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Eumediton in the Dutch Corporate Governance and Sustainability Landscape

November 2016

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Executive summary

Eumedion is a Dutch foundation representing the interests of Dutch and foreign institutional investors with investments in Dutch listed companies. In particular, it represents the interests of these participants in the field of corporate governance and sustainability. The foundation was established in 2006 with the objective to maintain and develop good corporate governance and sustainability performance by listed companies and institutional investors in the Netherlands and Europe.

In this report, we address the following research question: *To what extent has Eumedion contributed to the development and improvement of corporate governance and sustainability in the Netherlands during the 2006-2015 period?* We analyze Eumedion's contribution by using a theoretical framework that describes the process of developing norms of corporate governance and sustainability. These norms describe how (good) corporate governance and sustainability should look like. The process of developing norms can be broken down in three stages, i.e. *norm setting*, *norm spreading* and *norm implementation*. Our analysis describes how Eumedion is actively involved in all three stages.

The analysis in this report is based on a large *data base* consisting of documents that are publicly available from Eumedion's website as well as documents we obtained from Eumedion's secretariat and consists of Eumedion's Corporate Governance Manual, policy plans (beleidsplannen), annual reports, position papers, comment letters, consultation documents, focus letters, company dialogues, company alerts, and annual evaluations of annual general meetings of shareholders (AMGs). Moreover, we collected information about the media attention for Eumedion. The data covers the period 2005-2016. Finally, we held *interviews* with fourteen important actors in the Dutch and international corporate governance field who shared their experiences with and ideas and perceptions about the activities of Eumedion.

Our analysis reveals the following results. In the *norm setting* stage, norms regarding corporate governance and sustainability are established. Eumedion has been actively involved in this process, first of all by writing *consultation reactions* and sending *comment letters* to Dutch and European institutions directly involved in setting norms. In particular, it is frequently communicating with the Dutch Ministry of Finance, the European Union Institutions and (committees of) the Dutch House of Representatives, because they are most important in setting corporate governance and sustainability norms. The analysis also shows

that Eumedion is discussing a wide range of corporate governance and sustainability topics in its interactions with these institutions. Yet, over time the emphasis of topics discussed shifted from more traditional corporate governance topics (such as shareholder rights and remuneration) to financial and non-financial reporting and the role of the internal auditing function and external auditor. During the 2008-2012 it was particularly active on issues related to the financial markets and banking industry as a consequence of the global financial crisis. Finally, our analysis reveals that Eumedion has joined committees and boards of organizations that are important in establishing corporate governance and sustainability norms, both in, as well as outside, the Netherlands.

Next to the consultation reactions and comment letter, Eumedion produces *position papers* (since 2008), which are aimed at boosting discussions about norm setting and/or changes. Eumedion has been very active in writing these papers, especially during the years 2014-2016, signaling its active role in debates as a thought leader. The majority of these papers deal with topics related to the powers of shareholders and disclosures. Eumedion is also active in several Dutch and international committees in which norm setting regarding corporate governance and sustainability is discussed and developed. Eumedion's network of organizations in which it participates has widened considerably over the years.

During the second stage, *norms are spread*, or diffused, to the parties in the field who are supposed to act according to these norms. In order to make sure they act upon the norms, they should be made aware of them. Most importantly, Eumedion is active at this stage of the norm development process by annually issuing so-called *focus letters*, which are sent to Dutch listed companies and in which it communicates the most important topics for institutional investors for the next reporting and AGM season. Our review of these letters shows that they discuss a wide range of topics with an emphasis on the procedures regarding the organization of AGMs, content and accountability of remuneration policies, corporate risk analysis, risk management and control and reporting issues. The overview also shows that over the years the focus of the focus letters has shifted towards addressing risk and reporting issues. Evaluating the effectiveness of the focus letters suggests that they have had a significant impact on corporate governance behavior of Dutch listed companies and other related actors. The fact that Eumedion puts and keeps issues on the agenda of discussions about corporate governance between management and shareholders stimulates companies to address these issues.

During its early years (2006-2009) Eumedion was mostly involved in norm setting and norm spreading. Since 2009, it became more and more involved in the third stage of the norm

development process. During this stage, it is evaluated whether and to what extent norms are being *implemented* by companies. Eumedion again is actively involved in this stage. First of all, it has annual *dialogues* with a selection of Dutch listed companies, during which it communicates its observations and discusses its opinion on how norms should be applied by a specific company. Moreover, in case of controversial proposals made by company management at the AGM it may start the so-called *alert procedure*, which may lead to sending out an official alert to the company and Eumedion's participants. In this alert, it describes why it would like to see the proposal to be withdrawn or changed. Our evaluation of the use of company dialogues and alert service suggests that they played an important role in making norm implementation by participants a coordinated activity, i.e. it helped professionalizing the norm implementation process. They also helped Eumedion becoming increasingly influential in determining the debates over governance and sustainability both within the board room as well as during AGMs.

Combining the empirical evaluation of the documents with the content of the expert interviews reveals the following picture. First, although Eumedion is a *small organization*, it has been able to make a significant and positive contribution to all three stages of the norm development process in the Netherlands during the past ten years. It is taken into account as a serious partner in discussions during policy developments by important decision makers, management and supervisory board of companies and other relevant parties, both domestically as well as internationally. Moreover, Eumedion is seen as a serious knowledge centre and an active and respected organization representing shareholder interests.

Second, Eumedion has been actively involved in discussing a *broad spectrum* of corporate governance and sustainability issues, i.e. from traditional corporate governance topics, such as shareholder rights and remuneration to corporate social responsibility and tax avoidance.

Third, Eumedion has helped creating an environment in which there is a permanent *dialogue between company management and investors* during, but certainly also outside, the AGM. It has been successful in getting and keeping important governance issues on the agenda, in establishing closer and more informative relationships between management and shareholders, and in helping to make sure that shareholders are taken more seriously. It has also stimulated institutional investors to take their role as engaged shareholders more seriously.

Fourth, with respect to the implementation of norms, Eumedion may have been less effective in some cases in changing company behavior because it is a relatively *small player*.

For some of the companies with which it has a dialogue and/or sends out an alert, Eumedion represents only a small part of outstanding shares. Moreover, companies focus more on internationally operating proxy advisors such as ISS and Glass Lewis, because foreign institutional investors mostly look at the advice given by these proxy advisors, instead of looking at the alerts issued by Eumedion.

Fifth, Eumedion has a *limited mandate* to speak on behalf of its participants in its communication with companies. The issue of the mandate of the representative of institutional investors in the Netherlands has been on the table ever since its predecessor, the SCGOP was established; Eumedion as its successor “inherited” this discussion. It may signal controversial governance issues, yet its participants ultimately decide for themselves how they deal with these issues. Obviously, this reduces Eumedion’s direct power in influencing company behavior.

Sixth, Eumedion *focuses on corporate governance and sustainability*. Since in many cases corporate governance and sustainability issues are not really integrated in portfolio management and analysis of both investors and companies, the effectiveness of Eumedion in representing interests of its participants with respect to these issues is reduced.

Looking at the future, we suggest Eumedion to elaborate on the following three issues. First, given its experience and knowledge in the field of corporate governance and sustainability, it can play an important role in facilitating the discussion on how to *integrate CSR decisions in portfolio management decisions*, both within companies and institutional investors, as well as between companies and their investors. In communications they have with both these parties, it could more forcefully stress the fact that firm value and CSR are complements rather than substitutes, at least in the long-term.

Second, Eumedion could focus on stimulating, and perhaps even leading, the current *debate on engaged share-ownership*, both within and outside the Netherlands. Recently, Eumedion has voiced its concerns about the lack of an engaged and stable shareholder base in Dutch listed companies and the potential consequences of this for the long-term sustainability of these companies and its owners. It has also raised its voice in criticizing the use of loyalty shares as a way to create a stable shareholder base. This signals Eumedion has a clear stance in the debate on how to deal with developing an engaged and stable shareholder base. It could therefore become one of the thought leaders on this issue in the coming years.

Third, the fact that it has a *limited mandate* to act on behalf of its participants is a weakness of the model of interest representation used in the case of Eumedion. Strengthening its position as a representative of its participants vis-à-vis company management would

leverage the effectiveness of the association in the process of norm implementation. This would also mean that Eumedion is allowed and is able to take a more activist position in case of controversial proposals and/or decisions made by company management. Participants of Eumedion may therefore reconsider the foundation's mandate to make it more powerful in discussions with company management.

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1. Introduction

Eumedion is a Dutch foundation representing the interests of Dutch and foreign institutional investors with investments in Dutch listed companies. In particular, it represents the interests of these participants in the field of corporate governance and sustainability. Eumedion was established in 2006 as a successor of “Stichting Corporate Governance Onderzoek Pensioenfondsen” (SCGOP; Foundation for Corporate Governance Research, established in 1998) with the objective to maintain and develop good corporate governance and sustainability performance. From its early days, Eumedion has aimed to advance the quality of, the acceptance of, and compliance with generally accepted corporate governance standards by listed companies and institutional investors in the Netherlands and Europe.

Ten years after its establishment, the question may be asked to what extent it has contributed to the development and improvement of corporate governance and sustainability in the Netherlands during the 2006-2015 period. This question has been translated into a research project that has been carried out by the *institute* for Governance and Organizational Responsibility (iGOR) of the University of Groningen. The aim of the project was to systematically study Eumedion’s role, function, and operations in the period 2006 to 2015 in order to get an idea of the contribution it has made to corporate governance and sustainability developments in the Netherlands.

To reconstruct Eumedion’s contributions, a large variety of sources and documents has been used. Most importantly, internal reports and publicly available documents on its website were used in combination with documentation from external sources such as newspapers and other public media. This was accompanied by a set of twelve interviews with fourteen important actors in the Dutch and international corporate governance field who shared their experiences with and ideas and perceptions about the activities of Eumedion.

We analyze Eumedion’s contribution by using a theoretical framework that describes the process of developing norms of corporate governance and sustainability. These norms describe how (good) corporate governance and sustainability should look like. The process of developing norms can be broken down in three stages, i.e. norm setting, norm spreading and norm implementation. In the norm setting stage, norms regarding corporate governance and sustainability are established. During the second stage, these norms are diffused, or disseminated, to the parties in the field who are supposed to act according to these norms. During the third stage, it is evaluated whether and to what extent norms are being applied and

whether norms need to be adjusted in order to improve corporate governance practices. Our analysis describes how Eumedion is actively involved in all three stages.

This report is organized as follows. In chapter 2, we discuss the most important developments with respect to corporate governance in the Netherlands during the period 2006-2015 with a particular focus on ownership and the role of shareholders. Next, in chapter 3, we describe Eumedion, its establishment, aims and objectives, and its participants. Moreover, we describe the process of norm development and discuss the other parties in the field of corporate governance and sustainability that also aim at influencing the setting, diffusion and implementation of these norms. Chapter 4 provides an overview of Eumedion's role, function, and operations during the period 2006-2015 as a way to describe the contribution it has made to corporate governance and sustainability developments in the Netherlands. This is followed by an overview and discussion of the main findings of the analysis in chapter 5. Chapter 6 summarizes the main findings and provides concluding remarks.

2. The institutional context: Corporate governance and ownership in the Netherlands

2.1 Introduction

Corporate governance problems are not a new phenomenon. In his review of 400 years of Dutch corporate governance history, Frentrop (2002) illustrates that problems resulting from the separation of ownership and control are, in fact, several centuries old. He presents evidence demonstrating that governance issues have been relevant for listed firms since the Dutch East India Company was founded in 1602. He argues that the Dutch East India Company showed similarities with the modern corporation as described by Berle and Means (1932). Furthermore, his historical overview suggests that the various disciplinary mechanisms used to curb these problems changed only marginally over time. For instance, shareholders of the Dutch East India Company demanded not only that a board of directors be installed but also that management provides the shareholders with information about the company's results which was subsequently verified by an independent third party.

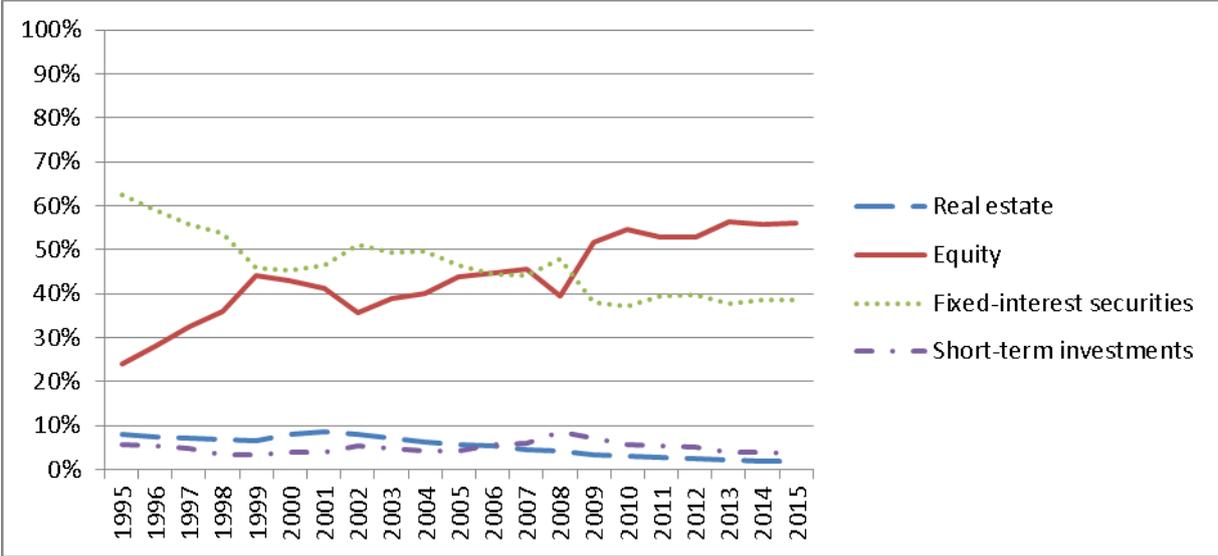
In this chapter, we provide a brief description of developments with respect to corporate governance in the Netherlands. Our description focuses on discussing ownership and the role of shareholders during the period 2006-2015. In particular, we zoom in on discussing the establishment of the Dutch Corporate Governance Code and on new legislation regarding shareholder rights and the consequences for shareholder activism in the Netherlands.

2.2 Trends in corporate governance and the role of institutional investors

From the 1990s, Dutch institutional investors such as pension funds and insurance companies started showing a growing interest in holding equity in their portfolios, mainly at the cost of holding fixed-interest securities (e.g., such as treasury bonds, etc.). Figures 1-4 show how the portfolios of Dutch institutional investors have changed considerably since the mid-1990s. While their equity holding amounted to 24 per cent in 1995, this had increased to 56 per cent in 2015. At the same time, investments in fixed-interest securities dropped from 62 to 38 per cent during the same period. In particular, pension funds changed to holding equity (from 27 to 67 per cent). Insurance companies showed less dramatic changes in reallocating their investments. Whereas they increased their equity holdings from 16 per cent in 1995 to 35 per cent in 2007, after the financial crisis they reduced their holdings to 27 per cent in 2015. In

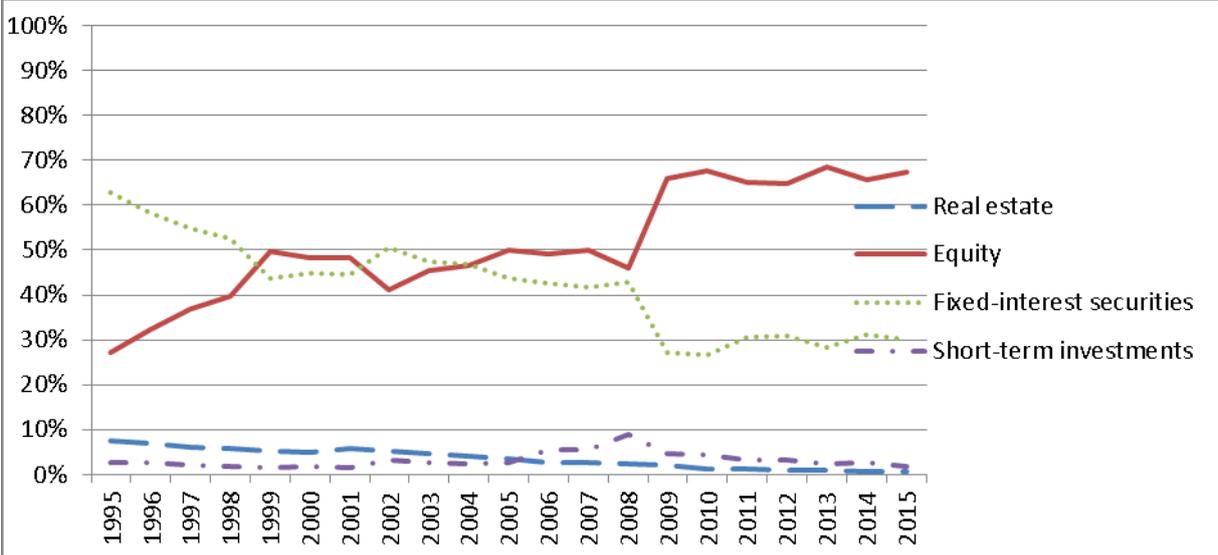
1995, mutual funds already held a substantial share of their portfolios in equity (34 per cent); they further increased this to 54 per cent in 2015.¹

Figure 1: Portfolio holdings of Dutch institutional investors, 1995-2015



Source: Statistics Netherlands (data accessed October 2016)

Figure 2: Portfolio holdings of Dutch pension funds, 1995-2015

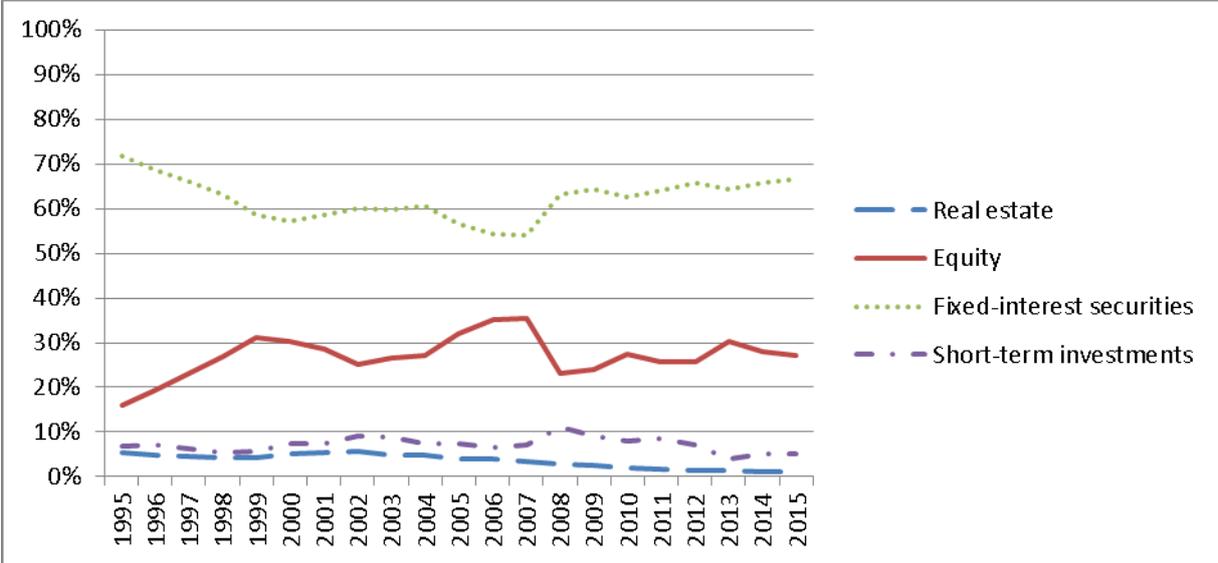


Source: Statistics Netherlands (data accessed October 2016)

The trends shown for Dutch institutional investors generally also hold for foreign institutional investors, especially those coming from Anglo-Saxon countries such as the US, Canada and the UK. One of the consequences was that shares of Dutch listed companies were increasingly held by foreign institutional investors. Whereas in 1995 almost 40 per cent of

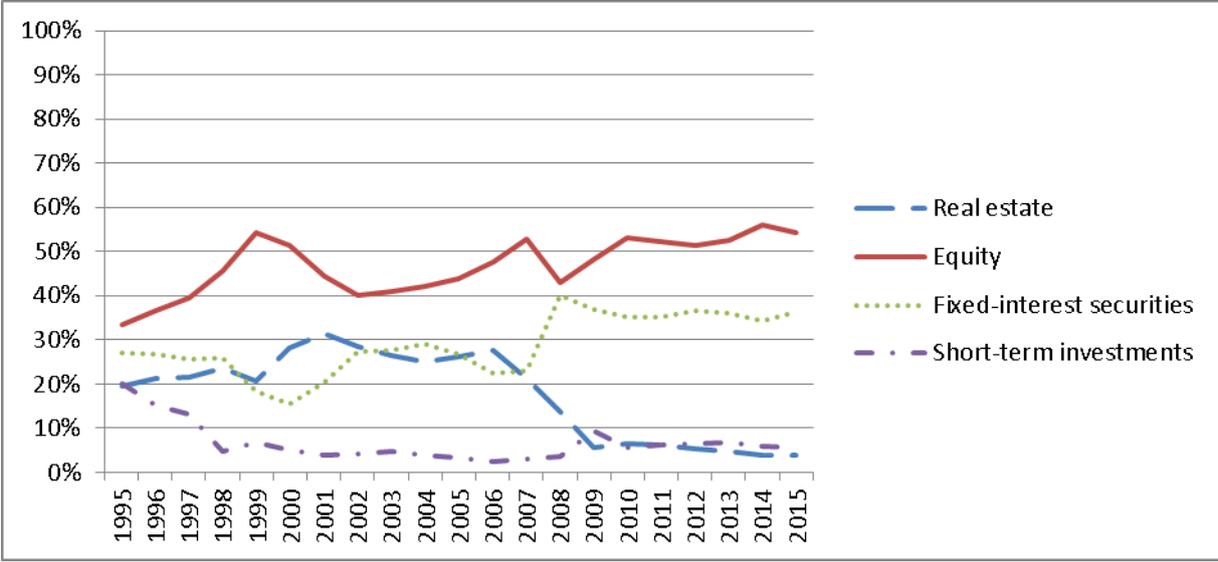
shares were held by these foreign investors, in 2005 this had increased to 75 per cent. Almost 85 per cent of shares held by foreign investors in 2005 were in the hands of investors from the US, Canada, the UK and Ireland.

Figure 3: Portfolio holdings of Dutch insurance companies, 1995-2015



Source: Statistics Netherlands (data accessed October 2016)

Figure 4: Portfolio holdings of Dutch mutual funds, 1995-2015



Source: Statistics Netherlands (data accessed October 2016)

Generally speaking, shareholders used to be at a great distance from company management. Yet, since the 1980s this started to change. Especially in the Anglo-Saxon countries, investors showed increasing attention for how listed companies are managed. This

led to growing pressure on companies to show positive results, create shareholder value, and be transparent. The development of norms regarding generally accepted corporate behavior became more pressing. That is, the regulation, either formally or voluntary, of the relationship between management and the shareholders of a company became an increasingly important issue.

In the Netherlands, at least until the early 2000s, the corporate governance context was marked by a stakeholder model and a two-tier board structure with a separate management and supervisory board in which supervisory board members were elected according to the co-option model. One consequence of the co-option model was that the so-called old-boys network played an important role in selecting new board members. This structure led to a situation in which the management board of a company had strong discretionary powers to make decisions. Moreover, companies had installed several anti-takeover devices such as anti-takeover preference shares, priority shares, depositary receipts, and binding nomination rights, effectively reducing the real influence of shareholders. These corporate governance structures effectively led to a situation in which checks and balances with respect to decision making by management were weak. This weakness was worsened due to the fact that share-ownership of Dutch companies was relatively widely dispersed (at least in comparison to other Continental European countries) and by the (very) low participation rate of shareholders at annual general meetings of shareholders (AGMs).² Internationally, therefore, the Netherlands ranked low in terms of perceptions of investors regarding the quality of its corporate governance structure.

2.3 The Dutch Corporate Governance Code

Worldwide, corporate scandals in the late 1980, 1990s, and especially the early 2000s triggered attention for good corporate governance and in particular for better organizing the relationship between management and shareholders of the company. In the UK, the first corporate governance code was established already in 1992 as a response to several major corporate failures. This code contained voluntary best practices with respect to corporate governance. Since the publication in 1992 of the “Report of the committee on the financial aspect of corporate governance”, known as the Cadbury Report, corporate governance codes have proliferated around the globe (Aguilera and Cuervo-Cazurra, 2009). In general, codes of good corporate governance contain best practice recommendations regarding the characteristics of boards of directors and other governance mechanisms (Zattoni and Cuomo, 2007). By presenting best practice provisions, governance codes aim at enhancing the quality

and transparency of management thereby improving company performance and restoring investors' confidence (Von Werder et al., 2005).

