# EVALUATION OF THE 2019 AGM SEASON

**Introduction**

Every year Eumedion[1] prepares an evaluation of the season of annual reports and shareholders meetings, the AGM season. The main substantive findings concerning the annual reports for the year 2018 and the regular shareholders' meetings held in 2019[2] are considered below.

**Highlights**

- The average number of votes cast (excluding those cast by Trust Offices) at the AGMs of the largest listed (AEX) companies reached also this year a new record level: 73.2% (2018: 72.4%). Also the average number of votes cast (excluding the votes cast by Trust Offices) at AGMs of the midcap (AMX) companies increased: from 64.9% in 2018 to 65.8% in 2019. This is, however, still lower than the peak level of 67.4% in 2017.
- KPN was this year the first Dutch company that offered its shareholders the possibility to vote virtually and real time during the AGM. It was the first step to hold a so-called hybrid shareholders meeting.
- The number of contested voting issues (>20% dissent votes) decreased from 29 in 2018 to 26 in 2019. This decrease is likely due to more dialogues between listed companies and shareholders ahead of the AGM and the accommodation of the board-proposed AGM resolutions to the amended voting policies of several institutional investors and proxy advisors. At the same time, the number of rejected board-proposed AGM resolutions increased from only 1 in 2018 to 7 in 2019. These related to proposals that were not aligned with updated voting policies of institutional investors and proxy advisors on the authority to issue new shares without pre-emption rights and to a company-specific issue at ING Groep resulting in shareholders' refusal to discharge the Executive and Supervisory Board. Regrettably none of the companies that saw one or more proposals rejected issued a statement how the board interprets the voting result and what actions it intends to take to consult shareholders in order to understand the reasons behind the result. This is a missed opportunity for relationship-building.
- Some Dutch listed companies are still struggling with executive remuneration. Companies that follow an intensive engagement programme ahead to the AGM, entering into dialogue with individual shareholders, shareholder organisations, proxy advisors and other relevant stakeholders, such as the works council, and who are responsive to their feedback tend to have a

[1] Together, the Eumedion participants represent approximately 25% of the shares of the Dutch listed companies.
[2] This evaluation report covers the AGMs of companies that have its registered office or headquarters in The Netherlands and are listed on Euronext Amsterdam, including Royal Dutch Shell PLC. This year's evaluation report also includes the Mylan NV AGM, as three Eumedion participants attended this meeting.

lower number of dissent votes than companies that refrain from conducting pre consultations. As a result Intertrust, Wessanen and BinckBank withdrew their remuneration proposals ahead of the AGM to avoid a shareholder rebellion, while BE Semiconductor Industries (BESI) felt it necessary to make last-minute amendments in order to win a majority vote. The remuneration proposals of TomTom, Takeaway.com and Ahold Delhaize were adopted, but with a relatively high number of dissent votes. With the Dutch legislator's decision to (in principle) increase the AGM voting threshold to adopt an amended executive remuneration from a simple majority to 75% of the votes cast, companies hopefully feel more encouraged to organise pre consultations on draft proposals.

- Diversity, in particular gender diversity, within the boardroom has become a prominent theme during dialogues between shareholders and companies and at AGMs. Dutch listed companies are showing encouraging signs that they are listening to shareholders and wider concerns about the lack of female executives and supervisory directors. There is now more or less gender balance with regard to new nominations for the Executive and Supervisory Board. The number of Dutch listed companies without any female executives and supervisory directors decreased from 17 to 11. Out of all Dutch AEX and AMX companies, only Flow Traders still has two all-male boards. Mainly as a result of this situation, the proposed re-appoint of Flow Traders' supervisory director Roger Hodenius, also member of the company's remuneration and nomination committee, received 20.7% dissent votes (35.7% if all Flow Trader board-related parties are exempted).
- Many companies were responsive to Eumedion's request for incorporating a comprehensive overview of the long-term value creation model of the company in the annual report. In that respect they are presenting an overview of the inputs, the business model, the output, the outcomes and the impact on society with a link to the sustainable development goals. The reports would be even more insightful if companies would quantify the input, the output, the outcome and the impact and to show that the company's purpose, mission and strategy are linked to materiality analysis.

