



## Financial reporting requirements for Dutch listed entities

For accounting periods beginning on or  
after 1 January 2022

August, 2022



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# Introduction

Overtime, the regulations and legislation with respect to the financial reporting requirements of listed entities whose registered office is in the Netherlands has increased significantly.

This publication provides an overview of the financial reporting requirements that Dutch listed entities need to comply with. The aim of this particular publication is to provide a comprehensive list of specific<sup>1</sup> financial reporting requirements that Dutch listed entities need to apply, as far as these entities are a public limited liability company (“*naamloze vennootschap*”) or a private limited liability company (“*besloten vennootschap*”), hereinafter ‘NV’, ‘BV’ and together ‘entities’ or ‘(other) listed entities’.

This publication covers the requirements for:

- entities with securities listed in a regulated market in the EU/EEA, i.e. public interest entities in scope of article 2:398-7a NCC; and
- other listed entities, i.e. entities with securities listed on a MTF (which is a non-regulated market) or on a market outside the EU/EEA.

This publication does not cover the requirements for credit institutions (banks) and insurance companies that classify as public interest entity based on article 2:398-7 b and c NCC. This publication also does not cover the requirements for investment entities<sup>2</sup>. This also means that the requirements for ‘market participants’ in the financial services industry to provide sustainability information in the management board report following the Sustainable Finance Disclosure Regulation (EU-regulation 2019/2088) are not covered in this publication.

This publication covers requirements for financial years starting on or after 1 January 2022.

The financial reporting requirements for listed entities are laid down in various laws and regulations, each of which has its own scope. In this publication, we list the requirements for each of the different categories of listed entities. The category to which the relevant requirements apply is indicated by means of coloured bars in the right-hand margin.

In this publication **the different categories of listed entities concern entities (NV or BV):**

- not being a credit institution or insurance company that classify as public interest entity;
  - not being an investment entity;
  - whose home member state (if applicable) is the Netherlands; and
  - whose registered office (“*statutaire zetel*”) is in the Netherlands,
- with:

1. **shares<sup>3</sup> listed on a regulated market in the EU/EEA;**
2. **securities other than shares listed on a regulated market in the EU/EEA;**
3. **shares listed on a MTF in the EU/EEA and with other securities listed on a regulated market in the EU/EEA;**
4. **shares listed on a MTF in the EU/EEA;**
5. **shares listed outside the EU/EEA on a market comparable to a regulated market in the EU/EEA;**
6. **shares listed outside the EU/EEA on a market comparable to a MTF.**



<sup>1</sup> Our publication ‘The Annual Accounts in the Netherlands’ gives an overview of the general financial reporting requirements of the Netherlands Civil Code and is available on <https://www.iasplus.com/en/tag-types/member-firms/netherlands>.

<sup>2</sup> An investment entity is an entity that is used for collective investment in order that the participants can share the proceeds of the investments.

<sup>3</sup> This includes both shares and depositary receipts.

The categories 1, 2 and 3 are listed entities that are public interest entities (in scope of article 2:398-7a NCC). The categories 4, 5 and 6 are other listed entities.

### Regulated market in the EU/EEA

As referred to in article 4 paragraph 21 of Directive 2014/65/EU, a regulated market of a Member State of the EU/EEA is a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of the aforementioned Directive.

Markets such as Euronext Amsterdam, Frankfurter Wertpapier Boerse and Euronext Paris are considered to be regulated markets, while markets such as Alternext, which is aimed at the listing of securities for small and medium-sized entities, are not. As required by article 56 of MiFID II, a searchable register of regulated markets within the European Economic Area (EEA) is maintained on the website of the European Securities and Markets Authority (ESMA)<sup>4</sup>.

### Multilateral Trading Facility (MTF)

The distinction between a regulated market and a MTF that does not qualify as a regulated market lies, in particular, in the requirement that a regulated market has admitted financial instruments under its 'rules and systems'. In the literature, this distinction is also referred to as the 'quality element' that distinguishes a regulated market from an MTF.

A MTF is a financial trading venue that serves as an alternative to the traditional trading exchanges as the regulated markets. MTFs connect multiple buyers and sellers through computerized systems in accordance with rules prescribed by Europe's Markets in Financial Instruments Directive (MiFID). In contrast with a regulated market, an MTF typically does not impose listing requirements. Examples of MTFs are Chi-X Europe, Liquidnet Europe, Currenex MTF, and UBS MTF.

### Home member state

The home member state is defined in article 2 of Directive 2004/109/EC (the Transparency Directive). A substantial part of the provisions of the Transparency Directive is implemented in chapter 5.1A Wft, which includes a reference to the home member state definition in the Transparency Directive (article 5:25a Wft). The home member state is an important starting point for determining (1) the competent authority and (2) whether and which requirements of Wft are applicable.

In case of listed shares or listed debt securities with a nominal value of less than EUR 1,000, the home member state is:

- the member state in which the issuer has its registered office, where the issuer is incorporated in the EU; or
- where the issuer is not incorporated in the EU, the member state chosen by the issuer from amongst the member states where its debts securities are admitted to trading on a regulated market.

This means that in this brochure for category 1 and for category 2 and 3 in case of debt securities with a nominal value of less than EUR 1,000, the Netherlands is by definition the home member state.

<sup>4</sup> <https://registers.esma.europa.eu/publication/>; select [MiFID/UCITS/AIFMD/EUSEF/EUVECA entities] from the List of Registers, then [Regulated market] from the Entity Type dropdown menu.

If the nominal value of the listed debt securities is at least EUR 1,000, the home member state is the member state chosen by the issuer from among the member state in which the issuer has its registered office, where applicable, and those member states where its debts securities are admitted to trading on a regulated market.

In this brochure category 2 and 3 in case of debt securities with a nominal value of at least EUR 1,000 are limited to those entities that have chosen the Netherlands as home member state.

For the categories 4, 5 and 6, the home member state is not relevant. This is because these entities are not subject to chapter 5.1A Wft and therefore the requirements of that chapter are not applicable.



# 1. Reporting requirements for Dutch listed entities

In general, the Dutch legal requirements relating to financial reporting and the annual accounts are included in Part 9 of the Netherlands Civil Code (NCC), based on the EU Accounting Directive 2013/34/EU. In addition, for some categories of Dutch listed entities the Financial Supervision Act (“*Wet Financieel Toezicht*”, ‘Wft’) requires that so-called 'regulated information' must be made public (article 1-1 Wft). Other reporting requirements for Dutch listed entities are included in several Decrees, other NCC articles, the Dutch Accounting Standards (DAS) issued by the Dutch Accounting Standards Board (DASB) and the Netherlands Corporate Governance Code (CGC).

This publication does not cover requirements, if any, issued by foreign authorities or exchange organizations.

## 1.1 Annual financial reporting

### 1.1.1 Requirements pursuant to Wft and CGC

Pursuant to article 5:25c Wft, an entity of which the Netherlands is the home Member State and of which securities (shares or other securities) are listed on a regulated market in the EU/EEA must make its annual financial reporting publicly available within four months of the end of the financial year. The annual financial reporting includes:

- the management board report (refer to Chapter 2);
- the report of the supervisory board (in accordance with CGC) (refer to Chapter 3);
- the audited financial statements, including auditors report (refer to Chapter 4);
- other information (refer to Chapter 5); and
- statements made by the management board that both the financial statements and the management board report give a true and fair view and that the main risks are described in the management board report (article 5:25c-2c Wft) (refer to paragraph 2.2.5.2).

