

**UNOFFICIAL ENGLISH TRANSLATION OF EUMEDION'S COMMENTS ON PROPOSALS FOR
UPDATING THE DUTCH CORPORATE GOVERNANCE CODE**

To The Dutch Corporate Governance Code Monitoring Committee
PO Box 20401
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Dear Monitoring Committee,

Eumedion is pleased to take this opportunity to respond to your proposals for updating the Dutch corporate governance code (hereafter referred to as the Code). Before examining the specific text proposals, we would like to make a few general remarks.

1. General comments

Eumedion has expressed support in the past for the Monitoring Committee's suggestion that the Code be evaluated at regular intervals and amended if necessary. Eumedion therefore greatly appreciates the fact that the Monitoring Committee has made proposals for updating the Code in various respects. It is of great importance that the Code remains topical, future-oriented and relevant. We agree with the Monitoring Committee that the subjects of long-term value creation, diversity and inclusion, and the role of shareholders lend themselves well to updating, partly in view of the social developments in these fields in the past six years. However, the proposals made by the Monitoring Committee in the first area (long-term value creation) are not very innovative. They more or less codify existing market practice (common practice) rather than encouraging the 'middle group' and laggards in listed companies to adopt the best practices in the market; the original aim of the Code. The European Commission's proposals on corporate sustainability reporting ('CSRD') and on corporate sustainability due diligence ('CSDDD'), for example, already go much further than the proposals that the Monitoring Committee is now presenting. In our opinion, the proposals should therefore have been more ambitious, particularly in the area of long-term value creation.

In addition, we very much regret that no proposals have been prepared to update the provisions that deal with the topic of risk management - with the exception of the sub-topic of the internal audit function. The continuing public debate about the role of the external auditor, a number of high-profile risk management cases at listed Dutch banks, the increased cyber security risks and a number of major accounting scandals abroad (including Wirecard and Carillion) are, in our view, sufficient reasons to update this topic in its entirety as well. The Minister of Finance had asked the Monitoring Committee to do so, partly on the basis of the findings and conclusions in the Leiden University research report entitled 'Strengthening the Accountability Chain'. This had the support of Eumedion at the time. If the recommendations from this report - with the exception of the recommendations relating to the internal audit function - are found by the Monitoring Committee to be too controversial to be

included in the Code, the Minister will probably have no choice but to transpose these recommendations into legislation. We consider this to be a missed opportunity, partly because the important part concerning, for example, the in-control statement has long been included in the Corporate Governance Code. We also endorse the words of the Minister of Finance in the letter of 9 July 2021 that the accountability for risk management is a crucial part of the Code and that the Code must remain relevant and up to date in this regard. We also subscribe to the wish of the Minister of Finance that the scope of the in-control statement should be extended from exclusively financial reporting risks to also operational and compliance risks. After all, as past experience has shown, material risks can also lie outside the scope of financial reporting, not least in terms of tax risks, money laundering risks, cyber security risks and safety and health risks. Moreover, in all these areas strict legislation is in place or has been proposed. It therefore seems obvious to us that the Executive Board should align the administrative organisation and internal controls with the (new) legislation in order to minimise compliance and operational risks. It seems as if the Monitoring Committee is closing its eyes to these developments by sticking to an in-control statement that only relates to financial reporting risks; nothing has changed in terms of scope since the first version of the Code - 19 years ago.

Finally, we endorse the wish of the Minister of Finance to include in the Corporate Governance Code the recommendation of the Leiden University for a more comprehensive explanation by the company of the selection, engagement, activities, functioning and findings of the external auditor. This would improve the communication between the Supervisory Board and the shareholders on how the assignment and supervision of the functioning of the external auditor took place. This makes it easier for all the players involved in the quality of reporting - and not only the external auditor - to take responsibility in this regard.

We therefore hope that you will reconsider your position on these recommendations.

2. Specific comments on proposals regarding long-term value creation

- We consider the proposed addition to principle 1.1 that the management board should be aware of the impact the actions of the company have on the production and value chain to be too vague and not in line with the aforementioned CSDDD. This proposed directive expects management and supervisory board members, when fulfilling their duty to act in the best interest of the company, to take into account the short, medium and long term consequences of their decisions on sustainability matters, including human rights, climate change and the environment. In addition, they are made responsible for putting in place and overseeing the due diligence actions and policy across the entire production and value chain. The text of principle 1.1 should at least reflect this. In addition, it would be appropriate to include a reference to the proposed CSDDD in the notes to best practice provision 1.1.1. A reference to the widely used UN Guiding Principles on Business and Human Rights should also be included in the explanatory notes to this provision.
- We also support the explicit statement in best practice provision 1.1.1 that an ESG strategy should be included in the company's strategy in order to create value in the long term. We do believe,

however, that the ESG objectives cannot be viewed separately from other strategic objectives (the principle of a 'holistic approach'). These objectives should also be concrete and well-communicated.

