| Incentive Plans for Board Members.....                     | 19 |
| Response to Dissent.....                                   | 19 |
| Governance Structure and the Shareholder Franchise.....    | 20 |
| Ratification of Board, Management and Auditors' Acts ..... | 20 |
| Ownership Reporting Requirements.....                      | 20 |
| Double Voting Rights.....                                  | 21 |
| Anti-Takeover Devices.....                                 | 21 |
| Change in Control Provisions .....                         | 21 |
| Share Repurchase Plans .....                               | 22 |
| Issuance of Shares and/or Convertible Securities .....     | 22 |
| Disclosure of General Meeting Vote Results.....            | 22 |
| Capital Management .....                                   | 23 |
| Authorised Capital .....                                   | 23 |
| Authority to Repurchase Shares .....                       | 23 |
| Connect with Glass Lewis .....                             | 24 |

# About Glass Lewis

Glass Lewis is the world's choice for governance solutions. We enable institutional investors and publicly listed companies to make informed decisions based on research and data. We cover 30,000+ meetings each year, across approximately 100 global markets. Our team has been providing in-depth analysis of companies since 2003, relying solely on publicly available information to inform its policies, research, and voting recommendations.

Our customers include the majority of the world's largest pension plans, mutual funds, and asset managers, collectively managing over \$40 trillion in assets. We have teams located across the United States, Europe, and Asia-Pacific giving us global reach with a local perspective on the important governance issues.

Investors around the world depend on Glass Lewis' [Viewpoint](#) platform to manage their proxy voting, policy implementation, recordkeeping, and reporting. Our industry leading [Proxy Paper](#) product provides comprehensive research and voting recommendations weeks ahead of voting deadlines. Public companies can also use our innovative [Report Feedback Statement](#) to deliver their opinion on our proxy research directly to the voting decision makers at every investor client in time for voting decisions to be made or changed.

The research team engages extensively with public companies, investors, regulators, and other industry stakeholders to gain relevant context into the realities surrounding companies, sectors, and the market in general. This enables us to provide the most comprehensive and pragmatic insights to our customers.

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# Preface: Benchmark Policy 2027

Glass Lewis' single house policy has traditionally anchored the regional benchmark guidelines. Given Glass Lewis' announced intention to move away from this single house policy, towards multiple perspectives representing varied viewpoints of its clients, policy development has entered a period of transition. As such, the Glass Lewis 2026 Benchmark Policy Guidelines will remain static for 2027.

Glass Lewis, however, remains committed to keeping policies current during this transition phase by ensuring that any relevant changes to regulation or corporate governance practices are reflected in the Benchmark Policy guidelines.

An overview of relevant market-level regulatory and/or best practice changes is provided below. However, it was concluded that policies included in these guidelines do not require revision for 2027.

## Regulatory Updates

- On January 3, 2026, a law simplifying certain rules for listed companies entered into force. Listed companies are no longer required to publish notices for general meetings of shareholders in the Belgian Official Gazette or in a nationally circulated newspaper, although other convening requirements, such as publishing the notice of meeting on the company's website, remain in place. Additionally, the law removes the requirement to provide written justification for delays in the disclosure of inside information unless specifically requested by the Financial Services and Markets Authority (FSMA), as well as the requirement for prior approval by the FSMA of marketing materials employed in rights issues.
- On July 3, 2026, a preliminary draft law transposing the EU Directive on Multiple Voting Rights was approved by the Council of Ministers and referred to the Council of State. Current Belgian law does not allow listed companies to issue shares carrying multiple voting rights, although the Belgian Code of Companies and Associations includes the potential for shares to carry double voting rights, provided that the shares have been held by the same shareholder for an uninterrupted period of two years.
- On July 18, 2026, a draft law transposing the EU Directive on Gender Balance on Corporate Boards was approved by the Council of Ministers. In addition to transposing the Directive, the draft law would extend the current gender diversity requirements in place for the board of directors to the management boards of listed companies and public interest organisations with a two-tier governance structure, as well as implement similar requirements for the management committees of autonomous public enterprises.
- A law partially transposing the European Union Omnibus I Directive was published in the Belgian Official Gazette on July 31, 2026. The law exempts certain companies from sustainability reporting requirements for financial years commencing on or after January 1, 2026, namely companies that do not exceed an annual net turnover of €450 million or an average of 1,000 employees. A further draft law transposing additional provisions of the Directive was approved by the Council of Ministers on July 18, 2026.

# Purpose

The purpose of the Benchmark Policy proxy research and advice is to serve as a framework that facilitates shareholder voting in favour of governance structures that will drive performance and promote and maintain long-term shareholder value.

## Guidelines Introduction

These guidelines are intended to supplement the *Continental Europe Benchmark Policy Guidelines* by highlighting regulations and policies specific to Belgium, offering a broad overview of the Benchmark Policy approach to proxy advice grounded in a mix of market best practices, client input on policy issues, and widespread investor consensus on key topics.

While corporate governance practices in Europe vary significantly by country, many principles and regulations are common to most European countries. Therefore, the Benchmark Policy Guidelines for companies located in Europe (with the exception of the UK and Ireland, for which there are separate Benchmark Policy voting guidelines) have been consolidated into a single pan-European policy under the *Continental Europe Benchmark Policy Guidelines* to reflect the growing convergence of both corporate governance regulations among EU Member States as well as governance practices among European companies.

While the Benchmark Policy approach to issues addressed in the *Continental Europe Benchmark Policy Guidelines* is not repeated here, these guidelines will clearly indicate when the Benchmark Policy for Belgian companies deviates from the *Continental Europe Benchmark Policy Guidelines*.

## Corporate Governance Background

The Belgian Code of Companies and Associations (BCCA) provides the legislative framework for corporate governance in Belgium. The Financial Services and Markets Authority (FSMA), successor to the Banking, Finance and Insurance Commission, is the regulatory agency responsible for monitoring Belgium's financial markets.