The Netherlands was not unaffected by the international trend of developing codes of good corporate governance. In 1996 various associations including the Association of Securities Issuing Companies ("Vereniging van Effecten Uitgevende Ondernemingen", VEUO) and the Amsterdam Stock Exchange Association installed the first committee on corporate governance. This committee, better known as the Peters Committee, issued a report entitled "Corporate governance in the Netherlands: Forty recommendations". As the title suggests, the report presented forty recommendations that were particularly aimed at listed companies. A key element of the Peters Report was its reliance on the willingness of companies to adopt, implement and enforce the recommendations (Groenewald, 2005). The recommendations were voluntary and non-binding, and their compliance was not monitored in a formal way. One year after the publication of the Code its impact was evaluated (Monitoring Corporate Governance in Nederland, 1998). The main conclusion was that the Code had little effect on changing corporate governance of Dutch listed companies. In the following years, attention for the Code and its implications faded. Voluntary compliance with the Code turned out to be difficult.

The analysis of the impact of the Peters recommendations was repeated in 2002. De Jong et al. (2005) showed that it hardly had any effect on changing corporate governance characteristics and firm value of the largest Dutch listed companies, suggesting that investors were skeptical about self-regulation of corporate governance practices. The authors concluded that "...little should be expected from initiatives that rely on monitoring without enforcement" (p.473). Notwithstanding its limited impact, the Peters recommendations were important for developing thinking about corporate governance in the Netherlands as it formed the basis for developments later on in the 2000s.

The situation changed quickly with new corporate scandals in the early 2000s when shareholders lost huge amounts of capital in companies such as Enron and WorldCom. It heated up corporate governance debates and led to a variety of responses in different countries (one of the most far-reaching being the Sarbanes-Oxley Act in 2002 in the US). In particular, these scandals showed the importance of increasing the intensity and quality of monitoring of management decision making and improving the disclosure and transparency of information on the companies' governance practices. This led to sharpening the policy as well as academic debates about the importance of changing corporate governance practices and the role of shareholders in achieving this, emphasizing the importance of strong shareholder rights.

In the Netherlands, the trigger for intensifying discussions about corporate governance was a scandal in one of its corporate prides, Koninklijke Ahold NV, which turned out to have serious corporate governance problems. This company showed strong growth during the 1990s. Yet, its growth turned out to be based on a strategy of quick international acquisitions, which were not properly reported. This was made possible due to the absence of strong and effective internal and external monitoring of company management's decision making. It led to a financial meltdown of the company ending with an accounting scandal in 2003. The debate was heated up further by the accounting scandal Royal Dutch Shell was confronted with in 2004. This company had overestimated its oil and gas reserves by 20 per cent and when this was announced early 2004, the company's stock price fell by 10 per cent. These scandals showed the weaknesses of the Dutch corporate governance system in general and implied a serious blow for the legitimacy of large corporations as well as the loss of confidence of investors.

In 2003 the Committee Tabaksblat was established. The establishment of the Code was in line with Committee Winter, appointed by the European Commission, which suggested creating country-specific codes as a step towards convergence of European Company law.³ In contrast to the Peters Committee, the Tabaksblat Committee was established at the invitation of the Minister of Finance and the Minister of Economic Affairs (Groenewald, 2005; Wymeersch, 2005). The Committee was tasked with developing new rules regarding corporate governance practices. It came up with a Code of Corporate Governance, safeguarded by the comply-or-explain principle, i.e. companies are deemed to comply with the best practices of the Code, unless they provide an explicit explanation of why they do not comply. So, instead of relying completely on self-regulation, listed companies were now legally required to report on a comply-or-explain basis. In the event of non-compliance, investors could go to court in order to enforce compliance. Moreover, from 2004 the monitoring of company compliance was evaluated annually by the Monitoring Committee Corporate Governance. The legal safeguard of the comply-or-explain rule (which was implemented in December 2004) and the annual monitoring procedure led to a Code "with teeth". The establishment of the Tabaksblat Committee and the Corporate Governance Code it developed was a major turning point in the Dutch corporate governance landscape as it led to a new level-playing field between corporate management and shareholders, initiating a search for a new balance in which conflicting interests were coordinated.

2.4 New legislation of shareholder rights and shareholder activism

The creation of such a new level-playing field was further supported by a number of changes in the Dutch law with respect to the rights of shareholders. Among other things, these new legal rights entailed the right to appoint and dismiss supervisory board members, which effectively marked the end of the co-option model, the right to approve major board decisions (such as large acquisitions and disinvestments), the right to submit shareholder proposals for shareholders owning one percent or more of issued capital, and the right to approve the remuneration policy.

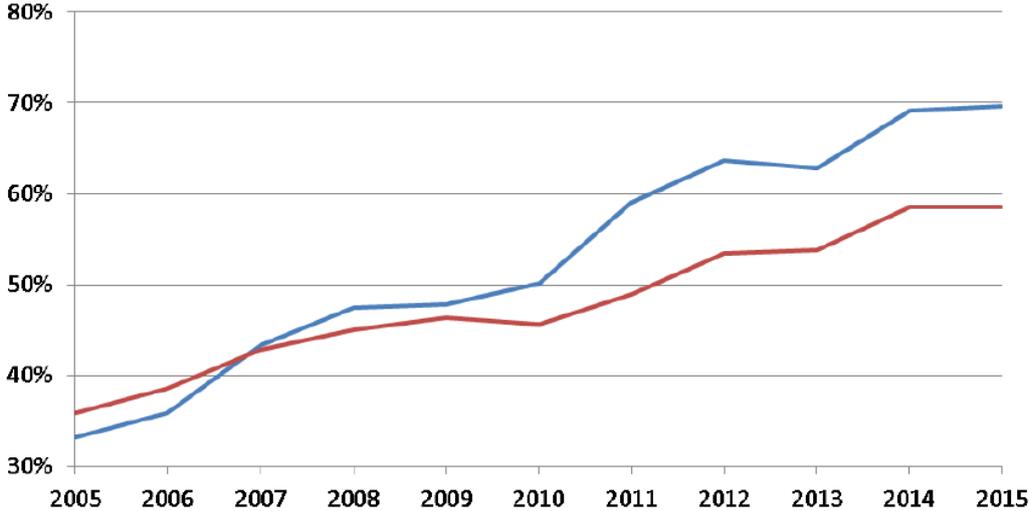
The establishment of the Code and the legislative changes in combination with some of the characteristics of the Dutch corporate governance context such as the relatively widely dispersed ownership and low participation rates at AGMs led to changes in the relationship between company management and the shareholders in the period from 2005 onwards. In particular, these changes allowed much more leeway for active shareholder involvement. This is exactly what happened during 2005-2008, when several Dutch companies were confronted with shareholders using their rights to influence management decisions and company strategies. In several cases, shareholder activism was initiated by hedge funds and other activist investors. In contrast, most other (more traditional) institutional investors did not actively look for influencing strategic decisions. At the same time, however, they showed interest in, and also in some cases actively supported, proposals from activist shareholders.

Well-known examples of shareholder activism were proposals to the management of Stork to change corporate strategies (2006), proposals to break up the company in the case of ABN AMRO bank (2007), and proposals for a demerger and the dismissal of the CEO and supervisory board in the case of ASMI (2006 and 2008). In a number of these cases, anti-takeover foundations were used as a response to the active involvement of shareholders and in an attempt to protect management's position and the company's strategy. Moreover, in some cases the Enterprise Chamber of the Amsterdam Court of Appeal was asked to take a stance in the clash between management and shareholders (e.g., Stork, 2006; ASMI, 2008).

The increase of shareholder activism triggered a number of changes in the Dutch corporate governance landscape. To begin with, the Dutch Supreme Court redefined the balance of power between company management and shareholders by passing its judgment on a number of critical corporate governance issues. It concluded that the AGM should focus on monitoring and controlling management decisions. Shareholders should not use their rights to determine corporate strategies. In particular, the shareholder's right to submit proposals at the

AGM agenda should be used actively only when such proposals could be determined as being reasonable and fair. Second, the Dutch Supreme Court established that anti-takeover provisions could be used in order to achieve a status quo and/or a level-playing field. The rebalancing of the power between management and shareholders also manifested itself by a rise in the number of anti-takeover devices. Confronted with shareholders who aimed at actively influencing corporate strategy, management (re)established barriers to reduce the success of this activist behavior. Finally, increased shareholder activism also contributed to an increase of participation rates at AGMs. As is shown in figure 5, these participation rates had increased from around 35 per cent in 2005 to almost 50 per cent in 2008. These rates would increase further over time to some 70 per cent in 2015 for companies listed on the AEX exchange.⁴

Figure 5: Participation rates at AGMs of Dutch listed firms, 2005-2015



Source: Eumedion Policy Plan (2016), p.7

The increase of shareholder activism was also accompanied by some legal changes. One of the more important of these changes was related to redefining the threshold for using the right to submit a shareholder proposal. This threshold was raised from one to three per cent of total issued capital. Together with the redefinition of the balance of power between company management and shareholders, the legal changes resulted in increasing the protection of management against shareholder activism.

The rebalancing of the power between management and shareholders in the Netherlands was a reflection of a larger international debate on the role of investors and their engagement with company decision making. This debate revolved around issues such as the

pros and cons of shareholder activism, short-term versus long-term share ownership, the need for establishing and the content of stewardship codes, and the use of incentives and instruments to stimulate long-term involvement with a company. In the next chapters we will come back to these developments in more detail.

2.5 Summary

Since the early 2000s corporate governance in the Netherlands has changed quite considerably. Until the 2003 existing corporate governance structures aimed at the checks and balances with respect to decision making by management were weak. The establishment of the Dutch Corporate Governance Code, in combination with important changes in legislation regarding shareholder rights, marked a major change in this respect. As a result, shareholder activism started to rise, contributing to a rebalancing of power between management and shareholders. By the end of the 2000s, several developments led to resetting the balance between management and shareholders, giving management ways to protect itself against activist shareholders in case their actions would disrupt the long-term sustainability of the company. Nevertheless, the Dutch corporate governance landscape had changed quite dramatically. Institutional investors had to find their place in the playing field, in which company management interacted with shareholders and other stakeholders in society. It is in this setting that Eumedion was established to facilitate institutional investors in positioning themselves in the playing field of Dutch corporate governance.

3. Eumedion's past and present

3.1 Introduction

As we will discuss in the following two chapters (4 and 5), Eumedion has played an important role in the developments described in chapter 2. From the start it was involved in the corporate governance debate, and its role in this debate grew over time. In this chapter we describe the establishment of Eumedion in 2006, its aims and objectives, and its participants. However, before we turn to Eumedion, it is important to understand why a foundation like this is relevant, and what kinds of problems it may solve. In particular, we shortly highlight theoretical discussions about shareholder activism and problems of free riding and collective action between shareholders. We then discuss the developments that led to the establishment of Eumedion, particularly focusing on SCGOP, an association that preceded Eumedion's establishment. Next, we describe Eumedion's objectives and aims, followed by a short overview of the number and nature of the institutional investors that have been participating in the foundation since 2006. We end this chapter by providing a short description of the wider field of corporate governance in which Eumedion operates.

3.2 Shareholder activism: A theoretical approach

In general, the relationship between company management and shareholders is complex due to their different and sometimes even conflicting interests. This relationship is legally formalized and embedded in legal rules and regulations. These rules and regulations are context-specific, i.e. they at least partly depend on the legal tradition in a country. Moreover, the relationship is also determined by country-specific traditions and expectations about how to behave as exemplified for instance in the (non-) existence of trust relations, as well as in voluntary codes.

The complexities of the relationship between company management and its shareholders are the result of a number of factors. First, in several cases there are many shareholders holding a small number of the outstanding shares. This reduces the involvement of shareholders in monitoring managers and decision making. The reduced involvement is further strengthened by the fact that most shareholders do not have the knowledge and/or resources to be actively involved. This is especially true for (institutional) investors who have a diversified portfolio of shares because it is very costly to monitor each company individually. Second, if shareholders get actively involved, the possible returns have to be shared with other shareholders who do not make these costs. This creates a collective good (or collective

action) problem. Each individual investor has an incentive to wait for, and free ride on, others to make investments in building a relationship with company management and influence its decision making. This may lead to a gap between de jure and de facto control of company decision making by shareholders. Third, shareholders may have different interests. In the case that the company shares are held by (a large number of) different minority shareholders, it becomes more difficult to act collectively, because it is more difficult to reach consensus with respect to strategic issues and specific decisions. To conclude, due to the relatively small size of the shares held by individual shareholders, the high costs of effective corporate governance, and the diverging interests, shareholders have serious difficulties to organize the interests they do share.

Shareholder activism: the role of institutional investors

In this context, there is an ongoing debate on the role of institutional investors. In particular, there has been increasing pressure on these investors to be more active when it comes to the monitoring of and engaging with company management decision making. This increasing pressure is due to a growing concern that many investors and stock analysts generally focus too much on short-term shareholder value (i.e. “investing for the next quarter”).⁵ This focus on short-term results may resonate in the boardroom and influence decision making, i.e. when managers feel the pressure to respond to requests from investors. It may result in so-called short-termism, which is defined as the tendency to take actions that maximize reported short-term earnings and stock prices at the expense of long-term company performance.

Institutional investors such as pension funds and insurance companies are usually considered to have a longer-term interest in the companies in which they invest. This is corroborated by data on their average holding periods. For example, according to a recent study institutional investors active on the Dutch stock market have low turnover in the largest part of their portfolio (De Roon and Slager, 2012). Because of their aims and the size of their investment, they have both the incentives and the means to be actively engaged in monitoring and influencing company management decision making (Shleifer and Vishny, 1986; Maug, 1998) and/or effectively use the threat of selling their shares in case their demands are not heard (Admati and Pfleiderer, 2009).

As was already mentioned above, the main reasons for the relatively low involvement of shareholders are free rider problems and high coordination costs. From a theoretical perspective, individual investors have insufficient incentives to be actively involved, because the costs of such an involvement are borne by the individual investors, while at the same time

the returns of this investment are shared among all investors of the company. Moreover, while it would make sense to coordinate active involvement among institutional investors, the costs of identifying trustful and cooperative peers (i.e. search costs and adverse selection problems), the costs of communication to reach an agreement about the type of active involvement and the costs of monitoring and enforcing the agreement are relatively high. These coordination costs act as a potential barrier for institutional investors to join forces, i.e. they create a collective action problem (Olson, 1965). Based on a worldwide survey among large institutional investors, McCahery et al. (2016) showed that around 60 per cent of institutional investors are considering coordinating monitoring activities but, due to high costs, collective action is limited in practice.

The above discussion shows how a foundation such as Eumedion can fulfill an important role in increasing corporate governance and sustainability norms. It facilitates collective action of institutional investors vis-à-vis company management and reduces transaction costs related to such actions. As a result it increases the pressure on company management to develop corporate governance practices that are in line with the longer term interests of institutional investors such as pension funds, insurance companies and investment funds.

3.3 History and establishment

Eumedion was preceded by “Stichting Corporate Governance Onderzoek Pensioenfondsen” (SCGOP; Foundation for Corporate Governance Research for Pension funds). Eumedion’s establishment and its development over the last ten years cannot be considered without describing what SCGOP had been doing before.

SCGOP was established in 1998 by two industry-wide and six company-related pension funds.⁶ In particular, ABP, PGGM, Shell Pension Fund and the Dutch Railway Pension Fund (Spoorwegpensioenfondsen) were active participants of this foundation. In particular, Peter de Koning of the Dutch Railway Pension Fund played an important role in instigating the initiative to set up the SCGOP. It was created to investigate the consequences of the developments with respect to corporate governance (i.e. increased involvement as shareholders, corporate scandals, new codes, etc.) for institutional investors (interview transcripts, p.1). The original founding participants shared the feeling that the quality of corporate governance was important for the value of their growing investments in shares. They realized that it may not be sufficient to safeguard future pensions by simply investing capital. The legitimacy of the investments is also important, i.e. it matters how profits are

made. This view was driven by a number of developments with respect to corporate governance in the 1990s. As described in chapter 2, a series of corporate scandals showed that existing corporate governance arrangements were problematic, initially mainly outside, but later also within, the Netherlands. The distance between shareholders and management was large, formal arrangements hardly worked and shareholders had no teeth towards management. In addition, weak monitoring of management decisions created additional risks for invested funds. Supervisory boards seemed ineffective, and reporting standards were not sufficiently informative. The pension funds (and shareholders in general) aimed at being more involved in the decision making process. Moreover, the founding participants of SCGOP realized that, although investments are made for financial purposes, they may have externalities, which may be socially and environmentally harmful. SCGOP, therefore, should also aim at explicitly focusing on corporate sustainability performance as one of the drivers of investment decisions made by its participants.

The founding participants realized that combining efforts with respect to active monitoring of company management would decrease the costs for each individual participant of the foundation and reduce the collective action problem. At the same time, however, this also created a potential conflict of interest. ABP and PGGM represented employees of an entire industry (i.e. government and education and health care) and had to legitimize their investments only to their participants. However, the company-related pension funds had a dual role to play. Next to being accountable to their paying participants, they were also accountable to the company to which it was related. These companies were also listed at the stock market. So, developing opinions with respect to corporate governance and public actions towards listed companies in the context of SCGOP could easily backfire when their own company would become the center of attention.

In the end, the participants decided that SCGOP would be a platform to improve corporate governance of Dutch listed firms and develop activities to realize this. At the same time, however, the mission of SCGOP should be limited and non-binding. It could not act on behalf of its participants, except in case it concerned general corporate governance issues. In addition, it could also not vote on behalf of participants. In case companies made a controversial proposal, participants themselves could voice their concerns at the AGMs. They were not obliged to share the views of SCGOP. With this system, pension funds could act united when sharing concerns, without running the risk that participants act as a group in cases the interests of individual pension funds were to be hurt. Instead, the focus of SCGOP was on providing information, stimulating debate and organizing activities regarding

(research into) corporate governance. Additionally, the foundation had no intention of being active in the public domain. In particular, the company-related pension funds opted for keeping away from public discussions, because they also had to cope with the interests of the companies to which they were directly related.

At this point, the discussion within SCGOP about the future of the foundation intensified. Should the foundation be further developed and, if so, how? These discussions initially led to reforming SCGOP, initiated by Jos van Niekerk (Progress, Unilever's pension fund), and finally led to "SCGOP New". In the period to follow, discussions further developed when "SCGOP New" was approached by other institutional investors, such as Robeco, ING investment Management and F&C in 2005, with the request to join the foundation. According to a press release of the foundation: "The decision by the SCGOP to open itself up to participation by all Dutch institutional investors means that investment institutions, asset managers and insurers will also be welcome."

One important reason for this request was that the new Corporate Governance Code, as formulated by the Tabaksblat committee, required institutional investors to legitimize and report on their voting behavior during AGMs as a best practice. Apparently, institutional investors were exploring their options to see how they could cope with this best practice. For the original participants of "SCGOP New" the request of other institutional investors intensified the existing potential conflict of interest described earlier. In particular, it reinforced attention for the key question with respect to how participants with varying interests could profit from sharing interests without being overshadowed by other participants when interests differ.

Finally, the early participants of the "SCGOP New" decided to establish a new foundation, Eumedion. For this new foundation, the potential participant base would be stretched by allowing other institutional investors to become involved as well. However, the rule established by SCGOP, i.e. that each participant should ultimately speak for itself, was maintained to avoid conflict of interests between the participants of SCGOP with a variety of interests themselves. This potential conflict of interest between participants is crucial for understanding what Eumedion has done and how it has worked over the last ten years.

Consequently, in 2006, Eumedion was established as a foundation of institutional investors. As each individual institutional investor is confronted with problems of a shortage of resources to invest in active involvement, issues of free riding, and problems of collective action, Eumedion was seen as a good way to solve these problems and coordinate on issues that mattered to all participants. Its aim was to improve the relationship between company

management and institutional investors. Eumedion's establishment, the services and activities it developed, and the position it obtained over time as an intermediary between institutional investors and company management can be understood best in this light. Eumedion's aim and related activities were developed to accommodate active involvement, reduce free rider problems and stimulate collective action of institutional investors participating in the foundation, having in mind the specific interests of these investors, i.e. creation of (long-term) company value. Given the impact of the corporate scandals of the 1990s and early 2000s, Eumedion's focus was on improving corporate governance and sustainable performance from its start, as weak corporate governance was seen as one of the main obstacles to achieving (long-term) company value. At the same time, it was argued that improving corporate governance and sustainable performance requires a more active investor involvement.

3.4 Eumedion: Its aims and objectives

As was mentioned above, Eumedion is a foundation of institutional investors that represents these investors' interests as owners of shares in Dutch listed companies. Its approach is based on fact finding and dialogue with all parties concerned, e.g. company management as well as domestic and international governmental institutions. Basically, Eumedion provides an important step in reducing the earlier described coordination problem, i.e. it solves a number of collective action problems among institutional investors. The foundation acts as a broker, or intermediary, between individual investors and coordinates their involvement. Eumedion is one of a few foundations around the world facilitating collective action of institutional investors. Similar associations have been established in Australia, Brazil, Canada, Hong Kong, Italy, Malaysia, UK and the USA. Appendix I provides a list of these associations.

The importance of investor associations such as Eumedion becomes larger when larger numbers of institutional investors hold relatively smaller sets of shares of a company. Such dispersed ownership makes collective action problems among shareholders more pressing. This was the situation for many Dutch listed companies, at least in the mid-2000s. In 2005, just before the establishment of Eumedion, the median value of the largest voting block of Dutch listed companies was only around 10 per cent. This was comparable to the value for listed companies in the UK, but (much) lower than the value for Germany (almost 60 per cent), and Italy (55 per cent), and France (20 per cent).

When looking at Eumedion's objective and mission, its role as a representative of institutional investors in solving a collective action problem becomes clear. According to the website of Eumedion, its objectives are: "... to maintain and further develop good corporate

governance and sustainability performance on the basis of the responsibility of institutional investors established in the Netherlands”; and “... to advance the acceptance of, and compliance with, generally accepted corporate governance standards by listed companies and institutional investors in the Netherlands and Europe in particular.” Moreover, its mission is defined as follows: “...to enhance the corporate governance, environmental and social performance and strategy of listed companies”; and “... [to encourage Eumedion’s participants] to take their own ESG-performance to a higher level.” Eumedion specifies the following activities to achieve its mission: “Encouraging joint consultations between institutional investors, listed companies and their representative organizations; consulting with the Dutch government, institutions of the European Union, other relevant authorities and sectoral organizations; influencing legislation and regulations; providing services in the field of corporate governance to its member[s]; [and] undertaking other activities, for example organizing seminars, symposia and roundtables...”

Both the objectives and mission show that Eumedion indeed focuses on representing the interests of institutional investors with respect to the quality of corporate governance and sustainability of Dutch listed companies, by coordinating and organizing shareholder activism among its participants and by actively communicating these interests with company management, as well as with norm setting institutions, in- and outside the Netherlands. This also explains why institutional investors both from Dutch as well as foreign origin showed interest in being a participant in Eumedion.

The foundation’s objectives and mission also make clear, however, that it not only acts as an intermediary facilitating collective action of investors vis-à-vis management of Dutch companies to help improve their corporate governance practices. In addition, it aims at improving corporate governance and sustainability practices of institutional investors themselves, such as increased shareholder engagement, a focus on sustainability next to financial performance, improving transparency regarding voting behavior, etc. In other words, it also aims at educating its participants in focusing on and applying best practices regarding corporate governance and sustainability. As discussed in section 3.3, the fact that the Code prescribes what is expected from shareholders in terms of good governance was a reason for institutional investors to become participants of SCGOP and, later on, of Eumedion as it could support them in developing responses to the prescriptions in the Code.

3.5 The participants of Eumedion

Table 1 provides an overview of Eumedion's participants during the period 2006-2015. As shown in panel A of the table, the number of participating institutions increased from 52 in the first year of its establishment to 68 in 2009, after which it fell to 62 in 2015. Most participants were pension funds. In 2006, 31 pension funds were participating (i.e. 60 per cent of all participants). This number increased to 42 in 2009 but dropped to 32 in 2015 (52 per cent). One reason for this drop is the consolidation of the Dutch pension funds industry. Since 2008 the number of Dutch pension funds decreased from 656 to 348 in 2014 (Statistics Netherlands). In particular, the number of company-related pension funds dropped substantially (from 547 in 2008 to 268 in 2014; Statistics Netherlands). Over time, therefore, pension funds became less dominant as participants in Eumedion. The number of other types of institutional investors (i.e. insurance companies, asset managers, investment funds, etc.) consistently increased from 21 in 2006 to 30 in 2015.

Between 2006 and 2011, the share of company-related pension funds in the total number of participating pension funds varied around 50 per cent; from 2012 the share of industry-wide pension funds was slightly but consistently higher than that of company-related funds. This again may be the result of the process of consolidation of (most company-related) pension funds that took place after 2008.

The majority of Eumedion's participants were Dutch institutional investors. Their share fluctuated between 75 and 85 per cent over the ten year period. Of the foreign participants, most were from the US. The strongest rise in the number of foreign participants was one year after Eumedion's establishment (i.e. from 8 to 12). After 2007 the number of foreign institutional investors fluctuated between 10 and 14.

Panel B of table 1 shows data for the 30 institutional investors that were participating during the full ten year period. Almost two thirds of them were pension funds. The number of company-related and industry-wide funds was almost the same. Overall, 91 different institutional investors have been members of Eumedion during the past ten years. Two thirds of them were a member for six or more years.

