1. Occasion

All the annual reports and annual accounts from the listed companies have been published and most of the shareholders' meetings are now behind us. The main findings and conclusions of the 2011 proxy season are set out below.

2. Key points

- Almost 10% increase in the number of votes cast at the AGMs of the AEX and AMX-quoted companies, partly as a consequence of the abolition of share blocking and the extension of the period for convening general meetings.
- For the first time since 2009, shareholders are again using the right to place an item on the agenda.
- Shareholder rights and responsibilities lead to discussion before and during AGMs.
- Eumedion spearheads letter 2011 fairly well complied with, with the exception of the proportional reporting of core figures.
- TSR is losing ground as the most important performance indicator in long-term incentive plans; shareholders are 'compensated' for this through guidelines for executives to retain a quantity of shares in their own company. The trend of including sustainability criteria in bonus plans continues, although there is relatively little transparency in this respect.
- Relatively many votes against the points on the agenda regarding the authority to issue shares and the limitation/exclusion of pre-emptive rights for existing shareholders when new shares are being issued.
- Auditors seem to be more sure of their ground.
- Recent decision by the Enterprise Chamber of the Amsterdam Court of Appeal has led to the increasing importance of being present at AGMs and addressing the meeting.
- Improvement of the transparency on ESG performance.

3. Explanatory notes

a) Effects of new legislation: AGMs are held later in the season, rise in the number of votes cast

On 1 July 2010 the Act implementing the Shareholder Rights Directive came into force. On the grounds of this new law, listed companies must call their shareholders to the AGM no fewer than 42 days before the date of this meeting and they must publish the documents to be submitted to the AGM no later than on that day. Furthermore, listed companies are no longer permitted to require shareholders wishing to participate in the decision-making process at the AGM to block their shares for a certain period. Shareholders are now registered on the 28th day before the date of the AGM as being entitled to attend the meeting and to vote; they are permitted to vote the number of shares held on that day, even if they hold a different number of shares on the day of the meeting. Listed companies have also had an obligation since 1 July 2010 to publish the results of the voting (on each individual resolution) within 15 days of the date of the AGM.

The consequences of the new legislation include the following:

i) most AGMs are held somewhat later in the season (and so dividend payments are also made later), but shareholders still experienced the problem that on the same date several AGMs of listed companies were held;

ii) The number of votes cast in the meetings has increased further (see table below; a sign that shareholders are more involved in the decision-making process of AGMs)[1].

Table: Number of votes cast at Dutch AGMs (% of total, excluding Trust Offices)

	2011	2010	2009	2008	2007	2006	2005
AEX companies ('Blue Chips')	59.1	50.2	47.9	47.5	43.4	35.9	33.3
AMX companies ('Midcaps')	49.0	45.7	46.4	45.0	42.9	38.6	35.9

A number of companies (in the Small Cap segment) experienced difficulties in adhering to the new statutory regulations:

i) RoodMicrotec still required its shareholders to block its shares (for a period of 6 days) in order to be able to participate in the decision-making process at the AGM[2].

ii) TKH Group was forced to postpone its shareholders' meeting for a week, because the company did not manage to publish the convocation in good time and unequivocally; Spyker had to rectify its convocation on account of the publication of an incorrect record date.

[1] This picture is confirmed by experiences with the Italian AGMs. This is the first season in which a prohibition on the restriction of share transfer applied in Italy and the period for convening the meeting was extended from 15 to 21 (or 30) days before the AGM date. These measures led to a doubling of the numbers of votes cast at the AGMs of a number of large Italian enterprises (such as Prysmian and Telecom Italia).

