



## GOVERNANCE CHARTER

### An exacting governance charter

Having reviewed the recommendations issued by the Organisation for Economic Co-operation and Development, the European Union, the Belgian State, as well as the Belgian Corporate Governance Code, SOFICO has adopted a governance charter.

Although the Belgian Corporate Governance Code is not fully tailored to SOFICO, the organisation considers that it has a duty as a public organisation that is keen to set an example to submit itself to an obligation to disclose broad information and to report its activities to the general public.

It is in this spirit of transparency that it has established its corporate governance charter. SOFICO is committed to transparency on a par with *Initiative, Integrity, Autonomy, Quality of work* and *Team spirit* which are our five values with respect to our corporate culture.

The SOFICO system of governance as set out in this document is based in part on the organisation's organic decree and its statutes, as well as on Walloon governance legislation, which explains its particularly exacting nature.

**14 December 2018**

(Appendix to the minutes of the meeting of the Executive Board on 14 December 2018)

### **1. PREAMBLE**

### **1.1. What is good corporate governance?**

Governance covers a body of rules according to which organisations are managed and controlled.

Good corporate governance achieves its goal by establishing the right balance between autonomy of action and control, and between performance and compliance with these rules.

The rules of governance are intended not only to facilitate management driven by performance, but also to provide mechanisms of direction and leadership while maintaining the transparency of the decision-making process.

Good governance must allow corporate goals to be established, provide the tools to achieve these goals and offer a way of evaluating performance.

Control comprises the effective evaluation of performance, careful management of the potential risks and appropriate monitoring of procedures and processes.

### **1.2. Key objective of the governance charter**

The key objective of a governance charter is to support long-term value creation and to ensure business continuity.

Governance practices based on transparency and responsibility strengthen stakeholders' confidence and benefit internal and external parties as well as the recipients of the company's activities.

Good governance also allows access to lower cost external finance.

Governance also aims to organise the structure of the management organs and decision-making processes more efficiently.

## 2. IDENTITY

*SOFICO's initial objective, as non-profit public interest organisation, was to accelerate the construction of missing links or bottlenecks on the trans-European networks of Wallonia's motorway and waterway networks.*

*To date, five large projects have been completed:*

- *The E25-E40 link road and the Cointe tunnel (completed in 2000);*
- *The E429/A8 motorway (completed in 2000);*
- *The Canal du Centre and the Strepy-Thieu boat lift (completed in 2002);*
- *The 4<sup>TH</sup> lock of Lanaye (completed in 2015);*
- *The new Ivoz-Ramet lock (completed in 2015).*

*Elsewhere, the project to build the bypass around Couvin is currently progressing. The project to widen the gauge of the Ampsin-Neuville lock kicked off in 2018.*

*Over the years, SOFICO's missions have expanded. Today, the Walloon Government has entrusted it with management of the structuring network.*

*Appointed project owner, it finances, delivers, maintains and operates around 2,400 km of motorway and strategic regional dual carriageways, which represents 52.3% of road traffic in Wallonia.*

*To effectively deliver on its management mission and rehabilitate the network, SOFICO works in accordance with the Plan Routes which provides investment of €500 million before tax in more than 300 projects.*

*In addition to the annual budget that SOFICO that will dedicate to maintaining the structuring network between 2016 and 2019, it can also count on the launch of a Plan Infrastructures to carry out detailed rehabilitation of the network. As a result, close to €350 million will be invested in the structuring network over four years.*

*This plan is financed primarily by the per-kilometre charge imposed on heavy goods vehicles since 1st April 2016.*

*Apart from these activities, SOFICO has inherited some other missions, in particular the operation of heritage sites:*

- *Motorway service areas;*
- *Hydroelectric power plants, wind turbines, photovoltaic panels;*
- *Telecommunications and multi-operator pylons.*

SOFICO is a public company *sui generis* created by the decree of 10 March 1994 in relation to the creation of the Société wallonne de Financement Complémentaire des Infrastructures, a body that provides additional funding for infrastructure.

SOFICO is the lead public operator that manages the structuring road and motorway network in Wallonia as well as the waterways infrastructure.