- We find that part vi) of best practice provision 1.1.1 is worded too narrowly and the wording also raises questions. Investors and other stakeholders expect listed companies to make a contribution anyway to the communities in which the company operates. In our opinion, this goes beyond merely paying taxes. We also believe that every company should explain in its annual report how it makes a net positive contribution to the communities in which the company operates.
- In section vii) of best practice provision 1.1.1 we would like to make it more explicit that this concerns the ESG-related impact "on people and the environment" or that this impact should remain within the so-called "planetary boundaries". This is in line with one of the key recommendations from the Maastricht University research report into the embedding of sustainability within Dutch listed companies, which was published in October 2021.
- A number of companies are currently experimenting with an Impact Report (e.g. ABN AMRO Bank) and an Environmental Profit & Loss account (e.g. Philips). In the dialogues, we encourage these companies to continue such reporting and others to start. However, we believe it is too early at this stage to expect all listed companies to monetise the effects of their business operations in the production and value chain. After all, no uniform standards have been prepared for this. In addition, it is questionable whether it is desirable to monetise all indicators that play a role in the production and value chain - for example, the number of accidents. We would therefore suggest that you consider deleting the phrase "and monetised" in best practice provision 1.1.4.
- According to the proposed text for best practice provision 1.1.4, the Monitoring Committee wants the management board to report on various ESG topics in its report. It is striking that the Monitoring Committee does not assign a role in this respect to the supervisory board and its audit committee, whereas sustainability reporting will only become more important in the near future as a result of the Code and the forthcoming CSRD. In practice, we see that supervisory boards (and their audit committees) - rightly - also see a role for themselves in this. We therefore urge you to codify this role in principle 1.5 and best practice provisions 1.5.1 and 1.5.3.
- With regard to the proposed text of best practice provision 1.1.6, we believe that the dialogue with stakeholders should not be limited to the ESG strategy. It is already common practice that the company's overall strategy is discussed in stakeholder dialogues. As noted earlier, in our view the ESG strategy cannot be viewed separately from the other parts of the corporate strategy (e.g. the capital allocation policy and the growth strategy). These components can also have a (material) impact on the company's stakeholders. In addition, the new best practice provision 1.1.5 on the role of shareholders in relation to long-term value creation does not refer to the "ESG strategy" either. We would therefore urge you to delete the addition of "ESG" in best practice provision 1.1.6.
- With regard to best practice provision 2.5.1, we are of the opinion that this provision does not sufficiently address the recent societal debate on combating undesirable and inadmissible behaviour. We recommend that the topics to be addressed in the context of the company's values

be extended to at least i) the safety and health at the workplace (in all its facets) and ii) the stimulation of a pleasant, safe, fair, inclusive and trusting workplace in which people from all backgrounds can be themselves and are encouraged and enabled to speak up and be heard, learn, make mistakes, and excel.

3. Specific comments on proposals regarding diversity and inclusion

Eumedion participants are convinced that a diversified composition of the Executive Board contributes to better board decision-making and company performance. In addition, they are of the opinion that a diverse workforce contributes to a healthy organisational culture that is focused on long-term value creation of the company. Eumedion therefore welcomes the revised best practice provision 2.1.5 which stipulates that companies have a firmwide policy on diversity and inclusion. Eumedion can also support accountability for that policy by providing insight into the inflow, progression and retention of diverse talent within the organisation (proposal for new best practice provision 2.1.6). In view of the tight labour market and the war on talent, such figures are of great importance to shareholders and other stakeholders in order to assess whether the company has and can continue to attract sufficient human resources to continue creating value in the long term. The Executive Board and the Supervisory Board often already designate these figures as so-called key performance indicators. The disclaimer to publish these figures externally in the corporate governance statement in the annual report "where relevant and applicable" is not aligned with the other updates of the Code which emphasise the importance of concrete ESG objectives. We therefore urge the Committee to delete the passage "where relevant and applicable" from the text of best practice provision 2.1.6.

4. Specific comments on proposals regarding the role of shareholders

Eumedion is pleased that the Monitoring Committee has presented proposals to integrate important parts of the Stewardship Code developed by Eumedion into the Corporate Governance Code. This underlines our belief that the engagement and voting policy of shareholders should also (ultimately) facilitate the strategy of Dutch listed companies aimed at long-term value creation; the central focus of the Code. According to the recitals of the revised European Shareholders' Rights Directive adopted in 2017, "effective and sustainable shareholder engagement is one of the cornerstones of the corporate governance model of listed companies". Also from this perspective, it is appropriate to integrate important parts of the Stewardship Code into the Corporate Governance Code.

We have a number of detailed comments on the proposals:

- The proposed text for best practice provision 4.2.2 rightly states that shareholders and the company should in principle be prepared to enter into a dialogue with each other. However, the explanatory notes to this provision only state that shareholders are expected to be prepared to enter into a constructive dialogue with companies. We consider it important that the explanatory notes also express the company's willingness to enter into a constructive dialogue with shareholders. It takes two to tango, after all.