[2] RoodMicrotec abolished the share blocking requirement for the EGM of 30 June 2011.

iii) Punch Graphix was on time with the convocation, but did not publish its annual report and annual accounts until 20 days before the AGM. It is dubious whether a legally valid resolution can be passed on the adoption of the annual accounts of this company.

iv) A number of companies did not publish the voting results on time or published incomplete results.

b) For the first time since 2009, shareholders are again using the right to place an item on the agenda

This season four different shareholders in three different listed companies made use of the right to put forward subjects for the AGM agenda. They put forward ten subjects in total, which were or will be voted on:

i) At Ageas a 1%-shareholder submitted a nomination for the appointment of a non-executive director; this proposal was passed by the AGM (the management board of Ageas also had no objections to the nomination).

ii) At Batenburg Beheer shareholders Monolith Investment Management (holder of 9.95% of the shares) and Exploitatie Maatschappij van Puijenbroek (holder of 25.8% of the shares) put forward three proposals: 1) the proposal to expand the supervisory board from three to four persons (Van Puijenbroek); 2) the recommendation to the supervisory board to nominate a person as a member of the supervisory board (Monolith); and 3) the proposal that a request be made for clarification of the provision of information on the policy pursued by the Batenburg management board regarding takeover bids (Monolith). The background to these proposals is that Monolith and several other shareholders have been discontented with the situation at Batenburg for some time, specifically with regard to the rejection of a possible public offer from private equity company Nimbus for the Batenburg shares. In addition, there is dissatisfaction with the proposal from the supervisory board to reappoint supervisory director Geert Wirken for a further period of two years *in the interest of the desirable continuity*, even if he has occupied a seat on the supervisory board for 16 years. This is not in accordance with the maximum term of office in the Tabaksblat Code (12 years). Until now, shareholder Van Puijenbroek has always expressed support for the strategy of the current management board at Batenburg and for the current membership of the supervisory board. The Batenburg AGM voted in favour of the Van Puijenbroek shareholder resolution and rejected the two Monolith shareholder resolutions.

iii) At Holland Colours three separate shareholders put six proposals on the agenda after three of the four current members of the supervisory board tendered their resignations on 10 May 2011, due to a dispute with the major shareholder (Holland Pigments, holding 49.94% of the Holland Colours shares) concerning the governance structure of Holland Colours. Only the supervisory director appointed after nomination by the major shareholder remained in office. The resolutions that were put forward are: i) to abolish the employee share ownership plan via major shareholder Holland Pigments, ii) to appoint a mediator for the imminent governance dispute; iii) to postpone decision-making about the appointment of new members of the

supervisory board, iv) to appoint three members of the supervisory board nominated by the major shareholder. The AGM only voted in favour of the proposal to appoint three members of the supervisory board nominated by Holland Pigments.

Shareholders were not alone in making use of their rights to put forward topics for the AGM. Holders of depositary receipts did so as well and depositary receipt holders at Grontmij actually used their right to recommend a candidate for the Board of the Trust Office in addition to the candidate proposed by the current Trust Office Board. The Board of the Trust Office subsequently assessed both candidates and compared them with the profile drafted for the vacancy. According to the Board, both candidates fitted the profile and the Trust Office Board finally chose "its" candidate.

c) Shareholder rights and responsibilities are an issue

Just as in previous years, there were discussions between shareholders and boards concerning the rights and responsibilities of shareholders. In concrete terms, these discussions concerned: i) the threshold for the right of shareholders to place an item on the AGM agenda; ii) anti-takeover defences; iii) the response time for the board when shareholders wish to place certain items on the agenda; and iv) the inclusion in the articles of association of best practice IV.4.6, which stipulates that shareholders must be present at the shareholders' meeting if they themselves have placed a subject on the agenda.

i) Just as in previous years, there were a number of companies in the past season that acted in anticipation of a change in the legislation on the right to place an item on the agenda. Randstad, Wereldhave, Kendrion, TMC Group and Octoplus proposed to their shareholders to delete the present capital criteria for the right to place an item on the agenda (1% of the subscribed capital or a shareholding with a market value of at least 50 million euro) from the articles of association, so that a basic reference is made to the statutory criteria. The consequence of this is that as soon as the ‘Frijns Bill’ passes into law, shareholders must represent at least 3% of the subscribed capital in order to be able to make use of the right to place an item on the agenda. In the Bill, the 1% and 50 million criteria are actually deleted from the law and replaced by a single criterion, i.e. 3% of the subscribed capital. The possibility does exist, however, to stipulate a lower threshold in the articles of association. Wereldhave released the following statement a couple of weeks before the AGM: “In view of the negative reactions of several large shareholders with respect to one item of the proposed amendment to the articles of association of the Company, the Priority of Wereldhave has decided to adjust the proposal, implying that [the relevant paragraph of the articles of association] will not be amended.” Randstad forced the proposal through with the support of its major shareholder and supervisory board member Goldschmeding (76% of the 'independent' shareholders were against), while Kendrion did not obtain support for the amendment to the articles of association until the board promised its shareholders that the threshold for placing an item on the agenda would remain 1% “in practice”. At TMC Group (shares are traded on Alternext) the proposal was adopted unanimously after the chair of the supervisory board stated that *no binding percentage* had been included in the new articles of