Best practice recommendations are provided by the Belgian Code on Corporate Governance (BCCG), which is maintained by the Corporate Governance Committee, a private foundation formed through a joint initiative of the Banking, Finance and Insurance Commission, the Federation of Enterprises in Belgium and Euronext Brussels, in an effort to improve corporate governance standards in Belgium. The BCCG consists of principles, provisions and guidelines that correspond to various obligations, recommendations and general governance targets that Belgian publicly listed companies are requested to incorporate into their governance framework on a comply-or-explain basis. The BCCG was most recently updated in May 2019 with entry into force on January 1, 2020.

## Prior Regulatory Updates

### Board Composition and Director Eligibility

On March 27, 2024, the Belgian government, following a recommendation from the Financial Services and Markets Authority (FSMA), adopted an act to amend corporate governance law to require a minimum of three independent directors on the boards of listed companies. This converts into hard law what was previously a recommendation under the Belgian Corporate Governance Code.

The law provides specific sanctions for failure to comply, including the suspension of director benefits until compliance is achieved. Additionally, boards must explicitly confirm the independence of proposed directors, and if any concerns exist, explain why those concerns do not preclude classification as an independent director.

The compliance deadline is the first day of a company's second financial year after March 29, 2024; for companies with a fiscal year that aligns with the calendar year, this means January 1, 2026. Companies that are not compliant by this deadline will have to achieve compliance at the following general meeting of shareholders.

The law also prevents individuals who have been convicted of serious crimes (e.g., money laundering, corruption, insider trading) from serving on the boards of listed companies. This provision is implemented with the assistance of a new database, the Central Register of Director Bans, where professional bans on directors imposed from August 1, 2023 are recorded by the clerk's office of the court, while criminal director bans are added automatically. The duration of the bans is determined according to the severity of the penalty: 20 years in case of convictions with imprisonment longer than 12 months, and ten years in case of convictions with imprisonment of 12 months or less, fines or suspended sentences.

### Draft Law Simplifying Rules for Listed Companies

On November 9, 2025, a draft law aimed at modernising certain rules for listed companies was introduced to the Belgian Chamber of Representatives. The proposed legislation seeks to reduce administrative hurdles and align national legislation with prevailing European standards. A specific date of entry into force is not yet known; upon adoption, the draft law would begin to apply ten days after publication in the Belgian Official Gazette.

The draft law proposes to change the obligations for companies delaying the disclosure of inside information under the EU Market Abuse Regulation. While companies would still be required to inform the FSMA when inside information is made public following a delay, they would no longer need to provide a written justification for the delay, unless specifically requested by FSMA. Furthermore, the law would remove the requirement for a prior approval by FSMA of marketing materials employed in rights issues, even when these are accompanied by a prospectus. Such materials would instead need to be filed with FSMA when they are published. Listed companies would also no longer be required to publish notices for general meetings of shareholders in the Belgian Official Gazette or in a nationally circulated newspaper, although other convening requirements, such as publishing the notice of meeting on the company's website, would remain in place.

# A Board of Directors that Serves the Interests of Shareholders

## Election of Directors

In accordance with the Belgian Code of Companies and Associations (BCCA), public companies may be governed by either a one-tier or two-tier board structure.<sup>1</sup> Companies must make an explicit choice on the structure they opt for. Under a two-tier board system, a supervisory board presides over a management board. The supervisory board consists entirely of non-executive directors, while the management board is composed entirely of executive directors. The management board is responsible for the day-to-day operation of the business, whereas the supervisory board is responsible for appointing and monitoring the management board. The choice of the governance model should be reassessed every five years.<sup>2</sup>

Unless specified otherwise, these guidelines generally assume a one-tier structure, reflecting prevailing market practice in Belgium.

## Independence

In Belgium, directors are typically categorised based on an examination of the type of relationship they have with the company:

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<sup>1</sup> Article 15:17 of the BCCA.

<sup>2</sup> Provision 1.1 of the Belgian Code of Corporate Governance (BCCG).

**Independent Director** — An independent director has no material<sup>3</sup> financial, familial<sup>4</sup> or other current relationships with the company,<sup>5</sup> its independent auditor, executives, or other board members, except for board service and standard fees paid for that service.

**Affiliated Director** — An affiliated director has a material financial, familial or other relationship with the company or its executives, but is not an employee of the company.<sup>6</sup> The directors are typically considered affiliated if they:

- Have been employed by the company within the past five years;<sup>7</sup>
- Have served on the board for more than 12 years;<sup>8</sup>
- Have — or have had within the past three years — a material business relationship with the company, either directly or as a partner, shareholder, director or senior employee of an entity that has such a relationship with the company;<sup>9</sup>
- Own or control 10% or more of the company's share capital or voting rights<sup>10</sup> or are employed by or have a material relationship with a significant shareholder;<sup>11</sup>

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<sup>3</sup> Per the *Continental Europe Benchmark Policy Guidelines*, "material" as used herein means a relationship in which the value exceeds: (i) €50,000 (or 50% of the total compensation paid to a board member, or where no amount is disclosed) for board members who personally receive compensation for a professional or other service they have agreed to perform for the company, outside of their service as a board member. This threshold also applies to board members who are the majority or principal owner of a firm that receives such payments; (ii) €100,000 for those board members employed by a professional services firm such as a law firm, investment bank or large consulting firm where the firm is paid for services but the individual is not directly compensated. This limit would also apply to charitable contributions to schools where a board member is a professor, or charities where a board member serves on the board or is an executive, or any other commercial dealings between the company and the board member or the board member's firm; (iii) 1% of the company's consolidated gross revenue for other business relationships (e.g., where the board member is an executive officer of a company that provides services or products to or receives services or products from the company); (iv) 10% of shareholders' equity and 5% of total assets for financing transactions; or (v) the total annual fees paid to a director for a personal loan not granted on normal market terms, or where no information regarding the terms of a loan have been provided.