## 1. Relatively high number of rejected and withdrawn AGM proposals

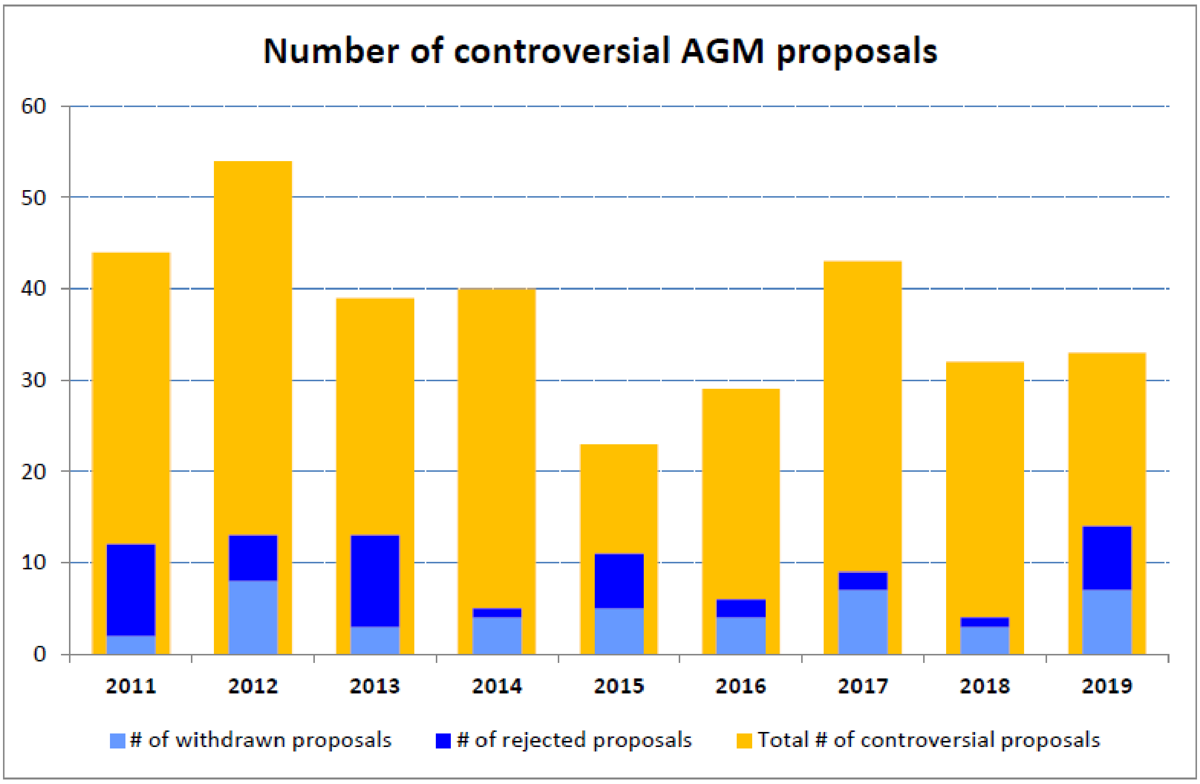
This year, 997 voting items were tabled, two of them were shareholder proposals.

One of the shareholder proposals was submitted by Follow This, a group of Shell shareholders that pushes Royal Dutch Shell to take leadership in the energy transition to a net-zero emission energy system. The Follow This shareholder resolution requested Shell to set and publish targets that are aligned with the goal of the Paris Climate Agreement to limit global warming to well below 2°C. They should to include long-term (2050) and intermediate objectives and should be quantitative. Follow This decided to withdraw this resolution after discussions with six major Dutch institutional investors that supported the Follow This climate resolution in previous years, and their statement 'investors expectations or oil and gas companies', that was published on 11 April 2019. Follow This decided to give Shell a year to bring its own climate ambition into line with the Paris Climate Agreement.

The other shareholder proposal was submitted by UAW Retiree Medical Benefits Trust (‘UAW Trust’) for the Mylan AGM. UAW Trust proposed to amend Mylan’s clawback policy in the sense that the policy would also provide for incentive compensation recovery in the event of various kinds of significant misconduct, either from a wrongdoer or from a member of senior management who failed to properly monitor or manage risks related to the misconduct. Initially, Mylan had the intention to exclude the shareholder proposal from its proxy materials on the ground that UAW Trust did not meet the 3% capital threshold as required by Dutch company law and the Mylan articles of association. However, Mylan changed its intention after receiving the view of the staff of the US Securities and Exchange Commission (SEC) that the company had “not demonstrated that the Proposal is not a proper subject for action by shareholders”. Under US law the shareholding requirement for submitting a shareholder proposal is lower (holding at least $ 2,000 in market value for at least one year) than under Dutch law. Mylan decided to include the UAW Trust proposal in the proxy statement as a discussion item at the AGM and to solicit views from shareholders who could not be physically present at the AGM through the proxy card as a contribution to the discussion at the AGM. Consequently, shareholders were able to provide advice to the Mylan Board as to whether they would support an amendment to the company’s clawback policy similar to that suggested in the shareholder proposal. As a result of the solicitation, a majority of the proxies received indicated support for the shareholder proposal. At the AGM, the Chairman of the Mylan Board confirmed that the Mylan Board will continue to consider the views and perspectives expressed by shareholders on this topic. This practice can probably set the tone for submitting shareholder proposals as discussion items at AGMs of other Dutch companies. A ‘pure’ discussion item at the AGM agenda of many – large – Dutch companies has only limited value as only a few shareholders come to the meeting in person to participate in the discussion.[3] The discussion at the AGM is often not representative of the feelings among *all* shareholders of the company. Gathering the views of shareholders on a (non binding) shareholder proposal by giving all shareholders the opportunity to participate in writing in the discussion at the AGM (through the proxy card) will make a discussion at the AGM more meaningful.