Table 1: Eumedion's participants, 2006-2015

<i>Year</i>	<i>N° of participants</i>	<i>N° of pension funds</i>	<i>N° of other participants</i>	<i>N° of company-related pension funds</i>	<i>N° of industry-wide pension funds</i>	<i>N° of Dutch participants</i>	<i>N° of foreign participants</i>
<i>Panel A: Characteristics of all participants</i>							
<i>2006</i>	52	31	21	17	14	44	8
<i>2007</i>	63	39	24	19	20	51	12
<i>2008</i>	63	39	24	18	21	50	13
<i>2009</i>	68	42	26	21	21	56	12
<i>2010</i>	64	38	26	20	18	51	13
<i>2011</i>	66	39	27	20	19	52	14
<i>2012</i>	65	37	28	18	19	52	13
<i>2013</i>	61	33	28	15	18	51	10
<i>2014</i>	63	33	30	15	18	52	11
<i>2015</i>	62	32	30	15	17	48	14
<i>Panel B: Characteristics of institutional investors participating in all ten years</i>							
<i>2006-2015</i>	30	19	11	10	9	23	7

Table 1 (continued): Eumedion's participants, 2006-2015

<i>Panel C: Number of institutional investors participating from one to ten years</i>	
<i>Number of years participating</i>	<i>Number of institutional investors</i>
1	3
2	11
3	4
4	9
5	2
6	6
7	12
8	5
9	9
10	30
<i>Total number of participating institutional investors</i>	
	91

Source: Information obtained from the Eumedion secretariat and Eumedion's annual reports 2006-2015

Notes: Other participants include insurance companies, asset managers, investment funds, etc.

3.6. Corporate governance and sustainability and the process of norm development

Eumedion represents the interests of its participants in order to improve and implement corporate governance and sustainability practices in the Netherlands. However, the activities of Eumedion cannot be understood without having an impression of the wider field in which discussions about corporate governance and sustainability take place and an overview of the other actors are in the field with which Eumedion has these discussions.

In this context, it is important to realize that these discussions aim at developing so-called norms of corporate governance and sustainability. These norms describe how (good) corporate governance and sustainability should look like. These may either be formal (rules and regulations) or informal (best practices). The process of developing norms can be broken down in three stages, or steps, i.e. norm setting, norm spreading and norm implementation. In the norm setting stage, norms regarding corporate governance and sustainability are established. During the second stage, these norms are diffused, or disseminated, to the parties in the field who are supposed to act according to these norms. In order to make sure they act upon the norms, they should be made aware of these norms. During the third stage, it is

evaluated whether and to what extent norms are being applied and whether norms need to be adjusted in order to improve corporate governance practices.

This process of norm development (consisting of the three stages) results in a so-called negotiated order, since the norms provide a benchmark based on which corporate governance and sustainability practices can be measured. The norms standardize acceptable practices. It is a legitimate reference point to determine whether company or organizational governance practices deviate from the norm.

Another important remark is that the process of norm development is also negotiated, since the norms are an outcome of a process, in which a variety of actors with specific interests try to push their different and sometimes even opposing ideas with respect to the content of these norms. This means that norms usually are the outcomes of debates, in which a compromise has to necessarily be made. The outcome of the debate is determined by the input different actors provide in combination with the power they have to push their interests.

As a final remark, once norms are established they do not necessarily remain fixed over time. In practice, established norms may be subject of discussions and debates about how to improve or change their content. In this sense, therefore, they may be seen as only temporary arrangements and subject to regular changes.

With this in mind, it is good to realize that Eumedion is only one among many players in the process of norm development aiming at representing the interests of its participants, in the Netherlands as well as internationally.

In the Dutch context, when it comes to proposing and setting (new) corporate governance and sustainability norms, important players are first of all several Dutch Ministries, in particular the Ministry of Finance, the Ministry of Economic Affairs, the Ministry of Security and Justice and the Ministry of Social Affairs. These ministries prepare relevant laws and norms on corporate governance and sustainability relevant for companies and their owners. Second, both the House of Representatives (de Tweede Kamer) and the Senate (de Eerste Kamer) are relevant, because they largely determine Dutch legislation. Third, the Dutch Corporate Governance Monitoring Committee is an important party, because it is installed to help ensure that the Dutch Corporate Governance Code is practically relevant and up to date. Moreover, it is responsible for monitoring the compliance with the Code by Dutch listed companies and institutional investors. Fourth, there are other government related organizations such as the Netherlands Authority for the Financial Markets (AFM) and the Dutch Central Bank (De Nederlandse Bank) that are relevant for developing corporate governance and sustainability norms. Fifth, the Dutch Accounting Standard Board is a

relevant party since it fosters the quality and practicality of external reporting within the Netherlands, particularly when it concerns the financial statements by corporations and legal entities.

Whereas the above listed institutions mainly focus on proposing and setting norms, other parties mainly aim at influencing the process of establishing norms. Eumedion may be considered as one of these parties.⁷ Next to Eumedion, first of all the “Vereniging Effecten Bezitters” (VEB) should be mentioned. VEB is an association of 45,000 members, representing the interests of the individual, often smaller, investors in the Netherlands. Essentially, it is the counterpart of Eumedion. Their interests do not always align with the interests of institutional investors. Second, the Association of Securities Issuing Companies (“Vereniging van Effecten Uitgevende Ondernemingen”, VEUO) represents the interests of the listed companies in the Netherlands. Third, The Royal Netherlands Institute of Chartered Accountants (NBA) represents the professional interests of accountants in the Netherlands. Fourth, Euronext Amsterdam is an exchange network that makes listed company equities accessible to a global pool of institutional and retail investors. Finally, the employers’ organization VNO-NCW, (Confederation of Netherlands Industry and Employers) and, to a lesser extent, labor unions such as the FNV and CNV should be mentioned as they also play their role in the field of developing norms related to corporate governance.

At the international level, the field of corporate governance in which norm development takes place is even more complicated. A central actor is the European Union with several different sub-actors working on corporate governance related issues. Second, the International Accounting Standards Board (IASB) creates financial reporting standards, which also have consequences for the Dutch context in general and for financial reporting practices of listed firms in particular. Finally, the International Corporate Governance Network (ICGN) is an investor-led organization with a mission to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies worldwide.

As we will discuss in chapter 4, within the above described national and international corporate governance field, Eumedion aims at influencing and spreading corporate governance and sustainability norms. Moreover, it aims to contributing to the implementation of these norms by companies and institutional investors. In particular, the discussion in chapter 4 will shows how Eumedion tries to contribute to the three stages of the norm development process discussed above.

4. Eumedion's role in shaping Dutch corporate governance: An overview

4.1 Introduction

In this chapter, we discuss Eumedion's role in shaping Dutch corporate governance by describing and analyzing different sets of documents. The analysis of the documents is substantiated by interviews with experts in the field of corporate governance in the Netherlands. We analyze Eumedion's role by using a theoretical framework that divides its contribution into three different stages of norm development, i.e. norm setting, norm spreading and norm implementation. Figure 6 provides an overview the stages of the norm development process. One important observation that needs to be stressed right from the beginning of the discussion in this chapter is that Eumedion is uniquely involved in all three.

In the remainder of this chapter, we first describe the data collection process. Next, we discuss the three different stages of norm development and describe Eumedion's involvement based on a description of documents produced by Eumedion belonging to each of the three stages.

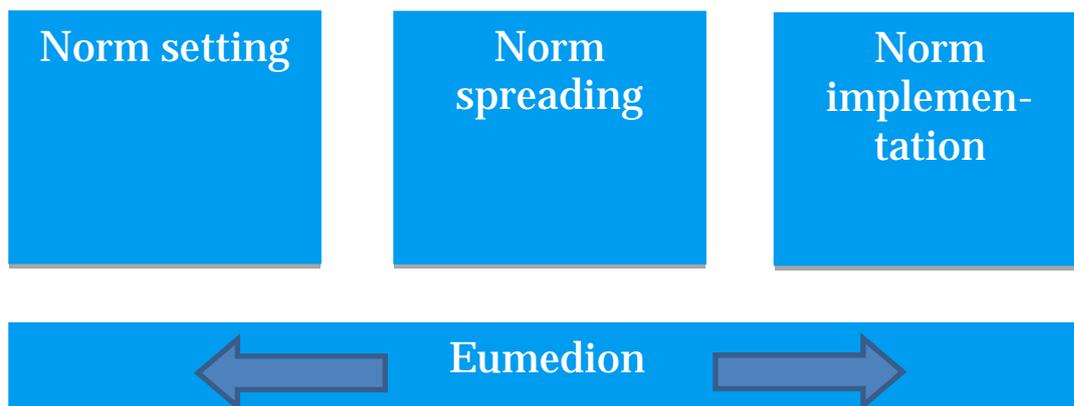


Figure 6: Eumedion's role in the norm development process

4.2 The data collection process

In order to be able to analyze Eumedion's contribution in shaping the Dutch corporate governance landscape since 2006, we use a large data set of documents. In particular, our data consists of documents that are publicly available from Eumedion's website as well as documents we obtained from Eumedion's secretariat. It consists of Eumedion's Corporate Governance Manuals, policy plans (beleidsplannen), annual reports, position papers, comment letters, consultation reactions, focus letters, company dialogue agendas and reports, company alerts, and annual evaluations of AGMs. Finally, we collected information about the media attention for Eumedion from six Dutch newspapers and two Dutch weekly magazines using

the LexisNexis database. The data covers the period 2005-2016. However, not all documents are available for all years. In appendix II, we provide an overview of the data sources we have used for this research project.⁸ In total, we have collected and analyzed over 1,000 documents.

We largely used the same approach to collect our data from the different sets of data sources to which we had access for this project. In particular, when collecting the data from the sources mentioned above, we started with a coding scheme based on the structure of the Dutch Corporate Governance Code (version 2008) at the level of principles to classify the content of the documents into different topics. The Code distinguishes twenty principles. By using the structure of the Code, the coding system is transparent, leading to a logical classification of information into different categories of corporate governance topics. Next to using the Code structure to determine corporate governance categories, we added several categories of topics, which are not covered by the Code, but are of interest with respect to Eumedion's involvement in shaping Dutch corporate governance. These topics include corporate social responsibility, corporate tax avoidance, company strategy and merger and acquisitions policies, etc. Appendix III presents the full list of principles and topics we use for coding the content of the documents. The data have been collected with the help of four student assistants.

Next to collecting information from these documents we held interviews with experts in the field of corporate governance in the Netherlands. The details on how these interviews were carried out, who participated, and how they have been used in the analysis is described in detail in appendix II.

We use the content of the documents and interviews to provide a chronological description of the topics Eumedion has focused on. In particular, our approach allows us to analyze what topics were discussed, when they were discussed, who was involved in these discussions and why these topics were discussed at the time.

4.3 Norm setting: How Eumedion influences the process of establishing of norms

Since 2006, Eumedion has been actively engaged in the process of developing the rules of the game of corporate governance and sustainability performance. It participates in discussions about, and is actively involved in setting and changing norms with respect to law and regulations, as well as best practices concerning corporate governance and sustainability. In this capacity it actively interacts with a wide range of Dutch and foreign private and governmental institutions. The list of institutions includes Dutch Ministries such as the

Ministry of Finance and the Ministry of Security and Justice, the Dutch Central Bank (DNB), the Netherlands Authority for the Financial Markets (AFM), the Dutch Corporate Governance Code Monitoring Committee, the Royal Netherlands Institute of Chartered Accountants (NBA), the Dutch House of Representatives, and the European Union. By being actively involved in policy forming debates, Eumedion aims at communicating the interests of institutional investors with a focus on corporate governance best practices. In addition, Eumedion aims at influencing the norm setting process with respect to corporate governance by having representatives of the foundation's secretariat as members of Dutch and foreign committees, which discuss and decide on norm setting. Examples of these committees are the Dutch Accounting Standard Board (DASB; Raad van de Jaarverslaggeving), AFM, NBA, the International Corporate Governance Network (ICGN) and the International Accounting Standards Board (IASB).

We first provide a description of the interactions Eumedion has with various Dutch and foreign institutions by presenting summary statistics of the correspondence it has with these institutions. In particular, we discuss the number and content of so-called consultation reactions and comment letters. In these documents Eumedion responds to new rules and regulations (i.e. norms) regarding corporate governance and sustainability performance in the Dutch context, as well as to initiatives and proposals related to changing these rules and regulations. The difference between these two types of documents is that in case of consultation reactions the norm setting institution actively solicits input from outside parties (of which Eumedion is one). In case of comment letters, Eumedion provides input to new regulations without the explicit invitation of the institution to do so. With these documents, it aims at communicating its view on the proposed norm setting and its impact on the corporate governance practices of Dutch (and European) companies. In several cases, it provides suggestions for changing or amending rules and regulations. The consultation reactions and comment letters are essentially reactive in nature.

In addition, we take into account the so-called position papers. In these papers, Eumedion communicates its stance with respect to a specific corporate governance topic (such as engaged ownership, protection of minority ownership) in order to influence the norm setting process. The position papers are not directed specifically to a norm setting institution. They are intended to boost discussions about norm setting and/or changes among a wider audience of national and international specialists in the field. In the position papers, Eumedion shows to be a thought leader in which it communicates about its views on developing new norms and/or about changing existing ones (interview transcripts, p.46).

Finally, we document to what extent members of Eumedion’s secretariat and/or representatives of its participants are members of boards or committees that are involved in the norm setting process. These board and committee positions also allow Eumedion to influence the norm setting process. Figure 7 provides an overview of our analysis of Eumedion’s involvement in the norm setting stage of the norm development process.

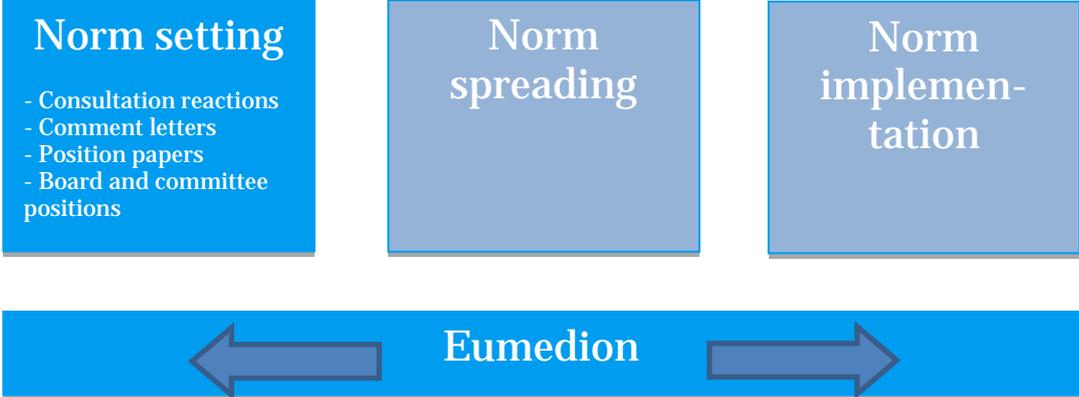


Figure 7: Eumedion’s role in the norm setting process

Eumedion’s consultation reactions, comment letters and position papers

Table 2 provides an overview of the number of position papers, consultation reactions, comment letters, and letters Eumedion has produced during the period 2006-2016. The total number of these documents is 283 (i.e. 26 per year). Overall, this suggests Eumedion has been rather active in participating in debates on norm setting regarding corporate governance in the Netherlands. As the table shows, consultation reactions have been used most often, i.e. 54 per cent of the total. The table also shows that with respect to the consultation reactions and comment letters taken together, Eumedion was equally active during the first and second part of the period. During the first half of the period 2006-2016 (i.e. 2006-2011) Eumedion produced 134 documents (51 per cent of the total), whereas in the second half of the period it was 131.

The data in table 2 indicate that by preparing a large number of consultation documents, Eumedion first and foremost responds to invitations to reflect on proposals for new, and/or changing existing, rules and regulations. In this way, it is able to influence the norm setting process at an early stage. Several of the consultation reactions contain detailed technical comments. For instance, a consultation on a proposal to change existing legal rules regarding the external auditor addressed to the Ministry of Finance, Eumedion provided detailed remarks on various articles such as that used terminology in the articles could lead to

misunderstanding, that some articles are redundant in view of other articles in the same amendment, etc. (Eumedion, 2007b). Another example is Eumedion’s response to a consultation by the Netherlands Authority for the Financial Markets (and the Dutch Central Bank) regarding the expertise (future) directors of financial institutions should possess (Eumedion, 2010). Apart from remarking that the proposed amendment did not explicitly refer to the original rule it is supposed to amend, Eumedion also made a remark that should help rulemakers to simplify the categorization of the types of financial institutions (which subsequently will determine the regime that the institution has to apply). According to the interviewees, Eumedion’s consultation reactions are seen as an important source of information for those involved in proposals for new and/or changing existing rules and regulations because of their in-depth discussion of various technical aspects and consequences of these proposals (interview transcripts, p.40, p.214).

Table 2: Number of documents per year and per type, 2006-2016

	<i>Consultation reactions</i>	<i>Comment letters</i>	<i>Position papers</i>	<i>TOTAL</i>
<i>2006</i>	2	6	0	8
<i>2007</i>	15	9	0	24
<i>2008</i>	7	13	2	22
<i>2009</i>	13	7	0	20
<i>2010</i>	17	9	1	27
<i>2011</i>	25	11	1	38
<i>2012</i>	7	27	1	34
<i>2013</i>	12	12	1	25
<i>2014</i>	24	4	2	30
<i>2015</i>	17	9	2	28
<i>2016</i>	14	5	6	25
<i>Year unknown</i>	0	0	2	2
TOTAL	153	112	18	283

Sources: Documents obtained from the Eumedion website (website accessed September 2016)

Note: The year of publication of 2 of the 18 position papers is not available. Eumedion’s website provides a larger number of documents under the heading of position papers. For the analysis we did not take into account the reports containing written input related to hearings of the House of Representatives. Moreover, one document appeared twice on the list of position papers with different document names.

Table 3 provides more details regarding the targeted institutions. According to this table, Eumedion had most interactions with the Dutch Ministry of Finance (18 per cent of the total), the European Commission (18 per cent), the House of Representatives and its committees (16 per cent), and other foreign institutions such as the European Securities and Markets Authority (ESMA), ESMA's predecessor Committee of European Securities Regulators (CESR), IASB and ICGN (20 per cent). Interaction with the Ministry of Finance took place in all years during the period 2006-2016 and was most active in 2011 (10 times). The same holds for its interaction with the Dutch House of Representatives (except for 2016), with 2008 being the peak year in terms of interaction (8 times). Its interaction with the European Union was quite evenly spread over the year, although in 2010 the number of interactions peaked to 9. Finally, other foreign institutions became increasingly important as targets of consultation reactions and comment letters. The share of interactions with these institutions for the period 2012-2016 was almost two thirds of the total number of interactions for the entire period.

The focus on interaction with the Ministry of Finance, the House of Representatives and the European Commission may not be surprising as these institutions are involved most intensively in developing rules and regulations regarding corporate governance. In particular, the Ministry of Finance is responsible for rule setting with respect to issues related to the transparency of capital markets and protection of investor rights.

The conclusion that may be drawn from the data in table 3 is that Eumedion has been sitting at many different tables to discuss the setting and/or changing of rules and regulations. In most cases, the discussion partners were representing institutions directly responsible for setting these rules in the Netherlands and the European Union.

Table 3: Number of documents per year and per targeted institution, 2006-2016

	<i>AFM and DNB</i>	<i>Foreign institutions</i>	<i>EU</i>	<i>Min. of Finance</i>	<i>Min. of Sec. and Justice</i>	<i>Monitoring Committee</i>	<i>NBA</i>	<i>Other Dutch institutions</i>	<i>Other Dutch Ministries</i>	<i>Senate and committees</i>	<i>House of Representatives and committees</i>	<i>Position papers*</i>	<i>TOTAL</i>
<i>2006</i>	0	1	0	2	0	0	0	0	0	1	4	0	8
<i>2007</i>	1	2	7	4	1	2	0	1	0	0	6	0	24
<i>2008</i>	0	0	1	5	2	1	1	1	0	1	8	2	22
<i>2009</i>	3	4	6	2	1	0	0	0	0	0	4	0	20
<i>2010</i>	1	4	9	5	1	0	1	0	0	1	4	1	27
<i>2011</i>	1	10	6	10	0	0	2	1	0	0	6	1	37
<i>2012</i>	1	9	5	7	1	0	2	0	1	1	7	1	35
<i>2013</i>	1	9	2	4	1	0	1	2	1	0	3	1	25
<i>2014</i>	0	6	5	4	4	0	4	2	2	0	1	2	30
<i>2015</i>	0	9	6	5	1	0	1	0	0	0	4	2	28
<i>2016</i>	0	3	4	4	3	2	3	0	0	0	0	6	25
<i>Unknown</i>	0	0	0	0	0	0	0	0	0	0	0	2	2
<i>TOTAL</i>	8	57	51	52	15	5	15	7	4	4	47	18	283

Sources: Documents obtained from the Eumedion website (website accessed September 2016)

Note: AFM = Netherlands Authority for the Financial Markets; DNB = Dutch Central Bank; NBA = Royal Netherlands Institute of Chartered Accountants

* Position papers are not specifically directed to an institution or committee. They are therefore reported in a separate column in this table. The year of publication of 2 of the 18 position papers is not provided.

Table 4: Number of documents per year and per type of rules and regulations, 2006-2016

	<i>Dutch law</i>	<i>Dutch regulations and codes</i>	<i>Other Dutch regulations</i>	<i>EU Directives</i>	<i>Other international rules*</i>	<i>Best practices-International</i>	<i>Foreign rules and regulations**</i>	<i>Other</i>	<i>Position papers***</i>	<i>TOTAL</i>
<i>2006</i>	7	0	0	0	0	0	0	1	0	8
<i>2007</i>	10	3	1	7	0	0	0	3	0	24
<i>2008</i>	11	1	6	2	0	0	0	0	2	22
<i>2009</i>	4	2	3	6	1	3	0	1	0	20
<i>2010</i>	10	0	2	5	1	0	1	7	1	27
<i>2011</i>	11	0	5	6	2	0	3	9	1	37
<i>2012</i>	11	2	6	7	3	0	0	5	1	35
<i>2013</i>	7	1	4	1	5	0	0	6	1	25
<i>2014</i>	9	1	6	4	4	0	1	3	2	30
<i>2015</i>	10	0	1	5	8	1	1	0	2	28
<i>2016</i>	6	2	3	4	1	0	0	3	6	25
<i>Unknown</i>	0	0	0	0	0	0	0	0	2	2
<i>TOTAL</i>	96	12	37	47	25	4	6	38	18	283

Sources: Documents obtained from the Eumedion website (website accessed September 2016)

Notes: * Other international rules and regulations (excluding EU Directives) that may affect companies in several countries; ** Rules and regulations applied by an individual foreign country affecting companies in countries outside this country; *** Position papers are not focused on specific rules or regulations. They are therefore reported in a separate column in this table. The year of publication of 2 of the 18 position papers is not provided.

Table 4 shows the type of rules and regulations to which consultation reactions and comment letters are responding.⁹ The table shows most documents deal with new and/or changes of existing Dutch (corporate) law (34 per cent). Eumedion produced ten or more documents addressing Dutch law regarding corporate governance in six out of eleven years.

In this respect, it showed being a little bit more active during the first half of the 2006-2016 period (i.e. 55 per cent of all documents produced over the whole period). It also showed to be relatively active in responding to proposals for directives from the European Union regarding corporate governance (12 per cent). Again, a slightly higher activity shows up during the first half of Eumedion's existence (i.e. 55 per cent of all documents during 2006-2011). The information provided in this table supports the conclusion that a large share of Eumedion's discussions was with institutions responsible for setting rules and regulations related to corporate governance in the Netherlands and the European Union. In table 5 we show the breakdown of position papers, consultation reactions and comment letters with respect to the topics they discuss. The table clearly shows Eumedion was involved in a wide range of topics. The most important topics discussed in the documents were developments in the financial markets in general (mainly focusing on issues related to the functioning and efficiency of stock markets; 18 per cent), developments with respect to the banking sector (emphasizing issues such as the role of banks as intermediaries, banking crisis, remuneration and the Basle regulatory standards; 14 per cent), the role of the auditor (12 per cent), shareholder rights (14 per cent), and financial reporting (16 per cent). The attention for financial markets and the banking sector in particular seems to be related to the financial crisis of 2007-2009 and its consequences for corporate governance in the Netherlands. During 2008-2012 Eumedion produced close to 63 per cent (i.e. 57 of 90) of all documents on these two topics. The turmoil within the financial sector had important consequences for government policies and generated a wave of new legislation. The large number of legal changes and the formulation of banking codes and regulations resulted in Eumedion being very active in order to represent the interests of institutional investors in the norm setting stage. Thus, according to our analysis, Eumedion clearly showed its strong involvement in monitoring how norm setting institutions dealt with addressing the causes and consequences of the crisis and its consequences for corporate governance.

