

Dutch companies to provide shareholders with voting confirmation

September 3, 2020

The second part of the Dutch implementation of the revised Shareholders Rights Directive (SRD) is in effect as of 3 September 2020. See [here](#) for our earlier reporting on the implementation.

Dutch listed companies should ensure, together with their listing agent, that they can provide shareholders with the required confirmations that their votes have been cast and recorded. In this context, specific attention should be given to the voting procedures at the meeting.

Two types of confirmation

This new legislation requires companies to give two types of confirmations for votes cast. If a vote is cast electronically, a confirmation of receipt must be given. And after the meeting, all shareholders can request the company to confirm that their vote was validly recorded and counted.

It is important to distinguish between an electronically cast vote, and an electronically granted proxy. What shareholders “casting a vote” through customary online voting platforms often actually do is provide an electronic proxy instructing an independent proxy holder to vote at the meeting.

The two types of mandatory confirmation are subject to minimum requirements set out in an [implementing regulation](#) of the European Commission.

Confirmation of electronically cast vote

The DCC introduces an obligation for the company to confirm receipt of a vote electronically cast prior to or during the shareholders meeting. This applies to all Dutch NVs, whether or not they are listed on a stock exchange, and to Dutch listed BVs. Confirmation has to be provided immediately after the casting of individual shareholder votes.

For companies listed on a European stock exchange, confirmation suffices if the company gives the relevant information to an intermediary who, in turn, is obligated to transmit the confirmation to the shareholder or, if a direct confirmation is not possible, to the next intermediary in the custody chain.

The possibility of passing on the confirmation through a chain of intermediaries may not be available if the company is listed on a stock exchange outside of the EU, such as NYSE or NASDAQ. Before allowing shareholders to vote electronically, these companies should carefully establish that the relevant voting platforms facilitate providing such confirmations. As described above, a vote cast pursuant to traditional procedures (where shareholders of US-listed Dutch companies can give voting instructions or grant a proxy) will typically not qualify as a vote that is electronically cast.

Confirming that a vote has been validly recorded and counted

In addition, the DCC introduces an obligation to, after the general meeting, provide shareholders, at their request, with a confirmation that their vote has been validly recorded and counted. The request must be made within three months after the general meeting. The information must be provided by the company within a reasonable timeframe. The legislature has suggested that a 15-day response time is acceptable; this is also in line with the [implementing regulation](#) of the European Commission. If the company cannot provide the requested information to the shareholder directly, confirmation can be given to an intermediary who, in turn, has to inform the relevant shareholder or a subsequent intermediary in the custody chain.

From the company’s perspective, it will be important to maintain a good administrative record of votes cast at the meeting. Proxyholders (including independent proxyholder as referred to in the Dutch Corporate Governance Code), attending the meeting and representing multiple shareholders should make clear who they are representing. If they abstain, they should clarify on behalf of which shareholder(s) they are acting. If proxyholders do not clarify this, it will not be possible to establish if the votes of certain shareholders were cast. As the request can be made up to three months after the general meeting, information has to be kept for that period. Where the information kept for these purposes qualifies as personal data, GDPR requirements need to be observed.

The confirmation should stipulate that the votes have been recorded and counted. It is not required to also confirm that the vote was against or in favour of a proposal.

This confirmation requirement applies to Dutch companies listed on a European regulated market.

Shareholder identification

As of 3 September, the new rules on shareholder identification also take effect. Dutch law on shareholder identification (in the Dutch Securities Giro Transfer Act) has been amended to align with the new provisions of the revised Shareholders Rights Directive. In line with existing legislation, the company can start a process to identify shareholders who hold 0.5% or more of the issued capital. The scope of these provisions is now limited to Dutch companies with a listing on a European regulated market (former Dutch provisions extended the scope to issuers with a Dutch listing irrespective of their statutory seat). In addition, new rules introducing enforcement of these provisions by shareholders have been implemented, as well as rules that consider non-compliance an economic offence under the Dutch Economic Offences Act.