#### *Exemption*

The requirements of article 5:25c Wft as described above are not applicable for entities that only issue bonds or other non-equity securities<sup>5</sup>, whose denomination per unit amounts to at least EUR 100,000<sup>6</sup> or the equivalent in another currency on the date of the issue (article 5:25g-2 Wft). For these entities the requirements as described in paragraph 1.1.2 apply.

<sup>5</sup> Non-equity securities are all securities that are not equity securities. Equity securities are shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer (article 2 of the EU Prospectus Regulation 2017/1129).

<sup>6</sup> At least EUR 50,000 in case an issuer only issues listed bonds that were already admitted to trading on a regulated market in the European Union prior to 31 December 2010 (article 5:25g-3 Wft).



## 1.1.2 Entities not in scope of Wft

Entities that are not in scope of article 5:25c Wft also have to make this annual reporting publicly available, except the statements mentioned in the last bullet of section 1.1.1. These entities must publish the annual accounts within eight days after adoption, in accordance with article 394-1 NCC.

In addition, article 394-3 NCC requires the entity to publish its annual accounts twelve months after the financial year-end at the latest.

If the financial statements have not been adopted within two months following the maximum period for preparing the financial statements (five months), or the extended maximum period of ten months after the end of the financial year, the management board must publish the financial statements without delay. In that case the financial statements must clearly disclose that they have not yet been adopted (article 394-2 NCC). The maximum period for publication of the annual accounts (either adopted or not) is therefore twelve months (article 394-3 NCC).



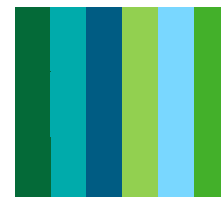
## 1.1.3 Compensation statement

Pursuant to article 2:135b and 187<sup>7</sup> NCC, an entity with shares listed on a regulated market in the EU/EEA must prepare a clear and understandable compensation statement, providing a comprehensive overview of the remuneration awarded or due to individual directors. This report is presented to the annual general meeting to hold an advisory vote and is made publicly available on the website of the entity after the general meeting (refer to Chapter 6).



## 1.1.4 Report on payments to governments

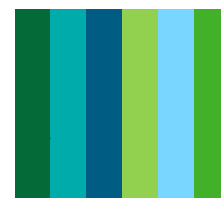
Pursuant to article 2:392a NCC and to article 2 of the Decree of Disclosing Payments to Government Entities ("*Besluit rapportage van betalingen aan overheden*"), certain entities active in the extractive industry (oil, gas and mining) or in the primary forest logging shall also make an annual report on payments to governments publicly available (refer to Chapter 7).



## 1.1.5 Basis of preparation

### 1.1.5.1 General

Listed entities must prepare the financial statements, management board report and other information in accordance with Part 9, Book 2 NCC.



### Language

In case of securities that are listed on a regulated market, the annual financial reporting must be made publicly available in the following language:

- a regulated market in the Netherlands: Dutch or English (article 5:25p-1 Wft);
- a regulated market in the Netherlands and in another member state:
  - Dutch or English and
  - a language accepted by the financial markets supervisory authority of that other member state or a language customary in the sphere of international finance (article 5:25p-2 Wft).

If the denomination per unit of the securities amounts to at least EUR 100,000 (or EUR 50,000 in case the securities were already admitted to trading prior to 31 December 2010) or the equivalent in another currency on the date of the issue, a Dutch or English version is not required (article 5:25p-5 and 6 Wft);



<sup>7</sup> This article applies to a BV with shares listed on a regulated market in the EU/EEA and regulates that various provisions for an NV also apply to a BV.

- a regulated market not in the Netherlands but in another member state: a language accepted by the financial markets supervisory authority of that other member state or a language customary in the sphere of international finance (article 5:25p-3 Wft).

For the entities mentioned above the choice of language as described in article 2:362-7, 391-1 and 394-1 and 4 NCC (refer to next paragraph) is not applicable (article 5:25p-4 Wft).

If the listed entity is not in scope of Wft (i.e. does not have securities that are listed on a regulated market in the EU/EEA), the financial statements and the management board report must be prepared in the Dutch language, unless the general meeting has resolved to use a different language (article 362-7 and 391-1 NCC). The financial statements and the management board report must be made publicly available in Dutch or if prepared in another language in French, German or English (article 2:394-1 and 4 NCC).

### 1.1.5.2 Consolidated financial statements

The consolidated financial statements of entities with securities listed on a regulated market in the EU/EEA have to be prepared in accordance with IFRS-EU and as a consequence some of the sections of Part 9, Book 2 NCC are not applicable to these financial statements (refer to Chapter 4).

### 1.1.6 Exemptions based on size

An entity with securities listed on a regulated market in the EU/EEA is designated as a public-interest entity, and consequently is deemed to be a large entity in terms of article 398-7 NCC. As such it cannot benefit from the exemptions for micro, small and medium-sized entities that are available for non-public-interest entities and must publish its full annual financial statements. The exemption for group entities of article 2:403 NCC also is not available for listed entities. This is because article 2:403-4 NCC states that the exemption for group entities does not apply to PIEs as referred to in article 2:398-7 NCC. Under this exemption a group entity is exempt from the usual disclosure, publication, and audit requirements relating to its financial statements if it meets certain conditions.

## 1.2 Half-yearly financial reporting

### 1.2.1 Requirements pursuant to Wft

#### 1.2.1.1 General

Pursuant to article 5:25d-1 Wft, an entity of which the Netherlands is the home Member State and of which securities (shares or other securities) are listed on a regulated market in the EU/EEA must make its half-yearly financial reports publicly available as soon as possible, but no later than three months after the end of the first six months of the financial year. This half-yearly financial reporting includes (article 5:25d-2 Wft):

- half-yearly financial statements;
- a half-yearly management board report; and
- statements made by the persons designated as responsible by the issuer, clearly indicating their names and functions, that, to the best of their knowledge:
  - the half-yearly financial statements give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole; and
  - the half-yearly management board report gives a true and fair view of (1) the most important events that have occurred during the reporting period and their effect on the half-yearly

accounts, (2) a description of the principal risks and uncertainties for the remaining six months of the financial year and (3) the most important transactions with related parties.



#### *Exemption*

Like the exemption for the annual financial reporting requirements as described in paragraph 1.1.1, the requirements of article 5:25d Wft as described above are not applicable for issuers who only issue bonds or other non-equity securities, whose denomination per unit amounts to at least EUR 100,000 or the equivalent in another currency on the date of the issue (article 5:25g-2 Wft).



#### **1.2.1.2 Basis for preparation**

If these entities are required to prepare consolidated financial statements, the half-yearly financial statements must be prepared on the basis of IFRS-EU – in accordance with IAS 34 ‘Interim Financial Reporting’.

If there is no obligation to prepare consolidated financial statements, the half-yearly financial statements must contain an abridged balance sheet, a condensed profit and loss account and explanatory notes (article 5:25d-5 Wft). In the half-yearly financial statements the same accounting policies are applied as for annual financial statements (article 5:25d-7 Wft). Further requirements are set out in the Decree implementing the Directive on the Transparency of Issuing Institutions in the Wft (Bulletin of Acts and Decrees 2008, 578). These requirements are not included in this publication.



#### **1.2.2 Entities not in scope of Wft**

Entities that are not in scope of article 5:25d Wft have no obligation to make half-yearly financial reports publicly available.