<sup>4</sup> Per the *Continental Europe Benchmark Policy Guidelines*, familial relationships include a person's spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces, nephews, in-laws, and anyone (other than domestic employees) who shares such person's home. A director is an affiliate if the director has a family member who is employed by the company.

<sup>5</sup> A company includes any parent or subsidiary in a group with the company or any entity that merged with, was acquired by, or acquired the company.

<sup>6</sup> If a company classifies a non-executive director as non-independent, the director is classified as an affiliate, unless there is a more suitable classification (i.e., shareholder representative, employee representative).

<sup>7</sup> Provision 3.5.1 of the Belgian Code of Corporate Governance (BCCG) recommends a three-year look-back. The five-year look back period is not applied to directors who have previously served as executives of the company on an interim basis for less than one year. In contrast, a director may continue to be classified as affiliated after the look back period has elapsed where a former executive has other significant ties to the company, such as being a member of the founding family of the firm or continuing to receive variable remuneration.

<sup>8</sup> Provision 3.5.2 of the BCCG.

<sup>9</sup> In line with the *Continental Europe Benchmark Policy Guidelines*. However, Provision 3.5 of the BCCG stipulates that only significant business transactions with the company in the financial reporting year shall serve to compromise a director's independence.

<sup>10</sup> Provision 3.5.5 of the BCCG.

<sup>11</sup> Evidence of significant ties to a major shareholder may be considered material in some cases, even when no direct employment or consulting relationship exists. For example, a history of serving on boards of entities controlled by a major

- Have close family ties with any of the company's advisors, directors or employees; or
- Hold cross-directorships or have significant links with other directors through their involvement in other companies or entities.<sup>12</sup>

**Inside Director** — An inside director simultaneously serves as a director and as an employee or executive of the company. This category may include a board chair who acts as an employee of the company or is paid as an employee of the company.

### Voting Recommendations on the Basis of Board Independence

In accordance with the BCCA and the BCCG, best practice indicates that a board will be most effective in protecting shareholders' interests when the majority of the board members are non-executive directors and a minimum of three directors are independent.<sup>13</sup> However, in the case of companies listed on the BEL20 index of the largest and most liquid companies, market expectations are such that at least a majority of all board members be independent.

Where 50% or more of the members are executive directors and/or the board does not include a sufficient number of independent members, the Benchmark Policy may result in a recommendation against some of the inside directors, in the case of a one-tier structure, and/or affiliated directors, in order to satisfy the applicable non-executive and independence thresholds. In the case of a two-tier structure, the supervisory board should be entirely non-executive with a minimum of three independent directors.<sup>14</sup> However, this generally does not apply where significant shareholders are represented on a board in proportion to their equity or voting stake in a company.

As outlined in the *Continental Europe Benchmark Policy Guidelines*, the Benchmark Policy does not recommend shareholders vote against any directors on the basis of lengthy tenure alone. However, votes against long-tenured directors may be recommended when it is determined that a lack of board refreshment may have contributed to poor financial performance, lax risk oversight, misaligned remuneration practices, unresponsiveness to shareholder concerns, diminution of shareholder rights, or other concerns. In conducting this analysis, the Benchmark Policy takes into account average board tenure, evidence of planned or recent board refreshment, and other concerns with the board's independence or structure.

### Voting Recommendations on the Basis of Committee Independence

In accordance with the BCCA, only non-executive directors may serve on a company's audit and remuneration committees.<sup>15</sup> Moreover, at least one member of the audit committee must be independent and have auditing

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shareholder may be sufficient for a director to be classified as affiliated. Moreover, directors may be classified as affiliated on the basis of directorships at entities controlled by a significant shareholder, particularly when a company fails to provide its own assessment of director independence.

<sup>12</sup> The Benchmark Policy does not apply a look-back period for this situation. The interlock policy applies to both public and private companies. On a case-by-case basis, other types of interlocking relationships will be evaluated, such as interlocks with close family members of executives or within group companies. Further, the analysis also evaluates multiple board interlocks among non-insiders (i.e., multiple directors serving on the same boards at other companies), for evidence of a pattern of poor oversight.

<sup>13</sup> Article 7:86/1 of the BCCA. Provision 3.4 of the BCCG.

<sup>14</sup> Provision 3.4 of the BCCG.

<sup>15</sup> Articles 7:99§2 and 7:100§2 of the BCCA.

competencies, and a majority of the remuneration committee members must be independent.<sup>16</sup> In line with the BCCG, best practice indicates that the board chair or another non-executive director should chair the nominating committee, which should comprise a majority of independent members.<sup>17</sup>

## Other Considerations for Individual Directors

The Benchmark Policy's evaluation of performance and experience issues is not materially different from the *Continental Europe Benchmark Policy Guidelines*.

### External Commitments

In accordance with the *Continental Europe Benchmark Policy Guidelines*, the Benchmark Policy will generally recommend that shareholders oppose the election of a director who:

- Serves as an executive officer<sup>18</sup> of any public company while serving on more than one additional external public company board; or
- Serves as a 'full-time' or executive member of the board<sup>19</sup> of any public company while serving on more than two additional external public company boards; or
- Serves as a non-executive director on more than five public company boards in total.<sup>20</sup>

Non-executive board chair positions at European companies are generally counted as two board seats given the increased time commitment generally associated with these roles. As executive directors will presumably devote their attention to the company where they serve as an executive, the Benchmark Policy generally does not recommend that shareholders vote against the election of a potentially overcommitted director at the company where they serve in an executive function. Similarly, the Benchmark Policy will generally not recommend that shareholders vote against the election of a potentially overcommitted director at a company where they hold the board chair position, except where the director:

- Serves as an executive officer of another public company; or
- Holds board chair positions at three or more public companies; or
- Is being proposed for initial election as board chair at the company.

Nevertheless, the analysis will apply a case-by-case approach regarding this issue, as described in the *Continental Europe Benchmark Policy Guidelines*.

