DE BRAUW BLACKSTONE WESTBROEK

Bill on statutory response time delayed

A draft bill introducing a statutory response time for management boards of listed companies will take a little longer before being submitted to the Second Chamber of the Dutch Parliament. In a letter to Parliament, the Dutch Minister of Economic Affairs gave an update on the actions announced last year by the Dutch government on response measures for hostile takeovers and activist shareholders. The draft bill will take longer to finalise, as the Council of State will be asked for advice on certain European law aspects.

In May 2017, the government proposed four possible lines of action in order to achieve a shift in the balance of responsibilities among stakeholders of Dutch listed companies. One action, also confirmed in the coalition agreement, is a proposed bill introducing a statutory response time of 250 days. This period would give the management board more time and room to assess stakeholder impact.

Currently, the attention of the legislature is focused on motions accepted after the debate on hostile takeovers that took place in the Second Chamber in June 2017, and how to incorporate these in the legislative proposal. Interviews with consulted parties clearly showed the importance of the exact format and concrete description of the proposal, before Parliament can consider its proportionality and effectiveness. More specific topics, such as the duration of the response time, the moment the response time can be invoked, and possible overlap with the EU Directive on takeover bids, were recurring topics in these conversations.

Another development is on discussions with Dutch institutional investors to see if they are experiencing any obstacles in the holding of their Dutch interests. The outcome is that no action is needed to address possible barriers. The discussions show that from a risk perspective, pension funds could invest more in Dutch listed companies. Institutional investors recognise the added value of the Dutch corporate governance model, a stakeholders approach and emphasis on long-term value creation, but they do not see themselves as having to play a specific role in this area.

Last year's coalition agreement also mentioned lowering the disclosure threshold for shareholders to notify their holding with the Dutch Authority for the Financial Markets (AFM) from 3% to 1% to enhance transparency. This proposal would allow companies with an annual turnover exceeding EUR 750 million to ask shareholders holding a 1% or greater interest to register this with the AFM. In a recent update, the Minister stated that more clarity on this intention is to be expected in Q2.

In conclusion, it will take more time before the government's approach towards response time and related issues are defined in more detail.