CORPORATE GOVERNANCE MANUAL

2022 EDITION

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INTRODUCTION

On the basis of the idea that institutional investors who operate globally hold most of the shares in listed companies and manage other people's money, a more active and engaged role is expected of this category of investors in particular. In the words of the Corporate Governance Committee (2003), institutional investors should act primarily in the interest of their ultimate beneficiaries and they have a "responsibility to the ultimate beneficiaries or investors and the companies in which they invest, to decide, in a careful and transparent way, whether they wish to exercise their rights as shareholder of listed companies." A special paragraph on institutional investors was included in the Dutch corporate governance code in order to codify the existing best practices for institutional investors with regard to corporate governance. The legislator has underlined these obligations by enshrining what is known as the "apply or explain" principle for Dutch institutional investors in the Financial Supervision Act (Netherlands). With effect from the financial year 2007, every institutional investor established in the Netherlands is required by law to give account of its compliance with the principles and best practice provisions in the Netherlands corporate governance code that apply to it.

The introduction of this statutory duty is also connected with society's increasing interest in the question of how shareholders – and institutional investors as well, by extension – exercise the rights assigned to them. What responsibilities do shareholders have? In recent years, this has been given more meaning. First of all, reference can be made to the revised shareholder rights directive[1]. According to the recitals of that directive "effective and sustainable shareholder engagement is one of the cornerstones of the corporate governance model of listed companies". To achieve that goal, the directive not only provides for a strengthening of shareholders' rights, but also for a number of obligations for institutional investors. For example, every institutional investor is expected to have an 'engagement policy' and to make public how this has been implemented (comply-or-explain). Secondly, reference can be made to the Dutch Stewardship Code drawn up by Eumedion in 2018, which replaces the Eumedion Best Practices for Engaged Shareholdership from 2011. This code explains how institutional investors can meet their responsibilities with respect to involved and responsible shareholderhip in a way that contributes to long-term value creation by Dutch listed investee companies and consequently to the returns on their investments. In addition, the Stewardship Code offers institutional investors the opportunity to render account to their participants and clients for the way in which they have exercised their shareholder rights. This code integrates the new stewardship obligations for institutional investors stemming from the aforementioned revised shareholder rights directive, the best practices from the Dutch corporate governance code that apply to institutional investors and a number of additional principles as a result of changing expectations with regard to shareholder involvement. Thirdly, reference can be made to the

[1] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (Official Journal of the European Union 2017, L 132).

sustainable finance disclosure regulation. This regulation requires financial market participants (including institutional investors) among other things to clarify how they have integrated environmental, social and governance ('ESG') factors into their investment and decision-making processes.[2]

Eumedion regards it as one of its tasks to support its members to act as engaged and responsible shareholder. It does this, among other things, by facilitating the institutional investors affiliated with it in developing and implementing a voting policy and in rendering account for the implementation of the voting policy. Eumedion has already contributed to this in the last few years, by making recommendations to the institutional investors which are its members. These recommendations are contained in the publications "Recommendations on the delegation of power to issue shares" (January 2008 last updated in 2019), "Recommendations on the authorization to repurchase own shares and on accountability for the dividend policy" (July 2008), "Principles for a sound remuneration policy for members of the management board of Dutch listed companies" (October 2009 and then updated almost annually updated last in 2021), recommendations stemming from the position paper on the position of minority shareholders in companies with a controlling shareholder (dated 28 June 2016), the Eumedion position with respect to restricted stock arrangements (adopted on 7 February 2018), the Dutch Stewardship Code (adopted on 20 June 2018),and the "Guidance for the explanatory notes to the nomination for (re)appointment of the statutory auditor" (October 2011 last updated in 2021). Those publications are published in this Corporate Governance Manual, so that all the relevant information on the development and implementation of a voting policy can be found in one place.

Reading guide

This manual provides the institutional investors which are members of Eumedion with guidelines for taking part in and voting at the general meetings of the Dutch listed companies. This version of the manual is an update of the 2017 Manual. The first edition was published in 2004, by the predecessor of Eumedion, the Corporate Governance Research Foundation for Pension Funds (SCGOP).

The manual consists of three sections. The first section contains a summary of the *rights* of shareholders in Dutch listed companies; this section provides a number of reference points or recommendations for each (standard) item on the agenda for a general meeting, which can be consulted when deciding on voting behaviour and with regard to asking questions during the general meeting. The second section contains an overview of shareholders' *responsibilities,* particularly those of institutional investors who invest in Dutch listed companies. The third section comprises a number of practical aspects of casting a vote at the general meetings of Dutch listed companies.

[2] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (Official Journal of the European Union 2019, L 317).

Eumedion hopes that this new version of the Corporate Governance Manual will contribute towards further professionalization and greater depth of the voting policy of institutional investors. The text of the manual was closed on 14 December 2021 and will be updated regularly on the basis of new legislation and regulations and best practices.

The text of this manual was formulated with the greatest possible care. We are, however, unable to guarantee that the information contained in this manual is still accurate on the date on which it is received, or will continue to be so in future. Eumedion cannot, therefore, be held responsible for decisions taken on the grounds of the information in this manual.

SECTION I: SHAREHOLDERS’ RIGHTS IN THE NETHERLANDS

I.1 Summary of shareholders' rights

According to the Dutch corporate governance code, the general meeting must be able to exert such influence on the policies of the management board and supervisory board of the company that it plays a fully-fledged role in the system of checks and balances at the company (principle 4.1 of the Dutch corporate governance code).

Partly on the basis of this point of view, the legislator has granted the following legal rights to the general meeting as an organ of Dutch listed companies:

Appointment and dismissal of members of the management board and of the supervisory board

a) appointment, suspension and dismissal of members of the management board, in which context it should be noted that management board members of a statutory two-tier company are appointed by the supervisory board (section 2:134 Civil Code (Netherlands), hereafter the "Civil Code"; see section 2:162 and 2:164a Civil Code for statutory two-tier companies);
b) appointment, suspension and dismissal of members of the supervisory board or non-executive board members, in which context it should be noted that the general meeting of statutory two-tier companies only has the option of cancellation of trust in the members of the supervisory board or the non-executive board members respectively (section 2:142, 144,158 par. 4, 161a, 164a Civil Code).

Accountability of (financial) policy and supervision

c) right to ask for information (section 2:107a par. 2 Civil Code);
d) granting of discharge to members of the management board and members of the supervisory board;
e) adoption of the annual report (section 2:101 par. 3 Civil Code);
f) appropriation of the profit and declaration of the dividend (section 2:105 in conjunction with 101 par. 6 Civil Code; best practice provision 4.1.3 (part iv) of the Dutch corporate governance code)[3];
g) appointment of the statutory auditor (section 2:393 par. 2 Civil Code)[4].

Remuneration

h) adoption of the remuneration policy for the management board (section 2:135 par. 1 Civil Code and section 2:135a par. 2 Civil Code);

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[3] A distribution charged to the reserves also requires a resolution of the general meeting of shareholders.

[4] See also Section 16 of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC ('Statutory Audit Regulation'). Section 17 states among others things the following: "Neither the initial engagement of a particular statutory auditor or audit firm, nor this in combination with any renewed engagements therewith shall exceed a maximum duration of 10 years". The Netherlands has not made use of the options included in the regulation to deviate from this term.

i) adoption of the remuneration policy for the supervisory board and the adoption of the remuneration of supervisory board members (section 2:145 Civil Code in conjunction with section 2:135a par. 2 Civil Code);
j) approval of share schemes and option schemes (section 2:135 par. 5 Civil Code);
k) advisory vote on the remuneration report (section 2:135b and 2:145 par. 2 of the Civil Code).

Internal structure

l) amendment of the articles of association (section 2:121 Civil Code);
m) resolution on a proposal by the management board to continue or discontinue the statutory two-tier board system after the company no longer meets the legal criteria for application of the two-tier system (section 2:154 par. 4 Civil Code);
n) conversion (section 2:18 in conjunction with 71 Civil Code);
o) legal and cross-border merger (section 2:317 in conjunction with 330 and 331 Civil Code);
p) split-off (section 2:334m Civil Code);
q) issue of shares or delegation of this power to another organ (section 2:96 Civil Code);
r) exclusion of the pre-emption right in the event of the issue of shares, or delegation of this power to another organ (section 2:96a Civil Code);
s) granting of an authorization for the repurchase of own shares by the company to the management board a(section 2:98 Civil Code);
t) reduction of capital (withdrawal of shares) (sections 2:99 and 2:100 Civil Code);
u) instruction to the management board to file a declaration of bankruptcy (2:136 Civil Code);
v) dissolution (section 2:19 Civil Code).

Public offer and other decisions on a major change in the identity or character of the company

w) approval of management board decisions concerning a significant change in the identity or character of the enterprise or company (section 2:107a Civil Code);
x) discussion of a public bid for the shares of the company (section 18 par. 1 Decree on Takeover Bids Financial Supervision Act [Netherlands]);
y) the exemption of a shareholder or group of shareholders acting in concert from the obligation to make a public bid for the shares[5] (section 2 Exemptions Decree Financial Supervision Act [Netherlands]);
z) discussion of the report about the policy pursued and the course of events since invoking the legal response time (section 2:114b part. 8 Civil Code).

[5] A resolution of this nature must be passed with 90% of the votes cast. The votes of the shareholder or group of shareholders acting in concert that is the subject of the proposed exemption are not counted as votes cast. It is also stipulated that the passing of resolutions in the general meeting should take place at a time that is no more than three months in advance of the acquisition of overall control by the shareholder or group of shareholders in question.

Logistics

aa) approval of the decision to prepare the management report and the annual accounts in a language other than Dutch (section 2:391 par. 1 and 2:362 par. 7 Civil Code);

bb) approval of the decision to send information to shareholders by electronic means (section 5:25k par. 5 Financial Supervision Act [Netherlands]).

In addition to the above legal rights, the Dutch corporate governance code contains a number of rights for the general meeting. The Dutch listed companies have no obligation to grant these rights to the general meeting, but in the event of their failure to grant these rights, they must provide an explanation for this decision. The following rights are involved:

a) discussion of the policy on additions to reserves and on dividends, in particular the level and purpose of the addition to reserves and the amount and the type of dividend (best practice provision 4.1.3 (part iii) of the Dutch corporate governance code);
b) discussion of each substantial change in the corporate governance structure of the company and in the compliance with the Dutch corporate governance code (best practice provision 4.1.3 (part vii) of the Dutch corporate governance code).

Resolutions are passed by a simple majority of the votes cast at the meeting, unless a qualified majority and/or a quorum is stipulated by law or in the articles of association. A legal departure applies, for example, in the event of the cancellation of a nomination for the appointment of a member of the supervisory board, or in the case of the cancellation of trust in the supervisory board of a statutory two-tier company (quorum) and when excluding or limiting the pre-emption right in the event of the issue of new shares (two-third of votes if less than half of the issued capital is present at the meeting). There is also a statutory deviation for the resolution to adopt the remuneration policy (three quarters of the votes cast, unless a lower majority is prescribed in the articles of association).[6] The articles of association of Dutch listed companies often include the stipulation that greater, super or qualified majorities are required for resolutions concerning an amendment to the articles of association, the dissolution of the company, and the dismissal of members of the management board and/or supervisory board (on the initiative of one or more than one shareholder). It is common to require a two-thirds majority of the number of votes cast representing at least half of the issued capital.

Besides the above-mentioned powers of the general meeting as an organ of a Dutch listed company, <u>individual shareholders or groups of shareholders</u> also have certain rights:

a) shareholders who individually or jointly represent at least 3% of the issued capital are entitled to request the management board to place items for discussion on the agenda for the general meeting. They may also request the management board to place voting items on the agenda of the

[6] Section 2:135a par. 2 Civil Code.

general meeting, provided that the items relate to an area where the general meeting has decision-making powers pursuant to the law or the articles of association.[7] The articles of association may contain lower thresholds (section 2:114a Civil Code);

b) shareholders who individually or jointly represent at least 10% of the issued capital can, on their request, be authorized by a court to convene a general meeting. The articles of association may contain a lower threshold (section 2:110 Civil Code);

c) a shareholder who represents 95% of the issued capital is entitled to buy out the shares of the remaining shareholders (section 2:92a Civil Code and 2:359c Civil Code);

d) the right to offer the shares to the party which represents at least 95% of the issued capital as a result of a public bid (section 2:359d Civil Code);

e) the right to submit a request for indemnification if the shareholder has voted against a merger resolution, when the acquiring company is a company incorporated under the law of another member state of the European Union or the European Economic Area (section 2:333h Civil Code).

f) the right to submit a request for indemnification if the shareholder has voted against a conversion resolution (section 2:71 Civil Code);

g) shareholders who individually or jointly represent a certain interest in a company can ask the Enterprise Chamber of the Amsterdam Court of Appeal to institute an inquiry into the running of a company. Shareholders of companies with an issued capital of more than € 22.5 million require a shareholding of at least 1% of the issued capital or a collective market value of at least € 20 million on the day the application is filed. Shareholders of companies with an issued capital of less than € 22.5 million require a shareholding of at least 10% of the issued capital or a collective nominal value of at least € 225,000. The articles of association may contain lower thresholds (section 2:346 Civil Code);

h) shareholders who, individually or jointly, when invoking the standstill period, are entitled to place an item on the agenda pursuant to section 2:114a Civil Code can request the Enterprise Chamber to terminate the reflection period (section 2:114b Civil Code);

i) every shareholder can demand of the Enterprise Chamber that the management report, annual accounts, the other data and the report on payments to governments be corrected (section 2:447 in conjunction with 2:448 Civil Code);

j) the right to vote at the general meeting (section 2:117 Civil Code);

k) the right to request a voting confirmation after the end of the general meeting (section 2:120 par. 6 Civil Code);

l) the right to hold management and supervisory board members liable (sections 6:162 and 2:139 in conjunction with 2:150 Civil Code);

m) after publication of the notice for a general meeting of shareholders, a shareholder with an economic interest, either individually or together with others, of at least 1% of the issued capital or

[7] If a request to place an item on the agenda relates to an area where the general meeting has no powers under the law or the articles of association, the company management may refuse the agenda request as a voting item.

who holds shares with a market value of at least € 250,000 has the right to request the issuer to distribute information to other shareholders if the company has the identification data of its shareholders (section 49c Securities Giro Transfer Act). The information must be related to an item on the agenda of the general meeting. The company must forward the information with the utmost urgency, at the most within three working days, or place this information on its website with the utmost urgency, in any event within three working days. The issuer may refuse to pass the information on or place it on its website if the information:

a. is submitted too late (later than seven days before the date of the general meeting);
b. which sends or is likely to send an incorrect or misleading signal with regard to the issuer; or
c. is of such a nature that it would not be reasonable or fair to expect the issuer to pass it on.

n) At the written request of a shareholder who, individually or jointly with other shareholders, represents at least 10% of the issued capital at the time of the request, the issuer shall identify its shareholders. This request must be made in a period from sixty days to the forty-second day before that of the general meeting (section 49b par 6 Securities Giro Transfer Act).