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<sup>16</sup> *Ibid.*

<sup>17</sup> Provision 4.19 of the BCCG.

<sup>18</sup> This policy applies to directors that serve in the top executive team of a publicly-listed company (i.e. executive committee, management board, etc.).

<sup>19</sup> This policy applies to directors that serve on a board in a 'full-time' or executive capacity without further defined responsibilities within the executive team (e.g., executive chair that is not a member of the executive committee, or a non-executive chair that serves in the role in a full-time capacity).

<sup>20</sup> Provision 5.5 of the BCCG.

## Board Structure and Composition

The Benchmark Policy's evaluation of the board structure and composition is not materially different from the *Continental Europe Benchmark Policy Guidelines*. The following are clarifications regarding best practice recommendations in Belgium.

### Separation of the Roles of Board Chair and CEO

While there are no legal requirements for the separation of the positions of board chair and CEO in Belgium, the BCCG recommends that in the case of a one-tier governance structure the two roles be filled by different individuals.<sup>21</sup> This recommendation is in line with the policy set forth in the *Continental Europe Benchmark Policy Guidelines*.

### Board Diversity

In December 2022, the EU Directive on Gender Balance on Corporate Boards came into force, requiring transposition into national law by December 2024. Member States are required to subject publicly listed companies to the objective that at least 40% of non-executive positions, or 33% of an aggregate of executive and non-executive positions, be held by the underrepresented gender by June 30, 2026.

At present, Belgian companies remain subject to the board diversity requirements introduced nationally in January 2011. Under the terms of this law, at least one-third of the board must be composed of directors belonging to the under-represented gender. If this is not achieved, the payment of director fees will be suspended, and any nomination of a director of the overrepresented gender will be considered null and void.<sup>22</sup>

### Director Attendance Records

Market best practice indicates that the regular attendance of directors at board and committee meetings is a core responsibility of directors to a company's shareholders. The Belgian Code on Corporate Governance recommends that the attendance record of directors at board and committee meetings is disclosed on an annual basis.<sup>23</sup>

Failure to disclose clear, individualised director attendance may result in a recommendation against the re-election of the governance committee chair (or equivalent) under the Benchmark Policy.

### Board Oversight of Environmental & Social Issues

In line with the *Continental Europe Benchmark Policy Guidelines*, the Benchmark Policy looks to companies to ensure that boards maintain clear oversight of material risks to their operations, including those that are environmental and social in nature. These risks could include, but are not limited to, matters related to climate

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<sup>21</sup> Provision 3.12 of the BCCG.

<sup>22</sup> Articles 3:6§2.6 and 7:86 of the BCCA. The percentage is calculated by multiplying the number of board members by 33% and then rounding the result to the closest whole number.

<sup>23</sup> Provision 3.9 of the BCCG.

change, human capital management, diversity, stakeholder relations, and health, safety & environment. Given the importance of the board's role in overseeing environmental and social risks, this responsibility should be formally designated and codified in the appropriate committee charters or other governing documents.

The Benchmark Policy will generally recommend voting against the governance committee chair (or equivalent) of BEL20 companies that fail to provide explicit disclosure concerning the board's role in overseeing material environmental and social issues.

## Board Committees

Most Belgian listed companies are legally required to establish an audit committee and a remuneration committee. The audit committee is to be composed solely of non-executive directors of which at least one is independent and has financial expertise.<sup>24</sup> The remuneration committee is also to be solely composed of non-executive directors, with a majority of independent members.<sup>25</sup> However, these requirements do not apply to smaller companies. At smaller companies, the tasks assigned to the audit and remuneration committees may be performed by the board as a whole, as long as: (i) the board includes at least one independent director; and (ii) in the event that the board chair is an executive director, they do not preside over the board when it is acting as audit or remuneration committee.<sup>26</sup> Moreover, the BCCG recommends that every company set up a nominating committee, comprising a majority of independent members.<sup>27</sup>

In accordance with market practice, the Benchmark Policy will generally not recommend voting against any directors based on the failure to form board committees. However, failure to form a nominating committee coupled with an insufficiently independent board may result in a recommendation against the board chair under the Benchmark Policy.

## Committee Composition and Performance

### The Role of a Committee Chair

Given their assigned leadership role and additional powers and responsibilities, a designated committee chair is generally considered to maintain primary responsibility for the actions of their respective committee. As such, many of the committee-specific Benchmark Policy voting recommendations are against the applicable committee chair rather than the entire committee (depending on the seriousness of the issue). In cases where the committee chair is not up for election due to a staggered board, and where substantial or multiple concerns have been identified, the Benchmark Policy will generally recommend voting against a long-serving committee member that is up for election, on a case-by-case basis.

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<sup>24</sup> Article 7:99§2 of the BCCA.

<sup>25</sup> Article 7:100§2 of the BCCA.

<sup>26</sup> Articles 7:99§3 and 7:100§4 of the BCCA. Smaller companies are defined as those with a free float of less than 50%, as well as other companies possessing two of the following three characteristics: (i) an average number of less than 250 employees during the current financial year; (ii) a balance sheet total of €43 million or less; (iii) an annual net turnover of €50 million or less.

<sup>27</sup> Provision 4.19 of the BCCG.

In cases where the Benchmark Policy would ordinarily recommend voting against a committee chair but the chair is not specified, the following general rules are applied:

- If there is no committee chair, the Benchmark Policy will recommend voting against the longest-serving committee member or, if the longest-serving committee member cannot be determined, the longest-serving board member serving on the committee (i.e. in either case, the “senior director”); and
- If there is no committee chair, but multiple senior directors serving on the committee, the Benchmark Policy will recommend voting against both (or all) such senior directors.