Its missions create links: it is also active in the area of energy (hydroelectric power plants, wind turbines, photovoltaic panels) and telecommunications (fibre optic networks and multi-operator pylons).

SOFICO is tasked, in accordance with its corporate purpose, with:

1. The provision, for a fee and to the benefit of users, of road and motorway infrastructure in accordance with the programme of completing missing links, eliminating bottlenecks and completing major roads as set out in European trans-European transport networks, while also ensuring the financing, delivery, maintenance and operation;

*Provision is defined as granting the right of access to and use of infrastructure in accordance with their nature and allocation.*

2. The provision, for a fee and to the benefit of users, of the structuring network, while also ensuring the financing, delivery, maintenance and operation;

*Provision in this sense defines the structuring network as the motorways and main highways and waterways, including traffic-free zones, dependencies and overhanging highway structures. The government decrees the list of roads that make up the structural network and inform parliament immediately.*

3. The management, for a fee, of the functioning of waterway infrastructure in accordance with the programme of completing missing links, eliminating bottlenecks as set out in European trans-European transport networks, while also ensuring the financing, delivery, maintenance and operation;

*Management of the functioning is defined as operating consistent service equipment and managing the functioning of the infrastructure, including providing the services necessary to this functioning and required to allow use of this infrastructure in order to facilitate provision by Walloon Region of public services with respect to waterways and the optimal use of these waterways in the Walloon Region, and responsibility for this functioning as well as granting the right to use this infrastructures.*

4. The management of non-profit infrastructure that is of public interest and *ad hoc* revenue collection order to support the commercial development of the road and waterways network in the region and to contribute to the financing of the skills specified under points 1 to 3.

The government decrees the list of infrastructures referred to in points 1 to 3 which it decided to execute or to entrust to the organisation. Financial planning of the works specified in this article s decreed by the organisation's Executive Board and is submitted to the government for approval.

To achieve its objective, SOFICO may in particular access third-party services and entrust to them any mission which helps to achieve its objective with respect to the rules pertaining to public works, supply and services markets:

- With the government's approval, join associations or acquire holdings in commercial organisations whose activity serves completion of the mission described *supra* ;
- Conduct financial operations in the context of achieving its corporate purpose;
- Acquire and grant immovable property rights or personal rights on built or non-built immovable property to the extent that is strictly necessary to achieve its corporate purpose.

### 3. CORPORATE GOVERNANCE PROCESS

SOFICO has reviewed the corporate governance recommendations issued by the Organisation for Economic Co-operation and Development, the European Union, the Belgian State, as well as the Belgian Corporate Governance Code.

The SOFICO system of governance , which is based in part on the organisation's organic decree and its statutes, as well as on Wallonian governance legislation, is equally exacting.

SOFICO considers that, although the Belgian Corporate Governance Code is not fully tailored to it, it has a duty as a public organisation to set an example by submitting itself to an obligation to disclose broad information and to report its activities to the general public.

It has established this corporate governance charter in a spirit of responsibility and transparency.

Transparency is one of SOFICO's values on a par with *Initiative*, *Integrity*, *Autonomy*, the *Quality of the work* and *Team spirit* which are SOFICO's five commitments in terms of corporate culture.

#### 4. LEGAL, REGULATORY AND STATUTORY FRAMEWORK

As a non-profit public interest organisation, SOFICO is primarily governed by:

- The decree of 10 March 1994 relating to the founding of the Société wallonne de Financement Complémentaire des Infrastructures, a body that provides additional funding for infrastructure (and subsequent modifications to this decree<sup>1</sup> and related decisions by the Wallonian government<sup>2</sup>);
- The decree of 12 February 2004 in relation to government commissioners and to the role of auditors within non-profit public interest organisations<sup>3</sup>, the decree of 12 February 2004 in relation to the public sector directors charter<sup>4</sup>, and the decree of 12 February 2004 in relation to the management contract and to the obligations to provide information (and subsequent modifications to these decrees);
- Public procurement regulations, in particular:
  - o The Act dated 17 June 2016 in relation to public procurement;
  - o The Act dated 16 February 2017 amending the Act of 17 June 2013 in relation to motivation, information and means of recourse with respect to public procurement and certain public works, supply and services markets;
  - o The Royal Decree of 18 April 2017 in relation to awarding public sector contracts in traditional sectors;
  - o The Royal Decree of 22 June 2017 modifying the Royal Decree of 14 January 2013 defining the general rules of execution for public procurement and public works concessions
- The decree of 15 December 2011 in relation to budget organisation, accounting and reporting by the Walloon public administration bodies<sup>5</sup>.