Table 5 also suggests that during the initial stage of its existence Eumedion put more emphasis on responding to rules and regulations regarding shareholder rights as compared to the more recent period: 24 of 37 documents were produced during 2006-2011. An important reason for this change may be that shareholder rights have been improved considerably over

the years. Especially the improved provisions around the AGMs, for which Eumedion actively lobbied, have contributed to a much better dialogue between the shareholders and (institutional) investors.¹⁰ An important example is the legally defined period when companies should announce the AGM and the agenda (plus accompanying documentation). In 2011, this has been extended from 15 days to 42 days. As a result, shareholders have much more time to study the documentation, and prepare their voting strategies (individually or jointly with other investors). Combined with the new prescriptions of the Code, the dialogues between shareholders and companies have improved considerably, a view that was confirmed by several interviewees (see for example interview transcripts, p.221).

Eumedion's reduced attention for rules and regulation regarding shareholder rights matches the more general observation that many of the core and process-related corporate governance issues have been addressed to a large extent (interview transcripts, p. 220). This is also corroborated by the fact that compliance of companies with Dutch Corporate Governance Code has been improved since 2004 and has been high, especially during recent years.¹¹

Moreover, the table shows that the role of the auditor seems to have become an important topic for Eumedion during the second half of the 2006-2016 period as 20 of in total 33 documents were produced during these years. This shift of attention is, at least to some extent, also driven by the fact that over the years norm setting institutions have shifted attention more towards issues related to the importance of disclosure and transparency, and the role of the auditor. This is, for example, true for the Dutch Code of Corporate Governance. Eumedion's change of focus in terms of topics addressed over time is the most important take-away of the table.

Table 5: Number of documents per year and per corporate governance topic

	<i>Auditor</i>	<i>Executive compensation</i>	<i>Corporate governance Code</i>	<i>Non-executive directors</i>	<i>Corporate governance, other</i>	<i>Financial markets</i>	<i>Banking industry</i>	<i>Acquisitions</i>	<i>Shareholder rights</i>	<i>Financial reporting</i>	<i>Other</i>	<i>TOTAL</i>
<i>2006</i>	0	0	0	0	0	0	0	4	3	1	0	8
<i>2007</i>	5	0	2	0	1	3	0	1	7	3	2	24
<i>2008</i>	0	5	4	0	1	3	0	0	6	0	3	22
<i>2009</i>	0	0	3	1	1	6	3	1	1	2	2	20
<i>2010</i>	2	2	1	0	1	5	5	0	6	3	2	27
<i>2011</i>	6	2	0	0	1	10	7	0	1	5	5	37
<i>2012</i>	4	1	2	0	2	11	7	0	0	7	1	35
<i>2013</i>	5	1	2	0	2	6	4	0	0	5	0	25
<i>2014</i>	4	0	1	0	0	2	3	0	3	9	8	30
<i>2015</i>	5	0	1	0	0	2	6	0	4	6	4	28
<i>2016</i>	2	0	2	0	0	3	4	0	4	6	4	25
<i>Unknown</i>	0	0	0	0	0	0	0	0	2	0	0	2
<i>TOTAL</i>	33	11	18	1	9	51	39	6	37	47	31	283

Sources: Documents obtained from the Eumedion website (website accessed September 2016)

Note: The content of the documents has been classified using broad categories of themes and issues in corporate governance, such as the role of the auditor (*Auditor*), executive compensation, responses to the content and structure of the Corporate Governance Code (*Corporate Governance Code*), the role of non-executive directors, other topics in corporate governance (*Corporate governance, other*), the functioning and efficiency of the stock markets (*Financial markets*), the banking sector (*Banking industry*), acquisitions, shareholder rights, financial reporting and other issues.

Table 6: Topics of position papers, 2008-2016

<i>Year</i>	<i>Corporate governance topic</i>	<i>Content of the position papers</i>
<i>Unknown</i>	IV.4	Acting in concert
<i>Unknown</i>	IV.1	Sovereign wealth funds (SWFs)
2008	IV.1	Hidden ownership and empty voting
2008	IV.1	Securities lending
2010	IV.1	Engaged ownership
2011	III.8	One-tier board structure
2012	V.1	Disclosure of consolidation of partly-owned subsidiaries
2013	-	The future of banks
2014	-	Future of the Dutch stock market
2014	IV.1	Engaged ownership
2015	IV.1	Protection minority shareholders
2015	IV.1	Corporate tax policy
2016	-	Regulation
2016	IV.1	Protection minority shareholders
2016	-	Climate change
2016	-	Country-by-country-reporting taxes
2016	IV.1	Protection minority shareholders
2016	-	Position Eumedion on Shareholder Rights Directive

Source: Documents available on Eumedion's website (accessed September 2016)

Finally, table 6 provides information on the position papers. As mentioned, these papers are different from the other documents as they are not specifically directed towards to a specific norm setting institution. Instead, they aim at boosting discussions about norm setting and/or changes. First, the table shows a change in how Eumedion sees itself. The number of position papers seems to be growing over time. Especially during the years 2014-2016 Eumedion was (very) active in writing these papers. This may be seen as evidence for the fact that over time it became increasingly proactive by actively giving shape to its role in debates as a thought leader. Second, the table shows that the majority of the position papers deals with topics related to the powers of shareholders (e.g. protection of minority shareholder rights, securities lending) and the responsibility of the shareholders (e.g. engaged share ownership, acting in concert). This is not surprising given the central aim of the foundation.

Some papers also deal with more general topics, however, such as reflections on trends in Dutch financial markets. These papers serve more as analyses of current trends.

Eumedion's committee membership

As mentioned, Eumedion may also aim at influencing the norm setting process by having representatives of the association's secretariat as members of Dutch and foreign committees, in which norm setting is discussed and decided upon. Next to influencing publishing position papers and reacting to proposals with comment letters and consultation documents, joining boards and committees of domestic and international organizations involved in the norm setting processes may be effective in influencing the outcomes of these processes.

As can be seen in table 7, over time Eumedion became part of domestic and international networks of institutions working in the field of corporate governance and sustainability by joining a variety of boards and committees. The table lists the board and committee membership of members of Eumedion's secretariat, as well as of representatives of its participants, for the period 2006- 2016. It first of all shows that Eumedion is active in several Dutch and international committees in which topics related to corporate governance are discussed and in which new, or changes to existing, rules and regulations are developed. Eumedion's network of organizations in which it participates seems to have widened considerably over the years. Whereas in 2006 it held positions in only 4 organizations, in 2016 had gone up to 12. The number of positions in these organizations increased from 5 to 24 over the same period. Whereas during the first few years (i.e. until 2011), the majority of the organization was of Dutch origin, this changed from 2012 onwards. The majority of the positions held were committee memberships. In a number of cases, the representatives of Eumedion held the chair or vice-chair position in these committees.

The table also shows that Eumedion has been particularly active in ICGN, an international think tank on corporate governance. This is an international network established and led by international institutional investors focusing on promoting standards of corporate governance and investor stewardship. ICGN has established Global Governance Principles in which its participants communicate their views on international standards of corporate governance and sustainability. Eumedion and representatives of its participants play an important role in the ICGN's organization, both in its board as well as in several of its committees. Moreover, representatives of Eumedion hold positions in the Council and several committees of the International Integrated Reporting Council (IIRC).

Table 7: Board and committee positions of members of Eumedion’s secretariat and representatives of its participants, 2006-2016

<i>Year</i>	<i>N° of institutions</i>	<i>N° of international institutions</i>	<i>N° of domestic institutions</i>	<i>N° of positions</i>	<i>N° of board positions</i>	<i>N° of committee memberships</i>	<i>N° other positions</i>
2006	4	2	2	5	0	4	1
2007	8	3	5	10	2	4	4
2008	10	4	6	20	2	13	5
2009	7	3	4	17	2	10	5
2010	8	4	4	18	2	12	4
2011	7	3	4	20	2	15	3
2012	10	6	4	20	2	11	7
2013	10	5	5	21	2	14	5
2014	11	6	5	20	2	13	5
2015	11	6	5	19	2	13	4
2016	12	6	6	24	3	13	8

Source: Information obtained from the Eumedion secretariat and Eumedion’s annual reports 2006-2015

Notes: Data for 2016 are until September of this year. From 2012 it may be that Eumedion stopped reporting in detail about the membership of its secretariat and representatives of its participants of committees of ICGN in its annual report. The number of committee memberships of this organization dropped from 13 in 2011 to 7 in 2012. The actual number of positions and committee members in ICGN for the years 2012-2015 may therefore be higher than reported in this table.

Table 8: Board, committee and other positions of members of Eumedion’s secretariat and representatives of its participants, 2007 and 2016

Panel A: 2007

<i>Organization</i>	<i>Scope</i>	<i>Number of boards, committees and other positions</i>	<i>Focus</i>	<i>Number of positions</i>
ICGN	International	1	International corporate governance	1
EFAL	International	1	Auditing	1
GAID	International	1	Auditing	1
DASB	Dutch	2	Accounting standards	2
MCCG	Dutch	1	Corporate governance	2
NRCT	Dutch	1	Corporate governance	1
SER	Dutch	1	Corporate governance	1
SCA	Dutch	1	Corporate governance	1

Panel B: 2016 (September)

<i>Organization</i>	<i>Scope</i>	<i>Number of boards, committees and other positions</i>	<i>Focus</i>	<i>Number of positions</i>
ICGN	International	7	International corporate governance	9
GNIA	International	1	Institutional investors	1
Stewardship Codes Network	International	1	Shareholder engagement	1
IASB	International	1	Accounting standards	1
IIRC	International	3	Integrated reporting	4
EFRAG	European	1	Financial reporting	1
ESMA	European	1	Financial market regulation	1
DASB	Dutch	1	Accounting standards	2
AFM	Dutch	1	Financial market regulation	1
IIA	Dutch	1	Auditing	1
Radboud University Nijmegen	Dutch	1	Research corporate law and governance	1
Steering committee Energy Transition Index	Dutch	1	Corporate social responsibility	1
NBA	Dutch	1	Accountancy	1

Source: Information obtained from the Eumedion secretariat and Eumedion’s annual report 2007

Note: ICGN = International Corporate Governance Network; EFAL = European Forum Auditor Liability; GAID = Global Auditor Investor Dialogue; DASB = Dutch Accounting Standards Board; MCCG = Monitoring Committee Corporate Governance; NRCT = Nationaal Register Commissarissen en Toezichthouders; SER = Sociaal Economische Raad; SCA = Stichting Communicatiekanaal Aandeelhouders; GNIA = Global Network of Investor Associations; IASB = International Accounting Standards Board; IIRC = International Integrated Reporting Council; EFRAG = European Financial Reporting Advisory Group; ESMA = European Securities and Markets Authority; AFM = Netherlands Authority for the Financial Markets; IIA = Institute of Internal Auditors; NBA = Royal Netherlands Institute of Chartered Accountants

In the Netherlands, Eumedion representatives hold positions in various influential committees and institutions, such as NBA, DASB and AFM. These board and committee positions allow Eumedion to be actively involved in debates with respect to norm setting regarding corporate governance in the Netherlands as well as in an international context.

Table 8 compares board and committee positions between 2007 and 2016. One interesting observation is that over time board and committee positions shifted from organizations focusing on general corporate governance topics towards topics related to accounting, auditing and corporate social responsibility. This corroborates the observation made earlier that in recent years Eumedion shifted its focus more into the direction of these topics.

The Dutch Code of Corporate Governance: An example of Eumedion's involvement

The establishment and writing of the Dutch Corporate Governance Code provides a good example of how Eumedion has been involved in setting the norms in the Netherlands with respect to corporate governance and sustainability. In 2003 the Tablaksblat Committee was asked to develop a new Dutch Corporate Governance Code. The membership of Peter de Koning (of SCGOP) in this Committee was the first sign that the interest group Eumedion was going to represent from 2006 onwards mattered from the beginning in the process of setting governance norms in the Netherlands.

After the Tablaksblat Committee had developed the first version of the Code in 2003, the Corporate Governance Code Monitoring Committee was established in 2004, which was headed by Jean Frijns, the former Chief Investment Officer of ABP and former board member of SCGOP. Eumedion became supportive party ('schragende partij') of the Monitoring Committee soon after its establishment in 2006 as the successor of SCGOP, which was one of the supportive parties since 2004. With this step, Eumedion became formally embedded in the norm setting process instigated by the Committee. As an important party in monitoring and amending the code, it was directly and actively involved in discussions with the Monitoring Committee with respect to the content of the Code. In these discussions it cooperated (and still cooperates) with other supportive organizations of the Code, such as VNO-NCW (employers' association), VEUO (association of listed companies), VEB (association of Dutch private investors), FNV, CNV (both trade unions) and Euronext Amsterdam. These supportive parties provide their input for establishing the content of the Code.

Based on the input of these parties, the Committee develops a first version of a proposal for (changes of) the Code. Next, the supportive parties, as well as other societal

organizations and individuals, can react to this proposal, i.e. they are asked to provide their comments and suggestions through consultation. The Committee may take into account these comments and changes after which the final version of the Code is determined. Although ultimately the Monitoring Committee decides itself on the formulation of the Code, the Committee puts great emphasis on including the views of the supportive parties when deciding on its content. The content of the Code needs to be supported by all interested parties in order to give the code the necessary legitimacy. This increases its effectiveness in stimulating the voluntary compliance with best practices of corporate governance and sustainability. This process of code development allows Eumedion to influence the content of the Code, serving the interests of institutional investors as much as possible.

Over the years, several members of the Monitoring Committee were also representatives of participants of Eumedion. As already mentioned, Peter de Koning, former chairman of SCGOP, became member of the Tablakslat Committee and Jean Frijns was the first chair of the Monitoring Committee. Others representing participants of Eumedion have been member from 2006 to 2008 and 2013 to 2015. Moreover, the current director, Rients Abma, and one of the previous members of Eumedion's secretariat have been involved as secretary of the Monitoring Committee as well.

4.4 Norm spreading: How Eumedion disseminates the norms

Once corporate governance norms are formulated, these need to be spread within the field. Although laws and codes have a variety of channels to spread in the corporate governance community, Eumedion actively communicates the norms they have been helping to develop as well. This means that it communicates its views on corporate governance practices, rules and regulations to all related parties. First of all, it shares and communicates these views with the participating institutional investors. Moreover, it informs the Dutch listed companies about their views on corporate governance norms. Finally, Eumedion interacts with various Dutch and foreign institutions about its stance regarding corporate governance practices, rules and regulations. Figure 8 below provides an overview of how Eumedion contributes to spreading norms regarding corporate governance and sustainability.

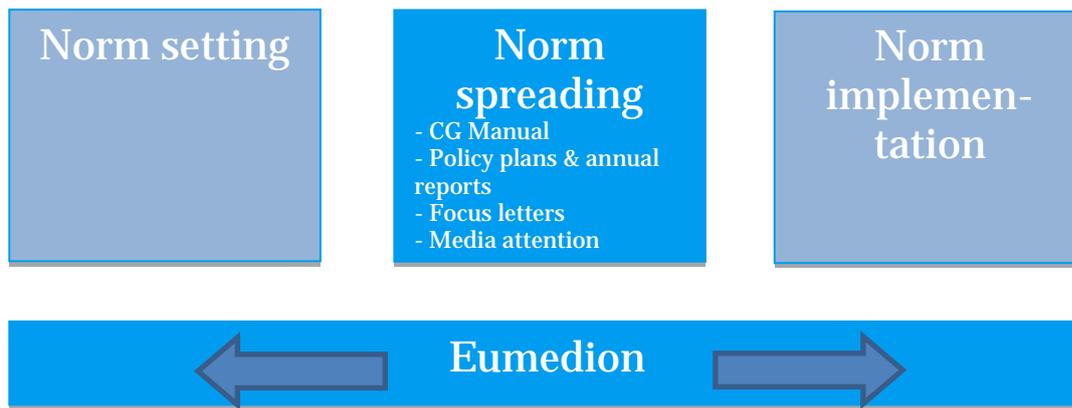


Figure 8: Eumedion's role in the norm spreading process

As part of the norm spreading process, Eumedion uses various channels of communication, all focused on making clear how Eumedion thinks about corporate governance. First, it publishes the so-called Corporate Governance Manual. The most recent version of the manual was published in 2013. The manual provides participating institutional investors with guidelines for taking part in and voting at the AGMs of Dutch listed companies. It contains a summary of the shareholder rights in the Netherlands, an overview of the shareholders' responsibilities (especially those of institutional investors) in the Dutch context and a list of practical aspects of casting a vote at AGMs of Dutch listed companies. More importantly, the manual contains several appendices in which Eumedion's principles, recommendation and best practices regarding various aspects of corporate governance are explained, covering topics such as the remuneration of management board, the delegation of power to issue shares, the authorization to repurchase own shares, the accountability of dividend policy, nomination for (re)appointment of the auditor, and engaged share ownership. The manual is an important source of reference for Eumedion and its participants in discussions and decision making on how to act with respect to various corporate governance issue.

Second, every year Eumedion publishes so-called policy plans. These plans provide an overview of priorities on which it will focus attention during a particular year. The policy plan documents deal with a broad spectrum of activities related to the norm setting, norm spreading as well as the norm implementation of Eumedion. It also discusses priorities related to influencing processes of rules and legislation within, as well as outside the Netherlands. It stresses priorities regarding the dialogues between company management and shareholders both informally as well as during AGMs. In the annual report published one year later, Eumedion's board and secretariat reflect on what has been achieved with respect to these

priorities. The publication of the policy plans and annual reports can be seen as part of the process of norm spreading, as these documents allow Eumedion to publicly explain their stance on several issues in corporate governance and to show how they aim at influencing the process of norm development during a particular year.

Third, and most importantly, once a year Eumedion issues the so-called focus letter. With these letters, it communicates the most important corporate governance and/or sustainability topics for institutional investors in Dutch listed companies for next year. The letters are sent to the largest Dutch listed companies prior to the AGM season to inform them about the topics participants of Eumedion may focus on and may ask questions about during the coming AGM. After each AGM season, Eumedion drafts an evaluation report. In case Eumedion concludes that companies did not sufficiently comply with specific recommendations it makes regarding corporate governance and/or sustainability behavior, these recommendations may come back in focus letters of the following year(s). The use of the focus letters arguable is one of the most forceful channels of communication and is therefore an important element of the norm spreading process.

The focus letters have become an important source of information for both companies as well as institutional investors. As it turned out in the interviews, these focus letters do not go unnoticed and are often part of the preparation for the publication of the annual report and the preparation for AGM by the investors (interview transcripts, p.46, pp.48-49, p.134, p.218). In a way, they serve as an early signaling system for companies to prepare themselves and develop their own strategy towards a specific corporate governance and/or sustainability issue that will be on the table soon.

Table 9 provides an overview of the content of the focus letters. In particular, it shows the corporate governance principles discussed (using the classification of the Corporate Governance Code, version 2008), as well as a short explanation of the content of the specific topics addressed in the letters. In the ten letters that have been published since 2006, a total of 20 different corporate governance topics have been discussed. The table shows that the focus letters focus on a number of important topics, and that discussions on some of these topics pop up in several years. First, the procedures regarding the organization of AGMs (2006 and 2007) have been a central topic. Subsequently, the attention moved towards the content and accountability of remuneration policies (2007 and 2008). Third, several letters discuss disclosure of corporate risk analysis, risk management and control (2008, 2009, 2010, 2011 and 2012), and the role of the management board and the internal audit function with respect to disclosing this information (2015). Fourth, a number of letters deals with financial

reporting issues, such as improving the quality of the discussion in the management report (2013, 2014 and 2015) and implementing integrated reporting. This approach of coming back on topics discussed in earlier focus letters increases the pressure Eumedion puts on company management to take these topics into account in its decision making process. Finally, the overview shows that over the years the focus of the focus letters has shifted towards addressing risk and reporting issues. This may have to do with the fact that especially since and due to the financial crisis of 2007-2008 investors are more eager to be informed about the risks a company, at least potentially, is confronted with and how these risks are managed.

The effectiveness of the focus letters in changing the corporate governance and sustainability landscape is evaluated by Eumedion in its annual reports and its evaluations of the AGM season. Each year, these reports address the question to what extent companies have responded to the content of the focus letter sent to them. In several cases, these evaluations indicate that companies have indeed taken into account the content of the focus letter in a specific year.¹² Below, we shortly discuss the evaluations of focus letters in the annual reports and evaluations of the AGM season published by Eumedion.¹³

In the focus letter of 2007 Eumedion recommended companies to take measures to improve the AGM process. In particular, it recommended to make use of new legislation to bring forward the record date for the AGM to 20 to 30 days before the AGM takes place and to publish the agenda of the AGM at least four weeks before the AGM. Eumedion reported that in 2007 almost half of all listed companies followed the first recommendation, whereas 80 per cent complied with the second (Eumedion, 2007a, p.9). A similar picture emerges for 2008 (Eumedion, 2008, p.22). Because of the weak response of companies to similar recommendations in the letter of 2007, Eumedion decided to focus on management board remuneration policies and transparency in the 2008 letter. Whereas remuneration policy and transparency remained a controversial issue during the period as a whole, in the evaluation of the 2012 AGM season Eumedion nevertheless concluded that remuneration policies in the Netherlands were less controversial than elsewhere. At the same time, however, remuneration reports in many cases still lacked depth, especially when it comes to explaining how the short-term bonus is established (Eumedion, 2012, p.25).

Table 9: Focus letters: Topics and content, 2006-2015

<i>Year</i>	<i>Code</i>	<i>Topic</i>	<i>Summary of content</i>
		<i>principle</i>	
2006	IV.3	AGM process	Timely publication of agenda; voting in absence, etc.
	I.	Compliance	Extend quality of explanations for non-compliance
	III.1	Supervisory board task and procedure	More elaborate statement of the board
	IV.2	Issuing share certificates	Transparency of trust offices
2007	IV.3	AGM process	Timely publication of agenda; voting in absence, etc.
	II.2	Management board remuneration	More focus on long-term incentives and improved accountability of remuneration plans
2008	II.1	Internal risk management and control	Extend the discussion of risks and risk management in annual report
	II.2	Management board remuneration	Improve the accountability of remuneration plans with respect to long-term goals, long-term incentives, peer groups and discretionary bonuses
2009	II.1	Internal risk management and control	Extend the discussion of risks and risk management in annual report
	IV.1	Dividend policy and share buy-backs	Improve the accountability regarding dividend policy; new legislation regarding share buy-backs
2010	II.1	Corporate strategy and risk management	Improve discussion of corporate strategy, long-term goals, risks, risk profile and link with remuneration
2011	II.1	Corporate risk analysis	Improve discussion and transparency of market analysis, conglomerate structure, financial transparency of subsidiaries, dividend policy and capital structure in annual report
2012	II.1	Risk and risk management	Extend information on risk analysis (including environmental and social), comments from external account and long-term viability analysis
	V.2	(Re)appointment external accountant	Better motivate nomination of (re)appointment
2013	III.	Supervisory board task and procedure	More elaborate statement of the board regarding CSR, transparency, board task performance and nomination
	V.1	Financial reporting	Elaborate on financial reporting; reduce use of standardized text in annual report
2014	II. and III.1	Management and supervisory board task and procedure	Elaborate on the selection procedure of (new) board members and diversity policy
	V.1	Financial reporting	Accounting firms should provide a more elaborate and company-specific audit report
2015	V.1	Financial reporting	Implement integrated reporting following the IIRC guidelines
	II.1 and V.3	Internal audit function	Management board should better monitor the company's risk management and internal control system; internal audit function should provide advice on this, it should also provide a risk-based audit plan and an assessment of the impact of significant changes on the company's risk profile

Source: Documents obtained from the Eumedion website (accessed July 2016)

In 2011, the letter focused on recommendations to extend information with respect to analyses of markets and to improve reporting on the company's financial strategy in the annual report of 2010. According to Eumedion both these issues were complied with to a reasonable extent (Eumedion, 2011, p.25). In the letter of 2012, Eumedion asked company management to extend information on the (re)appointment of the external accountant, which most of the largest companies also did (Eumedion, 2012, p.25). The focus letter of 2013 discussed the recommendation to improve the content of the report of the supervisory board with respect the presence of board members at meetings as well as the outcome of the board's self evaluation. Eumedion reported improvements on both these issues in the annual reports of 2012 (Eumedion, 2013, p.21). In 2014, Eumedion recommended external auditors to provide a more company-specific auditor's opinion (in which the auditor reports on key audit matters) with the 2013 annual report. It turned out that some 40 per cent of the external auditors followed this recommendation and the situation further improved in 2015 (Eumedion, 2014, p.22; Eumedion, 2015, p.24).¹⁴ Finally, in several earlier focus letters (the first one going back to 2008) Eumedion recommended to increase the informativeness of discussions on corporate strategy and risk taking. In the evaluation of the AGM season of 2014, Eumedion stated that companies improved information on these issues in their annual reports (Eumedion, 2014, p.22).

The picture that emerges from these evaluations of the effectiveness of the focus letters is that they do seem to have an impact on corporate governance and sustainability behavior of Dutch listed companies and other related actors. The fact that Eumedion puts and keeps issues on the agenda of discussions about corporate governance and sustainability between management and shareholders stimulates companies to at least think about and sometimes even address these issues. In some cases, the response seems immediate (e.g., the recommendation of the 2014 focus letter to provide more company-specific auditor reports), whereas in other cases it takes more time (e.g., the recommendations to improve disclosure on corporate strategy, risk and risk management in various focus letters).