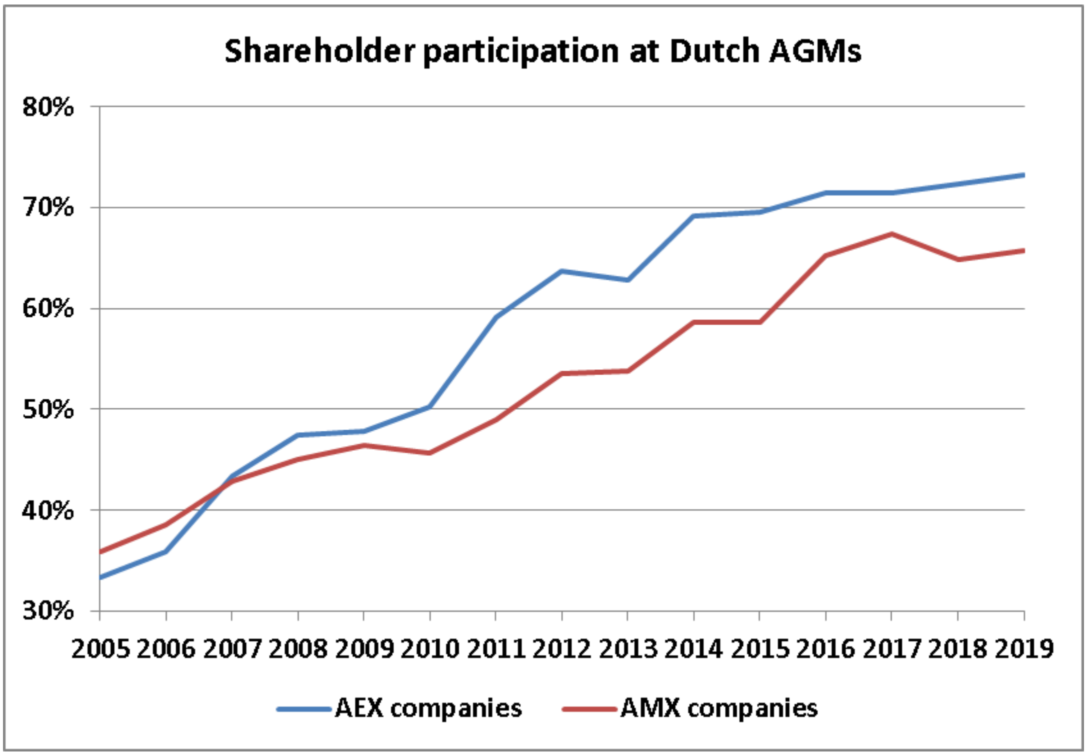
Seven management proposals were withdrawn ahead or at the AGM due to concerns over significant shareholder rebellion (see appendix 2). These proposals related to executive remuneration, the disapplication of pre-emption rights and an amendment of the articles of association. Another seven management proposals were voted down by the shareholders. These proposals related to the discharge of the Executive and Supervisory Board, the authorisation to issue new shares and the disapplication of pre-emption rights. The proposals that were withdrawn and rejected will be discussed in more detail in the section 2, 3 and 6 of this evaluation report.

[3] For example, at the 2019 AGM of ING Groep, only 0.67% of the issued capital that voted was physically present at the meeting and at the NN Group AGM only 0.02% of the ‘voting capital’.




The number of resolutions that received significant shareholder dissent (over 20%) decreased from 29 in 2018 to 26 this year (see appendix 1 for a complete overview). This is a reflection of a longer-term trend that an increasing number of Dutch listed companies are really engaging with their shareholders and are aligning their proposals with the voting guidelines of their most important shareholders and with the 'standard' voting policies of the most influential proxy advisors. At the same time, the number of rejected and withdrawn proposals was this year the highest in the last ten years. This shows that institutional investors have overcome their hesitance to vote against management proposals if these proposals deviate from their own voting policies and when they consider that there have been substantial corporate governance and sustainability failings. There is also less hesitation to vote against a proposal to amend an executive remuneration policy if they believe that the rewards are out of line with company performance and have concerns about executives' spiralling pay.

The average number of votes cast (excluding those cast by Trust Offices) at the AGMs of AEX companies reached for the sixth year in a row a new record: 73.2% (2018: 72.4%). Also the shareholder participation (excluding Trust Offices) at the AGMs of the midcap (AMX) companies has regained its upward trend: 65.8% in 2019 versus 64.9% in 2018. These results show the still increasing interest of in particular institutional investors to participate in the decision making process at AGMs and the value they attach to casting their votes.




KPN was this year the first Dutch listed company that took the first step to hold a so-called hybrid AGM. The KPN shareholders were not only given the opportunity to attend and to cast votes at the physical AGM, but they were also able to attend and vote at the meeting on all resolutions real time via the internet. It was a first step, because the shareholders attending the meeting virtually were not able to speak or otherwise comment during the meeting. A ‘full’ hybrid AGM offers the possibility to vote ánd to speak via the computer from either ‘location’. The possibility to vote virtually did, however, not result in higher shareholder participation: the number of votes cast at the KPN AGM dropped from 73.1% in 2018 to 70.0% in 2019.

**2. Board remuneration: pre consultations with shareholders are beneficial and will become more important in the future**

An increasing number of Dutch listed companies are engaging pro-actively with shareholders in connection with their proposal to amend the executive remuneration policy. Companies that followed an intensive engagement programme ahead of the AGM were ASR Nederland, DSM, KPN and ASML. They approached individual shareholders, shareholder organisations, proxy advisors and other relevant stakeholders, such as the works council,  and were responsive to their feedback. In general, companies that conduct pre consultations tend to have a lower number of dissent votes than companies that refrain from doing so. Some companies that did not engage their stakeholders ahead of the publication of the remuneration proposals, such as TomTom, Takeaway.com and Ahold Delhaize, saw their proposals adopted by the AGM, but with a relatively high number of dissent votes. However, we also saw a number of companies withdrawing the resolution ahead of shareholders voting, due to concerns over significant investor rebellion. This happened for example at Wessanen, BinckBank and Intertrust. The Supervisory Board of BESI felt it necessary to make last-minute amendments to its proposal and to make some commitments in order to win a majority vote at the AGM. At all these companies shareholders expressed their concerns on the rationale and the potential impact of the proposal on the pay-for-performance principle and on total income (quantum). With the legislator's decision to – in principle – increase the AGM voting threshold to adopt a proposal to amend the executive remuneration policy from a simple majority to 75% of the votes cast and to force companies to explain how the remuneration policy takes the 'social acceptance' into account, companies hopefully feel even more encouraged to organise pre consultations on draft proposals.