Shareholders can, furthermore, also initiate (other) proceedings in civil law or administrative law (by using the Class Action [Financial Settlement Act], the Auditors Disciplinary Law Act, by taking part in class actions against Dutch listed companies whose shares are [also] listed or traded on a stock exchange in the United States, or by lodging an appeal with the Appeals Board for Trade and Industry against a decision by the Netherlands Authority for the Financial Markets [hereafter the "AFM"]).

I.2 Tools for Eumedion members in assessing the items on the agenda for a general meeting

In the following paragraphs Eumedion provides a number of tools for assessing items that frequently appear on the agendas of general meetings of Dutch listed companies. The tools are not exhaustive and are intended to be taken into consideration when reaching a decision on how to vote or on the discussion at the general meeting. Eumedion has prepared recommendations on a number of specific items on the agenda. The recommendations given in some paragraphs must never lead blindly to the issue of specific voting proxies. Institutional investors will always have to form an opinion on their voting behaviour – eventually on the basis of expert external advice on each item on the agenda at each company – a process in which the circumstances of the case will weigh heavily.

I.2.1 Discussion of the management report

This part of the agenda is not a voting item; the report of the management board and the report of the supervisory board on the past financial year are discussed under this item on the agenda.

The following are points for attention in relation to the discussion of the management report:

- Is the report published as an 'integrated report' and prepared in accordance with the Integrated Reporting Framework of the Value Reporting Foundation or other integrated reporting approaches?
- Is sufficient and readily comprehensible information included about the company's business model for creating long-term value, the mission, the strategy, the financial and non-financial performance, opportunities and risks, the corporate governance and the operational targets?
- Is a readily comprehensible risk paragraph included and a clear description of the internal risk management and control systems?
- Does the report contain a description of the principal risks related to the company’s strategy, including environmental and social risks?
- Does the report contain a description of the company’s risk profile: the attitude towards the principal risks for the company and, if shown, the company’s vulnerability to these risks?
- Does the report contain a description of the issues that the management and/or supervisory board considered in relation to the financial statements (including the key audit matters as mentioned in the statutory auditor’s report) and how these issues were addressed?
- Does the report contain a specific continuity analysis, including:
  - the group structure (including subsidiaries and the percentage of shares that is owned by the parent company);
  - the capital structure;
  - dividend and share buy back policy;
  - the solvency and liquidity;
  - the debt covenants (transparency on relevant ratios to which companies should comply according to their bank covenants and the ‘results’ in the book year);
  - the governance structure, a.o. the shareholder structure in particular in the case of a controlling shareholder;
  - the integration of meaningful acquisitions and effectuating meaningful disinvestments;
  - scenario analyses in which a.o. social and environmental opportunities and threats that are material for the company are analysed?
- Does the report of large listed companies (or the statement referred to in the report) contain information about the diversity policy with regard to the composition of the management and the supervisory board. Is a clear description of the objectives of the policy, as well as the way in which the policy has been implemented and the results thereof in the past financial year included. Is the motivation why the company does not have a diversity policy acceptable and not clichés?
- Does the report of the supervisory board contain meaningful information about the activities performed by the supervisory board and the committees appointed by the supervisory board (including the audit committee) in the year under review?

- Is the report on the compliance with the Dutch corporate governance code acceptable to institutional investors? Are the reasons stated for any non-compliances acceptable to institutional investors and not clichés?
- Has the company included a clear, so-called non-financial statement in the management report, containing information relating to at least environmental matters (a.o. climate change), social (a.o. the company's tax policy) and employee-related matters, respect for human rights, anti-corruption and bribery matters[8]? Is a clear description of the policies, outcomes and risks related to those matters included? Is information on the due diligence processes implemented included, also regarding its supply and subcontracting chains?
- Does the report contain an overview of the key performance indicators related to environmental and social performance of the company which are important for a proper understanding of the company's position, as well as for being able to make informed investment decisions?
- Has an independent external party, e.g. the statutory auditor, provided assurance on the sustainability information reported by the company?
- Is a clear and transparent summary included of the (potentially usable) anti-takeover measures and has the management board explained why the existing anti-takeover measures should be retained?

I.2.2 Discussion on the application of the remuneration policy

Pursuant to Dutch law, the remuneration report must be submitted to the general meeting for an advisory vote.

The following are points for attention in relation to this item on the agenda:

- Is the remuneration report sufficiently clear and transparent? Does it contain sufficient information on the measures on the basis of which short-term bonuses are paid and long-term bonuses granted? Is all the information required on the grounds of section 2:135b Civil Code and the Dutch corporate governance code included in the remuneration report? Has the company taken into account the Eumedion principles for a sound remuneration policy for the members of the management board of Dutch listed companies (appendix I) and the Eumedion position with respect to restricted stock arrangements (annex to appendix I)?

I.2.3 Adoption of the annual accounts

Under Dutch law, this is a voting item at the general meeting. The consequence of non-adoption is that no dividend can be paid and no own shares can be repurchased (subject to the condition that the general meeting has agreed to this; see paragraph I.2.15). The general meeting is unable to amend the annual accounts during the meeting, but can make proposals for amendments. The statutory auditor must be consulted first for this purpose and must issue an opinion accordingly. In addition, the

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[8] In accordance with directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups ('Non-Financial Information Directive').

management board and the supervisory board must concur with the amendments. A new general meeting has to be convened where the annual accounts must be voted on again.

The following are points of reference for the proposal to adopt the annual accounts:

- Has the statutory auditor issued an unqualified opinion, a qualified opinion or a disclaimer of opinion?
- What were the key audit matters as mentioned in the auditor's report, what are the observations or conclusions of the statutory auditor with respect to these key audit matters and how have they been addressed by the management and supervisory board?
- Has the management of the company offered sufficient insight into the accounts and the standards used to give assessments and estimates of asset items and liability items?
- Has the company changed over to different accounting principles without adequate explanation?
- If there are current claims against the company and claims that can reasonably be expected, has a reserve been created for this purpose?
- Are the accounting principles still up-to-date (going concern, changed market conditions)?
- Have any recommendations made by the AFM or the Enterprise Chamber of the Amsterdam Court of Appeal with regard to the accounts of the company in question been implemented?

I.2.4 Corporate governance policy

This is (at least) a point for discussion during the general meeting. Companies can choose to put their corporate governance policy to a vote at the general meeting.

The following are points for attention in relation to this item on the agenda:

- Does the company apply the provisions of the Dutch corporate governance code to a substantial extent?
- Is the report on the compliance with the Dutch corporate governance code adequate? Are the reasons given for any instances of non-compliance acceptable to institutional investors and not clichés?
- It would be logical to ask critical questions and express doubts about proposals for or reports of an increase in the number of provisions that are not complied with.

I.2.5 Dividend policy and profit distribution

This is (at least) a point for discussion at the general meeting. Companies can choose to put their dividend policy to a vote at the general meeting.

The following are points for attention in relation to this item on the agenda:

- Has the company taken into account the Eumedion recommendations on accountability of the dividend policy (see appendix III)?

I.2.6 Appropriation of the profit and the amount of dividend

This is a voting item at the general meeting. The general meeting may propose an amended amount of dividend payment. In practice, the proposal must then go back to the management board and the supervisory board to assess – amongst others – whether the amended proposal is in line with the company's reserves and dividend policy. A new general meeting has to be convened to vote on the amended proposal.

The following are points of attention in relation to this item on the agenda:

- Is the amount of dividend paid consistent with the company's dividend policy?
- What is the amount of the dividend payment and the dividend yield in comparison with the companies in the peer group?
- What is the relationship between the dividend payment and the cash position?
- What is the relationship between the dividend payment and the possible purchase of own shares?
- Has it been made transparent why part of the profit is being allocated to the creation of reserves and what part is ultimately being allocated to the shareholders through the payment of dividend or through the purchase of own shares, and how consistent this is with the company's strategy?

I.2.7 Granting discharge to members of the management board and members of the supervisory board

This is a voting item at the general meeting. The consequence of granting discharge to members of the management board and members of the supervisory board is that the general meeting cannot reconsider components of the policy and supervision at a later time, with the exception of matters that were concealed, were not apparent or not disclosed, or were deliberately misleading. The withholding of discharge is held to be a corrective gesture. This item on the agenda has recently been "used" more often to express dissatisfaction with the policy being pursued, without (immediately) having to submit a motion of no confidence in the management board and/or the supervisory board.

The following are points of reference in this context:

- Are (legal) proceedings still pending against the company, a member of the management board or a member of the supervisory board?
- How have any (legal) proceedings against the company, a member of the management board or a member of the supervisory board been resolved? What are the possible settlements, fines and penalties reached in this regard?

- If the financial statements are not adopted, granting discharge to members of the management board and members of the supervisory board is not an obvious course of action.
- Has the management board responded adequately in the previous financial year to the remarks of the shareholders with regard to the strategy and policy of the management board? Has the supervisory board played a good, supervisory role in this context?
- Has the management board of the company responded adequately to the recommendations made by shareholders in previous general meetings?
- Is the degree of compliance with the Dutch corporate governance code sufficiently high, or have acceptable reasons been given from the perspective of institutional for the non-compliances with provisions of the code?

I.2.8 Appointment of members of the management board

This is a voting item at the general meeting of the listed companies that are not a 'structure' company (*structuurvennootschap*). At structure companies, members of the management board are appointed by the supervisory board. At the listed companies that do not have to apply the structure regime (*structuurregime*), extra requirements contained in the articles of association can apply to a resolution of the general meeting to reject the nomination for the appointment of a member of the management board (e.g. a binding nomination, a qualified majority of votes[9] or a stipulated quorum[10]). If the candidate in question is rejected by the general meeting, a new nomination should be presented in a new general meeting and may be expected to have taken the sentiment of the general meeting into account.

The following are points of reference for this item on the agenda:

- What is the quality of the candidate; how does his or her resumé look?
- What is the service record of the person in question at his or her previous employer(s) and/or – if applicable – as a member of the supervisory board of another company, also where interacting with shareholders is concerned?
- Are there reasons to doubt the integrity and reliability of the candidate in question?
- Is the candidate in question in keeping with the objective of more quality and diversity in the membership of the management board?
- Does the nomination bring the company a step closer to the appropriate and ambitious goals set by the company in the form of a target figure to make the ratio between the number of men and women on the board more balanced?
- Is the member of the management board being appointed for a period of four years, in compliance with best practice provision 2.2.1 of the Dutch corporate governance code?

[9] A higher voting majority than 50% plus 1, like two third of the votes cast.

[10] A specified part of the issued capital that needs to be represented at the general meeting in order to take legally valid decisions.

- Has the company provided meaningful information on the management board recruitment process, including information on the use of external advisers, selection criteria and in how any succession issues and diversity have been addressed?
- Does the person in question hold not more than two supervisory positions with large Dutch or non-Dutch companies or acts not as chairman of a supervisory board or of the one tier board of a large Dutch or non-Dutch company?
- Is his or her remuneration package in line with the remuneration policy adopted by the general meeting and has the company taken into account the Eumedion principles for a sound remuneration policy for members of the management board of Dutch listed companies (appendix I) and the Eumedion position with respect to restricted stock arrangements (annex to appendix I)?
- In the case of a reappointment, has the supervisory board evaluated the previous period of the appointment and what are the results of this evaluation?

I.2.9 Appointment of a member of the supervisory board

This is a voting item at the general meeting. The general meeting of structure companies can reject the candidate in question by a simple majority of votes[11] representing at least one-third of the issued capital. At the listed companies which do not apply the structure regime, extra requirements contained in the articles of association can apply to a resolution of the general meeting to reject the nomination for the appointment of a member of the supervisory board (e.g. a binding nomination, qualified majority of votes[12]or a stipulated quorum[13]). If the candidate in question is rejected by the general meeting, a new nomination should be presented in a new general meeting and may be expected to have taken the feelings of the general meeting into account.

