Eumedion call on sustainability report advisory vote – VEUO position

Vereniging Effecten Uitgevende Ondernemingen

Eumedion 2025 Focus letter: AGM advisory vote on 2024 sustainability report

In its focus letter for the 2025 AGM season, Eumedion calls on listed companies to submit their 2024 sustainability report to their AGMs for an advisory vote. The VEUO strongly encourages listed companies to discuss their sustainability policy and performance with their shareholders – as they already do. In this respect a complementary non-binding vote on the sustainability report may seem an additional sympathetic gesture towards shareholders, allowing them to voice their opinions about the sustainability performance of the company which, Eumedion argues, is in line with their authority to approve the annual financial statements. The VEUO, however, believes that such an advisory vote is inconsistent with the Dutch stakeholder model for listed companies and could lead to an ambiguous governance and numerous practical challenges. We therefore consider it inadvisable for listed companies to follow Eumedion's request. We explain our position below.

The boards, not shareholders, are responsible for sustainability (and other parts of strategy)

There are several governance reasons why shareholders should not be granted a vote, whether advisory or binding, on the company's sustainability report.

An AGM vote on the company's sustainability report, even if advisory, is in essence a vote on the company's sustainability *policy*: the reported numbers and information do not need anyone's approval – they are what they are. What in fact would be happening if shareholders were to be granted a vote on the report is giving them a say on the underlying sustainability policy

Sustainability, however, is an integral part of the company's strategy focused on sustainable long-term value creation. The sustainability strategy therefore is the exclusive responsibility and domain of the management board under supervision of the supervisory board.

There are good and important reasons for this. When voting their shares, shareholders act in their own interests. The outcome of the AGM vote on the sustainability report will thus reflect investor interests and sentiment with respect to sustainability. The management board and supervisory board have much wider responsibilities: they need to act in the best interest of the company and its business, whilst taking into account the interests of all the company's stakeholders – not only the interests of shareholders. Consequently, from a stakeholder perspective the two boards are much better suited to take responsibility for the sustainability policy and performance of the company than shareholders are. And, other than shareholders, the boards are accountable for the same. If boards need to subject the sustainability report to (only) shareholders, they lose the necessary autonomy to act in the best interests of the company as a whole and all its stakeholders.

This is even more important as the sustainability report covers a very wide range of topics (from environmental, human rights, governance, to social matters) and thus is relevant for many different stakeholders who may have different interests, again not only for shareholders.

It is for these reasons that, under Dutch law, case law and corporate governance, shareholders do not have a say on strategy including the sustainability related parts of the strategy. Similarly, they cannot request that strategy including sustainability-related voting items be added to the agenda of the annual general meeting, all in line with the Dutch Supreme Court's decision in the Fugro-case.

It is correct, as Eumedion states, that AGMs vote on the annual accounts – after which shareholders receive their annual dividends – but they do *not* vote on the management board's report of which the sustainability report forms part. And, indeed, shareholders have an advisory vote on the remuneration report, but that is because they have a vote on the remuneration policy.

Finally, sustainability is already an important and often recurring topic of discussion between listed companies and their shareholders, both in and outside the AGM. And in this regard it is a well-known fact that shareholder engagement outside AGMs is much more meaningful than that during AGMs, where most shareholders are physically absent having voted their shares already in advance of the meeting. The Dutch Corporate Governance Code provides an adequate framework for maintaining such dialogue with shareholders outside the AGM on sustainability and other strategic and performance matters.

Governance ambiguities and practical issues

As VEUO, we also anticipate governance ambiguities and practical challenges in case shareholders were to be granted an advisory vote on the sustainability report.

Should the sustainability report be submitted to the AGM for an advisory vote in 2025, it will likely be expected to maintain this practice in the following years. In fact, Eumedion is already advocating for a *binding* shareholder vote on the sustainability report, and this is a first step in that direction.

A considerable number of shareholders in Dutch listed companies reside in jurisdictions where sustainability has become a controversial matter, as Eumedion's own recent Green Paper points out.[1] This makes the outcome of the votes for which Eumedion is pleading uncertain and in any event less predictable, and it is to be expected that this challenge will grow in the coming years.

In the event less than 80% of shareholders vote in favour of the sustainability report, it is likely that Eumedion will declare the voting result as 'controversial'. This could result in additional governance demands, such as requests for further shareholder consultation on the reasons behind the voting result, and a demand to report back on those meetings and actions going forward. In other words, while the advisory vote may not be legally binding, it would have an effect on the governance of the company in case shareholders express dissenting views.

And: what do such dissenting views mean, also given that the report discusses a wide variety of matters? It is also quite possible that while some shareholders vote against the report believing the company does too little with respect to a certain part of its sustainability policy, other no-voters feel the company is doing too much. The outcome of these votes may well signal ambiguity rather than provide any clarity. These challenges will be even bigger if a report would be voted down.

Conclusion

The VEUO is a strong supporter of sustainable long-term value creation and meaningful engagement between listed companies and their shareholders, certainly also on sustainability. But we do promote clear and unambiguous corporate governance. Giving shareholders a vote on the company's sustainability report, even if advisory, confuses the roles and responsibilities in the company and discriminates between groups of stakeholders that have competing interests. And it is unnecessary, as shareholders already have and use ample opportunities to engage with listed companies on their sustainability policies and practices, all in line with the already existing provisions of the Dutch Corporate Governance Code.

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[1] *Herijking van het stakeholdersmodel en de rol van Nederlandse institutionele beleggers*, https://www.eumedion.nl/clientdata/215/media/clientimages/Green-Paper-NL-DEF.pdf?v=241017170318. See for instance p. 11: "*Gemiddeld genomen is het overgrote deel van het aandeelhoudersbestand van Nederlandse beursvennootschappen afkomstig uit een jurisdictie waar de maximalisatie van aandeelhouderswaarde centraal staat (in plaats van zoals in Nederland waar het stakeholdersdenken en duurzame langetermijnwaardecreatie centraal staan).*"