### Expertise of Audit Committee Members

For an audit committee to function effectively on investors’ behalf, it must include members with sufficient knowledge to diligently carry out their responsibilities.<sup>28</sup> The European Commission recommends that “the members of the audit committee should, collectively, have a recent and relevant background in and experience of finance and accounting for listed companies appropriate to the company’s activities.”<sup>29</sup>

In Belgium, market expectations are such that at least one member of the audit committee has the necessary competence in accounting and auditing.<sup>30</sup> Where representation of such expertise on the audit committee cannot be determined through the director biographies and disclosure provided by a company, the Benchmark Policy may result in a recommendation that shareholders vote against the re-election of the audit committee chair and/or other committee members standing for re-election.

## Election Procedures

The Benchmark Policy’s evaluation of election procedures is not materially different from the *Continental Europe Benchmark Policy Guidelines*. The following are clarifications regarding best practice recommendations in Belgium.

### Classified Boards and Term Lengths

Given market practice in Belgium, many investors view the presence of staggered boards as generally acceptable, so long as director terms remain reasonable. Under Belgian law, a director’s term may not exceed six years.<sup>31</sup> Belgian corporate governance standards, however, recommend that directors be elected for terms not exceeding four years.<sup>32</sup> The Benchmark Policy will generally result in a recommendation against the nominating committee chair when director terms exceed this second limit.

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<sup>28</sup> ICGN Global Principles, 8.3.

<sup>29</sup> EU Commission Recommendation of 15 February 2005, Section III, Article 11.2.

<sup>30</sup> Article 7:99§2 of the BCCA.

<sup>31</sup> Articles 7:85§2 and 7:105§3 of BCCA.

<sup>32</sup> Provision 5.6 of the BCCG.

# Transparency and Integrity in Financial Reporting

In Belgium, shareholders are required to approve a company's financial statements and dividend policy on an annual basis. They must also elect the company's independent auditors and approve their fees. Although the principal characteristics of these types of proposals encountered in Belgium are outlined below, the Benchmark Policy's evaluation of these issues is not materially different from the *Continental Europe Benchmark Policy Guidelines*.

## Accounts and Reports

As a routine matter, Belgian company law requires that shareholders approve a company's annual and consolidated financial statements within six months following the close of the fiscal year, in order for them to be valid.<sup>33</sup>

## Allocation of Profits/Dividends

In accordance with Belgian company law, prior to the distribution of dividends, companies are required to allocate at least 5% of their after-tax profits to a legal reserve. Additional allocations for legal reserves are no longer required when the legal reserve reaches 10% of the company's share capital.<sup>34</sup> After the statutory requirement for allocation to the legal reserve has been met, shareholders may decide to declare a dividend payable to shareholders, to allocate a portion to a specific reserve and/or to carry the profits forward in retained earnings.

## Appointment of Auditor and Authority to Set Fees

In Belgium, statutory auditors are generally appointed for terms of three years.<sup>35</sup> Shareholders also vote on the fees that will serve as the basis for a new auditor's fixed remuneration.<sup>36</sup>

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<sup>33</sup> Article 3:1§1 of the BCCA.

<sup>34</sup> Article 7:211 of the BCCA.

<sup>35</sup> Article 3:61§1 of the BCCA.

<sup>36</sup> Article 3:65§2 of the BCCA.

# The Link Between Pay and Performance

Belgian companies are required to seek shareholder approval of their remuneration policy, on a binding basis, at least every four years or whenever a material change is proposed.<sup>37</sup> Further, they must submit their remuneration report for advisory approval on an annual basis.<sup>38</sup>

In addition, shareholders must specifically approve: (i) any variable remuneration policy that does not satisfy specific performance period requirements, as outlined in the “Short-Term and Long-Term Incentives” section below; (ii) any equity-based awards with vesting periods of less than three years; (iii) any severance agreement exceeding 12 or 18 months of annual remuneration, as outlined in the “Post-Employment Benefits” section below; and (iv) any variable remuneration payable to a non-executive director.

The Benchmark Policy’s evaluation of these matters for Belgian companies does not differ materially from what is outlined in the *Continental Europe Benchmark Policy*. However, the Benchmark Policy does account for a company’s compliance with best practice in Belgium as described below, in the assessment of these proposals.

## Vote on Executive Remuneration (Say-on-Pay)

In accordance with the BCCA, the remuneration report must disclose:

- The company’s procedures for developing its remuneration policy and determining individual pay;
- A statement disclosing the basic elements of remuneration, the relative importance of the different components, the terms of any equity-based awards, information on the remuneration policies that were applicable during the two previous fiscal years, and a clear presentation of any significant changes made to the company’s remuneration policy;
- The amounts paid to each individual member of the board;
- The remuneration paid to the head of the executive team, broken down into fixed salary, variable remuneration, pension, and all other elements;
- The total amount of remuneration paid to all members of management, which must also be broken down into fixed salary, variable remuneration, pension, and all other elements;
- The number of shares, options, and other equity-based awards that were granted or exercised, or that expired, as well as the terms of these awards for each executive, on an individual basis;
- The individual values of the severance indemnities that may be due to any executive, as well as a justification for any severance payment made during the last fiscal year;
- Whether any clawback provisions apply to the variable compensation of executives;<sup>39</sup>
- The comparative evolution of remuneration over at least the five most recent fiscal years; and

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<sup>37</sup> Article 7:89/1§3 of the BCCA.

<sup>38</sup> Article 3:6§3 of the BCCA.

<sup>39</sup> Provision 7.12 of the BCCG states that the board should make provision in the contracts of the CEO and other executives to allow the company to recover variable remuneration paid, or withhold the payment of variable remuneration, and should specify the circumstances in which it would be appropriate to do so, insofar as enforceable by law.

- The ratio between the highest remuneration among executives and the lowest remuneration, expressed on a full-time equivalent basis.<sup>40</sup>

## Short- and Long-Term Incentives

Belgian law provides a clear framework for the appropriate breakdown between short- and long-term incentives: the Belgian Companies Code stipulates that if the variable remuneration of a director or member of the management board exceeds one quarter of their total remuneration, one quarter of the variable remuneration must be based on performance criteria evaluated over a period of at least two years, and another quarter over a period of at least three years. However, this requirement may be waived at the general meeting, or permanently removed through an amendment of the company's articles of association.<sup>41</sup> The Benchmark Policy will typically result in a recommendation against any proposals seeking to waive performance periods for variable pay, unless a compelling justification is provided.

