Eumedion principles for a sound remuneration policy for members of the management board of Dutch listed companies

Applicable as from 20 February 2019

Background

The tasks of the management board, the supervisory board and the general meeting are clearly distinguished in Dutch corporate law. The management board manages the company; the supervisory board supervises and advises the management board, and the general meeting monitors both the management board and the supervisory board. Shareholders are not intended to act the part of members of the management board, or to act the part of the supervisory directors.

The division of tasks is different, however, where the remuneration of management board members is concerned. The management board determines directly or indirectly the remuneration of all the other employees of the company, but it is obviously undesirable for the members of the management board to determine their own remuneration. As a consequence, supervisory directors have been given a more executive task with regard to the remuneration of directors under the articles of association which means that the task of the general meeting has altered as well. In the case of the remuneration of the management board, the supervisory board initiates and implements the policy here and the general meeting monitors the way in which the supervisory directors do this.

The legislator gave an explicit shape to this special role allocation with respect to the remuneration of members of the management board with effect from 1 October 2004. As from that date, the general meeting has had the right to determine the remuneration policy for management board members and the right to approve schemes in the form of shares or rights to subscribe for shares. According to the law, the general meeting also determines the remuneration of individual management board members, but it is permitted for the articles of association to designate another body to perform this task. This latter option is mostly used at listed companies with a widely dispersed share-ownership. Determination of the remuneration of individual management board members at such companies has mostly been transferred to the supervisory board or to the meeting of holders of priority shares, which implements policy in this regard.

This means, in practice, that the general meeting only adopts the remuneration policy for management board members at listed companies on the recommendation of the supervisory board, and the policy is subsequently implemented by the supervisory board. Under the law, the results of that policy – the total remuneration paid to individual management board members broken down into its various components – should be presented in the remuneration report. In this way, the general meeting is enabled to monitor the implementation of the policy by the supervisory board.

This supervisory role of the general meeting comprises a number of elements, therefore. It involves the adoption (in advance) of a proposal for a remuneration policy for the management board, the adoption (in advance) of any amendments to this policy, the approval (in advance) of schemes in the form of shares or rights to subscribe for shares, the approval (in advance) of any changes to these schemes, and the evaluation (in retrospect) of the results of the policy, as these are formulated in the remuneration report from the supervisory board. As from the 2021 general meetings onwards, the remuneration reports will be submitted to the general meeting for an advisory vote.

Eumedion has drawn up the principles for a sound remuneration policy set out below in order to support Dutch and international shareholders in the listed companies with statutory seat in the Netherlands[1] in the supervisory task assigned to them by the law and the Dutch Corporate Governance Code with respect to the remuneration of management board members. These principles relate to the process and the accountability, as well as to the structure and content of a sound remuneration policy.

The principles set out below build on the 2006 Eumedion recommendations on executive remuneration and on the provisions contained in the revised Dutch Corporate Governance Code of December 2016. In these new principles Eumedion emphatically endorses the mandate of the supervisory board to fashion a suitable remuneration policy for the management board, but this does not diminish in any way the power of the general meeting with regard to adopting the policy.

1 Since the scope of Eumedion's work is confined to the corporate governance and sustainability issues at Dutch listed companies, the principles in this document relate solely to that group of companies. Shareholders may also be able to apply the principles to other listed companies and legal persons.

Eumedion principles

Remuneration policy

1. The supervisory board[2] takes the initiative and is responsible for the drafting of a remuneration policy for the management board, as well as for the implementation and the results of this policy.
2. The remuneration policy for the management board and amendments to this are adopted by the general meeting. Schemes in the form of shares or rights to subscribe for shares and amendments to such schemes are submitted separately to the general meeting for its approval. If the supervisory board intends to increase the fixed salary of one or more management board members more than the (expected average) annual increase in the fixed salary of the employees of the company, this will be regarded as an amendment to the remuneration policy.
3. The remuneration policy for the management board is comprehensively evaluated at least once every four years by the supervisory board and the general meeting adopts continuation of the existing policy or modifications to this policy.
4. The remuneration policy for the management board is clear and understandable, is aligned with the long-term strategy of the company and the corresponding goals and contributes to the long-term value creation of the company. The remuneration policy for the management board contains no stimuli that may be detrimental to the task entrusted to the management board of serving the long-term interests of the company.
5. The structure and the amount of the remuneration of management board members are appropriate in relation to i) the identity, the purpose and the values of the company, ii) the pay ratios within the company, iii) the relevant (inter)national context and iv) the views of the relevant stakeholders, including shareholders, employees, customers and the wider society. The explanatory notes to the proposed (new) remuneration policy and the remuneration report should describe how these matters have been considered in the supervisory board discussions and decision-making. If a peer group is used to determine the appropriateness of the management board members' remuneration in relation to the (inter)national context, the composition of this group will be made public and explained. The supervisory board realises that management board members are required to serve as examples to the other employees of the company at any time.
6. The remuneration of management board members is based on a fixed salary. Any variable elements of the remuneration[3] are subject to a maximum determined in advance. The (conditional) granting and