One important caveat to the above conclusions is that it is difficult to establish causality between the content of focus letters in a particular year and the decision making by corporate boards in the same or later years. Decisions to change corporate governance and sustainability practices may be driven by other factors as well, such as codes, pressure from shareholders in general, the public debate, etc. Nevertheless, the evaluation of focus letters and their effectiveness seems to suggest that they may have been instrumental in changing corporate governance and sustainability practices of Dutch listed companies, next to pressures

coming from other sources to make such changes. Probably the best example of this are the recommendations related to improving disclosure of risks and risk management. These recommendations were also voiced in the revised version of the Dutch Corporate Governance Code of 2008, but the fact that Eumedion stressed this issue in their focus letters seemed to have helped to put risk reporting and disclosure at the top of the list of points of interest of company management.

Moreover, interviews with several corporate governance experts suggest that over the years, the focus letters have shown their growing importance in communicating the interests of Eumedion's participants. The letters have been taken more and more seriously by company management, as it allows them to be aware of the topics that may lead to questions from investors during informal meeting and AGMs. According to several of the expert interviews, the focus letters are highly informative (interview transcripts, p.33, p.134, p.218). Moreover, companies have increasingly tried to integrate the demands of Eumedion into their company policies to come to terms with investors (interview transcripts, p.67). According to a number of the interviewees, the focus letters are actively discussed in meetings of the management and supervisory board. The board evaluates whether the demands made in the letter are reasonable and whether and to what extent the company complies with these demands (interview transcripts, p.48, p.108, p.133).

A final channel through which Eumedion may communicate about its views on corporate governance and sustainability issues is by receiving and/or actively seeking media attention. One very important channel in this respect is Eumedion's own newsletter. Its newsletter is well-read (interview transcripts, p.9, p.137). Next to providing news about corporate governance and sustainability, it is also used to provide an overview of where and how Eumedion has raised its voice by providing list of links to policy documents such comment letters, consultation reactions, position papers and focus letters.

Next to the newsletter, there are several media channels that can be used for communicating about Eumedion's views on corporate governance and sustainability. The most important ones are newspapers and magazines that report on the newest developments with respect to corporate governance and sustainability. We searched for the term Eumedion and/or the name of its director in all nation wide newspapers as well as in two Dutch magazines known for their attention to business news. Table 10 provides an overview of the news articles and their content we came across in the search process.

Table 10: Media attention Eumedion, 2005-2016

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	TOTAL	%
I. Compliance with and enforcement of the code	0	0	0	0	0	0	0	0	0	0	0	0	0	0
II. The management board														
II.1 Role and procedure	3	2	7	3	0	0	2	2	0	2	3	3	27	5
II.2 Remuneration	0	7	9	18	5	6	3	1	8	5	9	5	76	14
II.3 Conflicts of interest	0	0	0	0	1	0	0	0	0	1	3	0	5	1
III. The supervisory board														
III.1 Role and procedure	0	3	0	1	1	0	0	2	0	0	0	0	7	1
III.2 Independence	0	0	2	0	0	0	0	0	0	0	0	0	2	0
III.3 Expertise and composition	0	1	0	2	2	1	0	0	1	0	1	0	8	1
III.4 Chairman and company secretary	0	0	0	0	0	1	0	0	0	0	0	0	1	0
III.5 Composition of committees	0	0	0	0	0	0	0	0	0	0	0	0	0	0
III.6 Conflicts of interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0
III.7 Remuneration	0	0	0	0	1	0	0	0	0	0	1	2	4	1
III.8 One-tier management structure	0	0	0	1	0	0	0	0	0	0	0	0	1	0
IV. Shareholders and the AGM														
IV.1 Powers	11	52	31	19	17	9	4	7	11	8	28	17	214	39
IV.2 Depositary receipts for shares	0	0	0	0	1	0	0	0	0	0	0	2	3	1
IV.3 Information and logistics of the AGM	1	13	3	8	3	4	2	5	1	2	0	0	42	8
IV.4 Responsibility of shareholders	1	3	7	13	31	5	5	11	7	6	4	2	95	17
V. Audit financial reporting, internal audit function and the external auditor														
V.1 Financial reporting	2	4	0	2	1	3	2	10	3	0	0	3	30	5
V.2 Role, appointment, remuneration and assessment of the external auditor	0	0	0	0	0	8	9	4	5	2	0	0	28	5
V.3 Internal audit function	0	0	0	0	0	1	0	0	0	6	0	0	7	1
V.4 Relationship and communication of the external auditor with the organs of the company	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	18	85	59	67	63	38	27	42	36	32	49	34	550	100

Source: News articles from seven Dutch newspaper (i.e. Telegraaf, NRC Handelsblad, AD, Trouw, Volkskrant, Parool, Financiële Dagblad) and two Dutch periodicals (Elsevier, HP/De Tijd) for the period 2005-2016 (until end of July of this year), in which Eumedion and/or its chair (Rients Abma) is explained mentioned. The articles were obtained from the Lexis Nexis data base.

The table shows that for the period 2005-2016 (until July) we found 550 articles in which Eumedion and/or its director were mentioned. The highest number of articles was found for the first four years of Eumedion’s existence, with the highest number for the year in which it was established (2006). This indicates that its establishment was widely covered in the Dutch newspapers. Apparently, the business community and other interested parties saw the establishment of a foundation representing the interests of institutional investors as an important event.

Three topics were discussed by far the most in the articles, i.e. remuneration (18 per cent of all articles), the powers of shareholders (39 per cent) and the responsibilities of shareholders (17 per cent). In contrast, issues revolving around the role of the supervisory board hardly received any attention.

4.5 Norm implementation: How Eumedion monitors implementation of norms

In this section we discuss how Eumedion has contributed to the implementation of corporate governance best practices. Whereas its activities related to norm setting and norm spreading are focused more on communicating about corporate governance to the market as a whole, activities related to norm implementation concentrate on individual companies and their corporate governance practices. In the process of norm implementation Eumedion uses several steps to communicate its views on specific items regarding corporate governance and sustainability decisions and/or practices of an individual company. These steps can be seen as a sequential decision process consisting of several consecutive steps of engagement (Gantchev, 2013).¹⁵ Eumedion uses two instruments to monitor the implementation of corporate governance and sustainability norms by companies, i.e. company dialogues and the alert procedure. Figure 9 shows Eumedion’s role in the process of norm implementation.

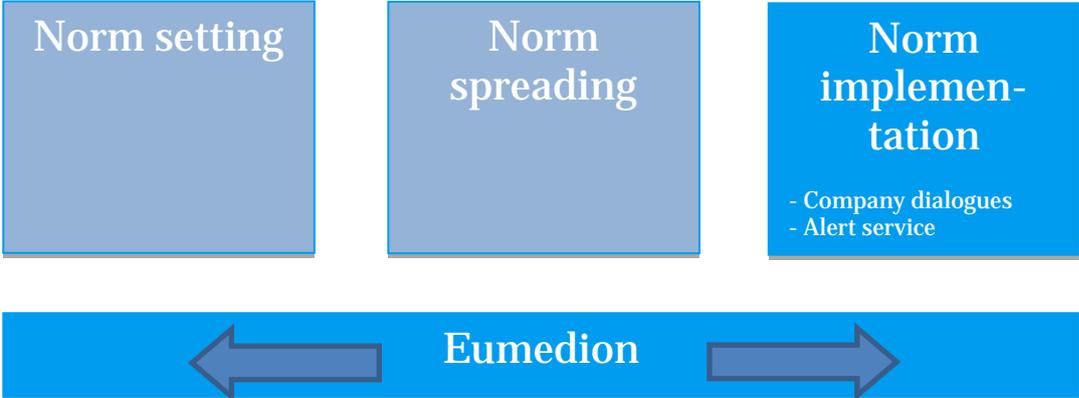


Figure 9: Eumedion’s role in the norm implementation process

The implementation process

As a starting point, Eumedion's engagement with individual companies is embedded in its general views on best practices of corporate governance and sustainability, which have been developed and communicated during the norm setting and norm spreading process. The first step of engagement is having annual company dialogues with a selection of Dutch listed companies (together with representatives of at least one of the participating institutional investors). During these dialogues Eumedion formally communicates its observations and discusses its opinion on how norms should be applied by a specific company. Although they had been organized previously, it was not until 2010 that Eumedion started to formalize these company dialogues. Eumedion thus started to develop its role in the implementation process only later in its existence. We come back to this observation in chapter 5.

Company dialogues are intended to lead to changes in the governance practices of a particular company. However, there are situations when Eumedion and the company can not find common ground and where there is no successful change in corporate governance and sustainability practices. If this is a minor issue, Eumedion may leave it for what it is. However, when company management decides to bring a proposal to the AGM that hurts the interests of Eumedion's participants, it may decide to take the next step, i.e. starting the so-called alert procedure.¹⁶ This procedure starts with informing the chair of the investment committee of Eumedion, as well as the institutional investor participating in Eumedion who will attend the AGM of the company about the proposal. They contact the company management to ask for further explanations about why the proposal has been put on the agenda. Moreover, Eumedion's investment committee convenes to discuss the proposal. If the committee decides the proposal is not in line with Dutch legislation, the Dutch Corporate Governance Code and/or Eumedion's Corporate Governance Manual, this leads to issuing an official alert to all participants, company management and the most important proxy advisors (e.g. ISS and Glass Lewis).^{17 18} An alert describes specific corporate governance and/or sustainability practices of the company, as well as a discussion of why Eumedion would like to see these practices changed and in what way.

From that moment on, Eumedion's participants take over. As discussed before, Eumedion does not have the voting rights of the individual participants. So, each of the participants has to consider if they want to follow Eumedion's proposals to change company's practices, or vote in favor of the controversial issue. Subsequently, participants can organize themselves. They first decide what to vote and subsequently look for other participants with similar voting plans. Finally, they choose one participant to speak during the AGM. This

participant will also receive the voting and/or speaking rights of the other participants who join. Eumedion is formally not involved in these last steps. However, it creates a platform where like-minded participants can find each other in time for the AGM.

The use of an alert can be seen as a more forceful way of voicing institutional investors' interests in changing company corporate governance practices. In general, alerts are not made public to a wider audience, however. Sending the alerts also to proxy advisors may provide additional leverage in communicating their demands, i.e. it may increase the pressure on companies to change its policies and proposals. In at least one recent example the indirect involvement of proxy advisors led to changes in company proposals demanded in an alert (interview transcripts, p.2, p.67). To conclude, the process of norm implementation can be seen as a sequence of steps towards escalating company involvement with the attention to convince the company to implement the norm on their own initiative, or otherwise see if the controversial proposal can be rejected by voting against it during the AGM.

In order to describe actual implementation activities, we use information from documents describing dialogues Eumedion has had with individual companies, alerts sent to individual companies and proposals and discussions about specific corporate governance and/or sustainability items at the AGM of shareholders of companies.

Company dialogues

As mentioned, Eumedion introduced annual company dialogues with a selection of Dutch listed companies. These dialogues entail informal consultations between company management and institutional investors to discuss corporate strategy and issues of interest to institutional investors. These meetings are to inform company management about the views of the institutional investors on these matters and to explain how they would like to see changes implemented, if necessary. This channels shareholder activism before the AGM, instead of activism during the AGM. This is also important for company management as it reduces the probability of difficult and perhaps even awkward public discussions during AGMs (interview transcripts, p.16, p.23, pp.55-56, p.146).

We analyze company dialogues by coding their content. In particular, we collect data regarding the name of the company, the year of the dialogue, the date of the dialogue, and the date of the AGM of the company. Moreover, we code the content of each company dialogue using a coding scheme that is based on the principles described in the Dutch Corporate Governance Code of 2008 (see appendix III). In addition, the coding scheme contains a number of additional corporate governance topics that are not covered in the Code of 2008,

but are of interest to Eumedion and its participants. These topics relate to issues such as corporate social responsibility in general, corporate tax avoidance, company strategy, integrated reporting, etc. We have access to company dialogues covering the period 2010-2016. The total number of documents we have coded is 107.

Table 11 provides an overview of the total number of company dialogues per year, as well as information about the number of dialogues per company. The table shows that the total number of companies with which Eumedion had dialogues during 2010-2016 period is 29. Whereas in the first two years the number of dialogues is relatively low (i.e. three and eight, respectively¹⁹), the number of dialogues per year has increased gradually from 2012. The average number of dialogues increased to 19 for the period 2012-2016. The highest number of dialogues is recorded for 2014 (i.e. 22).

Moreover, the table shows that Eumedion had intensive dialogues (i.e. during several years of the period 2012-2016) with a relatively small sub-sample of companies, most of them included in the AEX index of Euronext Amsterdam. On average, Eumedion had company dialogues with these 29 companies in three out of five years during the period 2012-2016. Most commonly, Eumedion had four dialogues with a company (eight cases). For one company it had dialogues in all years during the period 2010-2016.

Overall, then, table 11 provides evidence for the fact that the dialogue between companies, Eumedion and its participants intensified over time, as is clear from the increasing number of dialogues per year. Moreover, the table suggests that Eumedion showed persistence in its dialogues with a small set of companies as several of these companies were visited four times or more during this period.

Table 12 presents the results of the coding of the content of these company dialogues documents. We coded 1,154 topics that have been discussed during dialogues with companies. On average this is 11 topics per dialogue.²⁰ The table clearly shows that with respect to the principles of the Code the dialogues focus mostly on executive board's role and processes (Code principle II.1; 8.7 per cent of the cases), executive compensation (II.2; 18.0 per cent) and (financial) reporting and audits (V; 14.1 per cent). Among other things, the data thus reveal that, although remuneration is an important in these dialogues, it is certainly not the only topic discussed (as is sometimes claimed). The table also shows that the dialogues are focused on dealing with topics related to sustainability. Topics revolving around company strategy and mergers and acquisitions policies (4.4 per cent) and integrated reporting (3.8 per cent) also seem to be rather important in these dialogues.

The focus of the dialogues seems to be shifting over time from issues related to the principles of the Code towards other issues such as corporate social responsibility, company strategy and integrated reporting. This reflects the fact that Eumedion has gradually shifted from focusing on company compliance with the Code towards newer fields. This may be related to the fact that regarding the compliance with generally accepted corporate governance norms and practices Dutch companies have made serious improvements since the early 2000s (Bier et al., 2013). Eumedion started focusing more on sustainability issues from 2009. An important turning point in this process was a documentary on Dutch television about cluster bombs and heavy environmental damage for which indirectly pension funds were blamed because they invested in companies producing cluster bombs and/or contributing to environmental damage (interview transcripts, p.50).

Alerts

Eumedion started sending out alerts in 2009. As discussed earlier, when company management decides to bring a proposal to the AGM that hurts the interests of Eumedions' participants, it may start the alert procedure. When it is decided to start such a procedure company management is informed about this. This may lead to changing or withdraw the proposal even before an alert is sent out. In case this does not happen, the alert is sent out to Eumedion's participants and company management. Sending out the alert may lead to changing or withdrawing of the proposal. However, in case company management sticks to its original proposal, there will be a vote during the AGM to decide on whether or not the proposal is finally accepted by the shareholders of the company.

We analyze the content of alerts by coding which company receives an alert and in what year(s). Moreover, we code the content of the alert. We do this by using the same coding scheme we use for coding the company dialogues (see appendix III). In (almost) all cases the content of an alert is related to a very specific issue regarding the corporate governance practices of the company. In several cases, these practices end up being discussed during the company's AGM, (i.e. when sending out the alert has not changed the company's corporate governance practices). In the analysis we link the content of the alert to the agenda of the AGM of the company.

Table 11: Number of company dialogues, 2010-2016

<i>Panel A: Number of company dialogues per year</i>	
<i>Year</i>	<i>Number of company dialogues</i>
2010	3
2011	8
2012	16
2013	18
2014	22
2015	20
2016	20
<i>Total number of company dialogues</i>	107
<i>Panel B: Number of dialogues per company</i>	
<i>Number of dialogues</i>	<i>Number of companies</i>
<i>Number of companies with 1 dialogue</i>	5
<i>Number of companies with 2 dialogues</i>	3
<i>Number of companies with 3 dialogues</i>	4
<i>Number of companies with 4 dialogues</i>	8
<i>Number of companies with 5 dialogues</i>	3
<i>Number of companies with 6 dialogues</i>	5
<i>Number of companies with 7 dialogues</i>	1
<i>Total number of companies with at least 1 dialogue</i>	29

Source: Documents obtained from Eumedion's secretariat

Note: The information related to company dialogues we obtained consisted of three types of documents: company dialogue agendas, minutes of company dialogues, and so-called ESG scans (i.e. a list of topics that may be discussed during a dialogue). For some company dialogues more than one of these types of documents was available. We applied the following procedure. We first selected the company dialogue agendas as we assume that these documents provide the most complete list of topics Eumedion aims at discussing with company management. Yet, company dialogue agendas were not available in all cases. In case agendas were not available, we used the minutes of dialogues and in case minutes were also unavailable, ESG scans were used.

Table 12: Topics discussed during company dialogues, 2010-2016

	2010	2011	2012	2013	2014	2015	2016	TOTAL	All years (%)
I. Compliance with and enforcement of the code	0	0	0	0	0	0	0	0	0
II. Management board									
II.1 Role and procedure	0	11	11	18	20	19	21	100	8.7
II.2 Remuneration	4	16	48	31	39	50	20	208	18.0
II.3 Conflict of interest	0	0	1	1	0	1	0	3	0.3
III. Supervisory board									
III.1 Role and procedure	1	1	9	15	10	2	3	41	3.6
III.2 Independence	0	0	0	3	1	2	1	7	0.6
III.3 Expertise and composition	1	1	3	6	7	11	5	34	2.9
III.4 Chairman and company secretary	0	0	0	0	1	0	1	2	0.2
III.5 Composition of committees	0	0	2	1	4	0	2	9	0.8
III.6 Conflicts of interest	0	0	0	2	0	2	0	4	0.3
III.7 Remuneration	0	1	3	6	3	5	4	22	1.9
III.8 One-tier management structure	0	1	0	0	1	0	1	3	0.3
IV. Shareholders and the AGM									
IV.2 Depositary receipts for shares	2	1	6	1	7	5	19	41	3.6
IV.3 Information and logistics of the AGM	0	0	1	1	3	0	2	7	0.6
IV.4 Responsibility of shareholders	1	0	1	2	1	0	0	5	0.4
IV.2 Depositary receipts for shares	0	1	1	2	3	1	3	11	1.0
V. Audit of the financial reporting and the position of the internal audit function and the external auditor									
Other (total)	1	7	23	32	39	31	30	163	14.1
Corporate social responsibility	3	32	67	85	108	79	120	494	42.8
Tax avoidance	1	14	26	27	43	33	33	177	15.3
Strategy and mergers and acquisition policies	0	1	0	2	3	1	17	24	2.1
Integrated/sustainability reporting	0	3	3	7	11	10	17	51	4.4
Financial position	0	3	5	5	9	11	11	44	3.8
Financial reporting (e.g. quarterly reporting, IFRS issues)	0	0	1	3	2	1	1	8	0.7
Public availability of issues from management letter	1	1	8	10	2	5	7	34	2.9
Corporate governance general (e.g. structure, simplification)	0	1	1	4	4	4	0	14	1.2
Anti-takeover measures	0	0	1	1	0	0	1	3	0.3
Other	0	0	2	2	0	1	4	9	0.8
Other	1	9	20	24	34	13	29	130	11.3
TOTAL	13	72	176	206	247	208	232	1154	100

Source: Documents obtained from Eumedion's secretariat; see the note to table xx for an explanation of how we selected the documents to collect the information

Table 13 summarizes the results of the coding of the content of the alerts. The table shows that Eumedion sent out 62 alerts during the period 2009-2016, discussing 65 corporate governance topics (in 2012 and 2014 three alerts discussed two, instead of one, topic). The annual average number of alerts is 8. Yet, if we leave out 2009 (when Eumedion started using the alert service²¹), the annual average is 9. Most alerts were sent out in 2013 and 2014. The table reports that over the period 2009-2016 almost 50 per cent of the alerts deal with shareholder rights and the AGM (Code chapter IV). In most cases (i.e. 20 of 32 cases), they deal with the intention of company management to change the Articles of Association with respect to the threshold for submitting shareholder proposals at the AGM agenda (Code principle IV.3). This issue was raised especially during first years of the 2009-2016 period. In several of the remaining cases alerts deal with the discharge of the management and/or supervisory board.

Another important topic raised in the alerts relates to the management board (Code chapter II). The majority of these alerts (17 of 20 cases) deal with the remuneration of the managers, in particular changing the level and/or criteria for determining the variable component of remuneration. Almost half of the alerts dealing with remuneration were sent out in only two years, i.e. 2014 and 2016. Only a few alerts deal with compliance with and enforcement of the code (Code chapter I) and principles related to the audit of the financial reporting and the position of the internal audit function and the external auditor (Code chapter V).

Table 14 provides detailed information about the extent to which the topics raised in the alerts are discussed during the AGMs, and to what extent they have led to changes in corporate governance and/or sustainability practices of companies. In particular, the tables show whether a topic has been discussed during the AGM that follows after the alerts has been sent to the company and Eumedion participants, whether there has been a vote, what the outcome of the vote was, whether a representative of a participant of Eumedion raised his/her voice during the discussion on the topic and whether he/she explicitly mentioned that he/she did this in the name of other participants of Eumedion and/or whether it was mentioned that he/she represented the view of Eumedion (members). Note that in all cases a topic was discussed during the AGM, Eumedion had shown its objection against the proposal(s) of management in the alert.

The table shows that in a large majority of the cases the content of an alert was discussed at the AGM. In all other cases, sending out alerts led to company management's decision to withdraw or change proposals. The proposals that were changed and/or withdrawn

from the AGM agenda related to issues such as shareholder rights (discharge of the management and supervisory board; proposal to change the articles of association) and the remuneration of the management board.

In most cases the content of an alert was discussed at the AGM it also led to a voting (30 of 37 cases). During the discussions and the voting on the issues raised in an alert the participants of Eumedion were relatively active. In about half of the cases (19 of 37) they raised their voice and participated in the discussions on the topics raised. In almost all cases (17 of 19) they did this on behalf of other participants of the foundation.

According to our data, in one case the shareholders voted against a proposal made by management at the AGM. In all other cases the majority of the shareholders voted in favor of the proposals made. This may be interpreted in a number of ways. First of all, it is important to notice that in several cases proposals have been accepted with a substantial minority voting against the proposal. In the annual reports of 2010-2013, Eumedion remarks that proposals were accepted with the support of a friendly investor (i.e. a large shareholder) and/or with a relatively large share of votes against the proposal. In relation to this, if controversial corporate governance issues are discussed and voted upon during the AGM, one may expect company management has assured itself of the support from the main shareholders during informal discussions.

Second, it may indicate that in several of these cases Eumedion's powers to actually change corporate governance practices through voting at the AGM are limited, because the majority of shares is held by investors who are not a member of the association, i.e. family owners, large foreign investors, etc. For example, several of the alerts were directed towards companies with large block holders, such as individual investors/founders and/or families. These investors may have different opinions and/or interests.

Note that in the previous discussion we focus on alerts that were sent to companies and participants of Eumedion. We only have information with respect to these alerts and their content. However, as explained in principle the alert procedure may have been used in several other cases, but may not have led to sending out an alert as company management may have decided to withdraw a proposal or change it in line with the interests of Eumedion's participants after it has been informed that the alert procedure has been started. In other words, the threat of sending out an alert may also change company policies and proposals regarding corporate governance and/or sustainability. Although explicit information on the effectiveness of this threat is not available, Eumedion's annual reports for 2010-2015 do report on the number of times that starting the alert procedure did not result in sending out an

alert. Based on the information in these reports it appears that in the years 2010 to 2013 in one to three cases starting the alert procedure did not lead to an alert, because the company decided to withdraw or change a proposal and/or corporate governance practice. Also in 2016, in two cases this threat led to changes of proposals made by company management before an alert was sent out (interview transcripts, p.205).²²

Overall, the substantial share of alerts that led to changing of, or withdrawing proposals from the agenda of the AGM, and the apparent success of the threat of sending out an alert in changing corporate governance decisions, indicates that Eumedion's alert procedure has been successful at least to some extent in changing corporate governance behavior of Dutch companies.

4.6 Eumedion in shaping Dutch corporate governance: A summary

The above comprehensive discussion of Eumedion in the process of setting, spreading and implementing may be summarized as follows. Although it is difficult to provide clear evidence on the Eumedion's effectiveness during the various stages of norm development, our description suggests that several of its activities were successful in setting or changing the way corporate governance in the Netherlands has developed during the past ten years. In particular, the use of focus letters has contributed to the debate on corporate governance developments in the past decades. With these focus letters, Eumedion has contributed to getting and keeping important corporate governance and sustainability issues on the agenda of discussions between management and shareholders. In a similar vein, its comment letters and consultation reactions associated with specific cases, Eumedion has made a serious contribution to the development of new and/or to changing legislation in the Netherlands and the EU regarding corporate governance and sustainability.