association and proposed that a *pragmatic approach should be taken. It will be considered from time to time whether there is a reason to depart from the present percentage* (1%). The Octoplus AGM adopted the proposal to increase the threshold for submitting shareholder resolutions. LBi, that relocated its official seat to the Netherlands in the summer of 2010 and whose shares were submitted for listing on the Amsterdam stock exchange, had set the threshold for the right to place an item on the agenda at 3% in the articles of association when it was admitted to the listing. This is in conflict with the present law. It is to be proposed during the 2011 AGM that this percentage in the articles of association be deleted and to conform with the statutory criteria.

ii) The picture is mixed where anti-takeover defences are concerned. Alanheri submitted a proposal to convert its depositary receipts into shares and to stipulate 'Tabaksblat-proof' AGM thresholds for overriding a nomination for the appointment of a member of the management board and/or supervisory board and for the dismissal of a member of the management board and/or supervisory board. This means that it will lower the threshold from a 2/3 majority vote representing at least half of the subscribed capital, to a simple majority vote representing at least 1/3 of the subscribed capital. SBM Offshore did the same. In addition, SBM Offshore agreed, in compliance with the provisions of the Eumedion Corporate Governance Manual, that in the event of its anti-takeover foundation exercising the call option to acquire protective preference shares, it would organize an EGM within six months of the issue of the protective preference shares to discuss the status of the 'hostilities'. The AGM of SBM Offshore nevertheless rejected the proposal by a comfortable majority of votes (83.4%). In contrast to these (positive) events, Oranjewoud announced that it was considering the issue of priority shares and TNT Express is well defended against takeovers on its flotation on the stock exchange. TNT Express has formed an anti-takeover foundation with a broadly-worded objects clause for the exercise of the call option on the protective preference shares and, in a departure from the Tabaksblat Code, has raised high thresholds for the AGM's power to dismiss members of the management board and supervisory board and to override proposed nominations. We also encountered the rigging up of anti-takeover defences at Delta Lloyd at the end of 2009 (anti-takeover foundation with broadly-worded objects clause) and at LBi in the summer of 2010 (high thresholds for the AGM's power to dismiss members of the management board and supervisory board and to override proposed nominations). The AGM is sidelined in the event of a flotation on the stock exchange and the management board and supervisory board have complete freedom to frame the company structure just as they consider best (although subject to the precondition that the company still remains sufficiently attractive to investors). TNT gave an undertaking, incidentally, that TNT Express would consider submitting a proposal for amendment of the articles of association to the AGM in 2012, in order to make the appointment and dismissal procedure for members of the management board and supervisory board 'Tabaksblat-proof'. However, no hard 'promises' were made at the AGM.

iii) Last year a number of companies attempted to bind shareholders to the Tabakblat Code provision not to put forward an item for the AGM agenda without previous notice and, in the event of the intention to place an item on the agenda entailing a change in the company's strategy, to grant the management board a response time of no longer than 180 days. The relevant best practice provision was laid down in either the corporate governance statement or in the annual report, so that it cannot be ruled out that all shareholders must implement this best practice, even if they themselves have used the 'explain' option to state their reasons for departing or wishing to depart from the best practice. Philips, Heineken and Ageas have either deleted or eased the formulation this year, on the urging of shareholders last year. This year Randstad has also undertaken to do the same. Only TNT persists in last year's imperative formulation and Wavin has actually included a passage about the response time in its annual report for the first time this year.