#### **1.3 Overview**

Refer to Appendix 1 for an overview of the obligations concerning making annual and half-yearly financial reporting publicly available under this (transparency) legislation.



# 2. Management Board Report

## 2.1 General

### 2.1.1 Introduction

The management board of a listed entity must prepare a written management board report. Like the financial statements, the management board report must be made available for inspection by the shareholders (article 2:101-1 and 2:210-1 NCC). It is recommended, but not necessary, to include the financial statements and the management board report in 'one booklet' and to add the Other information (see also Chapter 6).

The management board report may not conflict with the financial statements (article 2:391-4 NCC). The management board report relates to the legal entity and the group entities whose financial data are included in its financial statements.

The management board report must give a true and fair view of (article 2:391-1 NCC):

- the situation on the balance sheet date;
- the development during the financial year; and
- the results.

### 2.1.2 References to the financial statements

References to and additional explanations of items in the financial statements must be included in the management board report if this is necessary for a true and fair view in the management board report (article 2:391-4 NCC). This information can be integrated with the information as required by article 391-1 NCC.

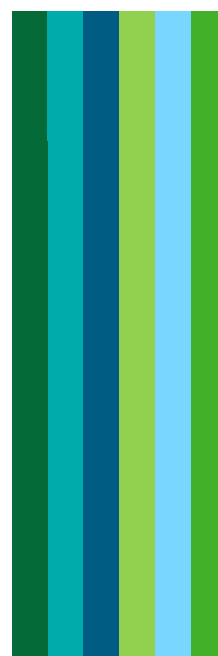
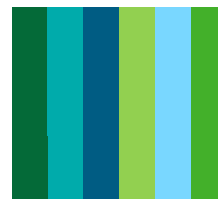
### 2.1.3 Key figures, key ratios and multi-annual overview

For the use of key figures, key ratios and multi-annual overview in the management board report, DAS 430 'Key figures, key ratios and multi-annual overview' applies.

The key figures and key ratios in financial statements can be distinguished into key figures and key ratios that are directly and not directly derived from the financial statements. The key figures and key ratios that cannot be derived from the financial statements must be clearly described and explained, including the definition, method of calculation and, as far as possible, a numerical reconciliation with items in the financial statements (article 430.104 DAS).

Key figures and key ratios that cannot be derived directly from the financial statements are not presented with more emphasis than key figures and key ratios that can be derived directly from the financial statements (article 430.106 DAS).

To the extent possible, for each key figure and key ratio included, the number of the respective key figure and key ratio of the previous year must be given. For the sake of comparability, key figures and key ratios from previous years should be calculated in the same way as the present reporting period. If there has been a change in the choice or method of calculating data, the data for previous years should be calculated in accordance with the new system, unless this is impracticable. In that case, this



fact shall be disclosed. The reason for changes in the choice or method of calculation of key figures and key ratios shall be explained (article 430.105 DAS).

If financial statements consist of both separate financial statements (“*enkelvoudige jaarrekening*”) and consolidated financial statements, it is generally preferable to derive the key figures and key ratios from the consolidated financial statements (article 430.107 DAS).

It is customary for entities whose shares are listed to present multi-annual overviews. These overviews considerably facilitate examination of trends in the financial position of the entity (article 430.108 DAS).

## 2.2 Contents of the management board report

### 2.2.1 General

For accounting periods beginning on or after 1 January 2022, The Dutch Accounting Standards Board has revised DAS 400 ‘Management Board Report’ and restructured it in a policy-neutral manner. This means that no substantive new provisions have been included. The new layout and structure are intended to increase the readability and accessibility of the chapter.

The new standard has a ‘stacking’ structure, in which the regulations applicable to all medium-sized and large legal entities are dealt with first. This is followed by rules for public interest entities and for listed entities.

The management board report must specifically address the specific situation of the entity. Overly global and vague statements are not allowed (article 400.1004 DAS).

### 2.2.2 Requirements for all medium-sized and large legal entities

The management board report of a medium-sized or large legal entity shall address the following subjects (article 400.1001 DAS):

1. policy, course of business and previous expectations;
2. objectives and core activities;
3. company structure and staffing;
4. financial developments;
5. risks and risk management;
6. culture and behaviour – soft controls;
7. risk management policy for financial instruments;
8. application of and compliance with codes of conduct;
9. research and development;
10. future expectations; and
11. other subjects.

The information provided on these subjects must relate to the legal entity and the group entities whose financial data are included in its financial statements (article 400.1012 DAS<sup>8</sup>).

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<sup>8</sup> In DAS 400.1012 it is stated that this information must relate to ‘the legal entity and its associated enterprise(s)’. This can be interpreted as ‘the legal entity and the group entities whose financial data are included in its financial statements’.

### 2.2.2.1 Policy, course of business and previous expectations

In the management board report, the board of directors shall report in writing on the course of events at the legal entity and the policy pursued by the legal entity. Infographic, visual, and multimedia elements may be used for this purpose.

The management board report must provide information about the important elements of the policy pursued and attention must be paid to the actual development during the year under review of important matters about which expectations were expressed in the previous management board report or about which a significant degree of uncertainty was mentioned. It is recommended in this respect to mention important deviations from trend developments mentioned in the previous management report.



### 2.2.2.2 Objectives and core activities

The legal entity must provide information in the management board report on its objectives and activities. This information shall in any case include:

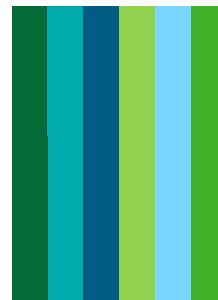
- the objective, whether or not laid down in a mission statement; and
- an indication of the (core) activities of the enterprise that is run by the legal entity, with the main products, services, geographical areas, categories of customers and suppliers, and the international chain in which it operates.



### 2.2.2.3 Company structure and staffing

The legal entity must provide information in the management board report on the corporate structure and staffing. This information shall in any case include:

- the legal structure of the enterprise, including the group structure and the applicability of the structure regime;
- the internal organisational structure; and
- the staffing.



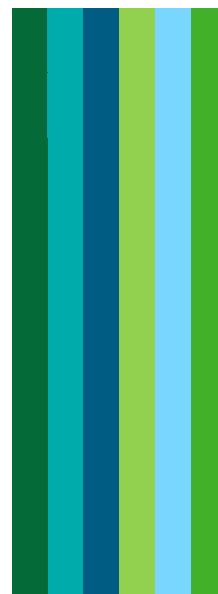
### 2.2.2.4 Financial developments

In the discussion in the management board report, at least the following aspects must be addressed through a balanced and comprehensive analysis:

- the developments during the financial year;
- the turnover and results achieved;
- the situation on the balance sheet date (solvency and liquidity);
- the main risks and uncertainties; and
- the cash flows and financing requirements.

Pursuant to article 2:391-1 NCC, this analysis is in line with the size and complexity of the legal entity and the group entities.

The management board report contains references to and additional explanations of items in the financial statements if this is necessary for a true and fair view in the management board report (article 2:391-4 NCC). Additional notes in the management board report may not replace notes in the financial statements (article 400.1042 DAS).



In the above-mentioned discussion, it is important for the understanding to distinguish between revenue and results achieved in core activities, secondary activities and activities that have already been discontinued or from which the entity intends to withdraw in due course. It is recommended that attention be paid to the development of both the absolute amounts and the position in relevant markets.