Table 13: Content of alerts, 2009-2016

	2009	2010	2011	2012	2013	2014	2015	2016	TOTAL	All years (%)
<i>I. Compliance with and enforcement of the code</i>	0	0	0	1	0	0	0	0	1	1.5
<i>II. Management board</i>										
<i>II.1 Role and procedure</i>	0	0	0	1	1	1	0	0	3	4.6
<i>II.2 Remuneration</i>	1	1	1	2	3	4	1	4	17	26.2
<i>III. Supervisory board</i>	1	0	0	3	0	3	1	1	9	13.8
<i>IV. Shareholders and the AGM</i>										
<i>IV.1 Powers</i>	0	1	1	1	2	3	2	2	12	18.5
<i>IV.3 Provision of information to and logistics of the AGM</i>	0	5	4	2	3	2	3	1	20	30.8
<i>V. Audit of the financial reporting and the position of the internal audit function and the external auditor</i>	0	0	1	0	0	0	0	0	1	1.5
<i>Other</i>	0	0	0	0	1	0	0	1	2	3.1
TOTAL	2	7	7	10*	10	13**	7	9	65	100

Source: Documents obtained from Eumedion's secretariat

Note: Information is based on the content of 62 alerts sent out by Eumedion during the period 2009-2016. * for 2012 indicates that in this year two alerts contained discussions of two, instead of one, corporate governance topics. ** for 2014 indicates that in this year one alert contained discussions of two, instead of one, corporate governance topics

Table 14: Alerts and discussions at AGMs, 2009-2016

	2009	2010	2011*	2012	2013	2014*	2015*	2016*	TOTAL alerts	Percentage of all alerts
<i>Total number of alerts</i>	2	7	6	10	10	12	6	7	60	100
<i>Content of the alert discussed during AGM</i>	0	6	5	2	4	8	6	6	37	61.7
<i>Voting on the topic addressed in the alert</i>	-	5	4	2	3	6	4	6	30	50.0
<i>Outcome of the voting#</i>	-	5/0	3/1	2/0	2/0	6/0	4/0	6/0	29/1	48.3/1.7
<i>Eumedion participant raises voice during discussion</i>	-	5	4	2	1	3	0	4	19	31.7
<i>Eumedion participant speaks in the name of Eumedion and/or one or more other participants</i>	-	4	4	2	1	2	0	4	17	28.3

Source: Documents obtained from Eumedion's secretariat

Note: Information is based on the content of 62 alerts sent out by Eumedion during the period 2009-2016 in which 65 corporate governance topics are discussed. * indicates that in these years information with respect to transcripts of the AGM of one company was incomplete; the alert for this company has therefore been dropped from the sample. Information was incomplete for two companies in 2016; again, the alerts for these companies have been dropped from the sample.

The numbers in the columns indicate in how many cases the majority of the shareholders voted in favor/against the proposal made by company management to the AGM.

Second, during its early years (2006-2009) Eumedion was mostly involved in norm setting and norm spreading. Norm implementation initially was a minor issue and was carried out by ad hoc company visits, mostly by participants themselves. Company dialogues were basically bilateral, i.e. between management and (one or a few) active investor(s). Eumedion had no active involvement in these dialogues. This changed from 2009 when Eumedion decided to start the alert service. Moreover, the company dialogues became more structured as well. Thus, norm implementation by participants became a coordinated activity, i.e. these investors coordinated their activities to put company management under pressure to change corporate governance and/or sustainability behavior and decision making. Eumedion played a crucial role in coordinating these activities. The norm implementation process, therefore, became more professionalized from 2009, i.e. it had developed from an ad hoc activity to a more structured approach.

Third, the discussion of the company dialogues and alert service provide clear signs that Eumedion has become increasingly influential in determining the debates over governance and sustainability both within the board room as well as during AGMs. Consequently, it has made an important contribution to professionalizing these debates. We elaborate on this point in chapter 5.

Finally, an important question that has not been addressed explicitly is to what extent the involvement in all three stages of the norm development process has affected Eumedion's effectiveness in influencing the process as a whole. Although we do not have a tool to explicitly measure this, we would argue that by sitting at different tables and by being visible and active at different stages of the norm development process, Eumedion is, at least potentially, more effective in influencing the norm development process.

5. Eumedion's role in shaping corporate governance: A discussion

5.1 Introduction

In this chapter we aim at providing a deeper account of the role Eumedion has played in shaping the corporate governance and sustainability context in the Netherlands during the past ten years. We first discuss its strengths in setting, spreading and implementing norms regarding corporate governance and sustainability performance. This is followed by a discussion of the potential barriers it has been confronted with when trying to influence the process of norm development. We end our discussion by pointing out a number of future directions Eumedion may consider.

5.2 Eumedion and its strengths: Small yet beautiful

Eumedion is a relatively small organization. As of December 2015, it represents over 60 institutional investors, most of which are Dutch pension funds, holding a total portfolio of over €4,000 billion.²³ The association's board consists of nine members and its secretary has five persons. Moreover, it has five committees (i.e. the legal committee, financial reporting and audit committee, investment committee, research committee, public relations committee) and one working group (executive remuneration), of which its members are representatives of participants of Eumedion (Eumedion annual report, 2015). The small size of the organization may, at least to some extent, be part of its success as it means that communication is direct, coordination costs are low and the level of transparency with respect to who is responsible for what is high. Given its relatively small size, its role in the Dutch corporate governance landscape seems to have been substantial.

General remarks

As discussed in chapter 3 a foundation such as Eumedion provides an important role in organizing and voicing interests of institutional investors. Since these investors generally have just a small set of shares, it would be too expensive to carefully monitor company management. So, they may greatly benefit from an intermediary that pools individual investor interests, increasing the power of voicing their demands with respect to the corporate governance and sustainability practices and behavior of companies. In addition, it also assists in supporting its participants to develop their own approach towards dealing with corporate governance and sustainability best practices, which is an explicit requirement according to the Dutch Corporate Governance Code. Although the Netherlands does not have a Stewardship

Code, one could argue that Eumedion – via its Best Practices for Engaged Share-Ownership – has paved the way to develop such a code in the near future (interview transcripts, p.214). Finally, it plays an important role in keeping its participants informed about important developments concerning corporate governance and sustainability in the Netherlands. Eumedion does play these roles by actively influencing the norm development process with respect to corporate governance and sustainability in the Netherlands. It is involved in setting, spreading and implementing these norms. The fact that it is actively involved in all three stages adds to its effectiveness in shaping the Dutch corporate governance and sustainability landscape.

Eumedion: knowledgeable and well-informed

Based on the analysis in chapter 4 and the expert interviews the picture emerges of an association that is very well-informed about the Dutch and international legislative and institutional context. During the interviews, several experts praised Eumedion for being a partner that it is very knowledgeable, competent and serious on and in discussions about corporate governance and sustainability. One interviewee remarked that: “In my view they are always very constructive, and always focused on content. I also think they carefully operate in discussions.” (interview transcripts, p.227). Another interviewee mentioned that: “In my view they deliver serious work. They have an excellent reputation with respect to thoroughness and knowledge.” (interview transcripts, p.211). According to one of the interviewees: “...it is a very advanced institution, with a lot of knowledge” (interview transcripts, p.124).

Its newsletter is well-read by people that matter in discussions about corporate governance and sustainability. A number of interviewees praised its content as being up-to-date, highly informative, well-argued and neutral without a strong political loading (interview transcripts, p.67, pp.136-137). As one of the experts mentioned: “[The newsletter] is indeed an important instrument, which, perhaps unknown to many people, has had its impact on the perception of corporate governance in the Netherlands.” (interview transcripts, p.137) The position papers and focus letters are carefully read by policy makers and those who deal with setting rules and regulations. As one of the interviewees stated: “My impression is that [they] are ... mostly [read] by those who take decisions, for example about legislation or about policy making; they read them carefully. And also the companies themselves.” (interview transcripts, p.67) The consultation reactions and comment letters contain detailed information about proposals made with respect to new rules and legislation that is of interest to these decision makers. In section 4.3 we gave some examples this.

Moreover, Eumedion's secretariat members and representatives of its participants are members of a wide range of Dutch and international organizations dealing with corporate governance and sustainability related issues. This allows them to be visible and present where decisions are taken. Eumedion is appreciated as a serious partner in discussions with the House of Representatives, and its committees (interview transcripts, p.22, p.209) as well as organizations such as the AFM and DASB. It is also one of the supportive parties of the Dutch Corporate Governance Code Monitoring Committee. Next to its involvement in Dutch organizations it is actively involved in international organizations and networks on corporate governance and sustainability. In particular, Eumedion plays an important role in ICGN and IIRC. In both organizations several representatives of Eumedion and its participants are members of the board and/or one or more committees. This makes it visible and influential, also at the international level.

Finally, not only is it unique in representing large institutional investors, Eumedion also voices their interests in a constructive way, which makes its contribution perceived as valuable at both ends of the table.

Eumedion and the interaction between company management and shareholders

One of Eumedion's most important contributions has been that it has helped developing the framework in which company management, non-executives and investors interact, i.e. it has helped creating the terms of engagement between these groups based on best principles and practices of corporate governance (interview transcripts, p.221). Eumedion has been successful in getting and keeping important governance issues on the agenda, in establishing closer and more informative relationships between management and shareholders, and in helping to make sure that shareholders are taken more seriously. It has also stimulated institutional investors to take their role as engaged shareholders more seriously. One interviewee claimed that "Eumedion has played a very important role in the professionalization of share-ownership [in the Netherlands]" (interview transcripts, p.218). In short, Eumedion has helped creating an environment in which there is a permanent dialogue between company management and investors during, but certainly also outside, the AGM.

One example of the improved interaction between management and shareholders is the increased participation of shareholders at AGMs. Participation rates have increased from 35 per cent in 2005 to 70 per cent in 2015 (see figure 5 shown in chapter 2). According to several of the interviewees Eumedion has contributed to increasing these participation rates during the past ten years (interview transcripts, p.212, pp. 217-218; ISS, 2015). For example, it has

helped creating legislation that has made it easier for investors to attend and actively participate at AGMs. In particular, 2011 appears to have been a watershed in this respect when legislation was established making it obligatory for company management to publish the AGM notice and agenda at least 42 days before the AGM is held (interview transcripts, p.212). Before this legislation, management could publish the AGM notice 15 days before the AGM was to be held. Increasing the time period shareholders have to prepare for the AGM allows them to come to informed decisions on how to vote. This has contributed to shareholders' willingness to attending and be actively involved in participating at AGMs. Moreover, it has created the possibility to convene with company management to discuss their disagreement with respect to specific issues on the agenda.

Further evidence on the improved dialogue between management and investors relates to the fact that investors have increasingly used their voting rights in a responsible way. Eumedion has contributed to this, at least when it comes to its participants. In 2011, it established best practices with respect to engaged share-ownership. Participants of Eumedion are expected to comply with these best practices. According to one of these best practices, participants are requested to use their voting rights in a responsible (i.e. informed) way. This best practice holds for all shares held in Dutch listed companies. According to Eumedion's own evaluation, 91 per cent of its participants complied with this best practice in 2015 (Eumedion, 2016a, p.8).

Eumedion has also contributed to changing the dynamics before and during AGMs. In the past, in many cases company management did not really take notice of shareholder demands during AGMs, as participation rates of shareholders were relatively low, which was (at least partly) due to the fact that in several cases outcomes were known because of voting by delegation and/or because it was known that beforehand that majority shareholders would vote in favor of proposals made by management. This made shareholders very passive in using their voting rights. These dynamics have changed during the last ten years. First of all, the informal interaction between management and shareholders before the AGM takes place has increased. Shareholders more often voice their concerns in direct interaction with company management. This is facilitated by the fact that Eumedion has created an environment in which shareholders are enabled to increase interaction and coordinate action against company management. In this respect, the company dialogues and the alert service have played an important role. Second, and as a result of the increased informal interaction with management, in recent years there are less controversial issues that are discussed during AGMs. In many cases, most of the controversial issues have already been dealt with during

informal talks, also because company management may have clear incentives to reduce the risk of having to discuss these controversial issues out in the open during an AGM (interview transcripts, p.220, p.230). As one of the interviewees stated: "...if you look at the dynamics at the AGM, the surprises, the controversial proposals [...] the number of these cases have been reduced considerably. In my view, this has been the effect of Eumedion." (interview transcripts, p.220). One of the other interviewees agreed when saying that: "...the fact that we see little surprises [at the AGMs] is one of big gains of having Eumedion" (interview transcripts, p.230).

It is important at this point to remark that Eumedion has gradually gained its position as a key player in the Dutch corporate governance and sustainability context. In the first few years, it remained relatively unnoticed by company management (interview transcripts, p.55). In those years, it mainly focused on influencing the norm setting and norm spreading process. Gradually over time, however, it has created itself a relevant and broader position in discussions about corporate governance and sustainability by also developing ways to influence the implementation of norms by company management. As discussed in the previous chapter, Eumedion started having company dialogues in a more formally structured way only from 2010. In addition, it started using the alert service from 2009. These instruments helped making Eumedion a relevant party in the discussion between shareholders and company management, i.e. a party that was noticed and taken into account by companies.

Eumedion and foreign investors

Eumedion is particularly relevant as a source of information for its foreign participants. According to a recent survey among institutional investors in Dutch listed companies, foreign investors see their participation in Eumedion as very relevant, because it allows them to learn more about the local context with respect to rules and regulations as well as with respect to norms and values in business and society. Moreover, it provides them a channel to communicate and coordinate with Dutch investors (Melis et al., 2011, pp. 103-104). As one investor notes: "Being part of Eumedion (...) is really valuable, because we get those insides by being alongside major Dutch pension funds and asset managers." (Melis et al., 2011, p.103). These foreign investors generally do not observe the nuances of the institutional context that influences the governance of listed companies in which they invest. Eumedion also provides a very good source for keeping them informed about recent developments with respect to Dutch corporate governance and sustainability. The alert service makes them aware of the potential threats of investing in Dutch companies. In addition, the network of investors

Eumedion is helpful to increase the pressure on companies to change their policies. Finally, Eumedion supports them with how to act during the AGMs. According to foreign investors, Eumedion has helped developing the dialogue between management and shareholders as standard practice (Melis et al., 2011, p.99).

Eumedion's added value vis-à-vis proxy advisors

When investors make informed decisions about their voting behavior, they can make use of advice provided by professional proxy advisors such as ISS or Glass Lewis and information and advice coming from other sources. One of these sources of information and advice is Eumedion. A recent survey among representatives of institutional investors shows that a large majority of these investors make use of proxy advisors and other input and also use codes as a benchmark. In most cases, they turn to professional proxy advisors, but also Eumedion was mentioned as one of the sources they use. Ultimately, however, investors make up their own decision on how to vote (Melis et al., 2011, p.48).

When it comes to Eumedion's contribution vis-à-vis globally operating proxy advisors, it seems to add value. Organizations such as Eumedion, but also the US-based Council of Institutional Investors (CII) and the Asian Corporate Governance Association (ACGA) have a specific geographic focus. These local initiatives are important with respect to (local) shareholder interests and the understanding of the local corporate governance context (Bier et al., 2012, p.112). Global proxy advisors have a "one-size-fits-all" approach as a starting point to monitoring governance issue. Their starting framework is based on international corporate governance standards embedded in, for instance, the UK Corporate Governance Code and the ICGN Global Governance Principles Code, as well as their own proxy voting guidelines.

In order to better understand whether and to what extent the Netherlands deviates from these international standards, institutional investors may turn to Eumedion to inform them and add national context when advising its participants on voting for or against certain issues during the AGM (interview transcripts, p.206). Eumedion is better equipped to provide country-specific context to voting behavior due to its unique position of being a Dutch-based foundation with domestic and foreign participants (Bier et al., 2012, pp.12-13; interview transcripts, p.122, p.159).

But the added value may go both ways. Proxy advisors such as ISS and Glass Lewis are important actors in Eumedion's network of institutional advisors. Many Eumedion participants are clients of ISS and/or Glass Lewis. Especially when it comes to norm

implementation, proxy advisors can add substantial leverage to the alerts of Eumedion. As discussed in chapter 4, Eumedion does send alerts to its participants, as well as to company management and, recently, also to the most important proxy advisors, when it observes controversial proposals on the agenda of the AGM of a company. As explained, ultimately its participants make up their own mind how on to vote on these proposals during the AGM, but, when they evaluate their voting behavior, they take into account the advice given by international proxy advisors. Moreover, also company management will take the position taken by proxy advisors into account when evaluating the probability that its proposals will pass during the AGM. Thus, in case Eumedion's alerts are supported by international proxy advisors, the original arguments given in the alerts gains momentum, which will considerably increase the pressure on company management to change or even withdraw proposals.

Eumedion's multi-faceted focus

As discussed in the previous chapters Eumedion is playing a role at different stages of the norm development process. In this role it is also almost by definition involved in many different aspects of corporate governance and sustainability in the Netherlands. On the one hand, it deals with more process-oriented governance topics such as the organization of AGMs, the role of boards, remuneration policies, shareholder rights, etc. On the other hand, it also deals with issues revolving around the content, disclosure and transparency of financial and non-financial reporting, as well as the role of the external auditor and the informativeness of the external auditor's report. Next to these core corporate governance related issues, it has become involved more and more in discussions and norm setting, spreading and implementation with respect to corporate sustainability performance. In its early days, corporate sustainability was already discussed within the SCGOP. However, Eumedion started focusing more on sustainability issues from 2009. Especially pension funds started to realize, also as result of a growing demand from the pension fund participants, to make sure that the investments meet social and environmental norms as well, next to making financial returns to cover their retirement payment.

The history of Eumedion as described in chapter 3 of this report reflects this as well. Initially, it was a platform for institutional investors with a focus on process-related corporate governance aspects. Yet, over time social and environmental aims became more and more important, reflecting the changing opinions of Eumedion's participants. It also reflects that many of the core corporate governance issues have been addressed and covered to a large extent. During recent years, the attention for these governance issues has been focused more

on reporting issues and the role of the internal audit function and the external auditor. Moreover, attention for governance has been accompanied by an increased attention for other issues that are important for institutional investors, such as corporate socially and environmentally responsible behavior, integrated reporting and tax evasion. As a consequence of all these changes Eumedion has become an organization with a multi-faceted focus.

Eumedion's strengths: Concluding remarks

Considering its size, Eumedion is an effective organization. It channels debates and is taken into account as a serious partner in discussions during policy developments by relevant parties. This does not only hold for the parties that have similar interests, it also holds for other parties involved in shaping the corporate governance and sustainability landscape due to their well-informed and knowledgeable outlets on many different and relevant issues. Eumedion is seen as a serious knowledge centre and an active and respected organization representing institutional shareholder interests. Given its small size, it is highly visible in debates in which it stretched its potential influence to the max, an observation that was supported very explicitly by a number of the interviewees (interview transcripts, p.214, p.219). Over time, it has managed to sit at the right tables and has been able to communicate with the most important decision makers, both domestically as well as internationally. Moreover, its involvement in spreading norms and helping implementing them by companies has not gone unnoticed. This implies that it delivers the arguments for both sides of the corporate governance relation, i.e. shareholders as well as company management, as to how corporate governance and sustainability best practices should look like. For Eumedion, shareholders, and especially the participating institutional investors, are particularly relevant in this respect. Eumedion supports them in interpreting what is expected from them in terms of good corporate governance and sustainability. All in all then, Eumedion seems to have made a significant and positive contribution to the quality of corporate governance and sustainability, especially in the Dutch context, during the past ten years.

5.3 Eumedion's challenges in the process of norm development

After having discussed the strengths in the process of developing norms regarding corporate governance and sustainability performance, we continue by discussing the potential challenges Eumedion has been confronted with when trying to influence the process of norm development. We focus on three issues, i.e. the relatively small size of shares it represents, the

issue of Eumedion's mandate in representing interests of its participants at AGMs, and its focus on issues related to corporate governance and sustainability.

Do "they" really hear its voice?

As described in chapter 3, Eumedion grew over time in terms of the number of participants and the total amount of capital it represents. It started as a representative of a group of mainly Dutch pension funds, but over time other national and international investors joined. In terms of norm setting and spreading, this has given Eumedion serious leverage in discussions about developing new and/or changing existing rules and regulations regarding corporate governance in the Netherlands.

At the same time, however, especially when it comes to the implementation of norms, there are limits to Eumedion's influence because it is a relatively small player. For some of the companies with which it has a dialogue and/or sends out an alert, Eumedion represents only a small part of outstanding shares. Especially the larger Dutch listed companies see them as representing (relatively small-sized) Dutch institutional investor ownership. Foreign investors (including institutional) hold a large majority of shares in most Dutch companies (i.e. around 75-80 per cent). Several of the interviewees stressed the issue of the smallness of Eumedion in this respect as a potential barrier to the impact it may have had on influencing company behavior (interview transcripts, p.206, p.227). As one of the interviewees remarked: "[Eumedion] should not overestimate its powers in changing company decisions..." especially when representing a small part of shares outstanding (interview transcripts, p.225). Company management ultimately listens mostly to the large (foreign) shareholders when taking into account the interests of shareholders (interview transcripts, p.206). At the same time, some of them indicated that in the smaller listed companies it sometimes represents 30-40 per cent of shares and that for these companies its influence has been bigger (interview transcripts, p.207).

In addition, companies also focus more on internationally operating proxy advisors such as ISS and Glass Lewis, because foreign institutional investors mostly look at the advice given by these proxy advisors, instead of looking at the alerts issued by Eumedion. Again, this particularly holds for the larger Dutch listed companies (interview transcripts, p.52). One interviewee remarked that especially internationally oriented companies are more focused on foreign codes and proxy advisors such as ISS as compared to the Dutch code and the alerts issued by Eumedion, unless perhaps in case there is a typical Dutch corporate governance issue they have to deal with (interview transcripts, p.208).

The issue of Eumedion representing only a small part of outstanding shares has become even more pressing, since ownership concentration in Dutch listed companies has been on the rise recently. According to a recent position paper published by Eumedion (Eumedion, position paper, 2016), the shares of several companies are owned by a few large owners such as families and/or founders. This limits the power of Eumedion in voicing the interests of shareholders, because these large shareholders may have different interests as compared to most other shareholders. These majority shareholders may determine voting outcomes due to their sheer size. In these cases, having company dialogues, sending out alerts and/or coordinate collective action at AGMs will almost never be successful (interview transcripts, p.213).

Finally, some interviewees made the remark that although in the Dutch context, Eumedion's role in the norm setting and norm spreading process may have been substantial, its influence on norm development outside the Netherlands has been less strong (interview transcripts, p.207). For example, in the interviews it has been pointed out that its role in influencing norm development within the European Union has been relatively limited, as the lines with policy makers and rule setters are not as short as they are with the House of Representatives in the Netherlands. In the European Union the norm development process is more formalized with more checks and balances and more actors as compared to the Dutch situation (interview transcripts, p.209). Moreover, Eumedion is an organization that is intertwined with the unique aspects of the Dutch pension system. As a result, there are hardly any similar organizations in other countries, which reduces the possibility to team up when pushing for certain rules and regulations. Whereas large companies, banks and auditors are organized internationally, the representation of institutional investors is less developed, making Eumedion as a organization rather unique in the European context.

Eumedion's mandate in representing interests of its participants

As discussed, Eumedion represents the interests of institutional investors. With respect to the norm setting and norm spreading process, this is really also the case. For these stages of norm development it has a mandate to act on behalf of its participants. However, this is not the case when it comes to the implementation of norms. During this part of the norm development process interests of participants may conflict. Therefore, institutional investors participating in Eumedion ultimately make up their own mind when deciding on how to deal with their role as monitors of company management and how they want to contribute to the company's strategy. In principle, they may decide to have informal discussions with management

separately from Eumedion's involvement and/or may participate at AGMs without following Eumedion's suggestions. Participants decide for themselves what to do when voting on controversial proposals. Also, when company dialogues are being held and/or alerts are sent out to companies, participants may regularly join forces, but ultimately vote for themselves (similar or dissimilar from Eumedion's arguments as included in the alerts). Thus, although Eumedion represents its participants in Dutch and international policy related issues, it is not a formal representative towards companies. It is clear that the lack of mandate in direct discussions with companies weakens Eumedion's power in the process of implementing norms.

The lack of mandate may result in situations in which Eumedion claims a corporate governance issue with respect to a company as being important, yet there is no follow-up during the AGM. One of the interviewees mentioned that this indeed is a potential problem (interview transcripts, p.225). Eumedion and its participants could solve this problem by improving the internal coordination process and have one voice about concerns they have with a company's corporate governance.

As described in chapter 3, the issue of Eumedion's mandate has been discussed since its establishment in 2006. Even before Eumedion's establishment, when the SCGOP was taking care of the interests of the large institutional investors, this was an issue of continuous discussion. In practical terms, the participants have always been reluctant to hand over the right to vote in the name of the participants to Eumedion. In particular, company pension funds are afraid they are confronted with situations where they stand up against corporate governance and sustainability practices and decisions of the company to which they are linked. In these cases, the question is whether their interests are really represented when Eumedion has a full mandate also in the implementation process.

On the positive side, the current situation may stimulate participants' active involvement in the norm implementation process, i.e. their engagement with companies and their corporate governance behavior may increase. By being actively involved they need to think about corporate governance and sustainability behavior of companies, how to monitor this and what solutions to look for. The peer pressure (i.e. participants observe each other's efforts in monitoring corporate governance behavior) may further increase the effectiveness of engagement of investors. This may contribute to enhancing the expertise with respect to applying and enforcing best practices in corporate governance within Eumedion as well as within institutional investors. It may also provide feedback to the norm setting process in which Eumedion is involved more strongly.