In Belgium, stock options are the dominant form of award under long-term incentive plans. Due primarily to Belgium's taxation regime,<sup>42</sup> the vast majority of such plans are not subject to performance conditions. As such, and in line with market expectations, the Benchmark Policy generally does not result in a recommendation against a remuneration report solely on the basis of the failure to attach performance conditions to long-term incentive plans at small- and mid-cap companies. While market best practice indicates a preference for a diversified metric set over a pure share price hurdle, in this context, many investors recognise the incentivising value of a share price premium attached to the exercise price of options (depending on the disclosed vesting terms).<sup>43</sup>

Moreover, for companies listed on the BEL 20 index market expectations are such that a significant portion of long-term remuneration to be subject to performance conditions measured over a period of at least three years, either through deferral of a significant portion of the annual bonus and/or through the use of a dedicated long-term incentive plan.

## Post-Employment Benefits

Belgian law requires that any new severance agreement exceeding 12 months of annual remuneration (or 18 months if the remuneration committee provided a motivated opinion) be separately ratified by shareholders at the first general meeting following its approval.<sup>44</sup> While severance packages are evaluated on a case-by-case basis, the Benchmark Policy would generally result in a recommendation against those exceeding these limits.

Belgian law does not contain a clear indication of which fixed and variable pay elements may be included in the definition of "annual remuneration" for the purpose of the severance cap calculation; however, Belgian and European best practice, indicate a preference for severance policies only including multiples of the base salary and annual bonus. In this regard, many investors view the clear disclosure of the remuneration elements that

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<sup>40</sup> Article 3:6§3 of the BCCA.

<sup>41</sup> Article 7:91 of the BCCA.

<sup>42</sup> In contrast with taxation regimes in other countries, stock options in Belgium are taxed upfront at grant date.

<sup>43</sup> A share price hurdle to be achieved on the vesting date is generally considered preferable to a pure premium on the exercise price.

<sup>44</sup> Article 7:92 of the BCCA.

may be included in the severance cap as good governance practice when assessing a remuneration policy. Moreover, in accordance with the expectations of many investors, severance payments should not be paid in the event of inadequate performance or voluntary departure.<sup>45</sup>

Lastly, in line with international and Belgian best practice, upon the departure of an executive board member, the size of long-term awards granted prior to termination and not yet vested should be reduced proportionately to the time served until termination. While severance payments and provisions are analysed on a case-by-case basis under the Benchmark Policy, substantial deviations from the above elements should generally be justified by companies' supporting disclosure.

Therefore, the Benchmark Policy may result in a recommendation against the remuneration report in the presence of termination packages that may be viewed as excessive and/or egregious, which may comprise severance payments exceeding the above limits, full vesting of outstanding long-term awards, or other elements (e.g., supplemental pension instalments, non-competition payments, full vesting of outstanding replacement or sign-on awards granted upon appointment or retention awards), especially when the inclusion of such elements has not been adequately explained or justified.

## Equity-Based Incentive Plan Proposals

When evaluating equity-based incentive plans in Belgium, the Benchmark Policy analysis will consider the terms of the proposed plan in light of best practice standards in Europe, as outlined in the *Continental Europe Benchmark Policy Guidelines*.

Under Belgian law, no performance share, stock option, or other equity-based award may have a vesting period of less than three years, unless shareholders have specifically waived this requirement at a general meeting, or amended the company's articles of association.<sup>46</sup> In line with the *Continental Europe Benchmark Policy Guidelines* as well as local best practice,<sup>47</sup> the Benchmark Policy may result in a recommendation against any proposal seeking to waive the legally required vesting requirements.

## Employee Savings Plans

In Belgium, shareholders are occasionally asked to approve share issuances for the benefit of employees who partake in an employee savings plan. Belgian law limits this option to companies that have distributed a minimum of two dividends over the past three fiscal years. The maximum capital increase for such an issuance during a fiscal year and the four preceding years may not exceed 20% of the company's share capital. Additionally, the subscription price may not be less than 80% of the price justified by the reports prepared by the board of directors and auditor, and employees must hold the shares for at least five years.<sup>48</sup> As such, the Benchmark Policy will support these proposals, in the absence of potentially excessive dilution to shareholders under a proposed plan.

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<sup>45</sup> CII Policies on Corporate Governance, 5.8b. ICGN Guidance on Executive Director Remuneration 2016, 3.1.

<sup>46</sup> Article 7:91 of the BCCA.

<sup>47</sup> Provision 7.11 of the BCCG.

<sup>48</sup> Article 7:204 of the BCCA.

## Incentive Plans for Board Members

In Belgium, any new remuneration program that would provide variable remuneration to non-executive directors requires separate shareholder approval. Furthermore, no variable remuneration may be allocated to independent directors.<sup>49</sup> Accordingly, the Benchmark Policy will generally result in a recommendation against such programs, in line with local best practice and the *Continental Europe Benchmark Policy Guidelines*.

However, while the BCCG recommends that non-executive board members not receive any performance-based remuneration, it also states that a portion of the remuneration allocated to non-executive directors should be paid in the form of restricted shares. These shares are expected to be held until at least one year after the non-executive member leaves the board and at least three years after grant.<sup>50</sup> In line with market best practice, the Benchmark Policy will not object to the payment of directors' fixed fees in the form of equity, provided that the vesting of such awards is either immediate or does not require the directors' continued service on the company's board for payment to occur.

