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Corporate Structures

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European Union encourages long-term shareholder engagement

A new EU directive will impose additional obligations on listed companies and certain other parties involved with respect to transparency and long-term shareholder engagement, to push back shareholders' and managers' excessive short-term focus. Shareholders will gain new rights under the directive, which the Netherlands, as well as the other EU Member States, must transpose into national legislation by 10 June 2019.

Some elements of the directive are already provided for in Dutch law. For example, listed companies are already entitled to identify shareholders holding more than 0.5% of shares. Similarly, shareholders already have the statutory right to approve directors' remuneration policy.

The directive is applicable to companies with (i) their registered office in an EU Member State and (ii) shares that are admitted to trading on a regulated market situated or operating within a Member State.

Institutional investors, asset managers and proxy advisers must offer more transparency

Institutional investors and asset managers will be obliged to draw up and disclose a policy on integrating shareholder engagement in their investment. If they fail to disclose the engagement policy, they must explain the reasons why ('comply or explain').

Proxy advisers will have to annually disclose certain information on how their research, advice and recommendations on how to vote in general meetings of listed companies were established. In addition, they must comply with a code of conduct or explain why they do not.

Shareholder influence on related-party transactions increases

In order to provide adequate protection for the interests of the company, material transactions with parties related to the company will require approval by either the shareholders or the board of managing or supervisory directors. It is up to the Member States to define what material transactions are.

Companies will need to publicly announce material transactions with related parties ultimately at the time of concluding the transaction. They must also provide information necessary to assess whether or not the transaction is fair and reasonable. Under Dutch law as it stands, publication is only required at a later stage, ie, together with the annual accounts.

Shareholders get a greater say in directors' remuneration

Once a remuneration policy for directors has been approved, shareholders will have the right to vote on it again every four years. Under current law, they only get this opportunity if and when the policy undergoes any changes. In addition, the remuneration report must disclose individual directors' remuneration and be made publicly available, eg, on the company's website. The aim is to increase corporate transparency and the accountability of directors.

Next steps

Member States have some leeway as to how they introduce the new rules in their national legislation. We will of course keep you informed on the legislation process in the Netherlands.