### 2.2.2.5 Risks and risk management

The description of risks and risk management shall address the following aspects:

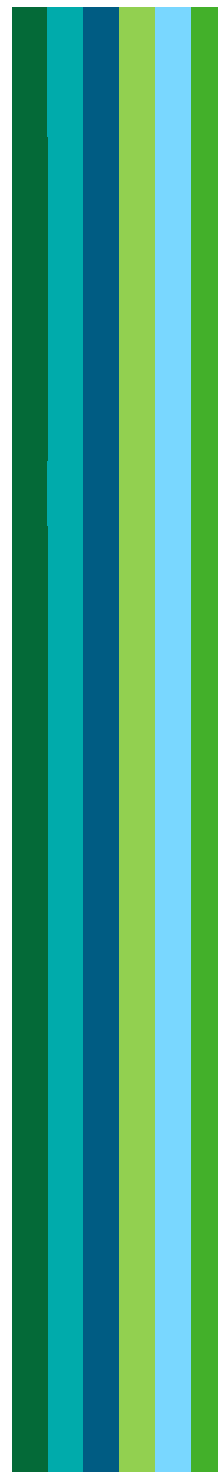
- I. principal risks and uncertainties;
- II. risk appetite;
- III. measures to control the main risks and uncertainties;
- IV. impact of risks on results and/or financial position;
- V. materialised main risks in the past financial year;
- VI. improvements made or planned in the risk management system; and
- VII. anchoring of risk management.

The extensiveness of the information to be provided shall also be determined by the size and complexity of the legal entity and its activities, and the related risks and uncertainties.

#### *Re I. Principal risks and uncertainties:*

The management board report provides a description of the main risks and uncertainties facing the legal entity (article 2:391-1 NCC). DAS 400 elaborates on this statutory requirement. According to the Dutch Accounting Standards Board, it is not the intention to provide an exhaustive explanation of all possible risks and uncertainties, but rather a selection and representation of the principal risks and uncertainties confronting a legal entity (and the consolidated entities). Uncertainties arise as a result of a complete or partial lack of information about, insight into or knowledge of an event, its consequences or probability of occurrence. Risks are the effects of uncertainties on the achievement of objectives. In selecting the main risks and uncertainties, at least the following categories are important:

- strategy: risks and uncertainties, often with an external orientation/initiative, that impede the realisation of the strategy and/or business plans of the legal entity and may have an impact on the long-term objectives (e.g. relating to or associated with the strategy or governance of the legal entity, technological or social developments and sustainability aspects);
- operational activities: risks and uncertainties that influence the effectiveness and efficiency of the legal entity's operational activities and therefore primarily relate to the processes within the legal entity and may influence the short-term objectives (which are related to, for example, the internal organisation and administration, the implementation of new information systems and the legal entity's remuneration system);
- financial position: risks and uncertainties relating to the legal entity's financial position (e.g. exchange rate risks, currency risks, interest rate risks, and uncertainties in its ability to raise finance);
- financial reporting: risks and uncertainties that affect the reliability of internal and external financial reporting (for example, uncertainties in complex allocation problems, the degree of subjectivity in valuation issues and risks relating to the design of financial reporting systems);
- legislation and regulations: risks and uncertainties arising from laws and regulations (both internal and external) that have a direct impact on the organization and/or the business processes of the legal entity (e.g. risks and uncertainties of operating in an environment with many and complex regulations, uncertainties relating to insider trading and risks resulting from changing tax legislation).



*Re. II. Risk appetite*

The legal entity must provide a general description of its willingness to hedge or not hedge risks and uncertainties (so-called risk appetite). The degree of risk appetite is a guideline for whether or not to take measures to control risks and uncertainties.

*Re III. Measures to control the main risks and uncertainties*

The legal entity must provide a description of the measures taken to manage the main risks and uncertainties, including, where possible, a qualitative description of the expected effectiveness of the measures taken. If there are no controls for one or more of the principal risks and uncertainties, this fact must be explained.

*Re IV. Impact of risks on results and/or financial position*

The legal entity must provide a description of the expected impact on the results and/or the financial position should one or more of the main risks and uncertainties materialise, if possible based on sensitivity analyses.

*Re V. Materialised main risks in the past financial year*

The legal entity must provide a description of the risks and uncertainties that had a significant impact on the legal entity in the past financial year, and the consequences thereof for the legal entity.

*Re VI. Improvements made or planned in the risk management system*

The legal entity must provide information on whether, and if so what, improvements have been or are being made to the legal person's risk management system.

*Re VII. Anchoring of risk management*

The legal entity preferably indicates how the risk management system is embedded in the organisation.

### **2.2.2.6 Culture and behaviour - soft controls**

The legal entity should preferably indicate what measures it has taken ('soft controls') to influence the culture, behaviour and motivation of its employees.

### **2.2.2.7 Risk management policy for financial instruments**

With regard to the use of financial instruments by the legal entity, the management board report must discuss the objectives and the policy for managing the risks relating to financial instruments, to the extent that this is significant for the assessment of the assets, liabilities, financial position and result of the legal entity (article 2:391-3 NCC). Attention should be paid to the policy for hedging the risks associated with all major types of (financial) transactions and the price, credit, liquidity and cash-flow risks incurred by the legal entity. The use of financial instruments as a tool to hedge financial risks can in itself be a source of risks.

The information relates to the legal entity and the group entities whose financial data have been included in the consolidated financial statements. To the extent that this information is provided in the financial statements, it is recommended that a specific reference to the relevant passage in the financial statements be included in the management report.





### 2.2.2.8 Application of and compliance with codes of conduct

The legal entity must indicate whether specific codes of conduct are followed and which ones. The legal entity shall also indicate whether these codes of conduct are followed on a mandatory or voluntary basis.

In the management board report (or in the table of contents) the legal entity must include a reference to the available information about compliance with the codes of conduct (for example, to its website). Codes of conduct expressly include international conventions and guidelines, such as the ILO declaration on fundamental principles and rights at work, the Tripartite International Labour Office (ILO) declaration on multinational enterprises and social policy, the OECD guidelines for multinational enterprises and the International Chamber of Commerce (ICC) guidelines on responsible purchasing.

### 2.2.2.9 Research and development

In the management board report, information on the activities in the field of research and development is provided (article 2:391-2 NCC). This applies regardless of whether development costs are included in intangible fixed assets in the balance sheet.

According to the Dutch Accounting Standards Board, it is recommended to provide information about the nature of the research and development activities and their significance for the position and the expected course of business of the legal entity. It may be important to distinguish between fundamental and applied research.

Research and development activities are of great significance to some legal entities (including so-called high-tech companies). In certain cases, this information can be qualified as 'sensitive' from a competition point of view, as a result of which a certain restraint may be appropriate. However, the law (article 2:391-2 NCC) does not grant exemption from the obligation to provide information about research and development activities. This is only the case for statements concerning the expected course of business (see hereafter under 'Future expectations').

The Dutch Accounting Standards Board also points out that the amount of research and development costs charged to the result for the financial year must be disclosed in the financial statements (on the basis of article 210.506 DAS or on the basis of IAS 38.126).

