

# Response time for Dutch listed companies to become a statutory right

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A new draft bill allows Dutch listed companies to invoke a statutory response time of up to 250 days. The management board can apply this response measure if shareholders ask the company to put a change in the board composition on the agenda of a general meeting, or in the event of a hostile public offer. The management board should use the response time to assess the effects the developments might have on the company's stakeholders, and to explore alternatives. The draft bill also codifies the management board's authority to determine the company's strategy.

The draft bill is now open for consultation – interested parties can submit feedback until 7 February 2019. It is too early in the process for clients to take action in anticipation of the proposed changes, but we will keep you informed on further developments.

## Background

The [draft bill](#) (*Dutch only*) responds to an ongoing public debate in the Netherlands on the protection of Dutch companies against shareholder activists and hostile takeover attempts. The debate was revived in 2017 following unsolicited attempts to take over AkzoNobel and Unilever.

## Invoking the statutory response time

The management board can invoke the response time if:

- shareholders individually or jointly representing 3% (or a lower percentage included in the articles of association) of the issued share capital, request the board to put a proposal on the agenda of the general meeting to:
  - a. appoint, suspend or dismiss members of the management board or supervisory board, or
  - b. amend the procedures laid down in the articles of association regarding the appointment, dismissal or suspension of a management board or supervisory board member
- an unsolicited public offer is announced or made.

The management board may only invoke the response time if it considers the shareholders' request or the offer to materially go against the interests of the company and its affiliated enterprises. The company's supervisory board must approve the decision to invoke the response time.

The draft bill applies to Dutch N.V. companies listed on a stock exchange in the Netherlands or abroad. If the company has a one-tier board structure, the powers and duties of the management board vest in the board as a whole.

## What happens during the response time?

During the response time, the general meeting cannot vote on shareholder proposals mentioned under a. and b. above. Shareholders may, however, request to discuss these matters at the general meeting.

The management board must use the response time to collect the information it needs to come to a prudent decision. In any event, the management board must consult: the shareholders representing 3% or more of the issued share capital, the supervisory board, as well as the company's works council. If one of the consulted parties issues a statement, the management board shares this with the other consulted parties.

## End of the response time

The response time ends:

- by a decision of the management board (subject to the supervisory board's approval),
- after the Dutch Enterprise Chamber honours a request to that effect made by shareholders individually or jointly representing 3% of the issued share capital, or
- the day after the public offer has been declared unconditional.

The management board must report on the policy and course of action pursued during the response time. This report must be placed on the company's website by the last day of the response time deadline. The report must also be put on the agenda as a discussion item at the first general meeting held after the response time ends.

## Other response measures

In addition to the proposed statutory response time, the Dutch Corporate Governance Code provides a 180-day response time. Most Dutch-listed companies also have other response measures in place, such as the possibility to issue preference shares. The explanatory notes to the draft bill indicate that the Dutch government is not in favour of a company invoking a combination of response measures, but the explanatory notes leave it up to the court to rule on this in specific situations.

## Conclusion

The aim of the proposed draft bill is to give the management board of listed companies more opportunity to:

- consider a takeover offer or a shareholder-initiated change in the composition of the board,
- engage with stakeholders of the company and weigh their interests, and
- explore alternatives

The developments in the Netherlands regarding response measures are not stand-alone issues. In addition to this initiative, a [draft bill](#) (*Dutch only*) to intervene in the Dutch telecommunication sector was submitted to the Council of State for further advice earlier this year. Under this proposal, companies in "vital sectors" are to be protected by governmental screening. At European level, political agreement was recently reached between the European Parliament, the Council and the Commission on an [EU framework](#) for screening of foreign direct investment into the EU on security or public order grounds.

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