iv) Heineken and Beter Bed Holding presented a proposal this year to include best practice IV.4.6 in the articles of association. Best practice IV.4.6 stipulates that when a shareholder has had an item placed on the agenda, he must explain this in the meeting and answer questions about it, if necessary. LBi had already included this in the articles of association in 2010, when it was admitted to the listing in Amsterdam. The inclusion of best practice IV.4.6 in the articles of association means that it is no longer possible for shareholders to provide a reasoned explanation for non-compliance. The proposals were adopted by the AGMs of Heineken and Beter Bed, partly because the AGMs believed that a provision of this kind for shareholders is more or less implied by the legal rule in the Netherlands of reasonableness and fairness.

d) Generally good adherence to the Eumedion spearheads letter 2011 (sections that refer to financial reporting)

Among other things, Eumedion asked the listed companies in its spearheads letter 2011 that a sound analysis of the markets in which they operate be included in their annual reports, preferably with information on market shares. The annual reports of the AEX and AMX-quoted companies show that the market analyses have improved in general (outstanding examples being Boskalis, TNT and ASML; DSM and AkzoNobel are still lagging behind). One quarter of the AEX-quoted companies also provide a summary of the market shares, and the proportion was even one-third in the case of the AMX and AScX-quoted companies.

Eumedion also asked the listed companies to report more clearly on the financial strategy of the company and also recommended that the financial ratios in the bank covenants be included in the annual reports. This point in the spearheads letter was also fairly well implemented. Companies have become more open about their financial strategy, perhaps due to the financial crisis in part; the dividend policy is better described and a third of the AEX-quoted companies, and even two-thirds of the AMX and AScX-quoted companies (with Wavin as best practice) report the financial ratios contained in the bank covenants. Only two AEX-quoted companies (Ahold, Wolters Kluwer) explicitly refuse to disclose these ratios. They state - in response to questions in the AGM – that a covenant is an agreement between two parties, the details of which do not have to be made public (Ahold) and

that the information is competitively sensitive; the company's negotiating position would be harmed if these ratios were to be published (Wolters Kluwer). A permanent point for attention in the description of the financial strategy is the absence of a description - or provision of only a summary description - of the relationship between the company's policy on reserves and dividend, and the company's strategy, the purchase of own shares, and the authorization to issue new shares. Furthermore, limits are generally established in the articles of association on the power of shareholders' meetings to decide 'freely' on the distribution of profits.

Not a single company followed the recommendation contained in the spearheads letter to report key figures such as turnover, operational profit, depreciation, debt and cash on a 'proportional' basis as well (no full consolidation if the parent company does not have full ownership of the subsidiary). The reply given by AkzoNobel to a question in the AGM on this subject expressed the thinking of all companies that *IFRS standards do not make it compulsory to report on this*. It became clear during a conversation with a listed company on this point that they are substantively in agreement with Eumedion on this point, but that i) they do not want to lead the way in the market (may be competitively sensitive); and ii) the IFRS and US GAAP are not moving in the direction of proportional reporting. In view of this, however, a subsidiary request was made to the companies to include a list of subsidiaries in the annual report or on the website, also stating what percentage of the shares is held by the parent company. Approximately half of the AEX-quoted companies and two-thirds of the AMX and AScX-quoted companies included a list of this kind in their annual reports. Other companies refer to the Chamber of Commerce, where a list of subsidiaries is deposited. AkzoNobel and TomTom have now placed the lists on the website, following questions from shareholders; Wolters Kluwer has agreed to consider doing so.

e) Shareholders more critical of the authority to issue shares and limitation/exclusion of pre-emptive right

