



**NEW EUMEDION VOTING GUIDELINE WITH RESPECT TO
SHARE ISSUANCE AUTHORISATIONS
AND LIMITATION OR EXCLUSION OF PRE-EMPTIVE RIGHTS**
(applicable as from the 2020 AGM season for Dutch listed companies)

17 December 2019

1. Current Eumedion position

In its recommendations on the delegation of power to issue shares (see annex 1 to this memo; incorporated in the Eumedion Corporate Governance Manual), Eumedion has recommended that the management board's authority to issue new shares without pre-emptive (subscription) rights should be limited to 10% of the issued capital if no material financing requirement is envisaged. An additional 10% can be granted if the proceeds are used for the effectuation of mergers and acquisitions. This '10% + 10%' authorisation size has long been market practice in the Netherlands.

If a material financing requirement is envisaged, Eumedion believes that existing shareholders should – in principle – be provided the opportunity to maintain their relative shareholding. The pre-emptive rights may only be excluded or limited in respect of shareholders who are seated in jurisdictions that have stricter prospectus requirements than the Netherlands or those in other countries where the main shareholders of the company are seated.

As it is often difficult to predict "material financing requirements" at the date that the annual general meeting is announced, the Eumedion position implies that for share issuance authorisations larger than 10% of the issued capital, an extraordinary general meeting has to be convened. With a legal convocation period of six weeks in the Netherlands, it takes a while before a Dutch listed company can act on business opportunities or on (re)financing requirements.

2. Recent developments

Two developments were relevant in the decision-making process to amend the current Eumedion position.

Firstly, an increasing number of institutional investors have stricter voting guidelines than the current Eumedion recommendation on share issuance authorisations without pre-emptive rights, and have more 'liberal' voting policies for share issuance authorisations with pre-emptive rights.

Many institutional investors will voice their opposition when the board asks for authorisations of more than 10% of the issued capital without pre-emptive rights. Since February 2019, also proxy advisory

firm ISS has lowered the ‘authorisation guideline without pre-emptive rights’ to max. 10% in its ‘standard voting policy’. However, proxy advisory firm Glass Lewis maintained its policy to allow for share issuance authorisations without pre-emptive rights of up to ‘10% + 10%’.

According to the standard voting policy of ISS, ISS will generally recommend voting in favour of share issuance authorities **with** pre-emptive rights to a maximum of 50% over currently issued capital.

According to the guidelines of the UK Investment Association (IA), the IA members “will regard as routine an authority to allot up to two-thirds of the existing issued share capital. Any amount in excess of one-third of existing issued shares should be applied to fully pre-emptive rights issues only”. This implies that IA members will vote in favour of general share issuance authorisations with pre-emptive rights of up to 33.3% and for up-front rights issues with pre-emptive rights of up to 66.7% of the issued capital.

As a result of the changes in institutional investors’ voting policies, almost all AEX companies have aligned their share issuance authorisations without pre-emptive rights with the institutional investors’ and proxy advisors’ guidelines (see table 1 below). A number of AEX companies have replaced the ‘second 10% share issuance tranche without pre-emptive rights’ by a higher or similar authorisation for share issuances with pre-emptive rights: ING Groep (40%), Unilever (23%), Aegon (25%), NN Group (20%) and DSM (10%).

Table 1: size of authorisations (in % issued capital) to issue new shares with or without pre-emption rights in 2019; number of Dutch listed companies per Euronext index group

	No authorisation requested	≤ 10% without pre-emption rights	20% without pre-emption rights	10% without pre-emption rights and X% with pre-emption rights
AEX	1	12	1 (IMCD/rejected by AGM)	5, where X stands for: ING: 40% Aegon: 25% Unilever: 23% NN: 20% DSM: 10%
AMX	2	13	6	0
AScX	0	13	8 (2x rejected by AGM)	0

A second important development is that since 20 July 2017 a prospectus is no longer required for share issuances up to 20% of the issued share capital (at this date the European Prospectus Regulation entered into force with respect to this new provision). Before that date the preparation of a prospectus was needed for all share issuances above 10% of the issued share capital. Consequently share issuances of up 20% of the issued share capital can nowadays more swiftly be effectuated.

3. New policy line

Also from an investor perspective it may be desirable that a management board is enabled to respond promptly to market developments, to business opportunities and/or to make (interim) dividends available in the form of shares, without first having to convene a general meeting. On the other hand there is a clear investors' appetite is to minimise dilution of their shareholdings. In order to balance these interests, and taking into account the tightened voting guidelines of many institutional investors as well as the new European threshold for avoiding the obligation to prepare a prospectus, Eumedion has decided to use as from the 2020 AGM season the following voting guideline:

- a) Maximum authority for the board to issue new shares **without pre-emptive rights**: 10% (for any purpose, including mergers and acquisitions and safeguarding or conserving the capital position of the company); **and**
- b) Maximum authority for the board to issue new shares by way of a rights issue (thereby – in principle¹ – **respecting pre-emptive rights**): 20% (for any purpose).

The other Eumedion guidelines in relation to the issuance of new shares will not be amended (e.g. the maximum authorisation period of 18 months, approval of the supervisory board, conditions for issuing anti-takeover preference shares, etc.).

¹ As explained earlier: in order to deal with legal or practical difficulties, the statutory pre-emptive rights have to be excluded, but eligible existing shareholders should be afforded contractual pre-emptive rights to subscribe for the new shares in proportion to their shareholding.

Annex 1: earlier text of Eumedion recommendations on the delegation of power to issue shares

c) Maximum number of shares to be issued

The maximum number of ordinary shares or financing preference shares to be issued on the basis of the resolution to delegate must be geared to the company's reasonably expected financing requirements (e.g. on account of acquisitions or reorganisations) during the period for which delegation is being requested. The reasons for this maximum number must be given in the notes to the proposal.

If no material financing requirement is envisaged in the proposed delegation period, an authorisation to issue ordinary shares or financing preference shares that may be used for any purpose may relate to not more than 10% of the issued capital (including issuance relating to stock dividend and/or employee (stock) option plans). An authorisation to issue ordinary shares or preference shares that may be used for mergers and acquisitions during that delegation period may also relate to not more than 10% of the issued capital. If a material financing requirement is envisaged, the company must provide sufficient information on the need and / or desirability of such a significant issuance.

f) Precluding and restricting preferential rights

A share issue in return for a contribution lower than the market price at the time of issue disadvantages the holders of shares already issued as an issue in return for a lower contribution will reduce the value of their shares. The statutory pre-emption right or the negotiable claim which they receive in this connection protects them against this or compensates for the reduction in value respectively. This safeguard is lost if both the power to issue shares and the power to preclude or restrict the preferential right are delegated to the board of directors.

Such a combined resolution to delegate must therefore provide that:

- (i) when these powers are jointly exercised by the board of directors, the value of the contribution must not be more than 10% lower than the average market price over the three-month period prior to the share issue;
- (ii) the proposed exclusion / limitation relates to a maximum of 20% of the issued capital.

If a material financing requirement is envisaged, existing shareholders should – in principle – be provided the opportunity to maintain their relative shareholding. The pre-emption rights may be excluded or limited in respect of shareholders who are seated in jurisdictions that have stricter prospectus requirements than the Netherlands or those in other countries where the main shareholders of the company are seated.