Focus on corporate governance and sustainability

Eumedion has been established to coordinate interests of institutional investors to improve the relation between institutional investors and companies with a particular focus on corporate governance and sustainability. As a result Eumedion's natural habitat is related to setting, spreading and implementing norms on these issues. One of the consequences is that Eumedion is intensively interacting with experts from departments focusing on governance and sustainability of both companies and institutional investors. These experts tend to agree more easily with Eumedion's arguments.

The question, however, is to what extent those responsible for investment decisions take these arguments into account. This relates to the issue of whether and to what extent governance and sustainability are integrated in portfolio management and analysis of both investors and companies (interview transcripts, p.235). For companies this can lead to a situation in which they receive mixed signals from the same investors. That is, one day they talk with governance and sustainability experts who have a lot of demands. The next day, however, they meet with portfolio managers and analysts representing the same institutional investor, asking about when the company is going to realize (higher) profits (interview transcripts, p.226). This may lead to confusion and misunderstanding between company management and investors.

The discussion about the relationship between financial and sustainability goals is an issue that is not specific for Eumedion's activities. It is an issue many investors are confronted with nowadays. Eumedion, nor its participants, can easily solve this. At the same time, it is a reality that adversely affects the outcomes of the dialogue between investors and companies and thus the effectiveness of Eumedion in representing interests of its participants with respect to governance and sustainability issues. One of the solutions to this problem may come from the institutional investors themselves in that they intensify the dialogue between their governance and sustainability experts and portfolio managers (interview transcripts, p.222).

Eumedion's challenges: Concluding remarks

Although small may be beautiful at times (see section 5.2), Eumedion's size is also a challenge. In particular, the fact that it represents only a small part of shares held in Dutch companies reduces its power to be effective in influencing the norm implementation process. The challenge of representation has become even more pressing as concentration of

ownership of Dutch companies at founders and families has been on the rise recently. Another challenge is the issue of the mandate Eumedion to speak on behalf of its participants. While it seems to have a strong mandate when it comes to the norm setting and norm spreading process, this is not the case in its communication with companies. It may signal controversial governance issues, yet its participants ultimately decide for themselves how they deal with these issues. Obviously, this reduces Eumedion's effectiveness in influencing company behavior. A third and related challenge is that Eumedion focuses on corporate governance and sustainability. As explained, since in many cases corporate governance and sustainability issues are not really integrated in portfolio investment management and analysis of both investors and companies, the effectiveness of Eumedion in representing interests of its participants with respect to these issues is reduced.

5.4 The future of Eumedion

Now that we have covered Eumedion's past activities, its role in the corporate governance and sustainability debate, and have reflected on Eumedion's strengths and challenges, we end with providing some recommendations for Eumedion and its participants for the upcoming years. In particular, in this section we deal with Eumedion's future role in discussions about the importance of corporate governance and sustainability issues and how they can or should be integrated in portfolio management decisions, its role in helping companies to create a stable shareholder base, and its role in elaborating on the dialogue between companies and investors.

The future of corporate governance and sustainability

After more than ten years since the Dutch Corporate Governance Code came into force the most important issues in corporate governance seem to be in place. Companies have more or less accepted most of the best practices of the Code. The number of controversial issues at AGMs has reduced over the years, although some issues (e.g. on remuneration) remain to be discussed from time to time. Instead, debates on corporate governance issues seem to have been replaced more and more by discussions about corporate sustainability, in particular related to corporate social responsibility (CSR) (interview transcripts, p.234).

At the same time, for many companies as well as for institutional investors discussions about governance and sustainability are currently still disconnected from decisions on how to create firm value. CSR decisions are not really part of the corporate strategy, as decision makers – at companies as well as at institutional investors – in many cases view creating firm value and CSR in terms of a trade-off, instead of being complementary. Ultimately, corporate

strategy and investors' decisions seem to be driven mostly by the search for creating shareholder value. Although from a general perspective, company management and investors may favor good governance and sustainability behavior (e.g., on topics such as pollution, tax avoidance, etc.), the moment it concerns their own business and/or investments, they mostly take a different perspective (interview transcripts, p.59).

Given its expertise, Eumedion could be a key player in the debate on the role of corporate governance and sustainability in business and society during the coming years (interview transcripts, p.219). Eumedion has focused on corporate social responsibility from the beginning. Already when SCGOP was established its importance was discussed. Yet, attention for this issue faded during the early years of Eumedion when the focus was more on the traditional corporate governance issues. Since 2009, the attention for corporate social responsible behavior has intensified. Eumedion started to actively monitor corporate social responsible behavior of companies. As discussed in section 5.3, Eumedion also intensively communicates with governance and sustainability experts. Moreover, it has been active in shaping and stressing the need for integrated reporting in their role as an active member of the International Integrated Reporting Council (IIRC).

In particular, Eumedion could play an important role in facilitating the discussion on how to integrate CSR decisions in portfolio management decisions (interview transcripts, p.219), stressing the fact that firm value and CSR are complements rather than substitutes, at least in the long-term. Of course, the core of this debate needs to take place within companies and institutional investors between CSR experts and portfolio managers. Bringing CSR experts and portfolio managers closer to each other also will help Eumedion in its communication towards companies, as it reduces the probability that company management gets mixed signals from CSR experts and portfolio managers of investors with respect to their demands.

Moreover, the dialogue between company management and institutional investors managers with respect to integrating CSR decisions into portfolio management decisions needs to be intensified (interview transcripts, p.222). Two recent surveys among representatives of company management and representatives of institutional investors showed that perceptions about investor engagement with respect to governance and sustainability issues clearly diverged (Melis et al., 2011; Bier et al., 2012). Whereas investors showed to be satisfied with their level of engagement on these issues, company management was much less positive. This may indicate there is still a gap to close when it comes to discussions about governance and sustainability issues between management and investors. Eumedion could

help closing this gap by facilitating the dialogue between both parties (interview transcripts, p.232).

Finally, Eumedion could play an important role in creating a more general awareness of the importance of corporate social responsible behavior, both at the end of companies as well as their investors (interview transcripts, p.234). What role could and should companies and investors play in society in the longer run? What contribution can they make to creating value for society at large and for the different stakeholders in particular? Eumedion could lead the discussion on how to apply corporate social responsibility that goes beyond ticking the box behavior and help developing approaches for companies as well as investors that really make an impact on creating value for society at large in the long run.

The search for a stable shareholder base

Especially since the late 2000s Dutch listed companies have been searching for a more stable and engaged shareholder base, i.e. after a period during which several of these companies experienced strong shareholder activism. In many cases, this shareholder activism was initiated by hedge funds and other profit-seeking activist investors who had an interest in the company only for the short-term. This may create pressure and uncertainty for company management, which is why it has a preference for a shareholder base that is more stable and more engaged in the company for the longer run.

Eumedion and its participants may also have an interest in companies with a more stable shareholder base, as their focus generally is on the longer rather than on the short-term. Eumedion's effectiveness in its communication with company management increases, at least potentially, if the investor base is engaged and is involved in the company for a longer period of time. In fact, creating engaged shareholders is exactly what Eumedion is aiming for by coordinating the interests of its participants and by supporting them with respect to how to behave as engaged investors.

Some recent developments have occurred that are related to the search for a stable and engaged shareholder base. First, since the later 2000s, there has been a shift with respect to the characteristics of the shareholder base of Dutch listed companies. In particular, several companies have seen a concentration of ownership due to the fact that a large part of the shares are owned by a dominant shareholder, such as a family or a founder. While this does lead to the stable and engaged shareholder base company management is looking for, it may not always be in line with the interests of other (institutional) investors. That is, the dominant shareholder may have interests that may not converge to those of other shareholders.

An important reason explaining this trend towards more concentrated ownership of Dutch listed companies is that a number of (foreign) companies with dominating owners (e.g. Altice, Fiat, etc.) have recently been listed on the Dutch stock exchange (interview transcripts, p.233). These companies are eager to obtain a listing in the Netherlands, because Dutch business law is relatively lenient towards companies with respect to the use of anti-takeover measures. Such measures help protecting the interests of dominant shareholders. One problem with this is that the leniency of Dutch business law may backfire on the general investment climate in the Netherlands as investors may start questioning whether and to what extent their interests as minority shareholders are properly protected.

Second, companies may aim at stimulating a more engaged and stable shareholder base by using instruments to incentivize long-term share ownership such as loyalty shares, giving investors holding these shares additional voting and/or cash flow rights. Companies are facilitated in using these instruments by the governments of some countries (such as France and Italy recently), aiming at reducing the pressure on corporate management coming from short-termist investors. The Dutch company law allows founding owners of a company to issue dual class shares and loyalty shares (Eumedion, 2016b, p.2). These solutions may have adverse consequences for other shareholders, however, because issuing this type of shares is in conflict with the one-share-one-vote principle. The Economist recently expressed its criticism regarding the use of instruments like these. In an article it concluded that ultimately, it is not important how long one holds a share but what one does with its right to vote (The Economist, 2010).

Eumedion has voiced its concerns about the lack of an engaged and stable shareholder base in Dutch listed companies and the potential consequences of this for the long-term sustainability of these companies and its owners. It has been critical of the increased concentration of ownership. It has also raised its voice in criticizing the use of loyalty and dual-class shares as a way to create a stable shareholder base (Eumedion, 2016b). This signals Eumedion has a clear stance in the debate on how to deal with developing an engaged and stable shareholder base. It could therefore become one of the thought leaders on this issue in the coming years.

The dialogue between company and investors

In section 5.3 we discussed the issue of Eumedion's mandate to act on behalf of its participants in its communication with company management. The fact that this mandate is only limited in practice as participants ultimately take their own decision on controversial

issues in corporate governance and sustainability weakens Eumedion's position in discussions with company management during the dialogues; it potentially decreases the effectiveness of the alerts; and it reduces the success rate of voting against these issues during the AGM.

The issue of the mandate of the representative of institutional investors in the Netherlands has been on the table ever since SCGOP was established and Eumedion as its successor "inherited" this discussion. As explained, the underlying reason for the reluctance of investors to hand over the mandate to Eumedion is related to the fact that especially the company-linked pension funds see the danger of having to agree with concerns raised by the foundation against the company to which they are linked.

The fact that it has a limited mandate to act on behalf of its participants has been mentioned by several of the interviewees as one of the main weaknesses of the model of interest representation used in the case of Eumedion (interview transcripts, pp.214-215; pp.223-224, pp.235-237). According to these interviewees, strengthening the position of Eumedion as a representative of its participants vis-à-vis company management would leverage the effectiveness of the association in the process of norm implementation. This would also mean that Eumedion is allowed and is able to take a more activist position in case of controversial proposals and/or decisions made by company management.

The Canadian Coalition for Good Governance (CCGG) is an interesting example of what may happen if an organisation such as Eumedion would become more activist. Similar to Eumedion, CCGG is an association representing the interests of institutional investors with investments in Canadian listed companies. It has a different approach, however, in that its main focus is on norm implementation. Moreover, it exclusively represents the interests of domestic participants. Finally, and perhaps most importantly, it has a more activist approach and focuses on raising its voice with respect to a limited number of controversial corporate governance issues. When raising its voice it has the mandate to act on behalf of its participants.

A recent study by Doidge et al. (2015) showed that CCGG's involvement was very effective in changing company decisions regarding controversial corporate governance issues, such as majority voting for director elections, say-on-pay and CEO compensation structures and disclosure. Doidge et al. showed that CCGG engaged with around 40 per cent of the companies listed at the S&P/TSX index²⁴, and found that the probability that companies adapted their policies on one of the three governance topics was significantly higher for those companies in which CCGG was engaged. Moreover, they found evidence for a spill-over effect. That is, the probability of changing governance policies was also higher for non-

engaged companies with board members who were also board members in one of the companies in which CCGG was engaged. Apparently, these policy changes travelled with the board members of engaged companies to the board room of other non-engaged companies. So, CCGG's approach is clearly focused, and at the same time it is also very powerful in voicing its views, because it can act on behalf of its participants. Based on these results, Doidge et al. (2015) concluded that CCGG's engagement was effective in improving corporate governance practices of Canadian listed companies.

Obviously, for Eumedion turning to a more activist model is not an easy step. Given the current governance structure, such a change would create a conflict between being more active while at the same time being the voice of a large variety of investors with different interests with respect to a number of issues. In particular, the differences in interests between company-linked pension funds versus other institutional investors would pose problems.²⁵

One way to solve this may be to focus on a narrow set of governance and sustainability issues for which interests of institutional investors are clearly similar. Eumedion's effectiveness in being more activist would be positively influenced if it is able to be successful in a limited number of cases, for which participants are willing to raise one voice and let Eumedion represent them in discussions with company management.

Another potentially interesting solution could be to differentiate between participants with respect to the extent to which they allow Eumedion acting on their behalf in discussions with company management. While some participants choose for a more extended mandate in all (or just a limited set of) governance and sustainability issues, others may choose for a more limited mandate for Eumedion to act on their behalf. Such a differentiation could even vary depending on the topic or issue that is discussed.

Ultimately, Eumedion's goal is to have regular, informed and active discussions between company management and the investors in the company. That is, there is a clear understanding at both sides of the table in terms of what investors expect from management and how and to what extent decisions also are relevant from a larger societal perspective. This would lead to a situation where alerts are no longer necessary and discussions of and voting on controversial issues at AGMs are exceptions (interview transcripts, p.234).

6. Summary and concluding remarks

In this report, we addressed the following research question:

To what extent has Eumedion contributed to the development and improvement of corporate governance and sustainability in the Netherlands during the 2006-2015 period?

We analyzed Eumedion's contribution by using a theoretical framework that describes the process of developing norms of corporate governance and sustainability. These norms describe how (good) corporate governance and sustainability should look like. The process of developing norms can be broken down in three stages, i.e. norm setting, norm spreading and norm implementation. Our analysis describes how Eumedion is actively involved in all three stages. The analysis provided the following results.

Norm setting

Eumedion has been actively involved in this process, first of all by writing consultation reactions and sending comment letters to Dutch and European institutions directly involved in setting norms. In particular, it is frequently communicating with the Dutch Ministry of Finance, the European Union institutions and (committees of) the Dutch House of Representatives, because they are most important in setting corporate governance and sustainability norms. The analysis also shows that Eumedion is discussing a wide range of corporate governance and sustainability topics in its interactions with these institutions. Yet, over time the emphasis of topics discussed shifted from more traditional corporate governance topics (such as shareholder rights and remuneration) to reporting and the role of the internal auditing function and external auditor. During the 2008-2012 it was particularly active on issues related to the financial markets and banking industry as a consequence of the global financial crisis.

Next to the consultation reactions and comment letter, Eumedion produces position papers (since 2008), which are aimed at boosting discussions about norm setting and/or changes. Eumedion has been very active in writing these papers, especially during the years 2014-2016, signaling its active role in debates as a thought leader. The majority of these papers deals with topics related to the powers of shareholders. Eumedion is also active in several Dutch and international committees in which norm setting regarding corporate governance and sustainability is discussed and developed. Eumedion's network of organizations in which it participates has widened considerably over the years.

Norm spreading

Most importantly, Eumedion has been active at this stage of the norm development process by annually issuing so-called focus letters, which are sent to Dutch listed companies and in which it communicates the most important corporate governance topics for institutional investors. Our review of these letters shows that they discuss a wide range of topics with an emphasis on the procedures regarding the organization of AGMs, content and accountability of remuneration policies, corporate risk analysis, risk management and control and (financial) reporting issues. The overview also shows that over the years the focus of the focus letters has shifted towards addressing risk and reporting issues. Evaluating the effectiveness of the focus letters suggests that they have had a significant impact on corporate governance and sustainability behavior of Dutch listed companies and other related actors. The fact that Eumedion puts and keeps issues on the agenda of discussions about corporate governance and sustainability between management and shareholders stimulates companies to address these issues.

Norm implementation

During its early years (2006-2009) Eumedion was mostly involved in norm setting and norm spreading. Since 2009, it became more and more involved in the third stage of the norm development process. During this stage, it is evaluated whether and to what extent norms are being implemented. Eumedion again is actively involved in this stage. First of all, it has annual dialogues with a selection of Dutch listed companies, during which it communicates its observations and discusses its opinion on how norms should be applied by a specific company. Moreover, in case of controversial proposals made by company management at the AGM it may start the so-called alert procedure, which may lead to sending out an official alert. In this alert, Eumedion describes why it would like to see the proposal to be withdrawn or changed. Our evaluation of the use of company dialogues and alert service suggests that they played an important role in making norm implementation by participants a coordinated activity, i.e. it helped professionalizing the norm implementation process. They also helped Eumedion becoming increasingly influential in determining the debates over governance and sustainability both within the board room as well as during AGMs.

Eumedion's role in shaping corporate governance

Combining the empirical evaluation of the documents with the content of the expert interviews reveals the following picture. First, although Eumedion is a small organization, it

has been able to make a significant and positive contribution to all three stages of the norm development process in the Netherlands during the past ten years. It is taken into account as a serious partner in discussions during policy developments by important decision makers, management of companies and other relevant parties, both domestically as well as internationally. Moreover, Eumedion is seen as a serious knowledge centre and an active and respected organization representing shareholder interests.

Second, Eumedion has been actively involved in discussing a broad spectrum of corporate governance and sustainability issues, i.e. from traditional corporate governance topics, such as shareholder rights and remuneration to corporate social responsibility and tax avoidance.

Third, Eumedion has helped creating an environment in which there is a permanent dialogue between company management and investors during, but certainly also outside, the AGM. It has been successful in getting and keeping important governance issues on the agenda, in establishing closer and more informative relationships between management and shareholders, and in helping to make sure that shareholders are taken more seriously. It has also stimulated institutional investors to take their role as engaged shareholders more seriously.

Fourth, with respect to the implementation of norms, Eumedion may have been less effective in some cases in changing company behavior because it is a relatively small player. For some of the companies with which it has a dialogue and/or sends out an alert, Eumedion represents only a small part of outstanding shares. Moreover, companies focus more on internationally operating proxy advisors such as ISS and Glass Lewis, because foreign institutional investors mostly look at the advice given by these proxy advisors, instead of looking at the alerts issued by Eumedion.

Fifth, Eumedion has a limited mandate to speak on behalf of its participants in its communication with companies. The issue of the mandate of the representative of institutional investors in the Netherlands has been on the table ever since its predecessor, the SCGOP was established; Eumedion as its successor “inherited” this discussion. It may signal controversial governance issues, yet its participants ultimately decide for themselves how they deal with these issues. Obviously, this reduces Eumedion’s power in influencing company behavior.

Sitxh, Eumedion focuses on corporate governance and sustainability. Since in many cases corporate governance and sustainability issues are not really integrated in portfolio management and analysis of both investors and companies, the effectiveness of Eumedion in representing interests of its participants with respect to these issues is reduced.

The future of Eumedion

Looking at the future, we suggest Eumedion to elaborate on the following three issues. First, given its experience and knowledge in the field of corporate governance and sustainability, it can play an important role in facilitating the discussion on how to integrate CSR decisions in portfolio management decisions, both within companies and institutional investors, as well as between companies and their investors. In communications they have with both these parties, it could more forcefully stress the fact that firm value and CSR are complements rather than substitutes, at least in the long-term.

Second, Eumedion could focus on stimulating, and perhaps even leading, the current debate on engaged share-ownership, both within and outside the Netherlands. Recently, Eumedion has voiced its concerns about the lack of an engaged and stable shareholder base in Dutch listed companies and the potential consequences of this for the long-term sustainability of these companies and its owners. It has also raised its voice in criticizing the use of loyalty and dual-class shares as a way to create a stable shareholder base. This signals Eumedion has a clear stance in the debate on how to deal with developing an engaged and stable shareholder base. It could therefore become one of the thought leaders on this issue in the coming years.

Third, the fact that it has a limited mandate to act on behalf of its participants is a weakness of the model of interest representation used in the case of Eumedion. Strengthening its position as a representative of its participants vis-à-vis company management would definitely leverage the effectiveness of the association in the process of norm implementation. This would also mean that Eumedion is allowed and is able to take a more activist position in case of controversial proposals and/or decisions made by company management. Participants of Eumedion may therefore reconsider the foundation's mandate to make it more powerful in discussions with company management.

References

- Aguilera, R. V., & Cuervo-Cazurra, A. (2009), Codes of Good Governance, *Corporate Governance: An International Review*, 17(3): 376-387
- Admati, A.R., and Pfleiderer, P. (2009), The "Wall Street Walk" and Shareholder Activism: Exit as a Form of Voice, *Review of Financial Studies*, 22(7): 2645-2685
- Becht, M., Franks, J., Mayer, C., & Rossi, S. (2010), Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes UK Focus Fund, *Review of Financial Studies*, 23(3): 3093-3129
- Berle, A.A., & Means, G.C., (1932), *The Modern Corporation and Private Property*, New Brunswick NJ: Transaction Publishers
- Bezemer, P.J, Zajac, E.J., Naumovska, I, van den Bosch, F.A.J., & Volberda, H.W. (2015), Power and Paradigms: The Dutch Response to Pressures for Shareholder Value, *Corporate Governance: An International Review*, 23(1): 60-75
- Bier, B., Frentrop, P.M.L., Lückerath-Rovers, M., & Melis, D.A.M. (2012), Naleving Nederlandse Corporate Governance Code: Aandeelhouders in de Nederlandse Corporate Governance Code. Rapport in opdracht van de Monitoring Commissie Governance Code, Breukelen: Nyenrode Business Universiteit;
<https://docs.google.com/viewer?url=http://www.mccg.nl/download/?id%3D2067>
- Bier, B., Frentrop, P., Lukerath-Rovers, M. and Melis, D. (2013), Overzicht Corporate Governance in Nederland 2003-2013. Rapport in opdracht van de Monitoring Commissie Corporate Governance Code, Breukelen: Nyenrode Business Universiteit;
<http://www.commissiecorporategovernance.nl/download/?id=2205>
- Carleton, W., Nelson, J., & Weisbach, M. (1998), The Influence of Institutions on Corporate Governance through Private Negotiations: Evidence from TIAA-CREF, *Journal of Finance*, 53(4): 1335-1362
- De Jong, A., De Jong, D., Mertens, G., & Wasley, C. (2005), The role of Self-regulation in Corporate Governance: Evidence and Implications from The Netherlands', *Journal of Corporate Finance*, 11(3): 473-503
- De Roon, F., & Slager, A. (2012), The Duration and Turnover of Dutch Equity Ownership A Case Study of Dutch Institutional Investors, Study commissioned by Eumedion, November 15;
http://eumedion.nl/nl/public/kennisbank/publicaties/2012_research_report_duration_and_turnover_dutch_equities.pdf
- Doidge, C., Dyck, A., Mahmudi, H., & Virani, A. (2015), Can Institutional Investors Improve Corporate Governance Through Collective Action? Working paper, April 2015;
http://www.ccg.ca/site/ccgg/assets/pdf/doidge_et_al_april_2015.pdf

- Eumediton (2007a), Annual Report;
http://eumediton.nl/nl/public/kennisbank/jaarverslag/jaarverslag_2007.pdf
- Eumediton (2007b), Consultation “Wetsvoorstel Implementatie Accountantsrichtlijn”;
<http://eumediton.nl/nl/public/kennisbank/consultaties/2007-06-implementatie-accountantsrichtlijn.pdf>
- Eumediton (2008), Annual Report;
http://eumediton.nl/nl/public/kennisbank/jaarverslag/jaarverslag_2008.pdf
- Eumediton, Consultation (2010), “Commentaar Conceptbeleidsregel Deskundigheid”;
<http://eumediton.nl/nl/public/kennisbank/consultaties/2010-10-afm-dnb-beleidsregel-deskundigheid.pdf>;
- Eumediton (2011), Annual Report;
http://eumediton.nl/nl/public/kennisbank/jaarverslag/jaarverslag_2011.pdf
- Eumediton (2012), Annual Report;
http://eumediton.nl/nl/public/kennisbank/jaarverslag/jaarverslag_2012.pdf
- Eumediton (2013), Annual Report;
<http://eumediton.nl/nl/public/kennisbank/jaarverslag/jaarverslag-2013.pdf>
- Eumediton (2014), Annual Report;
<http://eumediton.nl/nl/public/kennisbank/jaarverslag/jaarverslag-2014.pdf>
- Eumediton (2015), Annual Report;
<http://eumediton.nl/nl/public/kennisbank/jaarverslag/jaarverslag-2015.pdf>
- Eumediton (2016a), Policy Plan;
<http://eumediton.nl/nl/public/kennisbank/beleidsplan/beleidsplan-2016.pdf>
- Eumediton (2016b), position paper “Positie Minderheidsaandeelhouders in Ondernemingen met een Controlerend Aandeelhouder”;
<http://eumediton.nl/nl/public/kennisbank/position-papers/2016-06-position-paper-minderheidsaandeelhouders-def-versie.pdf>
- Frentrop, P. (2002), *Corporate governance 1602-2002*, Amsterdam: Prometheus
- Gantchev, N. (2013), The Costs of Shareholder Activism: Evidence from a Sequential Decision Model, *Journal of Financial Economics*, 107(3): 610-631
- Groenewald, E. (2005), Corporate Governance in the Netherlands: From the Verdam Report of 1964 to the Tabaksblat Code of 2003, *European Business Organization Law Review*, 6(2): 291-311
- ISS (2015), European Voting Results Report: 2015 Update, September 15
- Maug, E. (1998), Large Shareholders as Monitors: Is There a Trade-Off between Liquidity and Control?, *Journal of Finance*, 53(10): 65-98

- McCahery, J., Sautner, Z., & Starks, L. (2016), Behind the Scenes: The Corporate Governance Preferences of Institutional Investors, *Journal of Finance*, 71(6): 2905-2932
- Melis, D.A.M., Lückerath-Rovers, M., & Groothuis, M. (2011), Aandeelhoudersbetrokkenheid in Nederland: Onderzoek onder Institutionele Beleggers en hun Relatie met Nederlandse Beursfondsen. Rapport in opdracht van de Monitoring Commissie Governance Code, Breukelen: Nyenrode Business Universiteit; <https://docs.google.com/viewer?url=http://www.mccg.nl/download/?id%3D703>
- Olson, M. (1965), *The Logic of Collective Action : Public Goods and the Theory of Groups*, Cambridge MA.: Harvard University Press
- SCGOP (undated), Handboek Corporate Governance van SCGOP
- SCGOP (2005), F&C, ING Investment Management and Robeco join the SCGOP Initiative, press release, June 7 2005; available at: http://eumedion.nl/en/public/knowledgenetwork/press/press_notice_7-6-05.pdf (accessed 17 November 2016)
- Shleifer, A., & Vishny, R. (1986), Large Shareholders and Corporate Control, *Journal of Political Economy*, 94(3): 461-488
- The Economist (2010), Shareholder Activism: Ready, Set, Dough, December 2
- Von Werder A., Talaulicar, T., & Kolat, G.L. (2005), Compliance with the German Corporate Governance Code: An Empirical Analysis of the Compliance Statements by German Listed Companies, *Corporate Governance: An International Review*, 13(2): 178-187
- Wymeersch, E. (2005), The Future of Financial Regulation and Supervision in Europe, *Common Market Law Review*, 42(4): 987-1010
- Zattoni, A., & Cuomo, F. (2008), Why Adopt Codes of Good Governance? A Comparison of Institutional and Efficiency Perspectives, *Corporate Governance: An International Review*, 16(1): 1-15

Appendix I: Institutional investor associations around the world

This appendix provides short descriptions of institutional investor associations around the world. These associations are member of the Global Network of Investor Associations (GNIA), which was established in 2013 by the International Corporate Governance Network (ICGN). These associations have a common interest in promoting shareholder rights and responsibilities. The network “...enhances the capacity of national associations to share governance related priorities beyond local jurisdictions to an international audience thereby contributing to global governance reform efforts” (source: ICGN website).

