

**ICGN**

International Corporate Governance Network

Stichting Eumedion  
The Working Group 'Dutch Stewardship Code'  
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The Netherlands

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15 November 2017

To the Working Group 'Dutch Stewardship Code':

**Re: Consultation Document 'Dutch Stewardship Code' issued by Eumedion**

The International Corporate Governance Network (ICGN) welcomes the opportunity to provide comment on the proposed Dutch Stewardship Code, issued by Eumedion (the "Code"), as presented in its consultation document dated 18 September 2017.

ICGN is an investor-led organisation of governance professionals with Members which include institutional investors responsible for assets under management in excess of \$26 trillion. Our mission is to promote effective standards of corporate governance and investor stewardship to advance efficient financial markets and sustainable economies worldwide. This mission is encapsulated in our Global Governance Principles (GGP) and Global Stewardship Principles (GSP), which are relevant to companies and investors, respectively. For more information please visit [www.icgn.org](http://www.icgn.org).

The GSP are of particular relevance to this consultation given the prominence of ICGN investor Members who have the fiduciary duty of providing sustainable returns on capital to their ultimate beneficiaries – typically pension funds and long term savers. The Netherlands is an important market for ICGN Members, many of whom have significant shareholdings in Dutch companies, and who are also domiciled in the Netherlands.

**ICGN Global Stewardship Principles**

It is one of ICGN's top policy priorities to make successful stewardship a reality in markets around the world. Our own GSP are drawn from our early statement on Institutional Shareholder Responsibilities, published in 2003, and they serve as a global point of reference for developers of stewardship codes in many jurisdictions. The seven Principles described in the GSP set out ICGN's view of best practices with respect to investor stewardship. In this regard, we welcome some analogous drafting in the Principles expressed in the Eumedion Code.

**Prioritisation and ordering of the principles**

When examining the subjects covered by the Codes' principles, ICGN notes that, in comparison with ICGN's GSP, some Code subjects are presented as principles unto themselves, whereas in the ICGN GSP these subjects are addressed in the guidance points to the seven overarching ICGN stewardship principles. This degree of emphasis in the Eumedion Code might occur because of national interests or best practices to require prioritisation in the Netherlands. In any event it may be helpful to provide further clarification in some areas.

As an example, we observe that Principle 6 of the Code addresses the specific point of conflict of interests. Conflicts of interest are clearly worthy of emphasizing as a hindrance to good stewardship, and we see this theme rightly referenced not only in the Eumedion Code, but also in other stewardship codes around the world. This principle relates directly to Guidance point 1.6 of the ICGN GSP. However, ICGN considers that conflicts of interest are an important – but not the only—aspect of internal governance that investors must manage. We respectfully refer to ICGN’s GSP Principle 1 regarding investor governance, which addresses conflicts of interest, but also other includes governance considerations that are critical to effective stewardship capabilities. These include the need for investors to address appropriate (i.e., not short-term) time horizons, independent oversight, ethics and conduct, capacity and experience, the investment chain and appropriate remuneration structures. We would encourage Eumedion to consider these broader investor governance factors in the Code.

We would also observe that draft Principles 8 and 9 address very specific issues. While we do not disagree with what is articulated in these Principles, we believe that these might be regarded more as guidance points than standalone Principles.

The same applies to Principle 11 of the Dutch Code and Guidance point 5.6 of the ICGN GSP; both cover the issue of securities lending and voting. Again, we question this distinction between principle and guidance point. While we do not disagree with the position take by Eumedion in its Principle 11, we view the issue stock lending more as a subset of voting considerations-- and not as a principle unto itself. Eumedion’s prioritisation of this issue as a principle may reflect a governmental policy desire to address the specific issue of stocklending; or it might be that this issue of securities lending historically is more prominent in the Dutch market than in other capital markets, and therefore needs to be addressed more specifically as a principle. Further explanation thereto would be welcome.

## **Relationship between the Code and the implementing process of the Directive (EU) 2017/828**

The Dutch government must implement Directive (EU) 2017/828 in national laws, as will happen in other EU-member states. This may lead some EU member states to reconsider the effectiveness of “soft law” voluntary codes of governance and stewardship – and potentially considering the adoption of non-voluntary laws or regulation.

The Code contains the suggestion that it constitutes the 'translation' for Dutch institutional investors and asset managers of the Directive (EU) 2017/828. The recital states: '[T] his Code incorporates the new obligations for asset owners and asset managers voting from the [ . . . ] Shareholder Engagement Directive.' ICGN supports the strong approach to stewardship in the Eumedion Code, and we would observe that the Code’s principles may be more stringent in many ways than are the investor requirements in the Shareholder Rights Directive (SRD).

It is our observation that if the Eumedion Code is intended to serve as an investor guide on how to deal with the SRD, it may make sense in some cases to identify where the Code Principles extend beyond the requirements of the SRD. If this distinction is not made clear it could potentially give rise to criticism by users of the Code who may believe that adherence to the Eumedion Code presents a competitively disadvantageous burden compared to other European jurisdictions with less exacting stewardship requirements.