The organisation is subject to the Act dated 17 July 1975 in relation to corporate accounting and the organisation's annual accounts, now integrated into Book III of the Belgian Economic Rights Code.

SOFICO is also subject in part to the Belgian Commercial Code and in particular to the articles relating to commissioners (specifically art. 130 ff), to article 95 (formerly article 77 on the coordinated laws on commercial companies regarding the content of the management report), and to article 602 (relating to the rules for valuing contributions in kind).

SOFICO's statutes were adopted by the Decree of the Walloon Government dated 22 September 1994<sup>6</sup> and are deemed to be in force by virtue of the decree of 10 March 1994 referred to above.

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<sup>1</sup> Decree of 08 February 1996; decree of 4 February 1999; decree of 27 November 2003; decree of 23 February 2006; decree of 03 April 2009; decree of 10 December 2009; decree of 22 July 2010; decree of 27 October 2011; decree of 11 April 2014.

<sup>2</sup> Government of Wallonia Decree of 1 March 2012; Government of Wallonia Decree of 24 April 2014; Government of Wallonia Decree of 11 June 2015; Government of Wallonia Decree of 24 March 2016.

<sup>3</sup> Decree of 30 April 2009.

<sup>4</sup> Decree of 07 November 2007; decree of 22 July 2010; decree of 07 April 2011; decree of 03 December 2015; decree of 24 November 2016.

<sup>5</sup> Amended by the decree dated 23 December 2013 and by decree dated 17 December 2015.

<sup>6</sup> Amended by the Government of Wallonia Decrees of 14 March 1996, 04 March 1999, 19 December 2002 and 17 June 2004.



## 5. SHAREHOLDERS

The share capital is broken down as follows:

1. The category A1 capital securities, amounting to €1,328,890,779,60, are non-transferable nominative securities representing contributions in kind made by the Region.  
The amount of category A1 capital is unrestricted. The value of each contribution in kind is fixed according to the rules set out in article 602 of the Belgian Commercial Code.  
The category A1 capital is split into securities of €12,394.68;
2. The category A2 capital securities, amounting to €320,320,563.41 are non-transferable nominative securities fully subscribed by the Region.  
The category A2 capital is split into 25,843 securities of €12,394.68;
3. The category B nominative capital securities amount to €6,817,071.93. The category B capital is split into 550 securities of €12,394.68.

The Walloon Region currently holds 100% of the share capital social, the aforementioned decree of 10 March 1994 and the statutes stipulating that it must at all times hold minimum 51% of the share capital, either directly or through the intermediary of legal persons governed by public law and authorised by the government.



## 6. GOVERNANCE STRUCTURE

The key characteristics of SOFICO's governance model are as follows:

- An Executive Board that defines the general policy and strategy and supervises operational management
  - Appointment by the Executive Board of an internal specialist Audit Committee and Remuneration Committee
- A Management Committee (which is the management office of the Executive Board)
- A Chairman and a Managing Director acting jointly to enforce statutory competences and those specified by decree
- A Managing Director who takes responsibility for day-to-day management.

SOFICO's activities are performed by its staff under the direction of the Managing Director.

SOFICO aims to respond responsibly to interested parties and stakeholders, in particular its staff, its customers and its suppliers, as well as society and the environment. The public service provided by SOFICO is required to be entrenched in ethical standards.

SOFICO complies with all the relevant principles of the Belgian Code on Corporate Governance:

- **Principle 1.** The organisation shall adopt a clear corporate governance structure.
- **Principle 2.** The organisation shall have an effective and efficient Executive Board that takes decisions in the corporate interest.
- **Principle 3.** All board members shall demonstrate integrity and commitment.
- **Principle 5.** The Executive Board shall set up specialised committees.
- **Principle 6.** The organisation shall adopt a clear corporate governance structure.
- **Principle 8.** The company shall enter dialogue with shareholders and potential shareholders based on a mutual understanding of the objectives and expectations.
- **Principle 9.** The organisation shall ensure adequate disclosure of its corporate governance.