The legislator also decided that the company's articles of association may set a lower voting majority than 75% of the votes cast as threshold for adopting a remuneration policy, but such a proposal should be well-reasoned. WFD Unibail-Rodamco was the first Dutch listed company that tried to use this 'exception clause', but the explanation was far from reasoned. The company stated that the proposed amendment to its articles of association was "a technical clarification". Ahead of the AGM various shareholder groups and proxy advisors questioned the company's intention and expressed their concerns regarding the impact of the proposal on minority shareholder rights. As a result, the company decided to withdraw the proposed amendment to its articles of association. The company acknowledged that it should have explained the rationale and the impact of the proposal by entering into dialogue with shareholders before publishing the proposal.

The 2020 AGM season will be a crucial year for Dutch listed companies, since all listed company must submit the 2019 remuneration report for an advisory vote to the AGM and most will have to renew their remuneration policy following the implementation of the revised EU Shareholder Rights Directive. The remuneration policy is renewable on a four year term and shareholders of a large number of Dutch listed companies must consider the renewal of executive pay proposals for the next four years until 2024. We encourage companies to present remuneration policy proposals that that are well-aligned with the company's strategy, that result in a better overall pay-for-performance alignment, a stronger alignment between executives and shareholders via more stringent share-ownership guidelines for executives and to take into account the identity, the purpose and the values of the company, the pay ratios within the company and the views of the relevant stakeholders, including shareholders, employees and the wider society. For investigating those views, pro-active and early engagement is essential. For shareholders it is also important that the company discloses the outreach and engagement efforts (e.g. how many shareholders and other stakeholders were approached?), what the key findings and themes were and what, if anything, the company did to address those key findings or themes. With such disclosures the company can show the public how responsive it was to concerns raised by shareholders and other stakeholders.

### 3. Discharge as an instrument to disapprove the board's course of action

The discharge of the Executive and of the Supervisory Board are standard voting items on the AGM agenda of Dutch listed companies. In legal terms, discharge means that the policy of the Executive Board and the supervision of the Supervisory Board, as conducted until the moment of discharge, are approved by the AGM. Discharge is only a waiver of liability for executive and supervisory directors. Third parties are still able to invoke liability of directors. Under normal circumstances the discharge voting items generally receive high levels of support. Not receiving discharge does not have any direct consequences, while receiving discharge does not affect the shareholders' rights to bring legal action against directors for breaches of their duties when unknown facts surface after the discharge is granted. Voting against discharge is held to be a corrective gesture; somewhat similar to giving a yellow card in a football match. This item on the AGM agenda has recently been "used" more often to express shareholders' dissatisfaction with one or more decisions made and/or with a disappointing performance of the Executive and/or Supervisory Board, without (immediately) having to submit a motion of no confidence in the Executive and/or the Supervisory Board.

This year the AGM of ING Groep voted in majority (63%) against the discharge of the Executive and Supervisory Board. In this way, the AGM expressed its dissatisfaction with two important issues that had a negative impact on ING's reputation in 2018 and that led to negative public sentiment about the bank. The most important task of an Executive Board, under the supervision of the Supervisory Board, of a system bank is precisely to safeguard public confidence and reputation in the bank. The first issue was the March 2018 Supervisory Board proposal to increase the fixed salary of the CEO by more than 50%. This proposal met with strong criticism from the public, politicians, clients, employees and others, leading the Supervisory Board to withdraw the proposal within five days after the proposal was published. The second was ING's settlement with the Netherlands Public Prosecution Service (NPPS) relating to serious shortcomings in the execution of policies to prevent financial economic crime at ING Netherlands in the period 2010 – 2016. ING agreed to pay a fine of € 775 million. The fine was the biggest ever levied by the NPPS for a Dutch listed company. Initially, the Supervisory Board did not initiate any disciplinary measure against the members of the Executive Board. The Executive Board itself took the decision to forfeit any entitlement to variable remuneration over 2018. However, after a week of strong public discontent, the Supervisory Board eventually came to the conclusion that responsibility should be taken at Executive Board level. In consultation with the Supervisory Board, the CFO (Koos Timmermans) decided to step down. The AGM strongly blamed the ING Groep Executive Board for a culture of "business over compliance" within the bank for at least six years, as the NPPS and ING concluded. Consequently, ING did not properly fulfil its role as gatekeeper of the Dutch financial system for many years.

At the AGM of SBM Offshore, a large minority of the voters (36.5%) voted against the discharge of the Supervisory Board. A large group of shareholders expressed its dissatisfaction with the decision of the Supervisory Board to discretionarily increase the annual bonuses of the executives by 10% in connection with (among other things) the final settlement reached in December 2018 with the Brazilian Public Prosecutor's Service regarding SBM Offshore's bribery activities there and in connection with the successful collection of an insurance claim of $ 200 million for the settlement of an unsuccessful platform project. The opposing shareholders further objected to the double payment of a long-term incentive for the 2018 financial year. As a result of these two decisions, the 2018 total income of the

CEO increased by no less than 21% compared to 2017. A relatively large group of shareholders (representing 11.3% of the votes cast) also held the chair of the remuneration committee to account for the decisions made. This group voted against the reappointment of Cheryl Richard as supervisory director of SBM Offshore.

What is remarkable is that neither ING Groep nor SBM Offshore made a public statement after the disappointing voting results. In countries such as the United Kingdom, Germany and Switzerland it is common that a company in such a case acknowledges the significant shareholder dissent and outlines how it plans to engage with shareholders to better understand their concerns. With this inaction the companies risk facing another backlash next year.

**4. More companies incorporate a skills and diversity matrix in their annual reports**

An increasing number of Dutch listed companies are enhancing their annual reports to give shareholders clearer insights into the diversity of expertise represented on the board and how those qualifications align with the company's strategy and risk oversight needs. They are also using tables to highlight other kinds of diversity included on the board, such as diversity of tenure, gender, age and nationality.