The standard agenda items for delegation to the management board of the authority to issue new shares and limitation or exclusion of the pre-emptive right of shareholders when new shares are being issued are encountering increasing resistance from shareholders, even though the authority to issue shares and the limitation/exclusion of the pre-emptive right relate to no more than 20% of the subscribed capital (market practice in the Netherlands). Shareholders are apparently very apprehensive about possible dilution of their equity interest. The Wessanen AGM, for example, rejected both points on the agenda by approximately 65 percent of the votes cast. The AGMs at HITT and Ageas were also unwilling to grant the management board the authority to issue new shares in the coming 18 months. At the larger companies Reed Elsevier, Philips, ASML, DSM, Ahold, AkzoNobel, Fugro[3], SBM Offshore and Wolters Kluwer, shareholders representing between 9 and 38 percent of the votes cast voted against the proposal to grant authority to the management board to limit or exclude the pre-emptive right of existing shareholders in the event of a share issue on the scale of no more than 20% of the subscribed capital. It is specifically the large listed financial institutions that urge an easing of the Dutch market practice. They argue that they have less flexibility

[3] This item on the agenda could only be passed with the support of the Fugro Trust Office, representing 42.5% of the votes.

when there is a need to (substantially) increase solvency than the financial institutions registered in other EU member states (on account of the extended period in the Netherlands for convening the AGM) and in the United States (no AGM approval needed for the issue of shares; discretionary decision by management board). It was undertaken to discuss this again with the participants of Eumedion.

f) Auditors seem more sure of their ground

The critical report of September 2010 from the Netherlands Authority for the Financial Markets (AFM) on the quality of audits and quality control would appear to have produced positive effects. External auditors have made more comments on the annual accounts than in previous years and shareholders have asked questions concerning the audit and the term of appointment of the external auditor.

Four companies (TomTom, SBM Offshore, Vopak and Van Lanschot) state explicitly in their annual reports that the AFM report in question was discussed in a meeting of the (audit committee of the) supervisory board and that the external auditor in question was held to account by the supervisory board. Sligro states that the supervisory board reviewed the AFM's comments on financial reporting when discussing the annual report.

The external auditor issued a non-clean opinion for ten sets of annual accounts. The opinion on the annual accounts for VastNed Offices/Industrial went furthest, since the external auditor issued a qualified opinion, indicating that the auditor had an objection of material importance against the annual accounts. At Pharming, Fornix BioSciences, Spyker Cars, Qurius, NedSense, TIE Holding, RSDB, Vivenda Media Group and AMT the external auditor issued an opinion with an ‘emphasis of matter’ with the annual accounts, pointing out specific uncertainties to the user of the annual accounts, that could have an effect on the continuity of the company. The external auditor for Ageas issued an opinion with an explanatory note (emphasising the possibility of legal claims) and the auditor for AND International Publishers issued an opinion pointing out uncertainty in connection with a lawsuit.

Shareholders in VastNed Offices questioned the boards and the auditor about the qualified opinion issued and what the cause of this was. The answers satisfied the shareholders as only 6.7% of the votes cast were abstentions. Moreover, the fact that non-adoption of the annual accounts would also mean no payment of dividend prevented shareholders to vote against this agenda point. Shareholders of DSM and ASML asked the management board to periodically place the appointment of the auditor on the agenda for the AGM, even if the AGM had appointed the external auditor for a prolonged period in the past. The managements of both companies have undertaken to consider this request.

The AGM at Stern Groep was asked to grant the supervisory board the authority to appoint the auditor and the management board at Alanheri asked the AGM for a mandate to select an auditor. Such proposals erode the AGM's power to make appointments on the recommendation of the supervisory board. It is not yet known how the respective AGMs responded to these requests.

The reasons given for a recommendation to the AGM for the appointment of an auditor (audit firm) are regularly inadequate. Proposals to renew the appointment of the audit firm mostly contain no more

than a comment that the external auditor is still functioning effectively in the opinion of the supervisory board. Even in the case of companies that are proposing to change external auditors (Exact Holding and Grontmij in 2011), it is difficult for shareholders to assess the motives for the change, whether tenders have been invited and what the selection criteria were for the recommendation. It is announced in the annual report of the ING Groep that the AGM may again express an opinion on the performance of the external auditor in 2012. The supervisory board would already appear to have completed the performance evaluation, since the board is stating now that the present audit firm will be nominated for another two years in 2012.

g) Remuneration policy: reduced importance of TSR as a performance indicator, shareholders 'compensated' via guidelines for the holding of shares by executives, more companies observe sustainability criteria for bonuses