The appointment of board members (*Principle 4*) is within the competence of the government of Walloon. This competence is exercised while respecting democratic stipulations (representation based on election results as they translate for the Walloon parliament, competence, availability, mix and the principles set out in the decree of 12 February 2004 in relation to the public sector directors charter). The remuneration paid to the board members (*Principle 7*) is determined by the government in accordance with article 5 of the decree of 10 March 1994 referred to above.

Remuneration paid to the board members is published in accordance with the rules decreed by the Walloon parliament and the government.

The charter will be subject to regular review. Major changes shall be regularly presented during the general meeting of shareholders.

SOFICO's corporate governance charter is published on the website [www.sofico.org](http://www.sofico.org), along with the association's statutes.

Furthermore, SOFICO shall present information relative to its application of corporate governance in its annual report.

## 7. THE MANAGEMENT ORGANS

### **GENERAL MEETING**

Article 12 of the association's statutes specify that:

*« The general meeting brings together all the holders of category B securities<sup>7</sup>. It meets once a year, between 1 March and 30 April, to approve the annual accounts. It also meets whenever there is occasion to amend the statutes. It is convened by the Chairman of the Executive Board giving at least 15 (fifteen) days' notice by recorded delivery. The invitations contain the agenda. Each category B security holding entitles the holder to one vote. Holders of securities may be represented by a proxy. Decisions are taken by a majority of three-quarters of the votes issued. Decisions in relation to changes to the statutes do not come into effect until they have been approved by government decree. »*

The general meeting also reviews the annual report on the remuneration paid to board members and directors.

It is informed whenever changes are made to the governance charter.

The board members are invited to the general meeting sessions.

### **EXECUTIVE BOARD** Competences

Within the boundaries set by the law, decrees and statutes, the executive board has the most far-ranging powers to perform all the acts of administration or disposal necessary or useful in achieving the corporate purpose. All matters not expressly confined by law to the general meeting fall within the competence of the executive board.

Without prejudice to the above, the executive board's main responsibilities are as follows:

- Define the organisation's vision and values;
- Decide on the long-term strategy;
- Approve the management contract;
- Define and approve the programme of activities, the budget and the allocation of resources to deliver the strategy in the long-term and the annual goals;
- Monitor the organisation's performance;
- Ensure the provision of correct and timely information to stakeholders and interested parties;
- Supervise internal controls and risk management;
- Approve non-routine operations;
- Seek the implementation of article 10 of the statutes;
- Obtain information concerning the implementation of multi-year plans and programmes.

### **Composition**

In accordance with article 11 of the statutes, the Executive Board is made up of maximum ten members, including a Chairman and a Vice-Chairman. These board members are appointed by the general meeting at the suggestion of the Walloon Government for a duration of five years.

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<sup>7</sup> See page 7, point 5. *Shareholders*.

It is the responsibility of the Walloon government, at the time of appointment, to monitor the mix of genders.

In accordance with the decision of the Walloon Government, the executive board appoints a Chairman and a Vice-Chairman from among the members of the executive board.

The Managing Director is appointed by the general meeting on the recommendation of the government.

The executive board also appoints its secretary.

All the board members undertake to sign the public administrator charter (see appendix 1). Accordingly, all board members agree that the interests of the organisations and of all its shareholders take precedence in all circumstances over direct or indirect personal interests.

A representative of the Inspectorate of Finances is invited to attend SOFICO executive board meetings, although without a vote.

## **Operation**

The functioning of the executive board is managed by the Decree, the Commercial Code, the statutes and the in-house rules of procedure.

The executive board has a procedure for welcoming new board members and arranges regular briefing sessions for the new member.

In accordance with article 12 of the statutes, the executive board meets as often as this in the interests of SOFICO, with meetings convened by the Chairman (or by his Vice-Chairman). A meeting must be convened if requested by at least two board members.