### 2.2.2.10 Future expectations

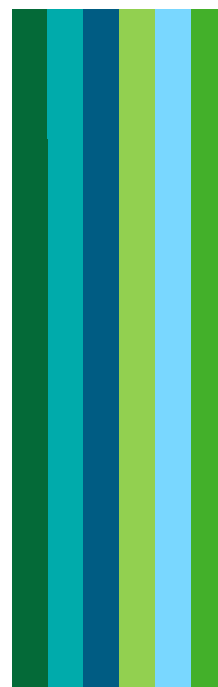
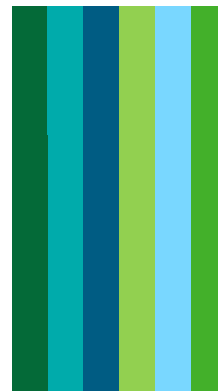
The management board report must include information concerning (article 2:391-2 NCC):

1. the expected course of business;
2. the activities in the field of research and development; and
3. special events not to be taken into account in the financial statements.

#### *Re 1. The expected course of business*

The section on the expected course of business shall deal in particular with the following aspects, insofar as important interests do not oppose it:

- investments;
- financing;
- staffing; and
- conditions on which the development of turnover and profitability depends.



The provision 'insofar as important interests do not oppose it' means that the legal entity need not make announcements which could seriously harm its position in the economic sphere. There is therefore an area of tension between, on the one hand, the information which users would like to obtain concerning the management board's view of the aforementioned opportunities and risks and, on the other, the information which the management board can provide without seriously harming the interests of the legal entity. Substantial interests' will usually arise in cases where strategic considerations make special care necessary, for example:

- plans to acquire other enterprises for which negotiations have not yet progressed; and
- strategic plans for bringing new products onto the market or entering new markets.

According to the Dutch Accounting Standards Board, the legal entity cannot be expected to make such concrete announcements that other market parties would have premature access to important information as a result.

With regard to investments, financing and staffing, this concerns that part of the policy that is often determined for the long term. The statements in the management board report therefore concern the expected consequences of the pursued policy in these areas. Quantitative projections - to the extent possible - may be useful but are not required.

The conditions on which the development of turnover and profitability depends include relevant internal and external developments, such as prospects and intentions regarding products, services and markets that are important to the legal entity, including the associated opportunities and risks. Risks include, for example, concentrations with respect to customers or markets. In that context, the relative position in the relevant markets is also important. Information on other relevant aspects, in particular those involving special risks, for example linked to specific currencies or government measures, should also be provided in this context. The development of turnover and profitability also depends on circumstances beyond the control of the legal entity. The required information may in this respect be limited to those circumstances which, in the opinion of the management board, will determine the development in particular. The circumstances on which the development of turnover and profitability depends may - in addition to those directly affecting the legal entity - include circumstances such as (inter)national economic developments and general government measures.

#### *Re 2. The activities in the field of research and development*

For a more detailed explanation of the required statements on research and development activities, please refer to the explanation above in paragraph 2.2.2.9.

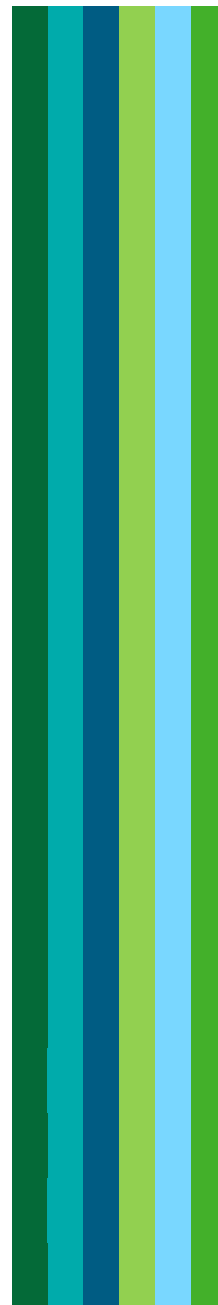
#### *Re 3. Special events not to be taken into account in the financial statements*

The extent to which special events that do not have to be taken into account in the annual accounts have affected expectations must be stated. This refers to events that occurred after the balance sheet date.

### **2.2.2.11 Other subjects**

Depending on their relevance for the users of the management board report and the financial statements, the following subjects may also be important in the management report:

- marketing and distribution;
- internal control of processes and procedures;
- quality control;
- internal and external provision of information; and
- automation.



## 2.2.3 Additional requirements for large legal entities

### 2.2.3.1 Non-financial performance indicators – corporate social responsibility

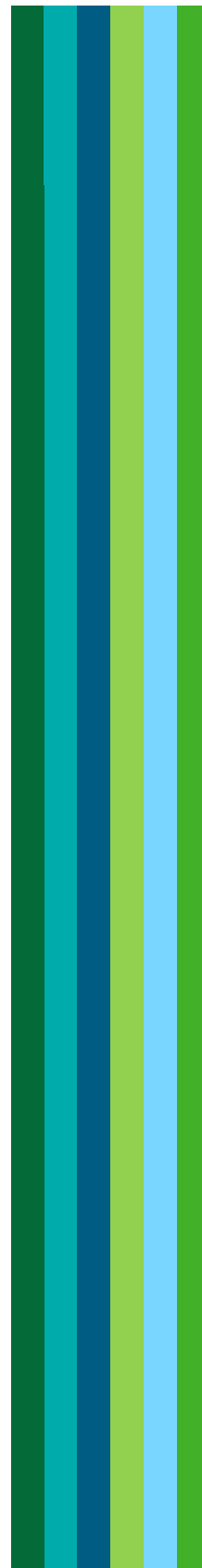
In order to provide a true and fair view, the law requires a balanced and comprehensive analysis of the situation on the balance sheet date, the developments during the financial year and the results. This analysis must be in line with the size and complexity of the legal entity and group entities. If necessary for a proper understanding, the analysis includes both financial and non-financial performance indicators, including environmental and personnel matters (article 2:391-1 NCC).

In general, according to the Dutch Accounting Standards Board, there are three social aspects to business activities, namely environmental, social and economic aspects. By consciously taking these three aspects and the related effects of business activities into account, the legal entity contributes to sustainable development. This is often referred to as corporate social responsibility. The Dutch Accounting Standards Board recommends that the management board report should include information about the main aspects of corporate social responsibility relevant to the legal entity, including the legal entity's (international) chain management. Responsible chain management is understood to mean the voluntary, but not free of obligation commitment and involvement of legal entities to exert a positive influence on the social and/or environmental policy of their suppliers and customers.

It is primarily up to the legal entity to give substance to corporate social responsibility in dialogue with its social environment. The diversity of situations makes it neither possible nor desirable to prescribe precisely and uniformly how legal entities should give this shape. However, transparency may be expected in this area, whereby the legal entity has attuned the choice of relevant social aspects and the information to be included in the management board report to the information needs of stakeholders. The legal entity determines whether, and if so how, information on relevant social aspects of entrepreneurship is included in the report, and which social aspects are considered most relevant. To this end, paragraph 400.2 of the Dutch Accounting Standards provides a framework that aims to provide support and direction for the reporting on social aspects of business operations and their development. For a more detailed elaboration of this framework, use can be made of authoritative national and international frameworks, standards and guides (including the "Guide to Social Reporting" included in Chapter 920 of the Dutch Accounting Standards) in the field of sustainability reporting and other reporting on non-financial information.