The following are points of reference for this item on the agenda:

- What is the quality of the candidate; how does his or her resumé look?
- What is service record of the person in question with his or her employer and/or – if applicable – as a member of the supervisory board of another company or other companies, also where interacting with shareholders is concerned?
- Are there reasons to doubt the integrity and reliability of the candidate in question?
- Is the member of the supervisory board being appointed for the first time for a period of four years, in compliance with best practice provision 2.2.2 of the Dutch corporate governance code?
- Has the company provided convincing arguments that the person in questions fits the supervisory board profile?

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[11] This is the majority of the votes cast plus 1.

[12] A higher voting majority than 50% plus 1, like two third of the votes cast.

[13] A specified part of the issued capital that needs to be represented at the general meeting in order to take legally valid decisions.

- Has the company provided meaningful information on the recruitment process of the new supervisory board members, including providing insight into the selection criteria and how any succession issues have been addressed?
- Is the candidate in question in keeping with the objective of more quality and diversity in the membership of the supervisory board?
- After the appointment of the relevant supervisory board member, does the company come a step closer to the appropriate and ambitious goals set by the company in the form of a target figure to make the ratio between the number of men and women on the supervisory board more balanced (each at least one third of the number of members)?
- Does the candidate in question have sufficient time to fulfil its role in the supervisory board?
- Does the person in question hold not more than five supervisory positions with large Dutch or non-Dutch companies, for which purpose the chairmanship of a supervisory board/board of directors counts double?
- After the appointment of the person in question, does the supervisory board comply with what is stated in best practice provision 2.1.7 of the Dutch corporate governance code (majority of the supervisory board members is independent)?
- In the case of a reappointment, has the supervisory board evaluated the previous period of the appointment and what are the results of this evaluation?
- In the case of a reappointment, does the person in question comply with what is stated in best practice provision 2.2.2 of the Dutch corporate governance code (one-time reappointment for four years and afterwards reappointment for two years that can be extended for a maximum of two years thereafter)?
- In the case of a reappointment, was the person in question in the previous appointment period frequently enough present at the meetings of the supervisory board? Did the company provide detailed information on the presence of the person in question at supervisory board and committee meetings?

I.2.10 Adoption remuneration policy for the management board and approval of option and share schemes

This is a voting item at the general meeting. The remuneration policy must be resubmitted to the general meeting for adoption at least every four years after its adoption. A majority of at least three quarters of the votes cast is required for a resolution to adopt the remuneration policy, unless a lower majority is prescribed in the articles of association. The general meeting can put forward changes to the proposed remuneration policy. In practice, the draft then has to go back to the supervisory board, a new general meeting may have to be convened and another vote will have to be taken. As a result, the company remunerates the directors in the meantime in accordance with existing policy or practice. The general meeting cannot effect any changes to the option and share schemes. The consequence of

rejection is, however, that the draft scheme has to go back to the supervisory board, which submits a new scheme to the general meeting for its approval. The previous remuneration policy adopted by the general meeting and/or the share and/or option scheme approved by the general meeting continues to apply in the interim period.

The following are points of reference with regard to this item on the agenda:

- Has the company taken into account the Eumedion principles for a sound remuneration policy for members of the management board of Dutch listed companies (appendix I) and the Eumedion position with respect to restricted stock arrangements (annex to appendix I)?
- Are the provision of sections 2:135 and 2:135 Civil Code met?
- Are the provisions of the Dutch corporate governance code with regard to the remuneration of members of the management board (principle 3.1 and 3.2) being applied to a sufficient extent and/or are arguments that are acceptable to institutional investors provided for non-compliance with the provisions of the code?

I.2.11 Adoption of the remuneration policy and the remuneration for the supervisory board members

This is a voting item at the general meeting. The remuneration policy must be resubmitted to the general meeting for adoption at least every four years after its adoption. A majority of at least three quarters of the votes cast is required for a resolution to adopt the remuneration policy, unless a lower majority is prescribed in the articles of association. The general meeting can put forward changes to the proposed remuneration. In practice, the draft then has to go back to the supervisory board, a new meeting may have to be convened and another vote will have to be taken. The consequence is that in the meantime the company remunerates the supervisory directors in accordance with existing policy or practice.

The following are points of reference with regard to this item on the agenda:

- Has the company taken into account the Eumedion principles for a sound remuneration policy for members of the management board of Dutch listed companies (appendix I) and the Eumedion position with respect to restricted stock arrangements (annex to appendix I)?
- Are the provision of sections 2:145 par 2 in conjunction with and 2:135a Civil Code met?
- Are the provisions of the Dutch corporate governance code with regard to the remuneration of members of the supervisory board (principle 3.3) being applied to a sufficient extent and/or are arguments that are acceptable to institutional investors provided for non-compliance with the provisions of the code?
- Has the company provided good reasons for a proposed change in the remuneration of the members of the supervisory board?

I.2.12 Proposal to amend the articles of association

This is a voting item at the general meeting. On the grounds of the articles of association, qualified majorities of votes may apply to some amendments.

The following are points of reference with regard to this item on the agenda:

- Has the company provided good reasons for the proposed amendment to the articles of association?
- If the amendment to the articles of association relates to the curtailment of the existing rights of ordinary shareholders, it would seem logical to vote against the amendment.
- If the amendment relates to a widening of the powers of shareholders, it would seem logical to vote in favour of the proposal.
- If the amendment relates to improved application of the Dutch corporate governance code by the company, it would seem logical to vote in favour.
- The situation is complicated when a number of amendments have been submitted with conflicting implications for shareholders' rights. In that event, it is always possible to request unbundling of the proposals (this is also recommended in best practice provision 4.1.3 of the Dutch corporate governance code).

I.2.13 Appointment statutory auditor

This is a voting item at the general meeting. If the general meeting rejects the proposed auditor, the supervisory board shall make a new nomination for a new general meeting to be convened.

The following are points of reference with regard to this item on the agenda:

- What is the justified preference of the audit committee? If this preference deviates from the supervisory board's proposal, what are the reasons for this?
- Is it transparent what task assignment the supervisory board wants to give to the statutory auditor?
- Has the supervisory board prepared a transparent and comparative cost analysis of audit firms that are qualified for the task assignment?
- In the event of a change of statutory auditor that is not prompted by the statutory obligation to rotate the statutory auditor, has the company provided good reasons for this change?
- Has the supervisory board made a thorough assessment of the functioning of the present statutory auditor and what are the most significant conclusions of this evaluation?
- What is the track record of the statutory auditor and of the firm where he or she is employed?
- Does the firm where the statutory auditor is employed have a public-interest entities licence from the AFM?
- Are there reasons for doubting the integrity and reliability of the organization where the statutory auditor is employed?

- What is the proportion of the amount that the company pays for the audit tasks carried out by the statutory auditor in relation to that for non-auditing tasks carried out by the same firm where the statutory auditor is employed?
- Has the company taken into account the Eumedion guidance for the explanatory notes to the nomination for (re)appointment of the statutory auditor (see appendix IV)?

I.2.14 Delegation of power to issue ordinary and preference shares and to exclude or restrict pre-emption rights

This is a voting item at the general meeting.

The following are points of reference with regard to this item on the agenda:

- Has the company taken into account the Eumedion recommendations concerning the delegation of the power to issue shares (see appendix II)?

I.2.15 Authorisation of the management board to repurchase own shares

This is a voting item at the general meeting. Authorization cannot be given if the financial statements have not been adopted.

The following are points of reference with regard to this item on the agenda:

- Has the company taken into account the Eumedion recommendations concerning the authorization to repurchase own shares (see appendix III)?

I.2.16 Approval of major transactions

This is a voting item at the general meeting.

The following are points of reference with regard to this item on the agenda:

- Has the management board demonstrated convincingly how the interest of the (minority) shareholders has been weighed against other interests also in relation to the interests of any other (major) shareholders?
- In the event of a takeover, is this takeover consistent with the company's strategy? Have the risks associated with the takeover been made sufficiently transparent (e.g is insight provided into how the risk profile is influenced, which projections formed the basis for the valuation used and to what extent the acquisition is integrated within the company)?
- In the event of a takeover, has it been demonstrated convincingly that the advantages of the synergy are greater than the cost price of the takeover, taking what are known as the integration costs into account and the costs of financing the takeover? Is it possible to express the projected synergy benefits in concrete figures with a corresponding concrete time frame? Has the

management board submitted a convincing implementation process to the general meeting, complete with scenarios, pro forma financial information and evaluation moments?

- In the event of a takeover, is the management board able to indicate how the takeover price was reached? Has a transparent fairness opinion been issued by a bank that is not involved in the transaction or accountancy firm, providing information on the prognoses assumed for the company being taken over? Have fairness opinions been issued that have not been published?
- In the event of a division or participating interest being disposed of, has it been demonstrated convincingly that the maximum feasible price has been stipulated?
- How does the takeover/disposal fit in with the company's long-term strategy?

I.2.17 Shareholders' proposals

A subject submitted by one or more shareholders who have made use of the right to place an item on the agenda can be put forward for discussion or put to a vote. The vote on the shareholders' proposal may be binding or non-binding in nature. The vote is binding if the proposal relates to a field where the general meeting has decision-making power by virtue of the law or articles of association. The vote is non-binding in all other cases, but the result of the vote does send a signal to the management board and the supervisory board.[14] An opinion on a shareholders' proposal should be formed on the merits of each individual case, in which process the reference points listed above for the items on the agenda can be taken into consideration.

[14] If a request to place an item on the agenda relates to an area where the general meeting has no powers by virtue of the law or the articles of association, the company management may refuse the request to place the item as a voting item on the agenda.

SECTION II: SHAREHOLDERS' RESPONSIBILITIES IN THE NETHERLANDS

II.1 Summary of the responsibilities of (certain) shareholders

The number of shareholders' rights has been extended in the last few years. Shareholders have the task of dealing responsibly with these powers and they have recently been increasingly reminded of this responsibility. The following obligations and rules of conduct for shareholders can be distilled from legislation and regulations, the Dutch corporate governance code, the reports of the Monitoring Committee Corporate Governance Code and from the jurisprudence.

Transparency

a) statutory obligation to immediately report the acquisition or disposal of shares if certain threshold values of the issued capital and/or voting rights[15] are reached, exceeded or fallen short of (3, 5, 10, 15, 20, 25, 30, 50, 75 and 95%) (section 5:38 par. 1 and 2 and 5:39 par. 1 Financial Supervision Act [Netherlands]);
b) statutory obligation to immediately report a gross short position if certain threshold values of the issued capital are reached, exceeded or fallen short of (5, 10, 15, 20, 25, 30, 50, 75 and 95%) (section 5:38 par. 3 and 5:39 par. 2 Financial Supervision Act [Netherlands]);
c) statutory obligation to report a net short position in the issued capital of a company whose shares are admitted to trading on a trading platform to the public supervisor on each occasion that the position reaches the threshold of 0.2% of the issued capital of the company concerned and every 0.1% above this level (article 5 Short Selling Regulation). A net short position of at least 0.5% of the issued capital and every 0.1% above this level will be publicly disclosed by the public supervisor (article 6 Short Selling Regulation);
d) statutory obligation to request for a declaration of no-objection from the financial supervisory authorities – DNB or ECB – if a person has the intention to acquire or to hold at least 10% of the issued capital and/or voting rights of a bank or an insurer (section 3:95 Financial Supervision Act [Netherlands} in conjunction with section 4 par. 1 sub c SSM Regulation)[16];
e) a shareholder who exercises the right of putting an item on the agenda of a general meeting is required to be transparent about his full economic interest ('long' and 'short') in shares at the time of exercising this right to the company (section 5:25k bis Financial Supervision Act [Netherlands]);
f) institutional investors shall decide, in a careful and transparent way, whether they wish to exercise their rights as shareholder of listed companies (preamble of the Dutch corporate governance code);
g) pension funds, life insurers and asset managers must publish an engagement policy on the website that complies with the provisions of section 5:87c Wft Financial Supervision Act [Netherlands] (section 5:87c par. 1 and 2 Financial Supervision Act [Netherlands])[17];

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[15] Including economic long positions like contracts for difference, cash-settled equity swaps, total return equity swaps, cash-settled call options and the selling of put options.

[16] For the intended acquisition of a substantional capital and/or voting interest in a regulated market (stock exchange), the provisions of section 5:32d Financial Supervision Acti [Netherlands] apply.

[17] Institutional investors may choose not to develop an engagement policy and/or not to disclose information about that policy and its implementation. In that case, they must motivate this on the website (section 5:87c par 4 Wft Financial Supervision Act [Netherlands]).

h) pension funds, life insurers and asset managers must publish on the website at least once per financial year how the engagement policy has been implemented. This statement must at least contain the manner in which the institutional investor or asset manager voted at the general meeting of the investee companies, including voting behaviour, an explanation of the most important votes and the use of the services of voting advisors. If an asset manager votes and/or carries out the engagement policy on behalf of a pension fund or life insurer, the pension fund or life insurer must make a reference on the website to the relevant voting information of the asset manager (section 5:87c par 3 and 5 Financial Supervision Act [Netherlands])[18];

i) institutional investors annually publish, on their website at least, their policy on the exercise of voting rights on shares that they hold in listed companies (best practice provision 4.3.5 of the Dutch corporate governance code)[19];

j) institutional investors report annually on their website and/or in their management report on the implementation of their policy on the exercise of voting rights in the relevant financial year (best practice provision 4.3.6 of the Dutch corporate governance code);

k) institutional investors report at least once a quarter on their website, whether and how they have voted as shareholders at the general meetings (best practice provision 4.3.6 of the Dutch corporate governance code);

l) institutional investors should publish on their website information about their policies regarding the integration of sustainability risks in their investment decision-making process (section 3 regulation on sustainability disclosures by financial market participants)[20];

m) institutional investors should be transparent about adverse sustainability impacts at entity level. Large institutional investors are required to publish on their website a statement on their due diligence policies with respect to the principal adverse impacts of investment (section 4 regulation on sustainability disclosures by financial market participants);

n) Depending on what kind of product is offered (regular, light green or dark green), certain information must be provided (section 6 to 8 regulation on sustainability disclosures by financial market participants);

o) Certain investment firms[21] must, if they hold an interest of more than 5% in a listed company, provide the following information in respect of each company: a) the proportion of voting rights, broken down by Member State and sector, b) a complete description of the voting behavior in the general meetings of companies the shares of which are held, an explanation of the votes, and the ratio of proposals put forward by the administrative or management body of the company which the

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[18] Institutional investors may choose not to develop an engagement policy and/or not to disclose information about that policy and its implementation. In that case, they must motivate this on the website (section 5:87c par 4 Wft Financial Supervision Act [Netherlands]).