It is notable in the proposals for amendments to remuneration policy that the importance of (relative) 'total shareholder return' (TSR) is waning as the leading performance indicator for the payment of bonuses to executives. At the same time, companies are issuing executives with guidelines on retaining a certain quantity of shares in their own companies, or investing a certain proportion of the bonus in own shares. In this way, shareholders are 'compensated' for the declining importance of TSR as a performance indicator. The 'Anglo Saxon' companies Royal Dutch Shell, Unilever and Reed Elsevier have applied such guidelines in recent years and companies like KPN, AkzoNobel, Heineken, SBM Offshore, Unit4 and Grontmij followed suit this year.

In recent years AkzoNobel, DSM, TNT, Royal Dutch Shell, ING, Aegon, Delta Lloyd and Ordina started to include sustainability criteria in executive bonuses and this trend continued in 2011. KPN, Wolters Kluwer, BAM Groep, USG People, Macintosh and Qurius also introduced sustainability criteria when giving short-term or long-term bonuses to their executives. SBM Offshore introduced what is known as a CSR multiplier in its short-term bonus plan. What the companies that have introduced sustainability criteria have in common is that the transparency of the objectives is meagre, both in advance of the performance year and thereafter. Companies are also wrestling with the measurement and target setting of sustainability criteria: Royal Dutch Shell replaced the Dow Jones Sustainability Index (DJSI) score with "targeted sustainable development measures which reflect improved opportunities identified through DJSI and Sustainable Asset Management (SAM) benchmarking and priorities agreed in consultation with the Board Corporate Social Responsibility Committee". AkzoNobel replaced the average ranking in the DJSI as a performance measure with the "average percentile sustainability score of the company as measured by SAM". KPN presented an amended remuneration policy in which the new performance measure 'energy reduction' was not yet clearly defined nor how it will be measured and what the specific targets are.

Partly in view of the decline in transparency on performance indicators and objectives and the greater discretionary powers of the supervisory board in determining executive remuneration, Eumedion argued in 2009 in favour of annual submission of the remuneration report to the shareholders' meeting

for (at least) an advisory opinion. Companies do not seem to be eager to do so, however, and Ageas alone followed this recommendation. Shareholders at the AGM of Reed Elsevier NV urged that they be granted the same rights as the AGM of Reed Elsevier plc, i.e. the authority to vote on the remuneration report. The management board agreed to consider this request.

All proposals for amendments to remuneration policy have been passed by the AGMs, although a number of proposals did encounter relatively widespread criticism in the AGMs. The proposal to amend the remuneration policy at Heineken received the most critical reception, mainly due to the 'free' allocation of bonus shares (i.e. with no link to performance indicators) and the inadequate transparency on criteria and objectives. It was only possible to pass the motion with the support of 'affiliate shareholders' Heineken Holding and Femsa; almost 73% of the 'independent' shareholders voted against the motion. The proposal to amend the remuneration policy of the ING Groep and of Aegon also met with relatively widespread opposition, even if the amendment had been prompted by new regulations (Controlled Remuneration Policy Decree and provisions of the Capital Requirements Directive). Many investors believed that the performance period for payment of the long-term bonus was only one year and that the transparency on the performance indicators left much to be desired. More than 43% of the capital present or represented at the AGM of ING voted against the proposal (more than 20% if the votes of the ING Trust Office are also taken into account). At the Aegon AGM, more than 30% voted against the amendment proposal (more than 48% when 'friendly' shareholder Vereniging Aegon is not taken into account). At the Ahold AGM, shareholders asked the Board why it is still of the opinion that the in 2006 adopted remuneration policy still fits the company, while the company has gone through several developments a.o. changes in the Board and focus areas. The Ahold board announced to reconsider its remuneration policy in 2011.

h) Level of compliance with Tabaksblat Code is high, but application of certain best practices can be improved and the quality of the explanations can be better