The framework of corporate social responsibility recommended by the Dutch Accounting Standards Board covers a number of aspects. In so far as relevant to the nature of the business activities, it is recommended that reporting on corporate social responsibility pays attention to each of the following aspects:

- general social aspects  
This sets out the main problems and challenges facing the legal entity, the extent to which they (partly) determine the business strategy, the role played by stakeholders of the legal entity in this respect, the interrelationship between the environmental, social and economic aspects set out below, as well as social aspects that are relevant to a proper understanding of the (international) chain in which the legal entity operates, and of the products and/or services that the legal entity puts on the market (e.g. in relation to safety), as well as information on governance and ethics (e.g. in relation to integrity and combating corruption);
- environmental aspects  
This may include information on energy, material and water use, discharges, emissions and waste. It also includes environmental protection measures to prevent contamination of air, water and soil, and to protect and enhance the quality and integrity of ecosystems;



- social aspects  
This may include information on labour issues, including employment, social security, working conditions and terms of employment. This also includes aspects such as health and safety, education and training, diversity and development opportunities. Social aspects also include information on human rights, fundamental principles and rights at work, respect for local communities and indigenous peoples, as well as information on the social commitment of the legal entity; and
- economic aspects  
This includes both financial and non-financial aspects. Financial aspects may include the financial contributions to society in the broad sense (e.g. in the form of taxes), as well as the financial contributions made by the legal entity to its stakeholders such as customers, suppliers, employees, capital providers and government. Non-financial economic aspects include the societal creation and dissemination of knowledge through research and development, training and the like.

When reporting on these aspects, it is recommended to make a distinction between the company's own operational management and business activities on the one hand, and the (international) chain in which a legal entity operates on the other. The legal entity's own operational management and business activities concern aspects that are directly controllable and manageable by the legal entity. The (international) chain in which a legal entity operates concerns aspects that fall outside the legal scope and dominance of the legal entity but on which the legal entity can exert a positive influence (for example by participating in sector-wide initiatives or by imposing requirements on the social or environmental policy of suppliers).

It is also recommended that attention be paid to (1) the dialogue with stakeholders, (2) the policy with regard to the aspect and the main considerations in this respect, (3) the organisation (governance structure and management information systems), (4) the implementation of the policy and the results achieved and (5) the expectations regarding internal and external developments that may affect the aforementioned social aspects of entrepreneurship. The inclusion of segmented information may be important in this respect.

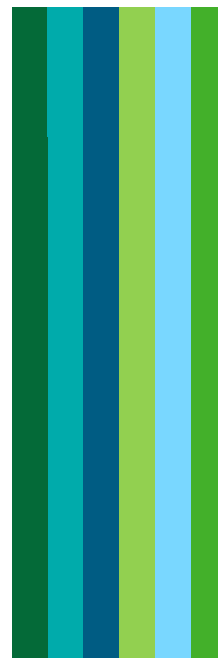
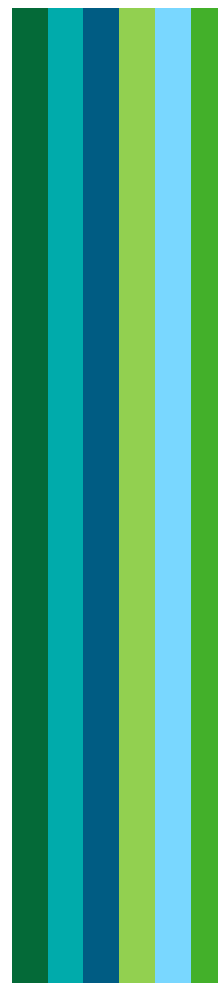
### 2.2.3.2 Target ratio of men to women at the top and the sub top

On 22 April 2022, the Decree on the content of management board reports was amended. The amended decree stipulates that, as of financial years starting on or after 1 January 2022, large legal entities will have to report in their management board report on:

- the gender ratio at the top (executive and supervisory board) and the subtop (employees in management positions);
- the self-imposed targets for their top and subtop as meant in articles 2:166-2 and 276-2 NCC;
- the plan of action to achieve these targets and on the results achieved; and
- if one or more targets have not been met, the reasons for this.

The entity also has to report this information to the SER annually within ten months after the end of the financial year.

In addition to a diversity quota for entities whose shares (or depositary receipts) are listed on a regulated market in the EU/EEA (article 2:142b and 187 NCC), the NCC introduces the obligation for large entities to set appropriate and ambitious targets in the form of a target figure to make the ratio of men to women more balanced (articles 2:166 and 276 NCC). The target should in any event include the management board and the supervisory board. In addition, the entity must determine for which subtop it sets a target: for categories of employees in managerial positions, to be determined by the



entity, for instance a so-called 'executive committee' or (the first and second layer) senior management positions. The entity must also draw up a plan to achieve the targets, which may include, for example, drawing up or amending a profile, setting up a transparent recruitment and selection process and explaining the preferential policy.

According to the Explanatory Memorandum to the Decree, these statements in the management board report enable the entity's shareholders to take note of the results and call the entity to account if necessary. Shareholders can also take the results into account when deciding how to vote on the (re)appointment of management board members and supervisory board members. Moreover, in the light of internal and external transparency, when entities report to an external body (the SER), they should also be obliged to share this information internally with the shareholders.

The amended parts of the Decree will lapse on 1 January 2030.

#### *Exemptions*

An entity that is a group entity is not required to set targets and meet the reporting obligation if the head of the group meets the obligations instead.

An entity whose shares (or depositary receipts) are listed on a regulated market in the EU/EEA is not required to set targets and meet the reporting obligation for the supervisory board (or the non-executive directors). Instead, these entities are subject to an ingrowth quota that aims to make the male-female ratio in the supervisory board (or in case of a one-tier board the non-executive directors) more balanced. A supervisory board is said to be balanced if at least one third of its members are men and at least one third are women. As long as this is not the case, no persons may be appointed as supervisory board members who do not contribute to a balanced composition in the supervisory board (article 2:142b and 187 NCC). An appointment in conflict with this is void by operation of law.

### **2.2.3.3 Sustainability reporting (applicable for future accounting periods)**

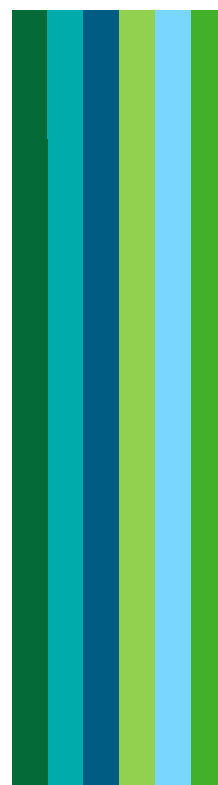
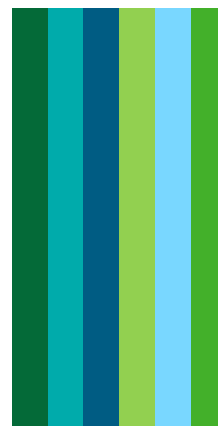
On 21 April 2021, the EC published the proposal for the Corporate Sustainability Reporting Directive (hereafter: CSRD). This directive concerns the requirements for sustainability reporting and is a revision of the existing Non-Financial Reporting Directive (hereafter: NFRD). The proposed new directive is part of the European Green Deal, in which the EC has expressed the ambition to be climate neutral by 2050 and to promote economic growth. The idea of the CSRD is to create a more uniform system for sustainability reporting, which will give stakeholders in particular a better insight into the sustainable activities of companies. The main objective is that investors will increase their investments in sustainable activities in the EU. The main impacts of the CSRD are outlined below.