[19] Paragraphs i ,j ,k and n have a legal basis for Dutch institutional investors in the Financial Supervision Act, whereby the "apply or explain" rule applies (section 5:86 Financial Supervision Act [Netherlands]). These components are also integrated in the Dutch Stewardship Code (principles 7 and 8).

[20] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (Official Journal of the European Union 2019, L 317).

[21] Investment firms which do not meet the criteria referred to in point (a) of Article 32 (4) of Directive (EU) 2019/2034.

investment firm has approved, c) an explanation of the use of proxy advisor firms and d) the voting guidelines regarding the companies the shares of which are held (art. 52). The aforementioned investment firms must, from 26 December 2022, disclose information on environmental, social and governance risks, including physical risks and transition risks. This information must be disclosed once in the first year and biannually thereafter (art. 53).[22]

Best practices in dealing with the company and fellow shareholders

a) shareholders shall act in relation to the company, the organs of the company and their fellow shareholders in keeping with the principle of reasonableness and fairness. This includes the willingness to engage in dialogue with the company and their fellow shareholders (preamble of the Dutch corporate governance code);

b) a shareholder with a large block of shares should, on the grounds of reasonableness and fairness, make disclosure to and consult reasonably with the company in question. In this context, he will have to disclose whether the block acquired is for investment purposes only, or whether he wishes to exercise influence on company policy with the block acquired (and wishes a seat on the management board or on the supervisory board to that end), or whether the interest acquired is the basis for the acquisition of a majority interest which is intended in turn to lead to acquisition of absolute control of the company. The company in question has an obligation to take note of the intentions of the shareholder and to investigate these intentions (jurisprudence[23]);

c) the shareholder and the target company are subsequently obliged to consult together (jurisprudence[24]);

d) the general meeting can express its ideas on strategy by exercising the rights assigned to it by virtue of law and in the articles of association. The general meeting must take reasonableness and fairness into consideration in exercising these rights (jurisprudence[25]);

e) if a major shareholder is not in agreement with the policy or strategy of the company, he must present credible alternatives and consult with the management board on this subject. If this does not happen, a policy change that a major shareholder wishes to implement is too much of a risk for other interested parties, such as employees and minority shareholders (jurisprudence[26]);

f) shareholders should form a careful judgment about the reasons for each of the deviations from the principles and best practice provisions of the Dutch corporate governance code. Shareholders, the management board and the supervisory board must be open to discussing the reason why a

[22] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (Official Journal of the European Union 2019, 314),

[23] Amsterdam Court of Appeal (Enterprise Chamber) 11 March 1999, JOR 1999, 89 (Breevast), grounds 4.16 and Amsterdam Court of Appeal (Enterprise Chamber) 22 March 2002, JOR 2002, 82 (Rodamco North America), grounds 3.8 and 3.9.

[24] Amsterdam Court of Appeal (Enterprise Chamber) 8 March 2001, JOR 2001,55 (Gucci).

[25] Amsterdam Court of Appeal (Enterprise Chamber) 17 January 2007, JOR 2007, 42 (Stork) and Netherlands Supreme Court 13 July 2007, NJ 2007, 434 (ABN AMRO Holding).

[26] Amsterdam Court of Appeal (Enterprise Chamber) 17 January 2007, JOR 2007, 42 (Stork).

principle or best practice provision has not been applied. It is up to the shareholders to hold the management board and the supervisory board accountable for compliance with the code. The starting point here is the recognition that corporate governance is a matter of customization and that deviations can be justified. Companies and shareholders have a shared responsibility to make 'comply or explain' self-regulation work well so that it can be an effective alternative to legislation; (paragraph compliance with the code which is included in the Dutch corporate governance code).

g) a shareholder shall exercise the right of putting an item on the agenda of a general meeting only after he consulted the management board about this. If one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company's strategy, for example through the dismissal of one or more management or supervisory board members, the management board shall be given the opportunity to stipulate a reasonable period in which to respond (the response time). This shall also apply to an intention as referred to above for judicial leave to call a general meeting pursuant to section 2:110 Civil Code. The shareholder shall respect the response time stipulated by the management board and that is maximised at 180 days (best practice provision 4.1.6 of the Dutch corporate governance code and jurisprudence)[27];
h) if a shareholder has arranged for an item to be put on the agenda, he shall explain this at the meeting and, if necessary, answer questions about it (best practice provision 4.1.5 of the Dutch corporate governance code);
i) a shareholder shall vote as he sees fit. A shareholder who makes use of the voting advice of a third party is expected to form his own judgement on the voting policy of this adviser and the voting advice provided by him (best practice provision 4.3.1 of the Dutch corporate governance code);
j) if a shareholder or a group of shareholders acting in concert acquires at least 30% of the voting rights, an obligation comes into effect to issue a public offer for all shares in the company (section 5:70 in conjunction with 1:1 Financial Supervision Act [Netherlands]);
k) all financial institutions in the Netherlands – including pension funds – are prohibited from investing in companies that manufacture, sell or distribute cluster ammunition. (section 21a of the Market Abuse Decree Financial Supervision Act [Netherlands]).

In addition to the above, the principle of Dutch corporate law also applies; that the exercise of rights and obligations can be evaluated in the light of the behavioural standard of reasonableness and fairness (section 2:8 Civil Code). This standard will be achieved more quickly when the influence of the investor is greater, because he has a relatively large block of shares in a company for example. There are also other specific situations in which the shareholder cannot entirely serve his own interests when exercising his voting rights. This applies, for example, in the situation where the shareholder does not hold the share interest in the relevant company for financial purposes alone, because other interests are also involved. The shareholder might be a competitor of the company, for instance, or the

[27] Amsterdam Court of Appeal (Enterprise Chamber) 6 September 2013, JOR 2013, 272 (Cryo-Save),.

shareholder may have a direct interest in a transaction with the company. This shareholder must act reasonably and fairly in the exercise of his rights, from which it follows that he must always take the possible consequences of his voting behaviour on the continuity of the business operations into consideration when deciding whether to vote for or against a proposal.

II.2 Dutch Stewardship Code

Eumedion drew up the Dutch Stewardship Code in 2018, which consists of 11 principles and accompanying guidance. This code builds on and replaces the 2011 Eumedion Best Practices for Engaged Share Ownership. The Stewardship Code explains how institutional investors can fulfill their responsibilities regarding engaged and responsible share ownership in a way that contributes to the long-term value creation by Dutch listed companies in which they invest and thus to the return on their investments. In addition, the Stewardship Code offers institutional investors the opportunity to render account to their participants and clients for the way in which they have exercised their shareholder rights. The Stewardship Code integrates the new stewardship obligations for pension funds, life insurers and asset managers from the revised shareholder rights directive. This code also includes the best practice provisions from the Dutch corporate governance code that apply to pension funds, life insurers and asset managers and contains a number of additional principles as a result of changing expectations with regard to shareholder involvement.

The Stewardship Code goes beyond the law on a number of points, the main ones are listed below:

- Obligation (in the event that a dialogue is entered into with a Dutch listed company outside the context of an AGM) to disclose its full share position (long and short) at the request of that company.
- Obligation (in addition to a general description of voting behavior during AGMs of Dutch listed companies and an explanation of the most important votes) to publish information on the website about how votes were cast per individual company and per voting item.
- Obligation to explain reasons for voting behavior on its own initiative or at the request of the company to the management board of the company, in the event that a vote is cast against a proposal from the board or the pension fund or the life insurer abstains from voting at a proposal of the board.
- Obligation to first consult with the management board if it is considered to convene an EGM or to make use of the right to place an item on the agenda.
- Obligation to provide an explanation when exercising the right to place an item on the agenda.
- Obligation to have strict policies regarding securities lending.

Pension funds, life insurers and asset managers of Dutch listed companies are encouraged to commit to the principles of this code. The Dutch Stewardship Code is included in its entirety in appendix V.

II.3 Securities lending

It sometimes occurs that institutional investors legally transfer (a quantity of their) shares to a party that must transfer these shares in the near future for a variety of reasons; this is also referred to as *securities lending*. The recipient commits at the same time to transfer back an equal number of the same shares at a later time, subject to the payment of a lending fee. The practice of securities lending leads to a dilemma where corporate governance is concerned. The institutional investor will have to balance the amount of the lending fee that can be earned to the benefit of its beneficiaries, against the benefits of voting at the general meeting. Securities lending could be detrimental to the goal of increasing the participation of shareholders in the decision-making process at general meetings and consequently of voting as many shares as possible. It is not enforceable that - nor is it verifiable in practice whether and how - the recipient exercises the voting rights on the borrowed shares. It is extremely possible that the parties who have borrowed the shares exercise the voting rights in a manner that is diametrically opposed to the voting policy of the institutional investor who is the beneficial owner of the shares. This is not in keeping with the responsibility of the institutional investor to (also) manage the controlling rights attached to shares in a correct and responsible manner.

Principle 11 of the Dutch Stewardship Code states that pension funds, life insurers and asset managers must recall their lent shares before the voting record date for a general meeting of a Dutch listed investee company, if the agenda for that general meeting contains one or more significant matters. According to the guidance on the aforementioned principle, it is up to the institutional investor to determine what is considered a significant matter, but includes at least a proposal tabled at the agenda of a general meeting: a) that is of economic or strategic importance is, b) which voting outcome is anticipated to be close or controversial or c) where the pension fund, life insurer or asset manager disagrees with the recommendation of the company's board.

II.4 Cooperation with other shareholders (acting in concert)

II.4.1 Compulsory notification of a substantial interest in a Dutch listed company

Shareholders are becoming increasingly more active and are making increasing use of their shareholders' rights. Institutional investors who take their role as active shareholders seriously can make contact with each other and generally do so with the objective of sharing information and research efforts. In certain circumstances, however, close cooperation between shareholders can lead to an obligation to notify on the grounds of section 5:45 par. 5 Financial Supervision Act [Netherlands]). This section stipulates that a person is deemed to have the disposal of the votes of which a third party has the disposal, if it has concluded a (verbal or written) agreement with this third party that provides for a "long-term common policy" on casting votes (for a longer period, in any event, than a single general meeting); this is also referred to as acting in concert. Shareholders are on the basis of chapter 5.3

Financial Supervision Act [Netherlands] legally obliged to notify the AFM when certain threshold values have been reached, exceeded or fallen short. The minimum threshold for notification has been set at at least 3% of the issued capital or votes in an issuer[28]. The notification is included in a register that can be inspected by the general public. It is important for institutional investors to know when cooperation is so close that it is held to be acting in concert. When the situations in which acting in concert exists are clear it is prevented that institutional investors in the event of non-compliance with the notification rules are rightly (but possibly wrongly as well) being faced with negative publicity or are confronted with sanctions under administrative law and/or civil law,[29].

The AFM uses the following guidance[30] relating to the question of when acting in concern exists in the sense of chapter 5.3 of the Financial Supervision Act [Netherlands]:

> **"Agreement concerning sustained joint voting policy**
>
> The AFM believes that consultation between shareholders can help increase the level of insight into the corporate governance of an issuer. This consultation can help shareholders convey their views to an issuer more effectively and clearly. This applies in particular with a view to preparations for a general meeting of shareholders, whereby consultation can lead to the granting of proxies and voting instructions. Such forms of consultation are generally not based on an agreement to pursue a *sustained* joint voting policy and therefore do not qualify as 'acting in concert'.
>
> If an agreement has been concluded between the parties that obliges them to pursue a sustained joint policy and to exercise their voting right jointly, each individual party will be considered to have disposal of the voting rights disposed of by the other party. In other words, as long as each party concerned retains the freedom to exercise its voting right independently (or have its voting right exercised) – at its own discretion – a sustained joint voting policy will not exist.
> A sustained policy does exist if the agreement, which may have been entered into verbally or in writing, does not apply for just one general meeting of shareholders. The agreement can also be concluded by, for example, a handshake, on the basis of which the parties in question can mutually deduce that they will exercise their voting right in a certain way at a number of general meetings of shareholders.
> The AFM will not always know whether an agreement has been made to pursue a sustained joint voting policy. The AFM may believe there is cause to request information from the parties in question if the cooperation is oriented around a subject that can lead to a change in the issuer's strategy, for example by jointly nominating one or more directors or supervisory directors.
> Various facts and circumstances may cause the AFM to suspect the existence of an agreement to pursue a sustained joint voting policy. The AFM can request information from the parties that are presumed to be cooperating on a strategic issue if, in the run-up to, during, or after a general meeting of shareholders, a number, but not necessarily all, of the following facts or circumstances occur:
>
> - The parties use the same lawyer or legal advisor.

