



Statutory cooling-off period will enter into force on 1 May 2021

On 1 May the bill that introduces a statutory cooling-off period for the boards of listed companies will enter into force. The bill was adopted by the First Chamber of the Dutch Parliament (*Eerste Kamer*) on 16 March 2021.

The bill introduces a new Section 2:114b Dutch Civil Code (**DCC**). The purpose is to give the board of a listed company more time and space to weigh the interests of the company and its stakeholders in the event of an unsolicited takeover bid or other pressure being put on the board to change the course of the company.

More specifically, the board of a listed company will be given the opportunity to invoke a cooling-off period up to 250 days in the event of i) a request by one or more shareholders for consideration of a proposal to appoint, suspend or dismiss one or more members of the (supervisory) board, or ii) when a public bid has been announced or made for the shares without agreement having been reached on the bid with the target company. The decision by the board to invoke the cooling-off period is subject to supervisory board approval. In addition, to invoke the cooling-off period, the request under i) and the public bid under ii) must in the view of the board be substantially contrary to the interest of the company and its affiliated enterprise.

The possibility to invoke a cooling-off period has been considered necessary in view of the complexity of such issues, pursuant to which the board needs sufficient time and space to identify possible consequences of actions that are demanded by the shareholders, whether or not in connection with a takeover, and to prepare an appropriate response.

The statutory cooling-off period resembles to some extent the response time already provided for in the Dutch Corporate Governance Code. The response time provides the board a reasonable period of up to 180 days in case of unsolicited shareholder activism. The statutory cooling-off period, however, (i) extends that term, (ii) is broader in scope, also applying in case of a hostile public bid and (iii) may have a different outcome, in that a hostile agenda item may still be tabled as a discussion item (as opposed to a voting item) during the cooling-off period, whereas it would not be tabled at all under the response time. In addition, the statutory basis of the cooling-off period may arguably provide more legal certainty compared to the statutory cooling-off period.

In addition, the bill further incorporates into Section 2:129 paragraph 1 DCC the standard developed in case law regarding the primacy of the board with regard to the strategy of the company. The expectation is that this statutory primacy of the board will enable long-term value creation in listed companies to become more central in decision-making and create more scope for a broad stakeholder approach.

For more information regarding this subject we refer to our [Genoteerd](#) (Dutch) / [Quoted](#) (English) about this subject or contact:

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