#### *Scope and effective date*

The current NFRD applies only to large PIEs with more than 500 employees. These entities are already required to provide information regarding sustainability as of financial year 2021: refer to paragraph 2.2.4.2.2. The new sustainability guidelines (CSRD) will apply to all large entities, regardless of whether they are PIEs or not and without the threshold of 500 employees. In concrete terms, this means that the CSRD will apply to all entities which, on their balance sheet date, exceed the threshold amounts for large legal entities of article 2:397-1 NCC for at least two of the three criteria for two consecutive balance sheet dates.

The near final text of the proposed CSRD includes the effective dates for several types of entities. In these proposals:

- PIEs (i.e. entities in scope of article 2:398-7 NCC) apply the CSRD to accounting periods starting on or after 1 January 2024;



- large entities that are not PIEs (i.e. entities that exceed the thresholds of article 2:397-1 NCC) apply the CSRD for accounting periods starting on or after 1 January 2025;
- EU listed SMEs, EU small and non-complex credit institutions, and captive insurance entities apply the CSRD for accounting periods starting on or after 1 January 2026;
- non-EU entities which generate net revenue of more than EUR 150 million in the EU and which have at least one large or listed EU subsidiary or an EU branch which generates a net revenue of more than EUR 40 million, apply the CSRD for accounting periods starting on or after 1 January 2028.

#### *Audit requirement*

The CSRD requires that limited assurance for the reported sustainability information is provided by an external auditor or an independent assurance service provider. In 2028 the EC will decide whether reasonable assurance will be required.

#### *Content*

Under the CSRD, entities must report on various forms of intangible capital, including intellectual, human, social and relational capital. Entities must provide, among other things, the following information:

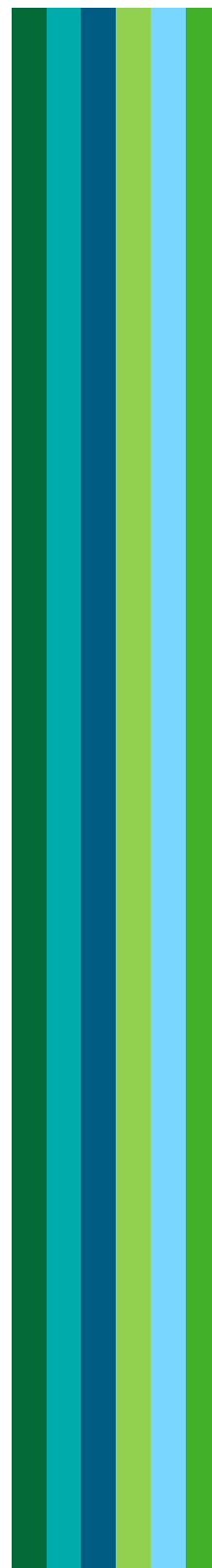
- description of the business model and strategy (resilience of the business model, opportunities, compatibility of the business model with the transition to a sustainable economy; implementation of the strategy; stakeholder interests and impact on sustainability issues);
- description of sustainability objectives, progress and implementation;
- description of the time-bound targets related to sustainability matters including where appropriate absolute greenhouse gas emissions targets for at least 2030 and 2050, a description and specification of whether the targets related to environmental matters are based on conclusive scientific evidence;
- description of the administrative, management and supervisory bodies in relation to sustainability issues;
- description of the sustainability policy;
- description of the due diligence process, which is the process for identifying adverse impacts related to sustainability factors and measures taken to prevent, mitigate or remedy those impacts;
- description of the main risks; and
- indicators related to all of the above.

All the above information must contain forward-looking, historical, qualitative and quantitative information. An entity must report the sustainability information in the management board report.

A subsidiary need not include sustainability information in its management board report if the parent entity has already included the sustainability information in its consolidated management board report. This exemption must be explicitly reported in the management board report of the subsidiary. The subsidiary must also publish the consolidated management board report of the parent entity.

#### *Digitisation*

The CSRD proposes that entities should draft their annual accounts and management board report in XHTML format and 'tag' the reported sustainability information according to a digital categorisation system. In this way, the comparability and digital findability of sustainability information can be better guaranteed.



### Reporting standards

The European Financial Reporting Advisory Group (EFRAG, an advisory body of the EC) will be responsible for the development of reporting standards relating to sustainability information. The development of these standards is an extensive process, and the EC expects that the first set of reporting standards will not be adopted before the end of 2022.



## 2.2.4 Additional requirements for listed public interest entities<sup>9</sup>

### 2.2.4.1 General

On the basis of article 2:391-5 NCC further requirements may be imposed on the content of the management report by a Decree (an “AMvB”). For listed public interest entities, requirements are in force that relate to:

- providing non-financial information in a non-financial statement; and
- information on statutory duties of an audit committee assigned to a body other than the audit committee.



### 2.2.4.2 Providing non-financial information in a non-financial statement

Pursuant to the Decree on the Disclosure of Non-Financial Information, listed PIEs that on average have more than 500 employees and do not meet the criteria for medium-sized legal entities in article 2:397 NCC must include a non-financial statement in the management board report.

An exemption applies to a large public interest entity that is part of a group as a subsidiary and whose group head includes a non-financial statement in its management board report. The head of the group will then provide the non-financial information for the entire group



#### 2.2.4.2.1. Non-financial information regarding business development, performance, position of the entity and effects of its activities

The information in the non-financial statement includes, to the extent necessary for an understanding of the development, results, position of the entity and the impact of its activities, at least (article 3 of the Decree) disclosure about:

- the business model by means of a brief description;
- the policy, including the due diligence procedures applied, and the results of the environmental, social and human resources policies, respect for human rights and the fight against corruption and bribery. If the legal entity does not have such a policy, the reasons must be explained;
- the main risks related to the subjects mentioned in the previous point in relation to the activities of the legal person, including – where relevant and proportionate – the business relations, products or services of the legal person likely to have negative effects on those subjects and how the legal person manages those risks; and
- non-financial performance indicators relevant to the specific business activities of the legal entity.

Where deemed appropriate, the non-financial statement shall include references to and additional explanations of items in the financial statements. Information need not be given if that would seriously damage the commercial position of the entity. This can only be the case in exceptional situations. The omission of information should not prevent a true and balanced understanding of the



<sup>9</sup> For accounting purposes, public interest entities only are entities that qualify as public interest entity pursuant to article 2:398-7 NCC. These are:

- entities with securities (shares and/or other securities) listed on a regulated market in the EU/EEA (article 2:398-7a NCC);
- credit institutions (banks) (article 2:398-7b NCC); and
- insurance companies (article 2:398-7c NCC).

In this publication we do not cover the reporting requirements for credit institutions and insurance companies.

development, results, position of the entity and the impact of its activities. It is possible that the management report for the next financial year will address the reasons why certain disclosures were not included in the previous financial year.

According to the Decree, the entity may make use of the national and international frameworks and frameworks of the European Union, provided that the management board report mentions which framework it has used.

We also refer to section 2.2.3.1 in which the recommendations of the Dutch Accounting Standards Board related to the corporate social responsibility for all large entities are presented. Given the overlap of disclosure requirements and recommendations, we envisage that listed entities will apply these sections in one part of their management board report.

### 2.2.4.2.2 Non-financial information regarding sustainability

In 2020 the EU Taxonomy Regulation (2020/852) has entered into force. On the basis of article 8 of this directly applicable EU regulation and its delegated acts, entities in scope of the NFRD (refer to paragraph 2.2.4.2) must include in their non-financial information statement information on how and to what extent the entities' activities are associated with economic activities which qualify as environmentally sustainable as defined in this regulation. For these environmentally sustainable activities the following key performance indicators (KPIs) have to be provided:

- the proportion of turnover derived from products or services that qualify as environmentally sustainable;
- the proportion of capital expenditure related to assets or processes associated with economic activities that qualify as environmentally sustainable; and
- the proportion of operating expenditure related to these activities.