[28] In the sense of art. 5:33 Financial Supervision Act [Netherlands].

[29] Under administrative law means that the AFM can impose a fine or a penalty and can publish this fact. Under civil law means that other interested parties (other shareholders, the company) can apply to a court to compel the person subject to the notification obligation to make the notification now, to suspend the exercise of voting rights, to suspend the implementation of resolutions passed at the shareholders' meeting, or to annul these resolutions.

[30] This guidance (publication date September 2016; update March 2021) can be found via: Substantial shareholdings and short positions | Issuers of securities | AFM Professionals.

- The parties send the issuer letters with the same purport.
- The parties jointly initiate (legal) proceedings.
- The parties jointly approach the issuer.
- The actual voting behaviour of the parties at the general meetings of shareholders is repeatedly similar.
- The parties have mutually issued or received instructions relating to behaviour or voting.
- A decision relating to a strategic issue is added, on the initiative of the shareholders, to the agenda of a general meeting of shareholders.
- The shareholders have agreed fees or guarantees.
- The parties are established at the same address (as given in the articles of association).
- The parties publicly announce that they are collaborating.
- The purchasing/selling behaviour of affiliated parties, for example a (legal) entity bound in a formal or actual control structure, a (legal) entity which can directly or indirectly exercise a voting right or can exercise certain rights in some other way as a result of which significant influence can be exerted on the commercial or financial policy;;
- a natural person who is family related.

This summary of facts and circumstances is not exhaustive."

II.4.2 Obligation to make a public offer for the shares of a Dutch listed company

On the grounds of section 5:70 Financial Supervision Act [Netherlands], a party that has acquired overall control is obliged to issue a public offer. Overall control exists when a party (individually or jointly with persons acting in concert with it) can exercise 30% or more of the voting rights. The objective of acting in concert must be either (i) to acquire overall control, or (ii) to cooperate with the target company to thwart an offer that has been announced. The acting in concert does not have to be evidenced by a written agreement. Verbal agreements, and even tacitly understood actions, may suffice. The law assumes that acting in concert always applies in certain relationships e.g. if shares are held by distinct group companies and natural persons, legal entities or companies and the companies controlled by them. The existence of acting in concert depends on the circumstances of the case and will depend on the objective of the cooperation. The Netherlands Minister of Justice made the following comments in this connection during the parliamentary debate on the bill to introduce the compulsory bid into Dutch legislation and regulations "When cooperation takes place with a view to the adoption of joint stances on the principles of the corporate governance of a company, the acquisition of overall control will generally be absent as a goal in this process […]. It can be stated in clarification that cooperation with the intention of achieving overall control will generally also not be involved if the cooperation and exchange of information between shareholders on the subject of the corporate governance of a company relates to a more effective decision-making process in the shareholders' meeting or to stimulate dialogue with the company. In other words, an effective dialogue between (a group of) shareholders and company management can take place, therefore, without the obligation to issue a public offer arising, to the extent that those engaged in this dialogue do not have the objective of acquiring overall control"[31]. The legislator has provided no concrete indications, however, as to what is still classified as corporate governance and when the will exists to exercise overall control. However,

[31] Parliamentary Papers (Netherlands) I 2006/07, 30 419, no. C.

the European stock markets regulator ESMA published a public statement on the concept of acting in concert within the meaning of the 'persons acting in concert' definition of the Takeover Bids Directive.[32] This declaration contains a so-called White List. The various forms of cooperation mentioned in this 'White list' do (in principle) not fall under the heading of acting in concert. This makes it clear, among other things, that shareholders do not enter the 'danger zone' of the obligation to launch a public bid when they discuss among themselves which matters need to be discussed with the management board. Nor are they in that danger zone if they request the board to place specific topics on the agenda for the general meeting. However, the foregoing does not apply to cooperation in the context of the appointment of board members. In those situations, one could under certain circumstances speak of acting in concert, resulting in a (joint) obligation to launch a public bid.

The question is to what extent the Enterprise Chamber of the Amsterdam Court of Appeal will be guided by this interpretation of ESMA. In the Netherlands, the supervision over mandatory offers is exercised by the Enterprise Chamber of the Amsterdam Court of Appeal and not by the Dutch securities regulator, the Netherlands Authority for the Financial Markets (AFM). [33] Parties that do not comply with the obligation to make a public bid can be forced by the Enterprise Chamber of the Amsterdam Court of Appeal to make a public bid at the request of injured parties.[34] When determining whether the obligation to make a public bid has been violated, the Enterprise Chamber of the Amsterdam Court of Appeal will also consider whether parties are acting in concert. The Minister of Finance wrote to the House of Representatives in December 2015 that the ESMA statement is part of the applicable framework of standards of the mandatory public bid scheme and that it is therefore logical that the Enterprise Chamber of the Amsterdam Court of Appeal should include this statement in its considerations. [35]

II.4.3 Mandatory declaration of no-objection

To acquire a qualifying holding in a bank or an insurer, a declaration of no-objection from the supervisor is required.[36] In short, a qualifying holding is defined in law as holding a share capital or voting interest in a company of at least 10%. In determining the voting interest, not only the votes that a person can cast are included but also the votes rights to which a person is considered to be entitled .[37] A person is considered to have the disposal of the votes that a third party has "if he has concluded an agreement with that third party which provides for a sustainable common policy on the casting of votes".[38] In other words, cooperating shareholders may be required to apply for a declaration of no-objection.

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32 This statement was first published in 2013 and subsequently updated. Information on shareholder cooperation and acting in concert under the Takeover Bids Directive (ESMA/2014/677-REV, date: 20 June 2014, last update: 8 January 2019). To be consulted via: esma-2014-677-rev_public_statement_concerning_shareholder_cooperation_and_acting_in_concert.pdf (europa.eu).

33 Section. 5:73 paragraph 1 in conjunction with section 5:70 Financial Supervision Act [The Netherlands].

34 Section 5:73 par. 1 Financial Supervision Act [The Netherlands].

35 *Parliamentary Papers* II 2015/16, 32545, 43.

36 Section 3:95 Financial Supervision Act [The Netherlands].

37 Section 1:1 Financial Supervision Act [The Netherlands] definition qualified holding.

38 Section 5:45 paragraph 5 Financial Supervision Act [The Netherlands].

The concept of a qualifying holding has a European origin.[39] In the 'Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector', ESMA, the European Banking Authority and the European Insurance and Pensions Authority (EIOPA) pay attention to the question when persons might be acting in concert.[40] This includes a summary of the various forms of cooperation that (in principle) do not fall under the heading of acting in concert. This list corresponds to the above discussed 'White list' of ESMA on the concept of acting in concert. In addition, the Joint Guidelines set out the factors which may indicate acting in concert. In that context, reference is made, among other things, to the existence of a family relationship and the presence of consistent patterns of voting by the relevant shareholders.

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[39] For banks: section 3 paragraph 1, point 33 and section 22 CRD IV in conjunction with section 4 paragraph 1, point 36 CRR. For insurers: secton 57 par.1, Solvency II Directive. Sections 3:95 and 3:103 Financial Supervision Act [The Netherlands].

[40] Final Report Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (20 December 2016, JC/GL/2016/01). To be consulted via: JC_QH_GLs_EN (europa.eu).

SECTION III: PRACTICAL MATTERS

III.1 Practical matters with regard to the exercise of voting rights

In view of the international spread of the investment portfolios of institutional investors, it is impracticable in most cases to attend all shareholders' meetings. In order to vote, therefore, institutional investors will mostly give a proxy to a third party. This third party may be anyone, although in practice it is usually an asset manager, a custodian, a specialized party (a corporate governance service provider, for example, or a depositary or trust office), a fellow shareholder, or the board of the company.

The proxy may be 'open', which implies that the proxy-holder himself may decide how he votes, or 'closed', which means that the proxy-holder has been instructed in advance on how to vote. Casting votes in this way is known as proxy voting and is a form of 'distance voting'. Other forms are voting by post or by internet, i.e. *e-voting*, which is increasingly being offered. The latter is increasingly being offered. A number of these options are listed below.

III.1.1 Granting a proxy to a Eumedion member who is attending the general meeting of the listed company in question

Eumedion members can give a proxy to the Eumedion member who is 'physically' attending the general meeting of the relevant company. Approximately one month and a half before the AGM season, Eumedion circulates an overview of the Dutch shareholder meetings at which a Eumedion member will be present who is willing to take voting proxies from other Eumedion members to the meeting. The following procedure has been agreed.

1. As soon as the name and identity details of the Eumedion member who is going to attend the general meeting are known, it is advisable for members to notify their own custodians accordingly. This can sometimes be done electronically by means of what is known as a voting platform. It can be indicated via a system of this kind that the shares in question will be 'physically' voted, i.e. during the general meeting, and the contact details of the person who is actually going to be voting should be provided at this time. Members who do not use a voting platform of this kind should send this information (physical voting and by whom) to the custodian bank and a member of the bank staff will then complete the necessary paperwork[41].
2. The member receives a certificate of deposit from the custodian and this serves as an admission ticket for the general meeting in question. The certificate states the name of the beneficial owner of the shares, the number of shares held by the beneficial owner on the registration date, and the name of the person to whom the proxy has been given. The bank or the investor usually has to sign the certificate of deposit in order to have actual access to the shareholders' meeting.
3. The person attending the relevant general meeting should be informed that he is being granted a proxy to vote and/or speak on behalf of the member in question. This person will ensure that the

[41] It is advisable, however, to apply directly to the custodian for a proxy form, in order to save time and avoid the risk of something going wrong in the voting chain.

analysis of the items on the agenda to be dealt with and the recommended voting behaviour are circulated in good time before the general meeting to the granter of the proxy.

4. As soon as the draft certificate of deposit has been received from the custodian, it is recommended to forward this draft to the person who will actually be attending the general meeting, so that he knows in good time on whose behalf he is going to vote (in addition) and approximately how many votes he will be representing.
5. The final certificate of deposit should be sent to the person receiving the proxy (preferably by fax or e-mail). This is done by either the custodian or by hand by the member (if his signature is required on the proxy, for example). The person attending the general meeting in question should take this certificate of deposit with him to the meeting, as proof that he is also voting on behalf of that other party.
6. As soon as the granter of the proxy has studied the draft analysis of the items on the agenda and the recommended voting behaviour and has decided whether or not to follow the advice, the proxy holder must be informed accordingly. It is possible for the proxy holder to vote differently on different proxies at the general meeting with respect to a specific voting item.
7. It is advisable for the granter of the proxy to make contact with the company in question one or two days before the shareholders' meeting, in order to ensure that the company has received the same information and that the completed forms meet the stipulated requirements.
8. It is advisable for the person who is physically attending the shareholders' meeting to be present at least one hour before the meeting starts, so that he is sure of having sufficient time to complete the verification procedures. The person should have valid proof of identity with him. It has proved useful to keep the names and (mobile) telephone numbers of the custodian(s) involved, the company secretary and the investors represented ready to hand.

III.1.2 International practice

The share portfolio of an institutional investor will, for the most part, consist of non-Dutch companies. The custodians (banks) of an institutional investor will generally have a working relationship with an international voting service. Institutional investors who wish to exercise their voting rights attaching to these non-Dutch shares can do so by using the internet options offered by the international voting service providers and it is thereafter the custodian's responsibility as authorized agent to ensure that the vote actually reaches the company.

It is not only possible to cast votes using the internet facilities, but voting advice for each item on the agenda can also be obtained through a proxy advisor. An institutional investor is able to outsource much of the voting process in this way, while still efficiently making a well-considered vote count. This does not alter the fact that the institutional investor remains responsible for the voting behaviour and, therefore, for the monitoring of the actual implementation of the voting policy by a third party. As a

consequence, the institutional investor will have to decide who is responsible within its own organisation for the implementation of the voting policy. It should be borne in mind in this context that decisions have to be made at short notice in many cases, since the period between the publication of the agenda and the voting registration date is limited. It should also be realised that voting is largely a seasonal activity that peaks in the March-June period, due to the link between the date of the close of the financial year and the date of the general meeting.

The international proxy advisors offer the following options:

- The proxy advisor provides an analysis of the items on the agenda with a corresponding voting recommendation. All the client has to do is to monitor the recommendations to decide, for example, whether they are consistent with its own voting policy or with its own voting behaviour guidelines. Once this has been done, the votes can be cast.
- Larger scale outsourcing of the voting process is possible. The consecutive process of receiving the convocation for a general meeting and the voting forms, determining the number of votes that can be cast, casting the votes themselves, and keeping note of how the votes were cast can be transferred in its entirety to the proxy advisor. The proxy advisor then votes in accordance with the client’s voting behaviour guidelines, or on the basis of the client’s voting policy that was communicated in advance.
- A variant of this is the service that only makes an alert for the client for a number of shares or a number of specific topics selected by the client. These are mostly the shares in the companies in the country where the client is established or in companies where controversial matters are at issue.

Institutional investors who work with external asset managers can agree with these asset managers that the latter will exercise the voting rights attaching to the shares in portfolio in accordance with the voting policy formulated by the institutional investor, which can be set out in the management agreement. It will still be necessary, however, for the institutional investor to make certain that this policy is actually being implemented. After all, the institutional investor continues to be responsible at all times for the voting behaviour on the shares.