During its year-end meeting, the executive board determines the main points it would like to see addressed during meeting the following year, namely:

- Regularly recurrent points (investment programme, accounts etc.);
- Current strategic points;
- Specific points in relation to its task of evaluation and control of day-to-day management.

During this meeting, it also determines what reports and dashboards it needs or would like to have to perform its task, and in particular to enable it to supervise:

- Decision-making by the executive board;
- The follow-up and implementation of recommendations and comments received from external auditors;
- Monitoring of the execution of multi-year plans and programmes.

At least once a year, the executive board holds a strategy meeting to which it invites the representative(s) of the competent ministry or ministries.

The executive board may deliberate and reach decisions only if half the members are present or represented. Any member of the executive board may delegate one of his colleagues to represent him at a meeting called by the board, and to vote there, by providing notification in writing, by telefax,

email or any other means of communication supported by a printed document. Members in attendance may act as proxy for one other member only.

If this quorum is not reached during a meeting, the agenda points for this meeting are fully adjourned to the agenda for the next meeting during which these points will be decided on without a quorum being required.

The executive board reaches decision by a majority of the votes by members in attendance or represented. If the number of votes is equal, the Chairman has the casting vote. However, decisions by which the executive board rules on the management contract and its modifications must be adopted by a majority of 80% of the votes cast.

Unless there are compelling reasons, the executive board may not rule on a point that does not appear on the agenda. In exceptional circumstances duly justified by the urgency and by the interests of the organisation, and with the exception of decisions where legislation prohibits recourse to this procedure, decisions by the executive board may be taken with the unanimous consent of the board members, expressed in writing.

The executive board determines its rules of procedure.

## **The specialist committees**

### **Audit Committee**

The executive board forms a specialist audit committee whose role is to perform in-depth examination of specific issues on behalf of the board, and to advise the board in this respect. In this context, it reports regularly to the executive board.

Without prejudice to the executive board's legal missions and in accordance with article 15(2) of the decree of 12 February 2004 in relation to the public sector directors charter, the **audit committee** is as a minimum charged with the following tasks:

- Review of the organisation's budget;
- Long-term review of the organisation's financial trajectory, of its multi-year plans and programmes; review of SOFICO debt position;
- Monitoring of the management of financial risk, including effectiveness and efficiency;
- Prior review of the annual accounts;
- Monitoring of the legal checks on the annual accounts, including following up questions and et recommendations made by the college of commissioners;
- Follow-up of the recommendations resulting from the financial audits.

The committee comprises two board members appointed by the executive board, one of whom is chairman of the committee. Each board member may be a member of only one specialist committee, and the Chairman and Vice-Chairman may not be a member of either of them.

The Managing Director automatically attends the committee meetings in an advisory capacity. The financial director also attends.

The members of the college of commissioners, the Government Financial Information Unit (Cellule d'informations financières du Gouvernement wallon - CIF) and the inspectorate of finance are also

invited by default.

The committee may also invite experts.

It meets minimum twice per annum.

The committee meets at the request of the executive board or on its own initiative.

SOFICO is responsible for preparing the right records and providing secretarial services to the committee.

### **Remuneration committee**

The executive board forms a specialist remuneration committee whose role is to perform in-depth examination of specific issues on behalf of the board, and to advise the board in this respect. In this context, it reports regularly to the executive board.

Without prejudice to the executive board's legal missions and in accordance with article 15(a) section 10 of the decree of 12 February 2004 in relation to the public sector directors charter, the specialist remuneration committee is as a minimum charged with the following tasks:

- Prepare the annual report on remuneration of the board members and directors for the general meeting;
- Review the organigram and the remuneration policy put forward by the Managing Director prior to submission to the executive board for approval;
- Conduct a detailed annual review of human resources management within the organisation, in particular keeping up-to-date with staff movements (leavers, appointments, extended leave such as credit hours, illness, unpaid leave, secondments.), and review the remuneration policy and human resources procedures (telephony, recruitment, car policy, etc.) ;
- Examine the options open to Sofico employees to confidentially report their concerns regarding possible irregularities (whistle-blowing) ;
- With respect to recruitment:
  - Form the selection panel for the reappointment of directors acting directly under the authority of the Managing Director, with the Chairman and the Managing Director sitting on the panel by default;
  - Review the documents which the board has requested in application of article 10 of the statutes.
- Give an opinion of the organisation's remuneration policies and practices and issue recommendations on individual remuneration and any benefits granted to managers.

