



ICGN

International Corporate Governance Network

Mr. D. Nava
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Mr. H. Kamp
Minister of Economic Affairs
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31 May 2017

Re: Proposed new legislation regarding takeover bids in the Netherlands

Dear Mr. Nava and Mr. Kamp,

The International Corporate Governance Network (ICGN) is a global investor-led body based in London, whose mission is to promote high standards of governance in companies and responsible investment practices by investors, with a long-term perspective on sustainable value creation. This mission extends systematically to promoting efficient financial markets and economies world-wide. ICGN was established over 20 years ago and today our membership of governance professionals spans over 45 countries, and includes investors representing assets under management in excess of US\$26 trillion. Many ICGN members are based in the Netherlands, and most of our institutional investment members will have investment holdings in Dutch companies.

We, along with the undersigned institutions below, are writing to express our significant concerns relating to the proposed new legislation regarding takeover bids in the Netherlands, as outlined in the letter of Minister Kamp to the Chair of the House of Representatives (Tweede Kamer der Staten-Generaal) on 20 May 2017. Our specific concern relates to the proposed one year “legal timeout” for hostile takeovers. It is our view that this is an unduly harsh provision that damages shareholder protections to the detriment of good corporate governance, efficient markets and sustainable value creation. We believe introduction of such an extreme provision would work against the interests of institutional investors and their beneficiaries — including pension funds and pensioners.

We further believe that this would carry economic disadvantages and put Dutch companies and the Dutch market in an unfavourable light from the perspective of the global institutional investment community. As you know, almost 90% of the shares in Dutch listed companies are owned by institutional investors, many of whom are based outside the Netherlands. Given the size and the open nature of the Dutch economy it is important to maintain the trust of these investors in the Dutch corporate governance system.

We would note that ICGN's first policy priority is to *promote long-term investment perspectives and sustainable value creation*. As an investor-led body we seek to support the long-term success of companies that we invest in. We are therefore sympathetic to your fundamental concerns about the potentially negative impact of hostile takeovers, particularly in cases when a hostile bidder might introduce short-term changes that do not support - or may contradict - a company's potential for long-term value creation. At the same time it is important to note that takeovers, including hostile takeovers, are neither intrinsically good nor bad. Done properly, takeovers – or, more generally the market for corporate control - can have a positive disciplining effect on companies and financial markets, and, as noted in Minister Kamp's letter, they are “part of the economic process”.

While we recognise the potential for abuse that could come from an acquiring company motivated by short-term horizons, we believe a one year “time out” period would be a disproportionate measure that would generate unintended consequences, particularly if this were to prohibit shareholders from calling for an extraordinary shareholders' meeting or propose changes to the management or supervisory boards of Dutch companies. We believe the negative consequences would impact the efficiency of the financial markets, entrench ineffective company managers and disenfranchise institutional investors. In our view this runs counter to the growing emphasis in European financial markets on investor stewardship — which encourages active and responsible engaging and exercising of shareholder rights. Indeed, we believe that institutional investor stewardship is one of the answers to this problem, to promote responsible long-term perspectives by investors in support of successful companies.

We are aware of similar concerns being expressed by the Dutch investor body Eumedion, and ICGN is supportive of Eumedion. Like Eumedion, we encourage you to consider alternative, and less extreme, options to address your concerns about potential hostile takeover abuses.

We would be happy to speak further with you on this matter if that would be of help.

Yours faithfully,



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Co-signatories:

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Dr. Daniel Summerfield, Co-Head of Responsible Investment