[2] In the event that the company has decided to include executive directors and supervisory directors in a single company body (a one-tier management structure), the principles set out in this document that apply to "the supervisory board" also apply to the supervisory or non-executive directors. Wherever this document refers to "the management board" or "members of the management board" it should also be understood to refer to executive directors in the case of companies with a one-tier management structure.

[3] These are all remuneration elements which are not included in the fixed salary, are not pensionable, have been granted for a specific period of time and can be reduced on a discretionary basis, suspended or canceled.

payment of variable elements of remuneration will always depend[4] on the achievement of goals[5] established in advance and also on the manner in which these goals have been achieved[6]. The assessment of any public or private bid, a legal merger or demerger or a major acquisition or divestment is part of the regular activities of a management board member. These events are therefore not eligible for the grant of an - additional - variable compensation.

7. The variable remuneration components are only paid out in cash or in listed (depositary receipts for) shares. The term for the unconditional granting of long-term variable remuneration elements is long enough to do justice to the long-term strategy of the company and the corresponding goals. This term is at least three years.
8. Companies are recommended to also base the granting of variable remuneration elements on environmental, social and/or governance goals. All goals are clear, clearly quantifiable, time-bounded and stretching, have a direct relation with the company's strategy and the operational. The goals are measurable and transparent and linked to the company's performance.
9. The supervisory board has discretionary powers relating to the unconditional granting of long-term variable remuneration elements in order to counteract unfair consequences, such as in the event of a takeover and/or dismissal. This authority looks primarily on the ability of the supervisory board to make downward adjustments to the size of the variable, unvested, remuneration elements. In the event of a takeover bid, merger or demerger any conditionally granted shares and / or rights to shares are settled most in proportion to the elapsed performance period ('pro rata').
10. The rules relating to variable elements of remuneration contain a provision that variable remuneration elements that have already been made unconditional and/or have been paid can be recovered if it becomes clear in due course that they have been wrongly granted (in part), on the basis of incorrect (financial) information, the relevant person has not met suitable norms in respect of expertise and correct behaviour or has been responsible for conduct that has resulted in a significant deterioration of the financial position of the company. In such a case, the supervisory board initiates a procedure to recover the remuneration elements in question.
11. It is recommended that members of the management board hold a certain number of (depositary receipts for) shares in their 'own' company and that the shares are held for at least a certain period of time after leaving the company.

Remuneration report

12. The supervisory board renders account in the remuneration report for the implementation and the (appropriateness)[7]of the) results of the remuneration policy for the management board. The

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4 This means that members of the management board are not eligible for granting a retention, transaction or other extraordinary bonus.

5 The term "goals" does not only include financial goals.

6 The risks taken are among the factors that can be borne in mind in this context.

7 On the basis of principle 5.

remuneration report shows how the actual payments, a.o. any variable elements of the remuneration, derive from the remuneration policy adopted, so as to enable the general meeting to monitor the implementation of this policy. Performance targets are described as well as the relative proportions between the performance targets. The remuneration report also contains, if applicable, a meaningful explanation of the use of 'discretion' by the supervisory board, as well as any amount that is recovered under the 'clawback authority' as mentioned in principle 10.

13. Companies are recommended to put the remuneration report to a vote as a separate item on the agenda at the general meeting.[8] If the supervisory board does not put the remuneration report to a vote at the general meeting, shareholders are unable to express their opinion directly on the implementation of the remuneration policy by the supervisory board. In that event, shareholders may take the remuneration report into consideration when deciding on their voting behaviour for other items on the agenda.

[8] From the 2021 general meetings onwards, it will be legally required to submit the remuneration report to the general meeting for an advisory vote.