The committee comprises three board members appointed by the executive board, one of whom is chairman of the committee. Each board member may be a member of only one specialist committee, and the Chairman and Vice-Chairman may not be a member of either of them.

The Managing Director automatically attends the committee meetings in an advisory capacity. The human resources director also attends.

The committee may also invite experts.

It meets minimum twice per annum.

The committee meets at the request of the executive board or on its own initiative.

SOFICO is responsible for preparing the right records and providing secretarial services to the committee.

### **MANAGEMENT COMMITTEE**

The Management Committee is the management office of the Executive Board.

All its powers are conferred by the executive board which may delegate tasks and missions to the committee.

### **DELEGATION TO DAY-TO-DAY MANAGEMENT**

#### ***The Chairman and the Managing Director acting jointly***

The Chairman and **Managing Director** acting jointly to enforce statutory competences and those specified by decree. The Chairman works in close collaboration with the **Managing Director**, he provides support and advice while respecting the **Managing Director's** executive responsibility. The Chairman acts as privileged intermediary to the **Managing Director**.

With the exception of documents which must be signed by two members of the executive board, all documents which commit the organisation, other than those relating to day-to-day management, and all authorisations and letters of attorney are signed jointly by the Chairman of the executive board and by the **Managing Director**. They may also be signed by two board members.

Day-to-day management documents are signed by the **Managing Director** and the Chairman.

The Chairman and the **Managing Director** are responsible for relationships with financial partners, the supervisory and guardianship bodies.

In this context, they:

- They present the annual report prescribed in article 15 of the statutes to the government;
- Respond to all requests for information from the supervisory and guardianship bodies;
- Manage the perception of revenue as set out in article 11 of the decree of 10 March 1994, amended by the decree of 2 February 1999.

#### ***The Chairman***

He is chairman of the general meeting, the executive board and the management committee.

The Chairman is also responsible for representing SOFICO to its shareholder.

More specifically, he is legally required to inform the government of the implications and consequences of all strategic decisions.

#### ***The Managing Director***

The Managing Director implements the general policy defined by the executive board by virtue of the authority delegated to it.

The Managing Director also deals with the day-to-day management of the company.

In particular, he:

- Executes the decisions made by the executive board and the management board;
- Examines the documents for submissions to the management organs;
- Responds to all requests for information from the management organs;
- Keeps the management organs regularly up-to-date with the organisation's performance;
- Leads the project for the financial planning of works to be adopted by the executive board in accordance with article 2, section 1, paragraph 6 of the decree dated 10 March 1994, inserted by the decree of 27 November 2003.

## **8. THE CONTROL MECHANISMS**

### **THE AGENTS OF CONTROL**

#### **1. The executive board**

This management organ is invested with the most extensive powers to perform all the acts necessary or useful in achieving the corporate purpose.

*Ipsa facto*, it is the first agent of control.

#### **2. The government commissioners**

The government commissioners attend executive board and management board meetings, but do not have a vote.

In accordance with article 8,§1 of the decree of 12 February 2004 with respect to government commissioners and the auditors' control missions within non-profit public interest organisations, the government commissioners are responsible for control at the level of SOFICO's legality and general interest.

#### **3. The college of audit commissioners**

The college of audit commissioners comprises two members who are appointed by the general meeting. One of the audit commissioners is elected from among the members of the Belgian Institute of Company Auditors and the second commissioner is, traditionally, elected from among the members of the Court of Audit based in particular on his administrative, budgetary and public procurement competences.

#### **4. The Court of Audit**

The Court of Audit maintains its general prerogatives with respect to approving annual accounts and general control of the management of centralised and decentralised public services by virtue of its basic law of 29 October 1846 in respect of the organisation of the Court of Audit.

#### **5. The European Investment Bank (EIB)**

The EIB verifies that loans it has granted are used compliantly and that they comply with the sustainability goals which SOFICO has agreed to adhere to.