Generally speaking, the Tabaksblat Code is well applied. There are a number of provisions that are not well applied or complied with, however:

i) Material amendments to the articles of association must be submitted separately to the AGM to be voted on (best practice IV.3.9). Amendments to the articles of association were on the agenda at 38 companies this season, but in only 4 cases were material amendments put to separate votes. Companies provide no explanation, however, for non-compliance with best practice IV.3.9. In at least 19 cases motions that shareholders believed were material had been placed on the agenda, such as the raising of the threshold for placing an item on the agenda, the implementation of best practice IV.4.6 (a shareholder who has arranged for an item to be put on the agenda must be present at the AGM) in the articles of association and the change in the maximum authorization to repurchase to 50% of the subscribed capital. According to shareholders, these points should be placed on the agenda separately from the more (legal-)technical amendments. It may be concluded that the companies are not clear about what constitutes 'material amendments.'

ii) Best practices II.2.13g and h (determination of whether performance criteria for the granting of bonuses have been met and accountability for the relationship between performance criteria and strategic objectives): this information is practically never included in the remuneration reports, while practically all listed companies also provide no explanation of instances of non-compliance.
iii) There is still a lack of clarity on what takes precedence with regard to the response time: the report that a shareholder provides an explanation for non-compliance with best practice IV.4.4 or that a company can always invoke the response time, on the basis of best practice II.1.9. Some companies have deleted or qualified passages on the invocation of the response time from their annual reports (also see point c of this memo). Others continue to maintain that they are within their rights in invoking the response time. It would be good if the Monitoring Committee were to provide clarity in this respect by means of guidance.

Furthermore, the reasons given for non-compliances are frequently inadequate, such as the explanation given by Boskalis for non-compliance with III.3.5 (maximum term of appointment of 12 years for supervisory directors): the non-compliance is *in the company interest*. Or the reasons stated by Heineken for non-compliance with the provision that only one supervisory board member may be non-independent. Five of the ten supervisory directors at Heineken are not independent, but the *supervisory board has ascertained that these supervisory directors will take a critical and independent stance*. Or the proviso that ING Group makes with regard to this stipulation: *ING Group complies with this provision, subject to the proviso that the Supervisory Board may decide, as the occasion arises and without stating its reasons for doing so, that a supervisory board member is held to be independent, notwithstanding the fact that one or more of the said criteria of dependence is/are applicable*.

i) Presence and speaking at AGM more important due to recent decision by the Enterprise Chamber

Presence at the AGM and speaking at the AGM (to register an objection to a proposal or to a passage in the annual report) have gained importance due to a recent decision by the Enterprise Chamber of the Amsterdam Court of Appeal in the ASMI case. The Enterprise Chamber ruled on 14 April 2011 that the ASMI Trust Office did not act wrongfully or incorrectly by exercising its call option to acquire protective preference shares in 2008 with the objective of impeding (temporarily at least) a possible change of members of the management and supervisory boards. When this call option was granted in 1996 (!) the AGM actually raised no objections (not a single shareholder addressed the AGM about this point on the agenda at that time) to the broad scope of the option, even if the management board of ASMI may have given the impression during that AGM that the granting of the call option was related to protection against a hostile takeover (in the first place) and not, therefore, against a change in the management of the company. After all, *the decision itself is the key factor in the interpretation of the granting of the option*, according to the Enterprise Chamber. This ruling by the Enterprise Chamber may possibly have to lead to a reassessment of the AGM as a consultative platform, certainly in the sense of having formal note taken (in the minutes) of objections to a management proposal; a high

percentage of votes against is not enough in itself. In practice, it will mainly be important in the event of ‘inaugural’ meetings of ‘new’ listed companies (such as at TNT Express this year) to express during the AGM any appropriate critical comments with regard to passages in the prospectus that are not in the interest of shareholders. This may prove to be of great importance in future.