III.1.3 Proxy solicitation

Institutional investors with an active interest in corporate governance will not only want to vote themselves, but will also want to be in touch with other shareholders, if necessary, in order to build greater joint voting power. An investor can do this by collecting proxies (proxy solicitation). Dutch legislation[42] allows shareholders to send information to fellow shareholders via the listed company. The solicitation of proxies through sending this information is not permitted, however. Where appropriate,

[42] Section 49c Securities Giro Transfer Act.

Eumedion coordinates members' efforts to this end, when one of the members asks other institutional investors for proxies (see above under III.1.1). The problems of acting in concert should, however, be taken into consideration in this context (see paragraph II.4).

III.1.4 *Engagement*

In certain cases, institutional investors wishing to make use of their voting rights need more than their own analyses of the proposals published by the company or the recommendations of specialist proxy advisory services. They will require the company to provide further clarification or an explanation of the proposals before deciding on their voting behaviour and the company will be willing to acquiesce, in principle, in order to minimize the risk of a vote against. The sounding out of proposals in advance of the general meeting prevents the unnecessary polarization of positions in the course of the meeting. In that light, conducting one-on-one discussions is aligned with a careful preparation of the decision-making at the general meeting. Moreover, the massive scale and openness of a general meeting does not make this the most appropriate forum for a good and substantive exchange of opinions on company policy and strategy. These are the reasons why institutional investors are increasingly pursuing a dialogue with the company outside the general meeting.

The communication of price-sensitive information should be avoided during the meetings, because price-sensitive information must in fact be provided equally and simultaneously to all investors. If the management board nevertheless (unintentionally) imparts price-sensitive information during the dialogue with (a group of) shareholders, this information will have to be made public as soon as possible by means of a press release. The disclosure of this information may be delayed by the company, under the condition that the confidentiality of the information is guaranteed (and provided that the other conditions for delay have been fulfilled), because, for example, the recipient of the information is bound by a confidentiality agreement[43]. Institutional investors themselves can also take measures to reduce the risk of "accidents". It is customary to establish in advance that no price-sensitive information will be exchanged, the institutional investor explicitly reserving to itself the right to disclose any price-sensitive information still acquired, should the company fail to do so. It is also advisable for a discussion of this kind to be conducted with at least two people representing the institutional investor. Another institutional investor is sometimes invited to attend the meeting as well, in order to reduce the risks of unilateral distribution of price-sensitive information.

[43] Section 17 paragraph 8 Market Abuse Regulation. An institutional investor will not sign a confidentiality agreement lightly, as an institutional investor is not longer allowed to trade the shares (and other securities) of the company to which the insider information relates. Such a trade restriction can be (very) expensive and can cause conflicts with the investment strategy used by institutional investor.

SECTION IV: ABOUT EUMEDION

Good corporate governance and sustainability policy

Eumedion represents the interests of institutional investors in the field of corporate governance and sustainability. All institutional investors that hold shares in Dutch listed companies can become a member of Eumedion. Eumedion is committed to promote good corporate governance and sustainability policies at Dutch listed companies and to promote engaged and responsible shareholdership by its members.

More than eight thousand billion euros

Eumedion was formed in 2006 and currently has approximately fifty members. More than half of these are Dutch pension funds and the other members are investment funds, insurance companies and other asset managers of mainly Dutch origin. The number of foreign asset managers that are members of Eumedion is substantial now and continues to grow.

The members of Eumedion collectively manage more than eight thousand billion euro, which is approximately seven times as much as the combined annual earnings of the entire population of the Netherlands. The members of Eumedion collectively hold approximately 25% of the shares in Dutch listed companies.

Joining forces

Shareholders used to pocket their dividends and sold their shares if they did not like the company policy, but things are different now. Major institutional investors are definitely expected to shoulder their responsibilities as co-owners and Eumedion helps them to do so. In the first place by studying all the proposals that are on the agendas of shareholders' meetings. Eumedion warns its members by means of an 'alert' in the event that an agenda proposal flagrantly conflicts with Dutch legislation and regulations, the Dutch corporate governance code or the Eumedion Corporate Governance Handbook.

It regularly happens that companies decide to withdraw the contested proposals. Eumedion and its members can also contact the management board and the supervisory board to communicate concerns. Together we are strong! In the Hague and Brussels, Eumedion also guards the interests of institutional investors by keeping a critical eye on developments relating to legislation and regulations and making proposals on how to do things better. As a representative of institutional investors, Eumedion also participates in various institutions as well, such as the Corporate Governance Code Monitoring Committee. In this way, Eumedion contributes to good corporate governance and sustainability at listed companies, while saving its members time and money.

Policy and implementation

Eumedion regularly commissions research into issues of current interest in the field of corporate governance and sustainability, such as the remuneration policy for corporate executives, and also takes part in the public debate by means of a wide range of publications and press releases. The annual symposium is always a highlight in this context, above all because the members debate the issues directly with each other. In addition, Eumedion has five committees that focus on subfields such as legislation, reporting, shareholders' meetings and the dialogue with companies. In addition, Eumedion has two working groups, one of which focuses on executive remuneration and one on the Dutch Stewardship Code. Eumedion can enter into a dialogue on behalf of its members with legislators, for example, or with representatives of other interested parties. The executive director of Eumedion and his staff organize all processes and ensure that these proceed smoothly. Eumedion also has a General Board consisting of members' representatives. The General Board decides on policy and chooses an Executive Board from among its members to supervise the implementation of policy. The General Board is accountable to the Members' Meeting that takes place twice a year.

Contact

You will find more information about Eumedion on the website at www.eumedion.nl where you will also find all publications, such as research reports, opinions and press releases. And you can, of course, also contact Eumedion.

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Appendix I: Eumedion principles for a sound remuneration policy for members of the management board of Dutch listed companies (October 2009 and then updated almost annually, most recently in 2021). Applicable as from 1 January 2022.

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, via 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[44] 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.

[44] 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[45] 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[46] are subject to a maximum determined in advance. The (conditional)

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[45] 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.

[46] 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.

granting and payment of variable elements of remuneration will always depend[47] on the achievement of goals[48] established in advance and also on the manner in which these goals have been achieved[49]. 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. A substantial portion of the variable remuneration elements is based on environmental, social and/or governance goals.[50] All goals are clear, clearly quantifiable, time-bounded and stretching, have a direct relation with the company's strategy and the operational risks. 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.[51] 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.

[47] This means that members of the management board are not eligible for granting a retention, transaction or other extraordinary bonus.
[48] The term "goals" does not only include financial goals.
[49] The risks taken are among the factors that can be borne in mind in this context.
[50] For financial companies, there is a legal obligation that at least 50% of the variable remuneration elements is based on non-financial criteria (art. 1:118 par. 3 Dutch Financial Supervision Act).
[51] An upward adjustment cannot be ruled out, but will only occur if the payment of the variable remuneration elements would be so low that fulfillment thereof is unacceptable according to standards of reasonableness and fairness.

Remuneration report

12. The supervisory board renders account in the remuneration report for the implementation and the (appropriateness)[52] of the) results of the remuneration policy for the management board. The 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.

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[52] On the basis of principle 5.

Annex to appendix I: Eumedion position with respect to restricted stock arrangements (adopted on 7 February 2018)

Reportedly, a number of Dutch listed companies are considering exchanging their long-term variable remuneration schemes for their management boards this year or next for a conditional share scheme whereby a certain number of shares is granted for free to the management board members, that have to be held on to for a longer period (hereafter: restricted stock arrangement). Up to now, it has been customary for Dutch listed companies to offer their board members - in addition to a short-term variable remuneration scheme - a long-term variable remuneration scheme whereby each year executives are conditionally awarded a number of shares, whereby the final number of shares that is awarded depends on the realisation of certain objectives in a period of often three years (the so-called long-term incentive plans). Partly because of the complexity of determining the right performance criteria and objectives, a number of listed companies are considering converting this performance-based share scheme into a restricted stock arrangement. The reasoning is that this will ensure a more long-term focus among management board members. Because the shares will constitute a larger component of the remuneration and of the assets of executives, here too there is an incentive to create long-term value.

Eumedion has considered the desirability or undesirability of a restricted stock arrangement and has established the following position:

1. A proposal to replace the long-term variable remuneration scheme with performance criteria by a restricted stock arrangement without performance criteria will be assessed on its merits on a case-by-case basis.
2. Such a proposal must be well motivated by (the remuneration committee of) the supervisory board so that shareholders can understand the reasons for this transfer.
3. The proposal must substantially reduce the complexity of the company's remuneration policy.
4. The proposal must fit within the general remuneration policy of the company.53
5. Since an uncertain remuneration element (because: depending on performance yet to be delivered) is exchanged for a certain remuneration element (because: only dependent on a 'holding period'), the conversion must take place at a substantial discount on the expected 'at target' value of the 'old' variable remuneration scheme. The discount must be at least 50%.
6. The shares must be held for at least five years and a the company must implement a share ownership guideline, requiring executives to own a certain amount of equity in the company (expressed as a percentage of the fixed remuneration). This package must at least be held for a certain period after departure from the company.
7. The company must provide transparency on the total remuneration of the executives in order to prevent unacceptable outcomes. The remuneration of the executives must be determined annually

[53] The supervisory board is aware of the exemplary role that directors fulfill in relation to the company's employees.

in cash and in restricted stock. The company must publish annually – ex-ante – a maximum for the total remuneration of the executives.

8. When the company introduces a restricted stock arrangement, it must not propose any other long-term variable remuneration scheme for at least the next five years.

Appendix II: Eumedion recommendations on the delegation of power to issue shares (January 2008 last updated in 2019)

(a) **Governing bodies involved in delegation**. In the event of delegation of the power to issue new shares, the board is designated for this purpose by the general meeting. If new shares are issued on the basis of the granted authorisation to issue new shares, this requires the prior approval of the supervisory board, unless the issuance takes place in the context of a share and/or option scheme approved by the general meeting.

(b) **Agenda items and explanatory note.** The agenda item on the delegation of power to issue new shares should be properly explained. In this explanation, the reasons for this proposal and the conditions under which the power to be delegated is to be exercised (including the maximum number of shares to be issued, the delegation period and the method of determining the issue price) must be outlined. Where the power to issue different types of shares is delegated, these proposals must be separate agenda items with separate explanatory notes. Where the power to issue shares is delegated with different objectives in mind (e.g. proposed acquisitions or share and option plans), these objectives must be specified in the explanatory note, and the delegation of the power to issue shares of the same class but with different objectives must be separate agenda items.

(c) **Maximum number of shares to be issued**. a) Maximum authority for the board to issue new shares without pre-emptive rights: 10% (for any purpose, including mergers and acquisitions and safeguarding or conserving the capital position of the company); and b) Maximum authority for the board to issue new shares by way of a rights issue (thereby – in principle[54] – respecting pre-emptive rights): 20% (for any purpose).[55]

(d) **Delegation period**. The power to issue shares should be granted for a maximum period of 18 months from the time of the resolution to delegate. The resolution to delegate must state whether the delegation can be withdrawn by the annual general meeting. Where a delegation period is still in progress, it is preferable to formulate the proposal as an extension of this current delegation, to prevent a lack of clarity as to whether the current delegation will continue to exist alongside the delegation to be granted.

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[54] In order to deal with legal or practical difficulties, the statutory pre-emptive rights have to be excluded, but eligible existing shareholders should be afforded contractual pre-emptive rights to subscribe for the new shares in proportion to their shareholding.

[55] See also: Eumedion Voting Guideline for Emission Authorization 2019. To be consulted via: https://www.eumedion.nl/clientdata/215/media/clientimages/Voting-guideline-share-Issuance-authorisations.pdf?v=191217113400.

(e) **Permitted issue price.** If the issue price is materially lower than the average market price of the share concerned over the previous three months, the board must report this and provide reasons for this.

(f) **Precluding and restricting pre-emptive rights.** A combination of delegation of issuance authority and exclusion/restriction of pre-emptive rights can only be allowed under the condition that:

i) the supervisory board approves the issue and the exclusion/limitation of the pre-emptive right;

ii) the proposed exclusion/limitation relates to a maximum of 10% of the issued capital (for any purpose, including mergers and acquisitions and protecting or preserving the company's capital position).[56] The pre-emptive rights may be excluded or limited in respect of shareholders who are seated in jurisdictions that have stricter prospectus requirements than the Netherlands or those in other countries where the main shareholders of the company are seated.

(g) **Anti-takeover preference shares.** Anti-takeover preference shares are only taken:

i) as a temporary, necessary protection against a specific threat to the continuity of the company or its policy, after careful consideration of the interests of the company, its business, the shareholders, the employees and others involved in the company and its business ;

ii) by a legal entity of which the board of directors is independent from the company;

iii) up to a maximum which may not exceed 100% of the nominal amount of the previously subscribed shares; and

iv) with as objective to enable the board of directors and the supervisory board of the company to enter into a constructive dialogue with the bidder, to explore possible alternatives and to inform the shareholders of the company. Within six months after the issuance of anti-takeover preference shares, the board will issue a statement of the results or of 'the state of play' and will organise an extraordinary general meeting to discuss this statement with the shareholders.

In the event of a proposal to delegate the power to issue anti-takeover preference shares which will be exercised by granting a call option (to a legal entity), the explanatory note must contain a description of:

(i) the (draft) option agreement containing the conditions under which the option can be exercised;

(ii) the maximum number of protective preference shares that can be issued;

(iii) the maximum period for which the protective preference shares can be held;

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[56] See also: Eumedion Voting Guideline for Emission Authorization 2019. To be consulted via: https://www.eumedion.nl/clientdata/215/media/clientimages/Voting-guideline-share-Issuance-authorisations.pdf?v=191217113400.