This year close to 70% of the AEX companies disclosed a supervisory board skills and diversity matrix in their annual reports or on their websites; which is an increase of more than 50% in comparison with last year. Eumedion requested the incorporation of such a matrix in the 2019 Focus Letter. While companies are required to disclose gender, age, nationality, profession, other board positions and tenure[4], a skills and diversity matrix has evolved as a voluntary disclosure tool that enhances readability and visually highlights the supervisory board's strengths and – possibly – reveals important areas not yet covered by supervisory directors. It highlights supervisory board diversity across skills, backgrounds and areas of expertise. The most successful of these matrices explain how the skill categories connect to the company's strategy and risk oversight needs and clearly align with the information provided in the supervisory director biographies.

An increasing number of companies are not only incorporating a skills and diversity matrix in the supervisory board report, but also an overview of the attendance rates of the individual supervisory directors at the plenary meetings of the supervisory board and at meetings of the supervisory board committees. This is important information for shareholders in order to judge how committed the supervisory board members are. Institutional investors take this information into account for determining their voting behaviour regarding the reappointment of a director. An increasing number of institutional investors explain in their voting policy that they will vote against the proposed reappointment if the director in question has attended less than 75% of the board meetings and if no clear explanation is given why this was the case. This was the reason why individual supervisory

[4] Dutch corporate governance code, best practice provision 2.1.2.

directors of Aalberts Industries and PostNL received a relatively high number of dissent votes; sometimes around 20%.

| Skills / Characteristics | D.W. Sickinghe | D.J. Haank | P.A.M. van Bommel | C.J. Garcia Moreno | C.J.G. Zuiderwijk | P.F. Hartman | J.C.M. Sap | E.J.C. Overbeek |
|---|---|---|---|---|---|---|---|---|
| Business leadership | x | x | x | x | x | x | | x |
| Industry knowledge (Telco) | x | | | x | | | | x |
| Industry knowledge (IT) | x | | | | x | | | x |
| Commercial | x | x | | | x | x | | x |
| Operational | x | | | | x | x | | x |
| Employment / social relations | | | | | x | x | x | |
| Society / government relations | | | | | x | x | x | |
| Corporate social responsibility | | | | | | | x | |
| Financial markets | x | x | x | x | | | | |
| Finance, audit & risk | x | x | x | x | | | x | |
| Financial experts (Dutch Corporate Governance Code) | | | x | x | | | | |
| International experience | x | x | x | x | | x | | x |
| **Executive / Non-executive** | | | | | | | | |
| (Full-time) Executive position at another company | x | x | x | x | x | | | x |
| Mainly non-executive role | | | | | | x | x | |
| **Diversity** | | | | | | | | |
| Male | x | x | x | x | | x | | x |
| Female | | | | | x | | x | |

*One of the best practices: the skills and diversity matrix of KPN*

### 5. Push for more women on Executive and Supervisory Boards

Shareholder calls for increased gender diversity on boards have grown more urgent in recent years. In October 2018, Eumedion urged Dutch listed companies to take more actions towards achieving a more gender balanced Executive and Supervisory Board. In a letter sent to all Dutch listed companies that have not yet reached the legal target of at least 30% female executive and supervisory directors, Eumedion stated that its participants have the firm belief that a diverse board makes better, more robust decisions, as well as better assesses the business risks and opportunities. It also sets the tone at the top for the diverse talent the company seeks to attract. At the same time, an increasing number of institutional investors incorporate specific gender diversity expectations into their executive and supervisory director voting policies.[5]

This year two things have become clear: many companies share this goal of bringing more women into the boardroom and are driving change, and a growing number of shareholders are willing to oppose boards that they perceive as insufficiently diverse. Between 1 October 2018 and 1 July 2019 Dutch listed companies nominated 16 new executive directors, 7 were female (44%). They nominated 45 new supervisory directors, 21 of them were female (47%). The number of Dutch listed companies without any female executive and supervisory director decreased from 17 to 11. Out of all Dutch AEX and AMX companies, only Flow Traders still has an all-male Executive and Supervisory Board. Mainly as a result of this situation, the proposed re-appoint of Flow Traders' supervisory director Roger

[5] E.g. BlackRock, ABP, APG Asset Management, PGGM, MN, PME, PMT, Hermes.

Hodenius, also member of the company's remuneration & appointment committee, received 20.7% dissent votes (35.7% if all Flow Trader boards-related parties are exempted). As such, the proposed reappointment was controversial (>20% dissent votes).

Despite the fact that companies are appointing more women to the Executive and Supervisory Board seats than ever, yet the overall share of female directors is only slowly increasing (tables 1 and 2). Main reason seems to be that the average director tenure continues to be quite extensive (at 10 years or longer), despite the fact that the new Dutch corporate governance code stipulates that a thorough explanation is needed if a supervisory director is nominated for a new term after 8 years of Supervisory Board membership.[6] As a result board seats rarely become vacant. Moreover, almost all Supervisory Board chair positions of the Dutch AEX and AMX companies remain held by men (98%). Intertrust is the only AEX/AMX company with a female Supervisory Board chair.