j) Quality of non-financial reporting is improving

This year a notably large number of AEX quoted and AMX quoted companies issued a sustainability or social responsibility report (hereafter: non-financial report) shortly after or even at the same time as the publication of the annual report. Five of the 25 AEX quoted companies issued an integrated annual report designated as such and one (Unibail-Rodamco) appears to be an integrated report. In an integrated annual report the listed company makes a direct connection between the operational and financial performance and the performance in environmental, social and governance areas. Integrated information is created as a consequence, which may be important to all stakeholders in forming an accurate picture of the company. Fugro, Randstad, TomTom and Wereldhave have no sustainability or social responsibility report. This is a conscious choice on the part of Randstad, because Randstad believes that it is, as an entity, a socially responsible company. Fugro, TomTom and Wereldhave have confined themselves to a number of pages in the annual report. At the AMX quoted companies the number of non-financial reports - or at least the reporting on environmental and social performance - is also increasing as a complement to the rendering of account for governance. Ten of the twenty-five actually have a separate CSR report. Wessanen and Delta Lloyd have incorporated the ESG information into their 'normal' annual reports. Aalberts, BinckBank, Brunel, Eurocommercial Properties, Unit4, Mediq and Pharming provide scarcely any non-financial information, either in their annual reports or on their sites. Given their activities, this is an issue in the specific cases of Aalberts, Mediq and Pharming. USG People has announced to publish its first CSR report at the end of 2011.

Quality

In addition to the increase in numbers, the increase in the quality of the non-financial reports is also increasing steadily. Corio, for example, has produced a considerably better report than last year, as has Aegon. ASML surprised last year with a first sustainability report that was already of good quality and the 2010 report is an improvement. It is ASML's goal to issue an integrated report for 2011.
DSM has published an integrated report for the first time, which still reads well. The layout of the report is by business unit, as is that of AkzoNobel, which works well for both of them.
Unilever, Philips and TNT also still have integrated reports, although ING abandoned integrated reporting for 2009 and has not returned to the pre-2009 format.
A point of attention at most listed companies is the high anecdotal content of the reports and the still inadequately concrete performance expressed in percentages, quantities or money. We also continue to see few non-financial risks referred to or described, also not in the form of dilemmas for example. KPN is an exception, with a clear analysis of its reputational risk for example in the risk paragraph of its annual report.

Comparability between reports and comparability through the years has been improving, since most listed companies have been complying with the GRI guidelines for several years now and attempt to achieve good scores (C, B or A). Some companies also offer an interactive tool on their websites to enable this comparison.
TNT is now still a good example of a company for which meaningful comparisons can be made for the past ten years, but this will become more difficult in the coming years due to the division of TNT into two 'new' listed companies. It will be interesting to see how these two new listed companies will solve the problem of comparability with past years.
Eumedion prefers integrated reporting, provided the quality of the present non-financial reports is suitable for this purpose. If the ESG performance and targets are not yet clear, then a non-integrated report would be better.

Assurance
An 'audit' by an accountant has become a matter of course for most AEX-quoted companies. Corio believes that it is not yet ready for this. Shell is one of the few that do not work with an accountant, but with a panel of experts who study the contents of its sustainability report. Shell does, however, have its CO2 data checked by Lloyd's Register Quality Assurance Ltd.
KPMG is the audit firm that provides most comments in the form of suggestions about how the company could improve its performance in the coming years. Wim Bartels at KPMG wrote the following for example, in the case of Heineken:
In 2010, Heineken has launched the new strategy, including a governance structure to deliver on commitments. In light of this new ambition the internal reporting systems and related control framework can be further enhanced. To enable comprehensive internal and external performance reporting, we recommend that Heineken further attunes the reporting systems and internal controls to the set ambition level, by – for example – further integrating its reporting systems and broadening the scope of the internal review procedures.
Deloitte and Ernst & Young frequently confine themselves to the phrase that they have found no anomalies. *On the basis of the procedures we have performed nothing has come to our attention that causes us to believe the Corporate Responsibility Report for the year 2010 is not prepared, in all material respects, in accordance with the Sustainability Reporting Guidelines (G3) of the Global Reporting Initiative.*

Conclusion
In summary, another step in the right direction towards improved transparency on ESG performance. Still required, however, are more real figures and more information on dilemmas and non-financial risks. It is conceivable, therefore, that something could be said about this in the spearheads letter for 2012. We expect a report from the International Integrated Reporting Committee this Summer, which might contain useful points of reference.