The associations of institutional investors are listed below. The short descriptions are copied (with some minor changes) from the GNIA website (<https://www.icgn.org/policy/global-network-investor-associations>)

The Asian Corporate Governance Association (ACGA) is an independent membership organisation incorporated under the laws of Hong Kong, dedicated to promoting corporate governance and the implementation of effective corporate governance practices throughout Asia. ACGA covers 11 markets in the region and facilitates improvements through research, advocacy and education. It is Asia’s leading expert organisation in corporate governance. ACGA’s membership comprises major global pension funds and asset managers that manage more than US\$10 trillion in assets, as well as highly regarded Asian listed companies, professional firms and tertiary institutes. Its governing Council comprises of directors from around Asia and its managed by a secretariat based in Hong Kong.

Website: <http://www.acga-asia.org>

Australian Council of Superannuation Investors (ACSI) is a collaboration between 31 Australian profit-for-members superannuation (pension) funds and 6 major international asset owners, who have joined together to advance their collective ownership rights to improve the management of environmental, social and governance (ESG) investment risks and opportunities by Australian listed companies. At December 2014, ACSI’s member funds in aggregate managed over A\$1.6 trillion in assets on behalf of more than 10 million pension

fund members. The Australian listed equities component of this total translates to approximately 11 per cent of the average ASX 200 listed company.

Website: www.acsi.org.au

The Australian Institute of Superannuation Trustees (AIST) is a national not-for-profit organisation whose mission is to promote and protect the interests of Australia's \$600 billion not-for-profit superannuation sector. AIST's membership includes the trustee directors and staff of industry, corporate and public-sector funds, who manage the superannuation accounts of nearly two-thirds of the Australian workforce. As the principal advocate and peak representative body for the not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research. AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

Website: <http://www.aist.asn.au>

The Association of Capital Markets Investors (AMEC) was founded on October 26th, 2006, as an initiative by independent and financial institutional investors to defend the rights of minority shareholders and promote the development of the Brazilian stock market. To achieve these objectives, AMEC fosters debates and discussions among its members, in compliance with strict internal governance guidelines and through the management of conflicts of interest. Issues are discussed by its Technical Committee and further submitted to its Management Board and Board of Directors for approval. Since its creation in 2006, the Association has become the main discussion forum for institutional investors with regard to corporate governance practices and investors' rights in Brazilian companies, in line with the most recent international recommendations. At the same time, AMEC's recommendations have been increasingly recognized by investors, companies and regulatory entities, a result of the Association's relevance and independent approach. AMEC gathers 62 foreign and domestic institutional investors responsible for managing investments of approximately \$500 billion Reais in the Brazilian stock market.

Website: <http://www.amecbrasil.org.br/en/>

Assogestioni is the representative association of the Italian investment management industry. It represents most of the Italian and foreign investment management companies operating in Italy, as well as banks and insurance companies involved in investment management, including pension schemes (whose members serve more than 10 million clients and manage asset of more than €1,600 billion, representing more than 60 per cent of the country's GDP). The association's main purpose is to foster the investment management industry in Italy through the establishment of a regulatory and market environment in Italy which is conducive to growth. To achieve these goals, Assogestioni offers to its members advice and technical support on legal, corporate governance, fiscal and operational matters. It also encourages its members, financial and public institutions to debate on themes involving savings, investments, sound corporate governance and regulatory and operational improvements. Assogestioni promotes the diffusion of an adequate corporate governance culture. Investment management companies place part of the funds entrusted to them by clients in shares and bonds of listed companies. For these reasons, it is crucial that the corporate governance rules and models adopted by those companies are efficient, guaranteeing the rights of shareholders and of the numerous individuals that own units in mutual funds and other managed assets. To help its members in their stewardship activities, Assogestioni promotes the diffusion of adequate corporate governance practices, monitors the behaviour of listed companies, proposes self-regulatory codes and participates in the political and academic debate. The Asset Managers Committee, created in 1994 and formed by representatives of the association's members, assists its members during the shareholder meetings of the main listed companies and helps them present candidates to be elected in management and surveillance boards. Assogestioni is a member of EFAMA (European Funds and Asset Management Association), with whom it collaborates for the elaboration of European Union regulations and an efficient self-regulation of the European investment management industry.

Website: <http://www.assogestioni.it>

The Canadian Coalition for Good Governance (CCGG) is the pre-eminent corporate governance organization in Canada and is uniquely positioned to effect change as the voice of shareholders. CCGG's mission is representing the interests of shareholders and promotes good governance practices in Canadian public companies and the improvement of the regulatory environment to best align the interests of boards and management with those of their shareholders and to promote the efficiency and effectiveness of the Canadian capital markets. CCGG's membership includes 50 Canada-based members with aggregate AUM of

approximately C\$3 trillion on behalf of pension fund contributors, mutual fund unit holders and other institutional and individual investors. It also collaborates with the Caisse de dépôt et placement du Québec, which is the largest pension fund in the province of Quebec.

Website: <http://www.ccg.ca>

The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of employee benefit funds and endowments, and a leading voice in the US for effective corporate governance standards and strong shareholder rights. CII voting members include public, union and corporate pension funds with combined assets under management in excess of \$3 trillion. CII also has more than 120 Associate Members, including some of the largest global asset managers.

Website: <http://www.cii.org>

The Investment Association (IA) represents UK investment managers. We have over 200 members who manage more than £5 trillion for clients around the world. Its aim is to make investment better for clients so they achieve their financial goals, better for companies so they get the capital they need to grow, and better for the economy so that everyone prospers.

Website: <http://www.theinvestmentassociation.org>

The Pensions and Lifetime Savings Association (PLSA) is the voice of workplace pensions in the UK. We speak for over 1,300 pension schemes that provide pensions for over 17 million people and have more than £900 billion of assets. It also has 400 members from businesses supporting the pensions sector. PLSA aims to help everyone get more out of their retirement savings. To do this we spread best practice among our members, challenge regulation where it adds more cost than benefit and promote policies that add value for savers. The PLSA has been at the forefront of promoting good corporate governance for over 20 years, and as representatives of major institutional investors we have a real interest in seeing high standards achieved and maintained.

Website: <http://www.plsa.co.uk/stewardship>

The Minority Shareholder Watchdog Group (MSWG), or Badan Pengawas Pemegang Saham Minoriti Berhad, was set up in the year 2000 as a Government initiative to be part of a broader Capital Market framework to bring about awareness primarily on minority shareholders interest and corporate governance matters. MSWG is a professional body licensed under the

Capital Markets and Services Act 2007. It is a self-governing and non-profit body, funded substantially by the Capital Market Development Fund (CMDf). It is an important channel of market discipline, encouraging good governance with the objective of creating long term sustainable value.

Website: <http://www.mswg.org.my>

Appendix II: Data sources

Documents

Below we shortly describe the nature of the most important documents that we used in the research for this project.

Comment letter (N=153)

Eumedion regularly grasps the opportunity to give their opinion on developing discussions and proposals related to corporate governance and sustainability regulations. The intention is to voice the interest of the institutional investors who are member of Eumedion and make sure that their opinion is heard. These unsolicited comments are called comment letters and are usually directed towards people or institutions involved in formulating new or changing existing norms.

Consultation reactions (N=112)

Considering its position, Eumedion is also regularly invited by other parties to give their opinion on developing discussions and proposals related to corporate governance and sustainability regulations. It usually contains a response to plans or concept texts in different stadia of development before the norms become official. These consultation letters are sent to a large variety of national and international bodies which are involved in the creation and formulation of norms related to corporate governance and sustainability. Examples are the Dutch Corporate Governance Code Monitoring Committee, Dutch Ministries and Parliament, European Commission, International Accounting Standards Board, etcetera.

Policy plan (N=11)

A yearly plan that summarizes the ambitions of Eumedion for the coming year and shows what issues and activities will receive extra attention of the members of the secretariat and the different committees. Mainly used for internal purposes and towards Eumedion participants.

Annual report (N=10)

An overview of the activities of Eumedion, including a financial statement, of the last year. Mainly used for internal purposes and towards Eumedion participants.

Position paper (N=18)

In its ambition to become a thought leader in debates around corporate governance and sustainability, Eumedion started to publish position papers. In these papers, a specific and relevant topic is discussed in detail and incorporates the opinion of Eumedion on that particular issue. The papers are not directly focused on a specific norm setting institution but are intended to reach a wider audience of interested parties. Examples of position paper topics are securities lending, ultimate investors, tax positions, the future of the Dutch stock market, climate change, etc.

Focus letter (N=10)

Each year, Eumedion chooses one or a few specific points they want to address during the upcoming AGM season and which is relevant to all listed companies. With this letter, Eumedion communicates that it will pay extra attention to these points when evaluating corporate governance and sustainability performance of listed companies. This extra attention will be a red line when formulating company dialogue agenda's and at the AGMs themselves. The specific points are formulated in a focus letter which is send to listed companies in the Netherlands far before the AGM season starts. The intention is that these companies can prepare themselves properly and timely before the dialogues start.

Company dialogue (N=107)

Eumedion follows how each listed company develops over time in terms of its corporate governance and sustainability. When companies do not meet the Eumedion standards, companies are approached to organize a meeting to have a dialogue about the concerns of institutional investors. The company dialogues reflect the agenda of these meetings and show what the problematic issues for that particular company are. Where focus letters are used to formulate and communicate general issues that relate to all listed companies, company dialogues focus on the specific choices a specific company has made. Company dialogues can be seen as part of the norm implementation process.

Alert (N=62)

Dialogues with companies do not always lead to a sufficient explanation, or a change in company choices. Subsequently, Eumedion can declare an issue 'controversial' and decide to send out an alert to its participants. Alerts make participants aware of the specific

controversial issue. It is not a voting advice (that is up to the participants themselves), but it does make clear where Eumedion sees potential harm done to the interests of institutional investors in general.

Media document (N=550)

News articles from seven Dutch newspaper (i.e. Telegraaf, NRC Handelsblad, AD, Trouw, Volkskrant, Parool, Financiële Dagblad) and two Dutch periodicals (Elsevier, HP/De Tijd) for the period 2005-2016, in which Eumedion and/or its chair (Rients Abma) is explained mentioned.

Interviews with experts in the field

An important source of information is the set of 12 interviews we conducted with 14 experts in the field (for a complete list of interviewees, see below). These interviews were focused on the perception of the interviewees with respect to the role of Eumedion in the development of corporate governance in the Netherlands at large. These interviews provided us with an overview of the role and position of Eumedion from different perspectives.

The results have been used in a variety of ways. Most importantly, the interviews have substantially contributed to the overall line of arguments in the report. Whenever we have used the interviews to substantiate our arguments and/or conclusions, we indicate this in the main text by referring to the interview transcripts and a page number. The interview transcripts is a document, in which the text of all interviews has been collected and ordered based on a list of specific topics that have been important in our research. We have used a code book to summarize the text of all interviews into these topics. Examples of the codes we use in the code book include: the SCGOP, Eumedion's participants, norm setting and the European Union, norm development and the Monitoring Committee Corporate Governance, focus letters, position papers, company dialogues, alerts, etc. In total, we have identified 27 codes, some of which consist of a number of sub-codes. The full list of codes used is provided at the end of this data appendix.

The page numbers referred to in the main text refer to the location where a transcript of a specific interview can be found based on which we support our argument and/or conclusion.

Next to using the interviews to support our arguments and conclusions, in a number of cases, we used anonymized and translated quotes of interviewees to substantiate and/or illustrate our points of view.

We are very grateful to the interviewees for the information shared and time spent on the interviews and like to thank them for their important contribution. On the next page, we provide the list of names of the interviewees. The interviews have been conducted between August and October 2016.

List of interviewees:

- Mr. P. Borgdorff and Mr. Drs. R. Abma (Eumedion)
- Mr. Drs. G.J. Everts LL.M (Board member of the AFM- the Netherlands Authority for the Financial Markets)
- Mr. Prof. Dr. J.M.G. Frijns (former chairman Dutch Corporate Governance Monitoring Committee)
- Mr. Drs. J.F. Hoogervorst (Chairman of the International Accounting Standards Board)
- Mr. J. Hooijer LL.M (Head of Unit, Directorate General JUST, European Commission)
- Mr. R.J. van de Kraats RA (CFO Randstad Holding NV, member Dutch Corporate Governance Monitoring Committee)
- Mr. Prof. Dr. J.A. van Manen (current chair Dutch Corporate Governance Monitoring Committee)
- Mrs. Dr. D. Melis (Nyenrode Business University)
- Mr. Drs. J. Nooitgedagt RA and Mrs. Mr. M. Grondhuis (VEUO -Vereniging Effecten Uitgevende Ondernemingen)
- Mr. Prof. Dr. Mr. G. Raaijmakers (International law firm NautaDutilh and Vrije Universiteit Amsterdam)
- Mr. Drs. J.B.M. Streppel (former chair Dutch Corporate Governance Monitoring Committee)
- Mr. Drs. B. Wammes (Director of the NBA – the Nationale Koninklijke Nederlandse Beroepsorganisatie van Accountants)

Code book interview transcripts

Below we provide the full list of codes and/or code words we have used to summarize the text of all interviews into specific topics relevant for the research in this report.

SCGOP

Norm setting

- Within Eumedion
- Dutch governmental organizations and institutions
- International organizations and institutions
- Monitoring Committee Code Corporate Governance
- Dutch Accounting Standards Board

Norm spreading

Norm implementation

- Company dialogues
- Alerts
- AGMs
- Composition

Participants

- Relationship Eumedion and its participants
- Relationship among participants

Media

Rules and regulations

Corporate Governance Code

- History
- Motivation
- Compliance
- Composition of the Committee

International participants

- Participants
- Networks

Various other documents

- Focus letters
- Newsletters
- Position papers

Shareholders

- AGM

- Different types of shareholders

Proxy advisors

Consultative bodies

VEB

VEUO

Companies

NBA

Free riding

Examples/cases

Integrated reporting

Eumedion's size

Positive contributions

Challenges

Future

Other

Appendix III: Coding system used to collect data from various documents

We have used various sources to collect data on the role Eumedion has played in shaping Dutch corporate governance practices during the period 2006-2015. These sources are: annual reports and policy plans, focus letters, comment letters, consultation documents, position papers, company dialogues, and alerts. We obtained these documents from the website of Eumedion and from Eumedion's secretariat. When collecting the data from these various documents, we have used a coding scheme to identify the topics based on the structure of the Dutch Corporate Governance Code (version 2008) at the level of principles to classify the content of the documents into different topics. The Code distinguishes twenty principles. Moreover, we add (three) categories of topics, which are not covered by the Code, but are of interest with respect to Eumedion's involvement in shaping Dutch corporate governance. These topics are corporate social responsibility, corporate tax avoidance and other topics. Below we provide the details on the coding system used to collect data from the various documents list the topics. Please note that in the tables we have aggregated the data with respect to principles to the level of chapters of the Code (mentioned below in italics), because of no or a low number of observations for specific principles. In the main text of the report we mention the principles within a Code chapter that receive most or all attention in the data we obtained from Eumedion.

Topics related to the structure of the Dutch Corporate Governance Code (version 2008)

- I. *Compliance with and enforcement of the code*

- II. *The management board*
 - II.1 Role and procedure
 - II.2 Remuneration
 - II.3 Conflicts of interest

- III. *The supervisory board*
 - III.1 Role and procedure
 - III.2 Independence
 - III.3 Expertise and composition
 - III.4 Chairman of the supervisory board and the company secretary
 - III.5 Composition and role of three key committees of the supervisory board
 - III.6 Conflicts of interest
 - III.7 Remuneration
 - III.8 One-tier management structure

IV. *Shareholders and the general meeting of shareholders*

IV.1 Powers

IV.2 Depositary receipts for shares

IV.3 Provision of information to and logistics of the general meeting

IV.4 Responsibility of shareholders

V. *Audit of the financial reporting and the position of the internal audit function and the external auditor*

V.1 Financial reporting

V.2 Role, appointment, remuneration and assessment of the functioning of the external auditor

V.3 Internal audit function

V.4 Relationship and communication of the external auditor with the organs of the company

Other topics

Corporate social responsibility

Corporate tax avoidance

Strategy and mergers and acquisition policies

Integrated/sustainability reporting

Financial position

Financial reporting (e.g. quarterly reporting, IFRS issues)

Public availability of issues from management letter

Corporate governance general (e.g. structure, simplification)

Anti-takeover measures

Other (this category includes a list of many different topics, several of which are company-specific, which makes it difficult to classify them in specific categories of corporate governance topics; examples are: expressed worries about the frequent absence of the CEO and its effects on the implementation of the new strategy; questions regarding the role of a “special” advisor that was appointed temporarily and his/her relationship with the board of directors; questions regarding a forensic examination conducted by Deloitte and to what extent this examination has resulted in extra precautions/measures; questions related to (alleged) bribery; questions regarding the different assessment by credit rating agencies: what could possibly explain the difference; expressed concerns that the executive board has been ignoring the swift in power among shareholders for such an extended period).

Endnotes

¹ Further analysis of the equity holdings of Dutch institutional investors shows that from 2004, an increasing share of these holdings was with mutual funds. This development accelerated after the emergence of the financial crisis. Whereas these institutional investors held 85 per cent of their equity holdings in terms of listed company shares, this dropped to 65 per cent in 2007 and further went down to 32 per cent in 2009. At the same time, equity held via mutual funds was only 10 per cent in 2004, which increased to 28 per cent in 2007 and to 62 per cent in 2009, after which it more or less stabilized (source: Statistics Netherlands).

² Before the mid-2000s, participation rates at AGMs of Dutch listed companies were less than 40 per cent on average. As compared to other European countries this was low, as in countries such as Germany, Italy and France participation rates were between 50-60 per cent. In the US, participation rates were even as high as 85 per cent.

³ The Dutch code was established in a relatively short period of time. One important reason why this is the case was that the Ahold scandal led to political pressure to come up with far-reaching regulations regarding corporate governance, disclosure and transparency. Dutch pension funds and company management clearly had different opinions about how to stimulate improving corporate governance of Dutch companies (interview transcripts, p.14). When the Minister of Finance (Gerrit Zalm) was voicing his willingness towards legislation with respect to corporate governance and corporate disclosure, Dutch companies and institutional investors decided to accept the creation of the Code as a second-best solution.

⁴ For companies listed on the AMX exchange, participation rates increased to 60 per cent over the same period.

⁵ On the growing attention for shareholder value of Dutch companies, see Bezemer et al. (2015).

⁶ The founding members of SCGOP were: Pensioenfond ABP, Pensioenfond PGGM, Algemeen Pensioenfond der KLM, Bedrijfspensioenfond KPN, Philips Pensioenfond, Shell Pensioenfond, Spoorwegpensioenfond and Unilever Pensioenfond "Progress". Next to these eight founding pension funds, 17 other pension funds were acting as participants to the association. (Handboek Corporate Governance van SCGOP, undated)

⁷ With some of them Eumedion sometimes meets to discuss how they can have an impact on the nature and formulation of corporate governance norms (interview transcripts, p.7, p.163 and pp.166-167).

⁸ Our approach is similar to Becht et al. (2008) who analyzed the impact of the Hermes Fund by using unpublished documents and interaction with companies in which the Fund is investing. It is also similar to Carleton et al. (1998) who used correspondence between TIAA-CREF, a U.S. based pension fund, and their targets. In particular they studied the negotiation process in connection with the filing of proxy statements.

⁹ The position papers are not taken into account in this table because they are usually not related to specific rules and regulations.

¹⁰ See section 5.2 for a more extensive discussion.

¹¹ See the reports of the Monitoring Committee on the compliance with the Dutch Corporate Governance Code 2004-2014 by visiting the Committee's website: <http://www.commissiecorporategovernance.nl/information-in-english>

¹² It would be interesting to evaluate to what extent recommendations made in focus letters have a longer term impact on corporate governance practices. Such an analysis is beyond the scope of this research project.

¹³ These documents are available on Eumedion's website: www.eumedion.nl/nl/kennisbank

¹⁴ The Netherlands, together with the UK, is a forerunner in the world with respect to recommending external accountants to provide a more company-specific auditor's opinion. The discussion on this matter started in 2013 when the International Auditing and Assurance Standards Board (IAASB) published a draft proposal in which this recommendation was made. Eumedion communicated this recommendation to companies and its participants in the same year in its focus letter.

¹⁵ Eumedion's approach may be compared to that of active shareholders in the U.S. as described in Gantchev (2013). According to Gantchev (2013) shareholder activism is a sequential decision process consisting of several sequential steps of shareholder engagement. For shareholders in the U.S. the sequence of steps usually consists of announcing the activist's intentions, formally communicating the activist's demands, an official request for board representation, filing a preliminary proxy statement, and finally waging a proxy fight. Each next step is taken only after the previous step has failed and after a cost-benefit analysis of taking the next step has shown that a net benefit may be expected. Eumedion uses a similar process when monitoring norm implementation of companies.

¹⁶ Until 2011, the alert procedure was only used for items on the agenda of the AGM that lead to a voting. After 2011, the alert service of Eumedion was extended. Alerts can also be sent in case of controversial corporate governance issues that do not lead to voting at the AGM.

¹⁷ The description of the process of issuing an alert is taken from Eumedion's annual report 2011 (p.24).

¹⁸ Eumedion started sending the alerts to companies and proxy advisors only recently (e.g. since the early 2010s) in order to show transparency about its activities. In particular, it gives companies the opportunity to check the information provided in the alert (interview transcripts, p.2).

¹⁹ The number of company dialogues during these two years may be low due to incomplete data. It may also be low because Eumedion needed time to develop procedures to organize these dialogues and to learn how to make use of them in the association's policy.

²⁰ Excluding the first two years when the number of topics discussed was 4 and 9, respectively.

²¹ The number of alerts for this year may be low due to incomplete data. According to its annual report of 2009 Eumedion sent out nine alerts in this year. We received copies of two of these alerts from Eumedion's secretariat.

²² In one of these two cases, the company received a second alert on a similar governance issue, since it initially did not want to give in and change this proposal. Yet, because two important proxy advisors (ISS and Glass Lewis), like Eumedion, advised against the proposal made by the company's management, it was finally withdrawn as well.

²³ Source: Eumedion's website (<http://eumedion.nl/nl/overeumedion>); accessed 18 November 2016.

²⁴ S&P/TSX index is an index of the stock prices of the largest companies on the Toronto Stock Exchange.

²⁵ A related issue making such a step more difficult may be that Eumedion is typically the product of the Dutch society in which the so-called polder model is still relevant, i.e. problems are solved jointly with other stakeholders as much as possible. In such a model, a more activist approach is more difficult to incorporate (interview transcripts, p.241, p.242).

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