#### **6. The Federal Public Service (FPS) Finances**

The VAT authorities have monitored and controlled the VAT statements and VAT collection since SOFICO became subject to VAT (in 1998).

The tax authority is also involved in assessing tax statements from legal persons, which SOFICO is required to submit.

#### **7. The Walloon commission on motorway facilities (CWEA)**

The CWEA is a mixed DGO1/SOFICO commission charged with ensuring overall consistency of the management of motorway facilities, in particular motorway service areas whether licensed out or



not (conduct regular inspection visits, ensure homogeneous control of compliance with the wording of the specifications, etc.).

An audit commissioner supports the commission in managing the concession-holders' accounts.

## **8. The Disputes Committee**

The SOFICO Disputes Committee charged with exploring the possibility of reaching an amicable resolution to any disagreement or dispute which occurs when awarding or during the execution of a public contract.

The proposed settlements are examined jointly by delegates from the Court of Audit, the Inspectorate of Finance, decentralised and central departments of Wallonia's Civil Service (SPW) involved in the dispute as well as SOFICO, to ensure that the proposed solution is legally valid.

### **RISK MANAGEMENT. RISK PREVENTION. PREVENTION OF CONFLICTS OF INTEREST, COMBATING FRAUD AND INTERNAL CONTROLS**

SOFICO must have internal controls, possibly outsourced, to ensure that its control procedures cover all the risks and are pertinent and practical.

Once a year, the Managing Director submits a report to the executive board to enable it to understand and monitor the control procedures implemented within SOFICO.

Its report must provide the executive board with a clear overview of how risks are managed and of the mechanisms implement to mitigate risks, prevent conflicts of interest and combat fraud.

Where applicable, the executive board may request operational or financial audits.

#### ***Special provisions with respect to conflicts of interest***

An organisation's board members must act in the interests of the company at all times.

Without prejudice to the statutory regulations in relation to conflicts of interest involving directors as specified in article 523 of the commercial, the executive board's in-house rules of procedure stipulate that board members must abstain from discussing and voting on matters in which they have an interest or in which personally and/or professionally and/or historically their spouse or partner, their parents or associates have an interest to the third degree. Where necessary, they shall leave the meeting for the duration that the issue is under discussion.

Regarding conflicts of interest in the context of public procurement, article 6 of the Act dated 17 June 2016 with respect to public procurement prescribes that:

' § 1. The contracting authority shall implement the measures required to effectively prevent, detect and rectify conflicts of interests which arise during the awarding and execution of the contract in order to avoid any distortion of competition and ensure equal treatment of all the economic parties.

The concept of conflict of interests refers as a minimum to any situation in which, during the awarding or execution, any civil servant concerned, all public authority figures and all persons associated with a contracting authority in any way, including the provider of ancillary purchasing activities on behalf of the contracting authority, along with any individual likely to influence the awarding or the issue of the contract, has a direct or indirect

financial, economic or other personal interest which could be perceived to compromise their impartiality or their independence in the context of the awarding and execution of the contract.

The rules of procedure may also designate other situations as conflicts of interest.

§ 2. All civil servants, public authority figures and all persons associated with a contracting authority in any way, including the provider of ancillary purchasing activities on behalf of the contracting authority, are prohibited from any form of involvement whatsoever in the awarding or execution of a public sector contract from the time that the individual, either personally or via an intermediary, is possibly in a situation of conflict of interests with a candidate or a bidding party. In exceptional circumstances, however, this prohibition does not apply where it would impede the contracting authority from fulfilling its needs.

§ 3. There is presumed to be a conflict of interests in all situations where:

1 - there is a relationship by blood or marriage, by direct line to the third degree or by collateral line to the fourth degree, or in the event of a legal cohabitation agreement between the civil servant, the public authority figure or the natural person referred to in paragraph 1(2) the public authority figure or the natural person referred to in paragraph 1(2) and one of the candidates or bidding parties or any other natural person with powers of representation, decision-making or control acting on behalf of any of these parties;

2 - the civil servant, the public authority figure or the natural person referred to in paragraph 1(2) is himself or via an intermediary the owner, co-owner or an active partner in one of the candidate or bidding party companies or has, whether personally or via an intermediary, power of representation, decision-making or control.