- The explanatory notes to best practice provision 4.3.8 specify what is considered a "significant item". The text of the explanatory notes corresponds on this point with the guidance on principle 11 of the Stewardship Code. With regard to item ii ("whose voting outcome is anticipated to be uncertain or controversial"), we note that it is challenging for some of our participants to comply with this. As the voting record date in The Netherlands is 28 days before the date of the general meeting, an institutional investor should already judge before that day whether the outcome of the vote on a certain proposal on the agenda of the general meeting will be uncertain or controversial. It is possible that an item on the agenda proves to be uncertain or controversial only after the voting recommendations of the proxy advisors and an 'alert' from our organisation, which are generally sent 20 to 25 days before the date of the general meeting. It is then too late for the institutional investor to recall any lent shares before the voting registration date. We therefore recommend that you consider deleting sub ii.

5. Specific comments on proposals regarding the internal audit function

- We agree with the proposals to update the provisions on the internal audit function. These arise (for the most part) from the aforementioned research report 'Strengthening the Accountability Chain' by Leiden University. However, it is unclear to us why recommendation 3 from that report regarding the safeguarding of the independent position of the internal audit function has not been adopted. It happens in practice, particularly at the somewhat smaller listed companies, that the internal audit function and the risk management or compliance function are not separated. We believe that in this case assurance on the quality of risk management should be obtained via an alternative way. Standard 112 of the Internal Auditing Standards explicitly addresses this issue. The implementation guidelines of this standard also mention concrete measures to mitigate the risk of the combinations mentioned. We recommend that a provision be included in the Code on this basis.
- We agree with the amendments to best practice provision 1.3.5. In view of the increased importance of the internal audit function, we think it desirable that the audit committee should include in its report the main points of the findings of the internal audit function and what actions the Executive Board has taken on them. Best practice provision 1.5.3 should be supplemented accordingly.
- The Monitoring Committee has not adopted recommendation 2b of the University Leiden research report on behaviour and culture. We consider the Leiden researchers' recommendation that the internal audit function should evaluate and assess the tone at the top of the organisation to be somewhat far-reaching. At the same time, the importance of an open culture and of open and honest behaviour is becoming more and more obvious, also in the light of the implementation of the strategy to create value in the long term. It therefore makes sense for the internal audit function to pay attention to this. We therefore suggest the Monitoring Committee to consider including an explanation of the internal auditor's work plan in the notes to best practice provision 1.3.3. This could, for example, state that the internal auditor function should also expressly consider the culture and behaviour within the organisation in its risk analysis and work plan.

6. Specific comments on the proposal to maintain the response time

Eumedion disagrees with the proposal to maintain the response time in the Code in the light of the introduction of the statutory reflection period on 1 May 2021. The Monitoring Committee fails to substantiate why a double form of protection remains necessary for Dutch listed companies - in addition to the existing forms of protection under the articles of association that many Dutch listed companies also enjoy. Moreover, the Monitoring Committee starts from the incorrect premise that the "starting point" of the statutory reflection period is that both regimes can co-exist. The legislator has expressly left it to the supporting parties to the Code to determine "whether and, if so, when and how they wish to amend the Code".

In addition, the Monitoring Committee states that the response time can be invoked for more subjects than the statutory reflection period and that the consequences of invoking it differ. This reasoning, too, is incorrect. According to best practice provision 4.1.6 the response time may be invoked for shareholders' requests 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". We would like to point out that the statutory reflection period can also be invoked if a shareholder requests that the dismissal of one or more management board or supervisory board members be put on the agenda as a voting item. Another possibility for changing the company's strategy is to propose the appointment of persons affiliated with the shareholder on the agenda as executive or supervisory director. Such a proposal also falls within the scope of the statutory reflection period. Other possibilities for changing the company's strategy - for example by entering into a merger, demerger, disposal or acquisition of major holdings or a direct proposal to change (a part of) the company's strategy - cannot, according to established case law, be initiated by a shareholder request (by means of a binding or non-binding vote by the general meeting). It is therefore incorrect that the response time can be invoked for more subjects than the statutory reflection period.

In addition, the consequences of invoking the response time and the statutory reflection period are identical, i.e. the general meeting cannot take a decision on the shareholder request for a certain period of time. The only essential difference between the response time and the statutory reflection period is the moment at which the 'pause button' can be pressed. This is earlier for the response time than for the statutory reflection period. Consequently, the length of the statutory reflection period can *de facto* be extended considerably. The wording in the explanatory notes to best practice provision 4.1.7 - not even in the main text - that "it would seem logical" that the duration of the response time that has meanwhile lapsed should be deducted from the duration of the statutory reflection period is far too weak.

We therefore urgently recommend that i) the response time (best practice provisions 4.1.6 and 4.1.7) be removed from the Code or ii) the main text of best practice provision 4.1.7 be amended to state that the duration of the response time that has lapsed will be deducted from the duration of the statutory

reflection period. Otherwise the Monitoring Committee itself is responsible for the fact that best practice provisions 4.1.6 and 4.1.7 are inconsistent with main principle 4.1 of the Code: "The general meeting should be able to exert such influence on the policy of the management board and the supervisory board of the company that it plays a fully-fledged role in the system of checks and balances in the company".