*Table 1: gender-diversity in the boards of Dutch AEX companies (situation at 1 July each year)*

| | 2009 | 2014 | 2018 | 2019 |
|---|---|---|---|---|
| Female executives | 5% | 6% | 9% | 10% |
| Female supervisory directors | 17% | 26% | 33% | 35% |

*Table 2: gender-diversity in the boards of Dutch AMX companies (situation at 1 July each year)*

| | 2009 | 2014 | 2018 | 2019 |
|---|---|---|---|---|
| Female executives | 0% | 8% | 7% | 8% |
| Female supervisory directors | 9% | 14% | 22% | 25% |

## 6. Authority to issue new shares and authority to restrict or exclude shareholders' pre-emption rights remain the most controversial voting issues

Just like last year, the proposed authorisations to the Executive Board to issue new shares and to limit or to exclude the pre-emption rights for existing shareholders were the most controversial voting items during this AGM season. Five of the seven proposals that were rejected by the AGM and 15 of the 26 (similar to 58%) AGM proposals receiving more than 20% against votes were related to these issues (see appendix 1), although less than the 72% of last year.

The proposals that received more than 20% dissent votes related to requests to authorise the Executive Board to issue up to 20% new shares without pre-emption rights. An increasing number of institutional investors do not allow authorisations for boards to issue more than 10% new shares without pre-emption rights. Also proxy adviser ISS has lowered the authorisation guideline this year to 10% in its standard voting policy. Consequently, almost all AEX companies have aligned their share issuance authorisations without pre-emption rights with the institutional investors' and proxy advisors'

[6] E.g. the chairman of the Brunel International Supervisory Board was appointed for a new term of 2 years after 18 years of supervisory board membership. Heineken Supervisory Board member Michel de Carvalho was appointed for a new term of 4 years after already having served for 23 years at the Supervisory Board.

guidelines. The only exception was IMCD. Consequently, this company saw its requested authorisation voted down. A number of AEX companies have replaced the ‘second 10% share issuance tranche without pre-emption’ by a higher or similar authorisation for share issuances with pre-emption rights: ING Groep (40%), Unilever (33%), Aegon (25%), NN Group (20%) and DSM (10%). In addition, NN Group also requested the authorisation to issue shares in the context of issuing contingent convertible securities (up to 30% of issued share capital for a period of 5 years). Under the European Solvency II Directive, these financial instruments qualify as restricted tier 1 capital. These authorisations were granted with more than 92% of the votes casted in favour.

The picture at the AMX and the AScX companies is more mixed. This season still five midcaps requested a 20% share issuance authorisation without pre-emption rights: Arcadis, Fugro, TomTom, Corbion, Takeaway.com and OCI. Although the resolutions passed, the number of dissent votes was relatively high (at least 10%). At Fugro the resolution could only pass with the help of the Trust Office. And from the AScX companies, even seven companies maintained the standard Dutch market practice: Sligro Food Group, Heijmans, NIBC, Vastned Retail, NSI, BinckBank and KAS Bank. Kiadis Pharma even requested an authorisation with the size of the total authorised capital. The AGMs of Vastned Retail and BinckBank rejected the requested authorisations, while the number of dissent votes at the AGM of NSI was relatively high (more than 30%). At the Heijmans AGM the resolution could only pass with the support of the Trust Office.

**7. Better insight into the long-term value creation model of listed companies**

In its 2019 Focus Letter, Eumedion requested all Dutch listed companies to better report on their view to create long-term value for all stakeholders, including the wider society, and their strategy to realise this. Almost all companies provided insight into their long-term value creation model according to the following framework: i) an overview of the capitals (resources (human and intellectual capital, financial and natural capital and social and relationship capital)) that the company draws upon for its business activities, ii) the company’s business model in relation to its purpose, ambitions and strategic priorities, iii) an overview of the output (the result of the application of the various capitals to the company’s business activities and processes as shaped by the company’s business model) and iv) the outcomes for the company’s relevant stakeholders, including the wider society, sometimes linked to a number of social development goals. An increasing number of companies also quantified the inputs, outputs and outcome. As a consequence, shareholders and stakeholders are provided a comprehensive overview of the results of the company and how this creates value for the company’s stakeholders and society and of the efficient use of the capitals which are at the company’s disposal. ABN AMRO Group even published an ‘Impact Report” that provides a quantified assessment of the value created per stakeholder group in 2018. We encourage all companies to quantify the inputs, outputs and outcomes and to explore the possibility to measure the impact of the company on the various stakeholder groups.

To investigate the topics that are most important from both the company's business perspective and its stakeholders' perspective, many companies conduct an annual or bi-annual materiality assessment. These companies also describe this process and present the most material topics in a so-called materiality matrix. What is sometimes missing is how the most material topics are linked to the value creation model and to the strategic priorities of the company. Only a very few companies, including KPN, Arcadis and Wessanen, present a so-called connectivity table or matrix, in which the material topics and their key performance indicators are linked to the strategic priorities, the related risks and targets and the actual results. We encourage more companies to come forward with a connectivity table or matrix.

**8. Further progress in more informative auditor's reports**

Eumedion sees further progress amongst external auditors to make the auditor's report more informative and therefore more meaningful for shareholders and other users of the annual reports and annual accounts. Almost all external auditors now present observations or conclusions to their key audit matters that are incorporated in the auditor's reports.

This year the report of the external auditor of Altice Europe (Ben Dielissen of Deloitte) stood out. He earmarked 'corporate governance' as one of the key audit matters. He mentions in his report that it is the external auditor's duty to obtain an understanding of the company's control environment. The control environment includes the governance and management functions and the "attitudes, awareness, and actions of those charged with governance and management concerning the entity's internal control and its importance in the entity". Based on this research he identified that in 2018 the resolution regarding the approval of the remuneration for the company's CEO was adopted despite the non-executives present at the meeting having voted against the resolution. At Altice Europe, the president of the company, a function held by the controlling shareholder, has power to control the decision making within the Board of Directors as he and the representative of a legal vehicle that is controlled by the family of the president, have affirmative voting power regarding all resolutions of the Board of Directors. This governance structure was considered to be a key audit matter by the external auditor. As such he pushed for transparency in the annual report regarding the internal decision-making process on conditionally granting the CEO 50 million preference shares (with an IFRS value of € 21.5 million) as part of the CEO's remuneration package. The external auditor also gave various recommendations to the Board of Directors to strengthen Altice Europe's corporate governance, e.g. by appointing two additional non-executive directors to ensure a better ratio of executives and non-executives, splitting the role of chairman of the board and chairman of the audit committee and amending the board rules to clarify that transactions with a related party shall be agreed in the normal course of business. All these recommendations were followed up by the Altice Europe Board of Directors.