(iv) the conditions under which the company can withdraw the anti-takeover preference shares; and
(v) the composition of the board of directors of the legal entity with which the option agreement has been or will be concluded.

This information must also be reported annually in the management report. The board of the listed company will not request the general meeting for authorisation to issue any protective preference shares by the company itself.

Appendix III: Eumedion recommendations on the authorization to repurchase own shares and on accountability for the dividend policy (July 2008)

1. Recommendations on delegation of the power to repurchase own shares

(a) **Organs involved in delegation.** If shares are actually repurchased on the basis of the granted authorisation to repurchase, the repurchase requires the prior approval of the supervisory board.

(b) **Placement on the agenda and explanatory notes.** The agenda item on the repurchase authorisation must be properly explained. This explanation must set out the reasons for the proposal and the conditions for the exercise of the powers to be delegated (including the maximum number of shares to be repurchased, the delegation period and the method of establishing the repurchase price). In the event of delegation of the powers to repurchase different kinds of shares, these proposals must be included as separate items on the agenda with separate explanatory notes.

(c) **Maximum number of shares to be repurchased.** The company is permitted to *acquire* shares to an amount of no more than half of the issued capital during the delegation period. If no material reorganization of the capital structure is foreseen in the delegation period envisaged, however, the company is entitled, in principle, to *hold* no more than 10% of the issued capital in own shares at any time during this delegation period. This means that the maximum number of own shares that a company has "on the shelf" at any moment must not, in principle, exceed 10% of the issued capital. If a material reorganization of the capital structure is foreseen during the delegation period envisaged, the number of own shares that may be held at any time during the delegation period may be raised to 20% of the issued capital[57]. The company must, however, provide a clear explanation for authorization of this kind. If the company wishes to repurchase more of its own shares within the authorization period, the own shares previously repurchased must first be withdrawn, which requires a resolution by the general meeting. It is advisable, therefore, certainly in the event of a material reorganization of the capital structure, that the request for authorization to repurchase own shares should be accompanied by a request for authorization to withdraw the shares repurchased.

(d) **Re-issue of repurchased shares.** When authorization for the repurchase of own shares is requested, it must always be clearly stated whether it is intended to re-issue these shares (in connection with stock option and/or share plans for example). In the absence of an explanation of this kind, it must be assumed that the shares repurchased will not be re-issued. Repurchased

[57] Other maximums may apply in the event of a proposal to purchase financing preference shares and/or protective preference shares.

shares may not be issued to a party with the objective of facilitating a takeover, or of preventing a takeover by another party (‘targeted stock placement’).

(e) **Delegation period.** Delegation of the power to repurchase own shares can be granted for a maximum period of 18 months as from the moment of the resolution to delegate. The resolution to delegate must state that the general meeting is entitled to withdraw the delegation and the conditions for withdrawal must be set out in detail in the resolution to delegate. Where a delegation period is still in progress, it is preferable to formulate the proposal as an extension of this current delegation, in order to prevent a lack of clarity as to whether the current delegation will continue to exist alongside the new delegation.

(f) **Method of repurchase.** When authorization for the repurchase of own shares is requested, it must be clearly stated how the shares in question will be repurchased; on the stock exchange or by a different method. It must always be clear that all shareholders can offer their shares to be repurchased in an equal extent. In unusual cases in which shares from one or a number of shareholders are repurchased, clear reasons must be provided for these transactions and these must be clearly apparent to all shareholders.

(g) **Permitted repurchase price.** The repurchase price must not be higher than 110% of the market price of the share; the market price being the average of the highest price of the share on each of the five trading days prior to the date of acquisition. If the management board requests authorization for a higher repurchase price, a clear explanation must be provided for this.

(h) **Pace of repurchase.** Repurchase transactions are not intended to influence the price of the share temporarily and the company must provide clear information, therefore, on what precautions have been taken to prevent repurchase transactions from influencing the price on the stock exchange each day. The maximum number of shares to be repurchased per trading day must always be stated (or what maximum percentage of the shares traded each day), how repurchase transactions are connected with the share-price related objectives in the remuneration policy and which internal or external party has been charged with the repurchase.

(i) **Transparency on repurchase transactions.** The company will include a summary of transactions in the management report showing developments in the number of own shares repurchased, in order to provide clear insight into the development of the repurchasing transactions during the financial year.

2. Recommendations dividend policy

(a) **Reporting.** The dividend policy must be clearly and transparently described at a place in the management report. Transparency would benefit if the relationship between the dividend policy and other possible relevant aspects of the strategic policy of the company could be clarified; these aspects could relate to long-term development, innovation, mergers and takeovers, and executive remuneration. A company that is paying dividend states which criterion or criteria is/are applied in determining the rate of the dividend and provides sound substantiation for this. A company that is not paying dividend (as yet) reports in the management report why it is not doing so (as yet) and when and under what conditions the management board will actually consider paying dividend. A company that is considering paying dividend states when it is possible that dividend may be distributed.

(b) **Placement on the agenda.** A company's dividend policy is dealt with and accounted for as a separate item on the agenda for the general meeting.

Appendix IV: Eumedion guidance for the explanatory notes to the nomination for (re)appointment of the statutory auditor (October 2011 last updated in 2021)

Best practice provision 1.6.1 of the Dutch corporate governance code reads: “The audit committee should report annually to the supervisory board on the functioning of, and the developments in, the relationship with the external auditor. The audit committee should advise the supervisory board regarding the external auditor’s nomination for appointment/reappointment or dismissal and should prepare the selection of the external auditor. The audit committee should give due consideration to the management board’s observations during the aforementioned work. Also on this basis, the supervisory board should determine its nomination for the appointment of the external auditor to the general meeting”. And best practice provision 1.6.4 reads: “The main conclusions of the supervisory board regarding the external auditor’s nomination and the outcomes of the external auditor selection process should be communicated to the general meeting”.

Within the context of the "the main conclusions of the supervisory board regarding the external auditor’s nomination and the outcomes of the external auditor selection process”" referred to in the code, Eumedion members would welcome the provision of the following information in the explanatory notes to the nomination for the (re)appointment of the statutory auditor:

a) A description of the process of arriving at this assessment of the functioning of the statutory auditor.
b) A statement of the main conclusions of the assessment, addressing also the following subjects: i) the quality of the audit; ii) the adequacy and interpretation of the audit assignment; iii) the quality of the content of the reports to the management board and to the audit committee; iv) the independence of the statutory auditor; v) the general conduct of the statutory auditor, including his professional scepticism; vi) the expertise and membership of the audit team; vii) the costs; and viii) the application of the Dutch Audit Firm Governance Code by the audit firm in question.

A Dutch listed company is legally obliged to rotate its statutory auditor after a maximum period of ten years.[58] In addition to the information that a company is required to provide based on the Statutory Audit Regulation[59], Eumedion members would welcome the provision of the following information on the tendering procedure in the explanatory notes to the proposal for the appointment of a new audit firm:

a) The number of audit firms approached to submit a tender.
b) A description of the selection criteria, which is consistent with the company’s policy regarding the independence of the statutory auditor and the quality controls at the audit firm in question.

[58] Section 17 Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

[59] Regulation (EU) No 537/2014 of the European Parliament and the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

c) A description of the selection process.

d) The decisive reason(s) for the recommendation of the audit firm in question.

e) The scope of the audit assignment.

f) The policy on any consultancy assignments to be carried out by the same audit firm (approval procedure, application of a maximum percentage of the total auditing costs, etc.).

g) The proposed duration of the audit engagement.

Appendix V: Dutch Stewardship Code (adopted on 20 June 2018)

Preamble

1. Since its establishment, Eumedion has been a strong advocate of good governance of Dutch listed companies[60]. Eumedion is one of the seven supporting organisations of the Dutch corporate governance code that contains principles and best practices for an effective corporate governance model that is intended to promote long-term value creation at Dutch listed companies.[61] According to the recitals of the recently adopted revised Shareholder Rights Directive[62] "effective and sustainable shareholder engagement is one of the cornerstones of the corporate governance model of listed companies". Asset owners[63] and asset managers[64] hold the overwhelming majority of the shares in Dutch listed companies and manage other people's and institutions' money. As a result, society at large expects that both Dutch and non-Dutch asset owners and asset managers take their responsibility in playing an active role in promoting good corporate governance and sustainability practices at Dutch listed investee companies. It is for this reason that Eumedion has drafted this Stewardship Code (hereinafter: Code), explaining how asset owners and asset managers can meet their stewardship responsibilities in a way that contributes to long-term value creation by Dutch listed investee companies and consequently to the long-term risk-adjusted returns on their investments. The Code also makes asset owners more accountable to their beneficiaries and asset managers more accountable to their clients. Furthermore, it accommodates companies in identifying which of its investors are committed to vote in an informed manner and are prepared to enter into a constructive dialogue. The Code should be read in conjunction with applicable legislation and regulations.

2. It is not the asset owner's nor the asset manager's role to manage the companies in which it invests. They do have, however, a role to play in monitoring the boards of those companies and that is why they need to gain understanding on how the boards fulfil their responsibilities. This **stewardship** role of asset owners and asset managers includes the casting of informed[65] votes at general meetings and the monitoring of and the engagement with listed companies on aspects related to the strategy, the performance and risks and opportunities of the company, the capital

[60] A 'Dutch listed company' means a company whose registered office is in the Netherlands and whose shares, or depositary receipts for shares, have been admitted to trading on a regulated market or a comparable system.

[61] Principle 1 of the Dutch corporate governance code.

[62] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (*OJ* 2017, L 132; http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0828&from=EN).

[63] As defined in Art. 2, point (e) of the revised Shareholder Rights Directive (in brief: pension funds and life insurance companies).

[64] As defined in Art. 2, point (f) of the revised Shareholder Rights Directive (in brief: investment firms providing portfolio management services to investors, managers of UCITS and alternative investment funds).

[65] An informed vote means that the voting right is exercised in accordance with the asset owner's or asset manager's voting policy. In the event that the investor makes use of voting advice from third parties, it should independently form its own opinion on the voting recommendations provided by this adviser.

structure, the social and environmental impact and corporate governance. **Engagement** is conducting a meaningful dialogue with listed companies on these aspects as well as on issues that are the subject of votes at general meetings. This can help to build trust and develop mutual understanding that supports the objective of long-term value creation by companies. To advance the goals of engagement, asset owners and asset managers are, where appropriate and at their discretion, also expected to cooperate with other shareholders and to communicate with other stakeholders of the company.

3. This Code builds on, and supersedes, the Eumedion Best Practices for Engaged Share-Ownership of 2011. This Code incorporates the new stewardship obligations for asset owners and asset managers stemming from the earlier mentioned revised Shareholder Rights Directive.[66] As from 10 June 2019, all Dutch asset owners and Dutch asset managers will be legally required to comply with these new obligations or to publicly disclose a clear and reasoned explanation why they have chosen not to comply with one or more of those obligations. This Code also incorporates the best practices of the Dutch Corporate Governance Code that apply to asset owners and asset managers and contains a number of additional principles as a result of evolving stewardship expectations. This Code provides a clear-cut, state of the art set of principles for stewardship by asset owners and asset managers towards Dutch listed investee companies. Asset owners and asset managers of Dutch listed companies are encouraged to commit to the principles of this Code. They must be aware of the legal obligations for shareholders of Dutch listed companies, e.g. the legal requirement to behave towards the company and its stakeholders in a manner that is reasonable and fair.[67]

4. As from book year 2019 onwards, asset owners and asset managers are expected to report on their compliance with the principles and to disclose the specific information requested in the principles. While this Code's principles are principally focused on stewardship towards Dutch listed investee companies, the principles can also be applied to non-Dutch listed investee companies, as appropriate.

5. The Code's principles build on the already existing responsibilities of shareholders and provide further guidance on the behaviour that is expected from asset owners and asset managers as shareholders of Dutch listed investee companies. This Code should be read in conjunction with the Dutch Corporate Governance Code which sets out standards guiding the behaviour of the executive and supervisory directors of Dutch listed companies. The principles are aligned with international stewardship codes and principles and may be regarded as an elaboration of the general principles of responsible and engaged share-ownership. Asset owners and asset managers are, therefore, expected to apply all the principles. However, there can be specific circumstances in

[66] Art. 3g of the revised Shareholder Rights Directive.
[67] In that context, shareholders are expected to be prepared to enter into dialogue with Dutch listed investee companies.

which one or more principles cannot be applied. Indeed, not all asset owners and asset managers are the same. As a consequence, the application level may differ, depending on factors such as the asset owner's or asset manager's size, its history, its investment policies (e.g. whether its policies are oriented towards active or passive strategies, towards quantitatively derived strategies or strategies based on fundamental analysis, etc.), its investment philosophy and its beliefs and the preferences of its beneficiaries and clients. Asset owners and asset managers have, therefore, the opportunity to apply the Code as each considers to be in their beneficiaries' or clients' best interests. However, in the situation of non-application of one or more principles, the asset owner or asset manager should publicly disclose a clear and reasoned explanation why it has decided not to apply these principles. The principles incorporated in this Code should not, however, restrict asset owners and asset managers from choosing to adopt more explicit and/or stronger stewardship practices.

6. Some asset owners use asset managers or external service providers to fulfil their stewardship activities on their behalf. Asset owners should clearly communicate their policies on stewardship to their asset managers or service providers, including how the principles of this Code should be applied. Asset owners should require their asset managers or service providers to demonstrate and report on the stewardship activities conducted on behalf of the asset owner. After all, it is the asset owner who is responsible for the fulfilment of the stewardship activities on its behalf. Asset owners who solely or partly invest indirectly in Dutch listed investee companies – via mutual or investment funds – have an obligation to effectively monitor the fund managers' stewardship activities, including the application of the principles of this Code and other (international) codes or guidelines with similar objectives.