## Response to Dissent

The BCCG recommends that when a significant proportion of the votes have been cast against the remuneration policy, the company should take the necessary steps to address the concerns of those voting against it, and consider adapting its policy accordingly.<sup>51</sup> As discussed under the *Continental Europe Benchmark Policy Guidelines*, many investors expect that when 20% or more of the votes cast by unaffiliated shareholders were not in favour of the remuneration report or a proposed remuneration policy for both executive and non-executive pay systems, the board should demonstrate some level of responsiveness to address shareholder concerns.<sup>52</sup>

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<sup>49</sup> Article 7:92 of the BCCA.

<sup>50</sup> Provision 7.6 of the BCCG.

<sup>51</sup> Provision 7.3 of the BCCG

<sup>52</sup> ICGN Global Principles, 10.10.

# Governance Structure and the Shareholder Franchise

In Belgium, shareholders often vote on a number of proposals that could have a material effect on their rights and interests as stakeholders. They must ratify the acts of the board of directors and independent auditors at every annual meeting. They may also be asked to approve ownership reporting rules that are more stringent than is mandated by law, as well as several authorities that could serve as anti-takeover devices. The Benchmark Policy's evaluation of these issues for Belgian companies does not differ materially from the *Continental Europe Benchmark Policy*.

## Ratification of Board, Management and Auditors' Acts

Under Belgian law, shareholders must vote on the discharge of the board of directors and the statutory auditors from any and all of their actions committed during the fiscal year.<sup>53</sup> This discharge from liabilities is binding for all shareholders who voted in favour of the proposal and can hinder legal claims against board members and auditors. In fact, this vote protects board members and the auditors against claims for damages from the company.

However, if the information provided to shareholders prior to the meeting was incorrect or incomplete, shareholders can still bring proceedings against the board and the auditors. Moreover, despite the approval of the ratification proposal, these individuals will still be liable for wilful misconduct, fraud or any criminal offenses. Lastly, the discharge granted by shareholders does not release them from liabilities toward third parties. Therefore, each proposal will be evaluated on a case-by-case basis under the Benchmark Policy analysis.

In line with the *Continental Europe Benchmark Policy*, the Benchmark Policy may recommend that shareholders vote against or abstain from ratification proposals where the ratification may prejudice shareholders due to the pending nature of an investigation, or in cases where the ratification of board members is offered only as a bundled item.

## Ownership Reporting Requirements

Belgian company law requires that any shareholder or group of shareholders whose ownership of voting rights in a company rises above or falls below 5% of total voting rights must notify the company and the FSMA. This disclosure obligation also exists for every transaction that causes the owner's voting rights, taking into account any voting rights held by affiliated entities, to exceed or fall below any multiple of 5% of total voting rights. The notification must be effected within five business days of the date on which the ownership threshold was crossed, and specify the number of shares held as well as the corresponding number of voting rights.<sup>54</sup>

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<sup>53</sup> Articles 7:109§3 and 7:149 of the BCCA.

<sup>54</sup> Article 7:83§1 of the BCCA and Articles 5 through 28 of the Law of May 2, 2007 implementing the Transparency Directive.

However, a company's articles of association may also require notification when a shareholder's ownership passes the thresholds of 1%, 2%, 3%, 4% and 7.5%.<sup>55</sup> In line with the *Continental Europe Benchmark Policy*, the Benchmark Policy will generally result in a recommendation against any amendment to the articles of association lowering share ownership disclosure thresholds.

## Double Voting Rights

The BCCA includes the potential for shares to carry double voting rights, provided that the shares have been held by the same shareholder for an uninterrupted period of two years. The introduction of such "loyalty shares" requires approval by general meeting with a two-thirds majority by amending the company's articles of association.<sup>56</sup>

Many investors agree that the economic stake of each shareholder should match their voting power. While such loyalty incentives for shareholders may accomplish the intended effect of maintaining a stable shareholder structure and decreasing volatility, the benefit to shareholders of such measures has not been sufficiently proven by academic literature nor have the consequences been fully studied. As a result, in line with the *Continental Europe Benchmark Policy*, the Benchmark Policy will generally recommend that shareholders oppose proposals to implement loyalty programmes for certain shareholders, since they unnecessarily create different classes of shareholders with disparate treatment.

Please refer to the *Continental Europe Benchmark Policy Guidelines* for further information on other potential multi-class share structures that differ from "loyalty shares."

## Anti-Takeover Devices

Many investors believe that provisions that are intended to prevent or thwart a potential takeover of a company are not conducive to good corporate governance and can reduce management accountability by substantially limiting returns for shareholders.<sup>57</sup> See specific examples typical to Belgian companies below.

### Change in Control Provisions

Belgian law requires that the extraordinary meeting of shareholders approve any clause pursuant to which the company may incur debt or an obligation in the event of a change in control or a public takeover bid.<sup>58</sup> While such clauses are often routine items, investors may see these as deterrents against a potential takeover.

As a result, the Benchmark Policy will support these proposals when the terms of the provision are clearly disclosed and the agreement falls within the company's regular course of business.<sup>59</sup> In other cases, the

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<sup>55</sup> Article 18 of the Law of May 2, 2007, implementing the Transparency Directive.

<sup>56</sup> Article 7:53§1 of the BCCA.

<sup>57</sup> G20/OECD Principles of Corporate Governance, II.H.2.

<sup>58</sup> Article 7:151 of the BCCA.

<sup>59</sup> In line with best market practice, disclosure of terms of the transaction generally includes the value of the transaction, the entities involved and the rationale for it to be considered as ordinary business, among other details.

Benchmark Policy may result in a recommendation against the proposal, absent a compelling rationale for how the agreement serves shareholder interests.

## Share Repurchase Plans

Belgian companies sometimes request shareholder approval of the authority to repurchase shares in the event of “serious and imminent harm to the company.”<sup>60</sup> Such an authority can be valid for a period of up to three years and must be included in the company’s articles of association.

The Benchmark Policy generally recommends that shareholders vote against general authorities to repurchase shares where this authority may be used as a takeover defence.

