Hogan Lovells

More diversity at the top

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On 28 September 2021 the Dutch Senate passed the act ''More balanced gender composition in the management and supervisory boards of large public and private companies'' (the ''Act'').[1] The purpose of the Act is to make the ratio of men to women at the top more balanced. For that purpose, an assimilation quota [2] and target figure will be implemented. The Act will enter into force on 1 January 2022.

Assimilation quota for listed companies

The Act requires a balanced composition of the supervisory board (and non-executive board members in case of a one-tier board) of listed companies, in the sense that at least one-third thereof should consist of men and one-third of women.[3] If this quota has not been met, it is not possible to appoint a new person who does not contribute to a balanced composition. An appointment in violation of the rule is null and void,[4] but does not affect the validity of the decision-making by the supervisory or one-tier board. A company may deviate from this assimilation quota in case of i) a reappointment within eight years after the year of initial appointment, or ii) exceptional circumstances, meaning that the deviation is necessary to serve the long-term interests and sustainability of the company as a whole or to guarantee its viability.[5]

Please note that pursuant to the Dutch Corporate Governance Code 2016, listed companies should already have drawn up a diversity policy that addresses concrete targets relating to (amongst other things) gender. If the composition of the supervisory board diverges from these targets, the current state of affairs should be outlined in the corporate governance statement, along with an explanation as to which measures are being taken to attain the intended target and by when this is likely to be achieved. The Act concretises the quota listed companies should meet to satisfy the balanced gender requirements and diversity policies should observe the one-third requirements under the Act.

Target figures for large companies

Pursuant to the Act, large[6] public and private limited companies will be obliged to set appropriate and ambitious target figures for the ratio of men to women on boards, supervisory boards and categories of employees in management positions to be determined by the company, including a plan to achieve this.[7] Listed companies are exempt from setting these target figures for its supervisory board (or non-executive board members in case of a one-tier board), as the assimilation quota applies to such board.

Within 10 months after the end of the financial year, companies must report to the Social and Economic Council (SER): i) the number of men and women sitting on the management board, the supervisory board, as well as the categories of employees in management positions at the end of the financial year; ii) the objectives in the form of a target figure; and iii) the plan to achieve these objectives, and in case one or more objectives are not achieved, the reasons therefor.

Group companies are exempt from the reporting obligations and the obligation to determine ambitious and appropriate target figures themselves if the head of the group (i.e. top holding company) implements these obligations, whether or not for the group companies concerned jointly.

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[1] In Dutch: Evenwichtiger verhouding van zetels tussen mannen en vrouwen in het bestuur en de raden van commissarissen van grote naamloze en besloten vennootschappen.

[2] In Dutch: ingroeiquotum.

[3] Article 2:142b Dutch Civil Code.

[4] Article 2:14 Dutch Civil Code.

[5] An appointment in case of such exceptional circumstances shall be for a maximum period of two years.

[6] A company qualifies as a large company if it, at each of two successive balance sheet data, has not met two out of the three following criteria (i) the value of the assets does not exceed EUR 20,000,000, (ii) the net turnover (being the net amount of sales) is EUR 40,000,000 or lower or (iii) the average number of employees is less than 250.

[7] Article 2:166/276 Dutch Civil Code.

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