Any civil servant, public authority figure or natural person finding themselves in a situation of conflict is required to disqualify themselves. He shall inform the contracting authority in writing.

§ 4. Where the civil servant, the public authority figure or the natural or legal person referred to in paragraph 1(2), either himself or via an intermediary, holds one or more shares or *parts representing at least five per cent of the share capital in one of the candidate or bidding party companies, he is obliged to inform the contracting authority accordingly.* " "

An appointed as a member of the executive board cannot be made or continue:

1. If in the individual's capacity in any form whatsoever there is a current and ongoing conflict of interests with SOFICO;
2. If the individual does not undertake to step down as soon as there is an ongoing conflict of interests with SOFICO capacity in any form whatsoever.

### **GIFTS AND/OR INVITATIONS**

The board members must be aware that with respect to gifts and/or invitations, **perception is almost always more important than the facts**. This means that whenever considering accepting gifts and/or invitations, the (potential) benefit for the organisation must be weighed up against possible criticism from external parties, whether justified or not.

The provisions set out below comprise the rules and regulations for board members. These must be adhered to at all times when deciding whether to accept gifts and/or invitations.

### **Definitions**

- Gifts are goods or services which are offered to board members by an external party, with no expectation of anything in return.
- The term 'invitation' refers to invitations issued by a third party to attend a lunch or a dinner, to enjoy *incentives*, or take part in trade fairs and/or social events (sport, cultural or other), the costs of which are paid by the external party (the meeting must always have a professional purpose).

### **General rules**

- In all their professional contact, the board members shall observe the highest standards of honesty, impartiality, objectivity and integrity and shall under no circumstance abuse their professional prerogatives or their authority for their personal profit.
- Board members must declare gifts and/or invitations to the secretary of the management organs, and whether they accepted or refused them. The secretary records these declarations in a special register. This register shall be reviewed once a year by the human resources and remuneration committee.
- Any gift and/or invitation which may be presumed to be an attempt to influence a decision on the part of SOFICO shall be refused.
- Attempts to influence decisions on the part of SOFICO which are liable to jeopardise SOFICO's image, credibility and honesty must be reported immediately to the Chairman of the executive board and to the Managing Director.
- These provisions are not designed to regulate attempts by an external party to influence a board member by means of ,commissions, bribes, financial rewards or benefits-in-kind, etc. given that these acts are covered by penal law.

The same rules apply to SOFICO staff members.

## 9. EVALUATION

### Declaration of governance

SOFICO adopts a declaration of corporate de governance which forms a specific section of its annual report, and which contains the following information as a minimum:

- Where SOFICO does not apply the full Belgian Code of Corporate Governance due to its size or specific characteristics, an indication of the parties to which it derogates and justified reasons for this derogation (principle of '*comply or explain*');
- A description of the key characteristics of internal control and risk management;
- The composition of the management organs and how they operate.

### Regular assessment of effective operation

The executive board is responsible for the quality of its own performance.

The individual board members keep their skills up-to-date and develop their knowledge of SOFICO so that they can fulfil their role on the executive board and in the specialist committees.

In accordance with article 10 of the decree of 12 February 2004 in relation to the public sector directors charter, SOFICO guarantees to the public administrator that it will hold briefing sessions or training cycles to enable the board member to ensure his ongoing development.

In order to continually improve its efficiency, the executive board systematically and regularly (minimum every three years) its own functioning and that of the specialist committees.

This evaluation focus on:

- The functioning of the executive board based on indicators
- Organisation of the executive board (agenda, documentation, reporting, frequency and duration)
- The organisation of its specialist committees (agendas, frequency and the duration of meetings, composition, information and documentation)
- The board member's understanding of their role and duties
- The executive board's involvement with and commitment to the executive board (understanding of SOFICO's skills areas, contacts, strategy development, environment, etc.)
- Communication with stakeholders
- Forward-looking thinking
- The executive board's overall efficiency

The executive board learns lessons from the review of its performance by recognising its strong points and remedying its weaknesses.

Details of the main characteristics of the process of reviewing the executive board and its specialist committees are published in the declaration of corporate governance.

### **Appendix:** - Public sector directors charter

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