## Issuance of Shares and/or Convertible Securities

In Belgium, shareholders may also explicitly allow companies to use their authorised capital during a takeover period. Such an authority can be valid for a period of up to three years and is included in the company’s articles of association. In such a case, the company may use that authority to the extent that: (i) the issuance price is at least equal to the price being offered by the entity making the bid; (ii) the new shares are fully paid-up upon issuance; and (iii) the number of new shares does not exceed 10% of the company’s share capital prior to the capital increase.<sup>61</sup>

Because such authorities can serve as a deterrent to interested suitors, the Benchmark Policy may result in recommending shareholders vote against any proposal that authorises a company to increase capital during a takeover bid without adequate rationale.

## Disclosure of General Meeting Vote Results

Many investors believe that companies should broadly and publicly disclose in a timely manner the vote results from general meetings.<sup>62</sup> Access to detailed vote results from general meetings is important for shareholders in conducting their stewardship duties. Specifically, the disclosure of vote results assists shareholders in gaining a better understanding of the outcome of general meetings, establishing engagement priorities, and tracking companies’ responses to material (minority) shareholder dissent on any of the agenda items. The non-disclosure of vote results can serve to disenfranchise minority shareholders, particularly at companies with a multi-class share structure or a controlling shareholder.

In Belgium, the disclosure of vote results from a shareholder meeting represents an established best practice. Accordingly, the Benchmark Policy will raise a concern in its board analysis at companies that do not disclose vote results from their previous annual meeting. In instances where BEL20 or BEL MID companies did not disclose vote results from their previous annual meeting, the Benchmark Policy will generally recommend that shareholders vote against the re-election of the chair of the governance committee or equivalent (i.e. board chair or Lead Independent Director).

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<sup>60</sup> Article 7:215§1 of the BCCA.

<sup>61</sup> Article 7:202 of the BCCA.

<sup>62</sup> CII Policies on Corporate Governance, 4.4.

# Capital Management

In Belgium, authorities to issue and repurchase shares are integrated in a company's articles of association. As a result, they are submitted to shareholder approval in the form of article amendments.

While the principles outlined in the *Continental Europe Benchmark Policy Guidelines* remain applicable, because of the frequent introduction of related anti-takeover measures, the Benchmark Policy includes additional policies for these issues in Belgium, as presented below.

## Authorised Capital

In Belgium, shareholders are required to approve all proposals related to the issuance of shares and/or convertible securities. According to Belgian law, shareholders may delegate the power to determine the terms and conditions of the issuance to the board. Notwithstanding the aforementioned, shareholders must determine the length of the authority, which is included in the company's articles of association and may in no event be greater than five years.<sup>63</sup> Moreover, according to Belgian law, companies are required to respect the preemptive rights of shareholders, unless they have received express authority to waive these rights in a proposal approved at a previous shareholder meeting.<sup>64</sup>

In line with the *Continental Europe Benchmark Policy*, the Benchmark Policy will generally recommend voting against any authorisation that could result in an issuance with preemptive rights in excess of 100% of share capital, and without preemptive rights in excess of 20% of share capital. In addition, the Benchmark Policy will result in a recommendation against any authorised capital authority if the company's articles of association include an anti-takeover provision that would enable it to issue capital during a takeover period, or if the authority is bundled with the renewal of an anti-takeover provision. If the meeting agenda includes both a regular authorised capital authority and the renewal of the anti-takeover provision, the Benchmark Policy will generally support the former proposal but oppose the latter.

## Authority to Repurchase Shares

Previously, Belgian law limited the number of shares that may be repurchased to 20% of a company's capital. This limit was removed in 2019, and the number of shares that can be repurchased will now be determined by the general meeting.<sup>65</sup> A 20% threshold will continue to apply under the Benchmark Policy analysis.

The Benchmark Policy will generally support authorities to repurchase shares in Belgium, unless the company's articles of association include an anti-takeover provision that would enable the company to repurchase shares during a takeover period, or if the authority is bundled with the renewal of an anti-takeover provision. If the meeting agenda includes both a regular share repurchase authority and the renewal of the anti-takeover provision, the Benchmark Policy will generally support the first proposal and oppose the latter.

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<sup>63</sup> Articles 7:198 and 7:199 of the BCCA.

<sup>64</sup> Articles 7:188, 7:190 and 7:191 of the BCCA.

<sup>65</sup> Article 7:215§1 of the BCCA.

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Corporate Website | [www.glasslewis.com](http://www.glasslewis.com)

Email | [info@glasslewis.com](mailto:info@glasslewis.com)

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## Global Locations

### North America

#### United States

*Headquarters*

100 Pine Street, Suite 1250  
San Francisco, CA 94111  
+1 415 678 4110

New York, NY  
+1 646 606 2345

2323 Grand Boulevard, Suite 1125  
Kansas City, MO 64108  
+1 816 945 4525

#### Canada

65 Front Street East, Suite 201  
Toronto, ON M5E 1B5

### Asia Pacific

#### Australia

*CGI Glass Lewis*  
Suite 5.03, Level 5  
255 George Street  
Sydney NSW 2000  
+61 2 9299 9266

#### Japan

Shinjuku Mitsui Building, 11th floor  
2-1-1, Nishi-Shinjuku, Shinjuku-ku,  
Tokyo 163-0411, Japan

#### Philippines

One Ayala East Tower, 1 Ayala Ave  
Makati, Metro Manila

### Europe

#### Ireland

15 Henry Street  
Limerick V94 V9T4  
+353 61 534 343

#### United Kingdom

80 Coleman Street  
Suite 4.02  
London EC2R 5BJ  
+44 20 7653 8800

#### France

*Proxinvest*  
6 Rue d'Uzès  
75002 Paris  
+33 (0)1 45 51 50 43

#### Germany

*IVOX Glass Lewis*  
Kaiserallee 23a  
76133 Karlsruhe  
+49 721 35 49622

#### Romania

Calea Aradului 11  
Timișoara 300254

#### Sweden

Norrskan House  
Birger Jarlsgatan 57C  
113 56 Stockholm

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