7. Asset owners and asset managers cooperate where appropriate and at their discretion with other shareholders in performing their stewardship activities towards Dutch listed investee companies. In case of collaboration, asset owners and asset managers should respect the relevant laws, regulations and guidelines, such as the Market Abuse Regulation.[68] They should also take note of the Dutch and European guidelines with respect to acting in concert, such as the guidelines of the Dutch Authority for the Financial Markets (AFM) in relation to the notification of substantial holdings[69] and the public statement of the European Securities and Markets Authority (ESMA) regarding public bids[70].

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[68] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (*OJ* 2014, L 173; http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN).

[69] https://www.afm.nl/~/profmedia/files/wet-regelgeving/marktmisbruik/guideline-shareholders.ashx?la=en.

[70] https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-677.pdf.

8. The Eumedion secretariat will annually monitor the compliance with the Code by asset owners and asset managers a) that are a participant of Eumedion, and b) that are not a participant of Eumedion but requested the Eumedion secretariat to be included in the monitoring. Compliance with the Code will be monitored on the basis of information provided by the aforementioned parties on their website and in the annual report. The results of the monitoring will be reported to the General Board of Eumedion, Eumedion participants and other asset owners and asset managers who are included in the monitoring. A summary of the monitoring report will be made public.

9. The Stewardship Code will enter into force on 1 January 2019. From book year 2019 onwards, asset owners and asset managers are expected to apply the principles of the Code and report on the implementation of it.

Principles

1. Asset owners and asset managers have a stewardship policy that describes how they integrate stewardship towards Dutch listed investee companies in their investment strategy. The stewardship policy should be aimed at preserving and enhancing value for their beneficiaries and/or clients, and should promote long-term value creation at Dutch listed investee companies. The stewardship policy should at least include the matters described in the principles of this Code and should be publicly disclosed on the asset owner's and asset manager's website. Asset owners and asset managers shall at least once a year publicly report on their website how they have implemented their stewardship policy, asset owners shall also report if and how they have integrated that policy into their arrangements with their asset managers.

2. Asset owners and asset managers monitor their Dutch listed investee companies on material issues, including, but not limited to, the company's business model for creating long-term value, the company's strategy, performance and risks and opportunities, the capital structure, social and environmental impact, corporate governance and corporate actions such as mergers and acquisitions. Material issues are those matters that are likely to significantly affect the company's ability to create long-term value.

3. Asset owners and asset managers are prepared to enter into dialogue with the executive and/or supervisory directors of their Dutch listed investee companies and are prepared to escalate their stewardship activities in case issues remain unresolved, where appropriate and at their discretion. In the event that an asset owner or asset manager enters into dialogue with a Dutch listed investee company on certain issues, outside the context of a general meeting, the asset owner or asset manager will disclose its full equity holding (long and short) at the request of that company.

4. Asset owners and asset managers cooperate with other shareholders in exercising stewardship activities towards Dutch listed investee companies, where appropriate and at their discretion.

5. Asset owners and asset managers communicate with relevant stakeholders of Dutch listed investee companies, where appropriate and at their discretion.

6. Asset owners and asset managers identify, manage and remedy actual and potential conflicts of interest in relation to their stewardship activities towards Dutch listed investee companies. Asset owners and asset managers publicly disclose their conflicts of interest policy in relation to their stewardship activities.

7. Asset owners and asset managers exercise their voting rights and other rights attached to shares in Dutch listed investee companies in an informed manner. They publicly disclose on their website: a) at least once every quarter how they have voted their shares in Dutch listed investee companies, at an individual company level and per voting item, and b) at least annually a general description of their voting behaviour at general meetings of Dutch listed investee companies and an explanation of the most significant votes. In the event that the asset owner or asset manager casts an against or a withhold vote on a management proposal, he should explain the reasons for this voting behaviour to the company's board either pro-actively or at the request of the company.

8. Asset owners and asset managers publicly disclose their voting policy and at least annually if and how they use proxy research and/or voting services. Asset owners and asset managers that use proxy research and/or voting services ensure that their votes are cast in line with their own voting policy.

9. Asset owners and asset managers that consider exercising their right to submit a request for convening an extraordinary general meeting or for tabling a shareholder resolution at a general meeting of a Dutch listed investee company should have consulted the company's board prior to exercising this right.

10. If a resolution proposed by an asset owner or asset manager has been put on the agenda of a general meeting of a Dutch listed investee company, the asset owner or asset manager should be present or represented at that meeting in order to explain this resolution and, if necessary, answer questions about it.

11. Asset owners and asset managers will abstain from voting if their short position in the Dutch listed investee company in question is larger than their long position. Asset owners and asset managers should recall their lent shares before the voting record date for a general meeting of a Dutch listed investee company, if the agenda for that general meeting contains one or more significant matters.

Guidance

Guidance principle 1

- Preference is given to the term 'stewardship policy' instead of 'engagement policy' that is used in the revised Shareholder Rights Directive. As described in section 2 of the preamble 'engagement' is considered to be an element of the broader concept of stewardship.
- Asset owners and asset managers have a fiduciary duty to act in the best interests of their beneficiaries and clients and for the exclusive purpose of providing benefits to their beneficiaries and clients. Therefore, the stewardship policy should be aimed at preserving and enhancing value for their beneficiaries and clients. Given the fact that asset owners and their asset managers generally have a long-term investment horizon, this stewardship policy's objective is congruent with an investee company's objective of promoting long-term value creation. As such, the stewardship policy can contribute to the long-term success of companies.
- If an asset owner is unable to exercise stewardship activities directly, he should ensure, through an arrangement, that his asset manager(s) or external service provider(s) is (are) undertaking these activities on his behalf. The asset owner is required to publicly disclose – on an apply-or-explain basis – certain key elements of this arrangement as stipulated by article 3h of the revised Shareholder Rights Directive. Some asset owners solely invest in mutual or investment funds and not directly in the shares of Dutch listed companies. As a consequence, those asset owners are unable to exercise stewardship activities themselves. Those asset owners should ensure that the managers of the mutual or investment funds they invest in have a stewardship policy in line with principle 1 or with other (international) codes or guidelines with similar objectives.

Guidance principle 2

- Every corporate action should be judged on its own merits, thereby taking into account the interests of other stakeholders of the Dutch listed investee company.
- In assessing the Dutch listed investee companies' long-term value creation opportunities, risks, strategy and performance, it is critical to consider environmental (including climate change risks and opportunities), social and governance information (including board composition and diversity) besides financial information.
- Material issues can include short-, mid- and long-term developments.

Guidance principle 3

- According to Dutch company law, shareholders of Dutch listed companies should act in keeping with the principles of reasonableness and fairness. In that context, shareholders are expected to be prepared to enter into dialogue with Dutch listed investee companies.

- If challenging issues need to be discussed with a company, it is beneficial if a relationship between the asset owner and/or asset manager and the Dutch listed investee company has already been established, particularly if such a discussion needs to be held urgently.

Escalation actions by asset owners and asset managers may include:

- Writing a letter to the executive and/or supervisory directors in which the matters of concern are explained;
- Holding additional meetings with the executive and/or supervisory directors, specifically to discuss the matters of concern;
- Holding meetings with other stakeholders, such as banks, creditors, customers, suppliers, the works council and non-governmental organisations;
- Attending the general meeting and expressing concerns at that meeting, including voting against management proposals;
- Issuing a public statement;
- Intervening jointly with other institutional investors and shareholders on specific issues;
- Requesting that certain subjects are placed on the agenda of the general meeting or asking that an extraordinary general meeting is convened;
- Submitting one or more nominations for the appointment of a member of the executive and/or supervisory board as appropriate;
- Taking legal action, when appropriate, such as initiating inquiry proceedings at the Enterprise Chamber of the Amsterdam Court of Appeal; and
- Selling the shares.

The escalation actions should be aimed at preserving and enhancing value for the beneficiaries and/or clients, and should promote long-term value creation at Dutch listed investee companies, as stipulated in principle 1 of this Code.

‘Full equity holding’ in the last sentence of principle 3 means the asset owner’s or asset manager’s full economic interest in the Dutch listed investee company as referred to in article 5:25kbis of the Dutch Financial Supervision Act.

Guidance principle 4

- Groups of investors may wish to discuss issues which are of common interest to them, and which they may wish to pursue collectively towards one or several companies. Collective engagement may deliver benefits to both companies and investors. For instance, because both the board and investors get familiar with each others views and perspectives and engagement is made more cost effective.

- Collective discussion may also generate a wider and deeper range of analysis compared to a one-to-one meeting, although there should be sensitivity to the fact that some issues are better discussed on a one-to-one basis, and that a constructive discussion of such issues may be inhibited in a group meeting context.

Guidance principle 5

- Asset owners and asset managers may aim to understand the aspirations and motivations of other relevant stakeholders of the company, for example banks, creditors, customers, suppliers, the works council and non-governmental organisations, to advance the goals of a dialogue with a Dutch listed investee company and/or their voting behaviour on material issues. The decision to respond to relevant stakeholders is determined by the asset owner or asset manager, based on the issue at hand.

Guidance principle 6

- Asset owners and asset managers should be aware of the possible existence of other interests involving themselves and the Dutch listed investee company apart from the shareholder's interest alone. This can occur, for example, when the asset owner or asset manager in question also offers financial products (such as insurance contracts) to the Dutch listed investee company, or when a member of the executive and/or supervisory board of the asset owner or asset manager is also a member of the executive and/or supervisory board of the Dutch listed investee company in question. It is also possible that an asset manager that invests for a pension fund holds shares in a Dutch listed investee company that sponsors the pension fund concerned, or that an asset owner or asset manager is affiliated in some way with a Dutch listed investee company whose shares are subject to a public bid.

Guidance principle 7

- Asset owners and asset managers should publicly disclose how they have implemented their voting policy including a general description of voting behaviour and an explanation of the most significant votes. A vote can be considered to be significant due to the subject matter of the vote or the size of the holding in the company. 'Significant votes' include votes cast on significant matters as mentioned in the guidance on principle 11 and votes cast at general meetings of Dutch investee companies where the asset owner or asset manager has a large holding compared to the asset owner's or asset manager's holdings in other investee companies.

Guidance principle 8

- Asset owners and asset managers should use their voting rights in a well informed manner and in line with their voting policy. Asset owners or asset managers that use the services of proxy

advisors, should – particularly in case of a standard voting policy – disclose to what extent the voting recommendations of those advisors are followed. Asset owners and asset managers should regularly evaluate that their proxy advisors have robust processes, policies and capabilities in place to ensure the quality of the voting recommendations made.

Guidance principle 11
Asset owners and asset managers do not borrow or lend shares for the primary purpose of exercising voting rights on these shares. Asset owners or asset managers who have lent shares will take reasonable steps to discourage that those shares are borrowed for the primary purpose of exercising voting rights.

In the situation of holding a short position that is larger than the long position in a Dutch listed investee company, the interests of the asset owner or asset manager might not be aligned with the objective of the investee company to create long-term value. Therefore, asset owners and asset managers should abstain from voting in such a situation. Asset owners and asset managers should already monitor their net short positions in Dutch listed investee companies in order to comply with the notification requirements stemming from the Short Selling Regulation.[71]

In practice many market participants take short positions by using specific legal entities for this purpose. The recommendation to abstain from voting if the short position is larger than the long position in a Dutch listed investee company is not applicable at group level and for the legal entities within the group that manage long positions in the same Dutch listed investee company. In that case, the manager of the legal entity that is used for taking short positions has no influence on the group's voting policy and behaviour.

The asset owner or asset manager determines what is considered to be a significant matter, but includes at least a proposal tabled at the agenda of a general meeting:

- that is of economic or strategic importance;
- which voting outcome is anticipated to be close or controversial; or
- where the asset owner or asset manager disagrees with the recommendation of the company's board.

[71] Regulation (EU) no 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (PbEU 2012 L86).

Appendix VI: Recommendations stemming from the position paper position of minority shareholders in companies with a controlling shareholder (dated 28 June 2016)

The box below summarises the proposals made in the position paper position of minority shareholders in companies with a controlling shareholder.[72]

A. Good practice for enhancing the checks and balances at listed companies with a controlling shareholder

1. The company and controlling shareholder draw up a relationship agreement which at least confirms that all transactions between them will be agreed on customary market terms, regulates any representation on the supervisory board and contains assurances that all appearance of insider trading will be combatted.
2. The majority of the members of the supervisory or one-tier board are independent.
3. Independent shareholder approval of major transactions between the company and controlling shareholder and of grants of additional rights to the controlling shareholder.
4. Sunset clause for any additional rights for the controlling shareholder on flotation, cross-border or domestic merger or demerger.

B. Good practice in takeover situations

1. The target company establishes a takeover committee.
2. On completion of a comprehensive due diligence review, the bidder does not buy shares in the target company privately or on the market.
3. The target company only co-operates with a post-closing restructuring measure if the bidder has obtained at least 80% of the shares.
4. One or more supervisory directors have special powers after the bid has become unconditional and as long as shares are listed.
5. The target company ensures that there is a real possibility of a competing bid.
6. More transparency and representative decision-making on asset transactions.

[72] The position paper can be consulted via: https://en.eumedion.nl/clientdata/217/media/clientimages/2016-06-position-paper-minority-shareholders-final-version.pdf?v=211203130953.