Also the external auditor of Kardan (Marco Corver of PwC) investigated the control environment of this company. He noted that "ethical and compliance requirements are impacting the control environment, tone at the top, culture and behaviour of the Group's management and employees" and performed audit procedures at company level designed to identify the risk of management override of controls. These procedures included, amongst others, an assessment of the 'tone-at-the-top' and the compliance with the company's policies, laws and regulations. He concluded that there were no significant findings.

A number of external auditors (for instance the external auditors of ASML, ING Groep, DSM, Unilever, SBM Offshore, Arcadis, Intertrust, Wereldhave, AMG, OCI, Corbion, ASM International, Brunel International, NSI, Accell Group, ForFarmers, Kiadis Pharma and Neways) expanded their description of the audit scope this year to their company-specific activities in relation to possible the detection of fraud and non-compliance with laws and regulations. As a result, shareholders and other stakeholders were provided with more information on the specific audit procedures and processes of identifying fraud and other compliance risks, how the external auditor assessed these risks and how he evaluated the design and the implementation of the internal controls that mitigate fraud and other compliance risks. Some external auditors even tested the operating effectiveness of these internal controls. They also published their observations. This more extensive description of the audit scope is welcomed by institutional investors. It remains, however, unclear why the afore-mentioned external auditors included a section on fraud and non-compliance with laws and regulations in their reports and other external auditors not. We believe that for a better understanding of the auditor's activities in relation to fraud and other compliance issues it is preferable that all external auditors include a separation section on fraud and compliance risks in their report.

Furthermore we experience an increase in the number of companies that request an auditor to provide reasonable assurance to the sustainability information or to some key sustainability performance criteria published by the company: DSM, Philips, Signify, PostNL, KPN and BAM Groep. As sustainability information is increasingly integrated into the investment-decision process of institutional investors and in their engagement and voting procedures, external verification of the sustainability data is becoming more important. We also see a number of companies that started to apply the reporting recommendations of the Task Force on Climate-related Financial Disclosures, for instance Royal Dutch Shell, Vopak, DSM, Unilever, AkzoNobel, Philips, Signify, ING Groep, ABN AMRO, Van Lanschot Kempen, Aegon, ASR Nederland and NN Group. Institutional investors support this climate-related reporting framework and encourage all listed companies, in particular the companies that are related to the oil and gas sector, to be clear about how they plan to be resilient in the energy transition. We also encourage all listed companies to consider scaling-up the assurance level of their published sustainability information or their key sustainability performance indicators from 'limited' to 'reasonable'.

In 2019 four Dutch listed companies decided to nominate a new external auditor: ASR Nederland, Wessanen, Pharming and Envipco Holding. Some AGMs authorised the Supervisory Board or the none-executives to appoint a new external auditor: Value8, Novisource, AND International Publishers, MKB Nedsense and IEX Group. In general, the information provided by the companies on the selection process, the criteria to assess the quality of the audit firm and the audit team, the track record of the lead partner and the decisive reasons for the nominated audit firm is very brief. Eumedion would like to reiterate its recommendation to companies that decide to nominate a new statutory auditor to provide comprehensive information on the tender process and the selection criteria.

**9. Mixed developments regarding protective measures**

Institutional investors believe companies need to have in place governance structures (for example shareholder rights and accountability measures) to ensure that the Executive and Supervisory Board can be hold to account for their performance and supervision. Effective governance structures are viewed as a safety valve to protect shareholder rights. Dutch listed companies are well-known for their possibilities to protect themselves against bidders and against shareholders who want to influence the board's strategy, policies and composition. As a result, Dutch corporate governance is not always valued as world class. 2019 saw mixed developments with regard to protective measures at Dutch listed companies.

To begin with the positive developments. Unilever NV has terminated its depositary receipt structure. Consequently, Unilever's providers of risk capital can now "freely" decide on all voting items placed on the AGM agenda. In the past, the Unilever Trust Office always voted for those shares for which the holders of the depositary receipt had not requested a proxy. As a result, the Trust Office had a great influence on the actual AGM voting outcome. For example, during the 2019 AGM of Unilever NV, the Trust Office represented nearly 35% of the share capital present or represented at the AGM.

Ahold Delhaize decided to repurchase its preferred financing shares and to liquidate the Trust Office that formally held this class of shares. This Trust Office had issued non-voting depositary receipts to the parties that 'really' held these preferred financing shares (and the economic risk). With the acquisition of the preferred financing shares, the company not only simplified its share capital (after cancellation of the preferred financing shares only common shares are outstanding), but also removed a quasi protective measure as the Trust Office voted for those preferred financing shares for which the holders of the depositary receipt had not requested a proxy. Ahold Delhaize now only has an anti-takeover foundation as protection mechanism, that can exercise its call-option to acquire anti-takeover preference shares in the situation of a hostile public bid.