## The Code obligations on non-Dutch institutional investors

Points 4 and 5 of the preamble suggest new obligations on asset owners and asset managers, particularly those from outside the Netherlands. We support this direction of travel, but in some cases we think it may be difficult for non-Dutch asset owners and asset managers to deal with these obligations at the level of detail specified in the Code—particularly for any non-Dutch investors who would like to be a Code signatory. It may be impractical to expect that asset managers and asset owners with global portfolios will have the compliance capacities to deal with stewardship codes in every market where they have investment holdings. For this reason we note that you have created an alternative of “endorsing” the Code without actually being a signatory. We think this is a clever way to approach this problem for non-Dutch institutional investors. However, even for those investors who endorse the Code, there may be better scope for more clarifying expectations for international investors. In this context both these points 4 and 5 from the preamble might benefit from greater clarity on how asset owners and asset managers might be able to comply with these points.

## Stakeholders and ESG issues

Principle 5 suggests a standard of behavior between asset owners and asset managers vis-à-vis stakeholders. As drafted, this Principle seems potentially vague, and may benefit from greater clarification – particularly for non-Dutch investors. ICGN understands that in the Dutch 'Polder Model' it is common for all stakeholders to have open dialogue and develop mutual understanding in promoting the success of companies; this can be positive. However, for non-Dutch investors – even if they are only “endorsers”, and not signatories—it may not be clear how to do this and when it would be appropriate to do so. Moreover, we do not believe that investors should be required to meet with stakeholders; this should only be done when there is good reason for the investor to wish to do so.

As a specific point we note that the Guidance principle 5 suggests that investors should understand stakeholder issues and concerns event before entering into a dialogue with a Dutch investee company. While it is certainly important for investors to understand a company’s stakeholder relations, this sequencing is potentially confusing. This may be particularly so for non-Dutch investors who in the first instance would seek to develop a direct relationship with the company – and not the stakeholders. Indeed, some investor engagement meetings with company management are beneficial to enable investors to learn about strengths and weaknesses in a company’s stakeholder relations—to set the stage for further company engagement or dialogue with relevant stakeholder groups. There may be scope for clarification on this point.

Related to stakeholder issues we note that one of ICGN’s seven stewardship principles (GSP Principle 6) is promoting long-term value creation and integration of environmental, social and governance (ESG) factors. We believe that ESG factors are of fundamental importance to a better understanding of stakeholder issues -- and a company’s citizenship and social impact more broadly. Indeed, better integration of ESG factors into investment analysis, monitoring, engagement and voting should be a means through which investors would satisfy the requirements under the Dutch Polder model and Principle 5 of the Code.

ICGN notes that some investors struggle with ESG integration and understanding its relevance to the investment process. Accordingly, we believe that the importance of ESG integration—and long term investment perspectives are critical and warrant designation of a standalone ICGN stewardship principle. We note that stakeholder interests and ESG factors are explicitly referenced in the Dutch Corporate Governance Code, but less so in the draft Eumedion stewardship Code. Eumedion therefore may wish to place greater emphasis in the

Code on the role of ESG analysis in promoting good stewardship and better understanding of stakeholder interests.

## Voting

With regard to Principle 10 on voting, ICGN suggests to not only call for the disclosure of the voting policy, but also to disclose publicly the actual voting records on individual investee companies, as is suggested in guidance point 5.3 of ICGN's GSP.

## Monitoring Committee – composition and accountability

ICGN supports the idea of establishing a Monitoring Committee to assess and report annually on the application of the Code's principles by investors. In the Preamble paragraph 9 the Code is clear about the responsibilities of the Monitoring Committee. However, there could be greater clarity as to who will appoint the members and what would be the necessary qualifications for aspirant members. In particular it would be useful to understand if some Committee members might be representatives of asset owners and asset managers - or if it would be preferable to only have outside members. If there are to be investor representatives on this Committee, it would be important to address the question of independence. In such a case we would suggest that the chairman of the Monitoring Committee should be independent of the signatories of the Code, and that it may be useful to provide guidance as to the balance between investor representative and independent non-investor representatives on the Committee. It would also be important to understand to whom this Committee is directly accountable. Is that to the board of Eumedion only? It would be good as well to clarify which Dutch government ministry or department would receive this report – and what their expected role might be.

To conclude, we congratulate Eumedion and the Working Group on this draft Dutch Stewardship Code. This will provide a good foundation for further in-depth discussions in the Netherlands on the importance of engagement and investor responsibilities. As in most markets the biggest challenge lies in implementation and how this all is applied in the actual behaviour of asset owners and asset managers, both the Netherlands and from international domiciles.

ICGN applauds the hard work of the Eumedion Working Group, and we hope that our feedback and comments are helpful when finalising the first Dutch Stewardship Code. Should you wish to discuss our comments further, please contact me or George Dallas, ICGN's Policy Director, by email at [george.dallas@icgn.org](mailto:george.dallas@icgn.org)

Yours faithfully,



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