

Trend Report

The rise of stakeholder committees in the Netherlands

Over the past years international attention to sustainability and responsible business has increased. Environmental, social and governance (ESG) topics have therefore gained prominent position on corporate agendas. Reference is made for instance to the proposed EU Corporate Sustainability Due Diligence Directive, which is envisaged to impose certain sustainability and human rights obligations on in-scope entities.¹ As part of this broader development, focus on position of stakeholders and their engagement by companies has also increased. This has led to more Dutch listed companies installing stakeholder committees to facilitate a dialogue on ESG topics with external stakeholders. So how will this development impact Dutch corporate governance going forward?

Stakeholder engagement in Dutch listed companies

As international consensus on the importance of sustainable and responsible business has grown, ESG has become a fast-moving and urgent topic gaining a prominent role on corporate agendas worldwide. Amidst regulatory and other (legal) developments, this has also led to increased focus on the role and position of external stakeholders in business conduct. Stakeholder engagement has therefore become of more significant interest in the ESG debate.

The Dutch stakeholder-oriented governance model provides a suitable basis for stakeholder engagement. In fulfilling their duties, Dutch boards need to act solely in the interests of their company, which is determined by observing the interests of all stakeholders with a view to long-term value creation. Relevant stakeholders include shareholders, employees and creditors, but wider societal interests arguably must also be considered. Dutch boards have significant discretion in how they weigh stakeholder interests.

¹ See also our Quoted of 28 June 2022 on Sustainability reporting by listed and large companies ([link](#)).

ESG topics such as carbon emission goals, sustainable supply chains and diversity & inclusion may fit well within this stakeholder-oriented governance. However, there is no clear formal basis for stakeholder engagement and how it should be structured within Dutch (listed) companies.

Stakeholder committees in the Netherlands

Dutch companies have significant freedom in how they structure their governance to cater for stakeholder engagement. Installing a stakeholder committee is one way to ensure a clear channel for stakeholder engagement. Stakeholder committees may enable companies to identify relevant stakeholder interests in respect to ESG topics and provide for meaningful dialogue. By doing so, management can develop a deeper understanding of their company's context and environment, which in turn may feed into future purpose and strategy discussions. Dutch law facilitates the instalment of stakeholder committees and meaningful engagement with these external stakeholders.

The first stakeholder committees have already been installed by Dutch listed companies. Through these committees, companies engage with external stakeholders and experts and receive their independent views and advice. Stakeholder committees thus facilitate and help formalize stakeholder consultations conducted by Dutch companies.

We expect this development to continue, also in view of regulatory developments. Notably, the current proposal to update the Dutch Corporate Governance Code introduces the requirement for companies to prepare an ESG policy and seeks to establish appropriate stakeholder dialogue in relation thereto. Stakeholder committees could provide a platform to facilitate this kind of dialogue.

Stakeholder committees can be used in a wide array of cases, ranging from being purely a platform for discussion and obtaining information, to having a more active role in the a company's decision-making process on ESG matters. For illustrative purposes, we have identified several roles stakeholder committee could fulfill for companies:

- i. **Forum for discussion and information gathering.** Stakeholder committees can be a platform for companies to structure discussions with relevant external stakeholders on how the company acts on ESG matters and to obtain other information from such

stakeholders. In doing so, a stakeholder committee plays a role in benchmarking the company's ESG performance and allows management to respond to changing stakeholder needs.

- ii. **Involvement in ESG policy.** Stakeholder committees could also take on a more active role in developing the ESG policy of companies. Stakeholder committees could for instance help companies identify key ESG topics, provide suggestions on how to address these topics and help to establish ESG guidelines.
- iii. **Advisory body.** The installment of an advisory stakeholder committee can also be considered. This committee could be consulted on relevant ESG topics, such as carbon emission goals and/or responsible supply chain management. This type of stakeholder committee may also provide solicited or unsolicited advice and could even be granted binding or non-binding approval rights of certain material resolutions related to key ESG topics.

Considerations for installing stakeholder committees in Dutch listed companies

Given the significant freedom Dutch corporate law offers and absent clear case law or scholarly doctrine, there is no established standard (yet) for stakeholder committees in Dutch companies. When opting to install a stakeholder committee, companies should in any case consider the following:

- i. **Clear documentation.** Companies should carefully assess what 'type' of stakeholder committee they wish to install, how its involvement should be structured and what rights that committee and its members will have. Selection criteria and the role and position of the stakeholder committee should be reflected in clear regulations to create a well-defined structure for stakeholder engagement.
- ii. **Due involvement.** Within the determined structure for stakeholder engagement, companies should strive to duly involve the stakeholder committee and enable it to fully take on the role it has been granted. This means providing appropriate information to the stakeholder committee, ensuring timely and meaningful engagement and documenting how stakeholder input is considered by management.

iii. **Appropriate reporting.** Companies should observe due transparency to the market regarding the instalment of and engagement with their stakeholder committee. To avoid accusations of 'greenwashing' companies should strive for fair and realistic disclosures.

Expectations for the future

We expect to see a further increase in the use of stakeholder committees by Dutch listed companies. The more established these stakeholder committees become, the more likely they are to impact Dutch corporate governance standards. This may help develop a more established market practice and doctrine regarding the role and composition of stakeholder committees in the Netherlands.

For more information, please reach out to your Loyens & Loeff contacts: Bastiaan Cornelisse, Mijke Sinninghe Damsté, Michel van Agt, Menno Baks, Bastiaan Kemp or Philippe Hezer.

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