However, two other companies introduced new protective measures. Smallcap company Kiadis Pharma was granted the authority to implement, somewhere in the upcoming five years, an anti-takeover protection in the form of a call-option to subscribe for anti-takeover preference shares that is granted to an independent foundation. The call-option is not limited in time and can be exercised in whole or in part, up to the authorised share capital of anti-takeover preference shares as per the articles of association at the time of exercise and at multiple times and occasions (including after the issuance and subsequent cancellation of anti-takeover preference shares). The proposal was approved by an overwhelming majority of the votes cast at the shareholders meeting: 89.7%. Another smallcap company, DGB Group, was even granted the authority to introduce two new protective measures: the establishment of an anti-takeover foundation with a call-option to subscribe for anti-takeover preference shares and ii) the issuance of priority shares (shares with special control rights: for instance the right to make up binding nominations for the appointment of board directors) to one of the non-executives. The shareholders meeting of DGB Group approved this proposal with almost 100% of the votes cast.

The South African conglomerate Naspers announced its plans to float its consumer internet businesses at the Euronext Amsterdam Stock Exchange in September (with a secondary listing at the Johannesburg Stock Exchange) and to incorporate this new company – known as Prosus NV – in the Netherlands. After Yandex NV, Digi Communications NV, Trivago NV and Altice Europe NV this new company will be the fifth Dutch company that will issue dual-class shares in order to guarantee that the founders keep control over the company after floating. While the voting ratio between the two share classes of Yandex, Tivago and Digi Communications is 10:1 and 25:1 at Altice Europe, Prosus plans to fix the voting ratio of the founders' shares in relation to the shares for the common shareholders at 1000:1. The company believes this voting structure, which is also in place at parent company level (Naspers), has enabled long-term value focus for Naspers which has translated into the company delivering long-term growth and value to shareholders over the past years. The dual-class voting structure will only become effective at the moment Naspers' voting rights in Prosus decreases to less than 50% plus one vote. At the moment of floating the e-commerce business, Naspers will hold approximately 73% of the shares and voting rights in Prosus. The Naspers subsidiary is yet another example of a company that responds to the very flexible Dutch company law and the very flexible listing requirements of the Euronext Amsterdam Stock Exchange, thereby affecting the Dutch investment climate.

**Appendix 1: AGM proposals with strongest shareholder resistance (more than 20% against votes; excluding votes cast by Trust Offices)**

| AGM | Subject | Result |
|---|---|---|
| ING Groep | Discharge of Supervisory Board | 62.7% against (**resolution voted down**) |
| ING Groep | Discharge of Executive Board | 62.5% against **(resolution voted down)** |
| Fugro | Disapplication of pre-emption rights | 56.4% against [7] |
| Vastned Retail | Authority to issue new shares | 55.4% against **(resolution voted down)** |
| Heijmans | Disapplication of pre-emption rights | 55.2% against[8] |
| Heijmans | Authority to issue new shares | 55.1% against[9] |
| IMCD | Disapplication of pre-emption rights | 53.2% against **(resolution voted down)** |
| Wereldhave | Authority to issue new shares | 53.1% against **(resolution voted down)** |
| Fugro | Authority to issue new shares | 48.0% against |
| BinckBank | Authority to issue new shares as 'stand-alone' company | 40.5% against **(resolution voted down)**[10] |
| SBM Offshore | Discharge of Supervisory Board | 36.5% against |
| IMCD | Authority to issue new shares | 36.1% against |
| BinckBank | Authority to issue new shares after being acquired by bidder | 35.0% against **(resolution voted down)**[11] |
| BESI | Amendment remuneration policy | 33.7% against |
| NSI | Disapplication of pre-emption rights | 33.0% against |
| Mylan | Authority to issue new shares and disapplication of pre-emption rights | 32.3% against |
| Curetis | Granting of stock options to executive director J. Bacher | 30.2% against |
| Curetis | Granting of stock options to executive director O. Schacht | 29.9% against |
| NSI | Authority to issue new shares | 29.9% against |
| Curetis | Granting of stock options to executive director A. Plum | 29.8% against |
| Curetis | Granting of stock options to each supervisory director | 29.8% against |
| Curetis | Disapplication of pre-emption rights | 29.8% against |
| Aalberts Industries | Re-appointment of supervisory director Jan van der Zouw | 23.2% against |
| Curetis | Authority to issue new shares in relation to strategic capital raising(s) | 21.9% against |
| Intertrust | Dividend over financial year 2018 | 21.6% against |
| Flow Traders | Re-appointment of supervisory director Roger Hodenius | 20.7% against |

**Appendix 2: Proposals withdrawn ahead or at the start of the AGM**

| AGM | Proposal |
|---|---|
| Royal Dutch Shell | Setting and publishing targets that are aligned with the goal of the Paris Climate Agreement (shareholder proposal) |
| Wereldhave | Disapplication pre-emption rights |
| Intertrust | Amendment remuneration policy |
| Intertrust | Amendment long-term incentive plan |
| BinckBank | Amendment remuneration policy |
| Wessanen | Amendment remuneration policy |
| WFD Unibail-Rodamco | Amendment articles of association |
| Vastned Retail | Disapplication pre-emption rights |

[7] Proposal was formally approved with 75.5% votes in favour due to the votes cast by the Fugro Trust Office.
[8] Proposal was approved with 83.4% votes in favour due to the votes cast by the Heijmans Trust Office.
[9] Proposal was approved with 83.4% votes in favour due to the votes cast by the Heijmans Trust Office.
[10] Approval of this proposal required a legal 2/3 vote majority since less than 50% of the issued capital was present or represented at the BinckBank general meeting.
[11] Approval of this proposal required a legal 2/3 vote majority since less than 50% of the issued capital was present or represented at the BinckBank general meeting.