The activities described in the delegated acts are considered environmentally sustainable if they contribute to at least one of the following six environmental objectives:

- a. climate change mitigation;
- b. climate change adaption;
- c. sustainable use and protection of water and marine resources;
- d. the transition to a circular economy;
- e. pollution prevention and control; and
- f. the protection and restoration of biodiversity and ecosystems.

An entity should identify which of its activities are 'taxonomy eligible' and which of its activities are 'taxonomy aligned'. An activity is taxonomy eligible if it:

- contributes to one or more of the six environmental objectives; and
- it is described in the European Commission's delegated acts, but does not yet meet certain additional criteria.

An activity is taxonomy-aligned if it:

- contributes to one or more of the six environmental objectives and it is described in the European Commission's delegated acts (i.e it is taxonomy eligible);
- does not significantly harm any of the other five environmental objectives;
- is carried in compliance with the minimum social safeguards as specified in the Regulation; and
- meets the relevant technical screening criteria that have been established by the European Commission in the delegated acts.



As from 1 January 2022 (i.e. for financial year 2021) entities only needed to report certain qualitative information and the three KPIs for their activities that are *taxonomy eligible* for the first two environmental objectives: (a) climate change mitigation and (b) climate change adaptation.



As from 1 January 2023 (i.e. for financial year 2022) entities need to report certain qualitative information and the three KPIs for their activities that are *taxonomy aligned* for the first two environmental objectives: (a) climate change mitigation and (b) climate change adaptation. The technical screening criteria of the other four environmental objectives have not been endorsed yet by the European Commission. At the date of writing this publication (August 2022) it is not yet known as per when these other four environmental objectives should be reported and whether that would be on eligibility or alignment level.

### 2.2.4.3 Information on statutory duties of an audit committee assigned to a body other than the audit committee

Pursuant to the Decree establishing an audit committee (*“Besluit instelling auditcommissie”*), listed public interest entities that assigned statutory duties of an audit committee to a body other than the audit committee, must include in the management board report information about the designated body and its composition.



This Decree does not apply to listed PIEs that are subject to one of the exemptions listed in article 3 of the Decree.

## 2.2.5 Additional requirements for all listed entities

### 2.2.5.1 General

Additional reporting requirements for the management board report for listed entities are laid down in various laws and regulations, each of which has its own scope. In this publication, we list the requirements for each of the different categories of listed entities. Therefore, for each requirement we will depict the scope of the concerning laws and regulations. The requirements relate to:

- statements made by the management board (paragraph 2.2.5.2);
- information on the capital structure, control rights and restriction thereof (paragraph 2.2.5.3);
- a Corporate governance statement (paragraph 2.2.5.4); and
- Corporate governance code notices (paragraph 2.2.5.5).



### 2.2.5.2 Statements made by the management board

#### 2.2.5.2.1 Scope

This requirement applies to entities whose securities are admitted to trading on a regulated market in the EU/EEA and to which article 5:25c Wft applies.



Article 5:25c Wft applies to entities of which the Netherlands is the home Member State and of which securities (shares or other securities) are listed on a regulated market in the EU/EEA.

#### *Exemption*

The requirements of article 5:25c Wft as described above are not applicable for entities that only issue bonds or other non-equity securities, whose denomination per unit amounts to at least EUR 100,000 or the equivalent in another currency on the date of the issue (article 5:25g-2 Wft).



### 2.2.5.2.2 Content

Article 5:25c-2c Wft requires that the annual financial reporting of the entities in scope shall also include statements made by the persons designated as responsible by the issuer and clearly indicating their names and functions, that, to the best of their knowledge:

- the financial statements give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole; and
- the management board report gives a true and fair view of the situation on the balance sheet date, the course of business during the financial year of the issuing institution and of its affiliated entities, the details of which are included in its financial statements, and that the management board report describes the essential risks with which the issuing institution is confronted.

### 2.2.5.3 Information on the capital structure, control rights and restriction thereof

#### 2.2.5.3.1 Scope

The information described in this paragraph must be provided pursuant to Article 10 Takeover Directive Decree (Bulletin of Acts and Decrees 2006, 191). This Decree concerns the implementation of article 10 of EC Directive 2004/25/EC on takeover bids. Article 10 Takeover Directive Decree applies to all entities of which shares (including depositary receipts) are admitted for trading on a regulated market in the EU/EEA (except particular investment entities).

#### 2.2.5.3.2 Content

In the management report, entities in scope have to report on:

- a. the capital structure of the entity;
- b. restrictions on the transfer of (depository receipts for) shares in the entity;
- c. participating interests in the entity for which a notification obligation exists in accordance with Wft (articles 5:34, 35 and 43 Wft)\*;
- d. special control rights attached to shares and the name of the entitled party\*;
- e. a mechanism for controlling option schemes for employees;
- f. any restrictions on voting rights, terms for exercising voting rights and the issue of depository receipts for shares\*;
- g. any agreement with a shareholder which may give rise to a restriction on the transfer of (depository receipts for) shares or a restriction on voting rights;
- h. regulations concerning the appointment and dismissal of directors and supervisory directors and amendment of the articles of association\*;
- i. powers of the management board, in particular to issue and repurchase shares\*;
- j. important agreements to which the entity is a party and which are concluded, amended or dissolved subject to the condition of a change of control of the entity after a public bid has been made, as well as the consequences of such agreements, unless the agreements or consequences are of such a nature that the entity is seriously harmed by the announcement; and
- k. any agreement with a director or employee providing for a payment on termination of employment following a public bid.

\* Where applicable, these disclosures shall be included in the corporate governance statement.

## 2.2.5.4 Corporate governance statement

### 2.2.5.4.1 Scope

Pursuant the Decree on the contents of management board reports, listed entities are obliged to publish a 'corporate governance statement'. Parts of the decree apply to different categories of listed entities as indicated in paragraph 2.2.5.4.3 hereafter.



### 2.2.5.4.2 Form

The statement forms part of the management board report. It may also be published separately electronically. In that case, the management board report must state where the statement can be obtained (article 2a paragraph 1 Decree on the contents of the management board report).



### 2.2.5.4.3 Content

#### 2.2.5.4.3.1 General

The content of the corporate governance statement varies depending on the nature of the type of listing and/or the size of the entity. Depending on the type of listing and the size of the company, one or more of the following topics are included in the statement, which are set out in more detail in the following paragraphs (articles 3, 3a and 3b Decree on the contents of management board reports):

- I. the management and control system relating to the financial reporting process;
- II. the functioning of organs of the entity;
- III. compliance with the principles and best practice provisions of the CGC and any other voluntary codes of conduct;
- IV. certain announcements prescribed in Decree article 10 Takeover Directive; and
- V. information by large listed entities on diversity.



#### 2.2.5.4.3.2 The management and control system relating to the financial reporting process

The main features of the management and control system relating to the financial reporting process of the entity and of the group whose financial data are included in the financial statements.



#### 2.2.5.4.3.3 The functioning of organs of the entity

- the functioning of the shareholders' meeting, its main powers and the rights of shareholders and how these can be exercised, insofar as this does not immediately follow from the law;
- the composition and functioning of the executive board and the supervisory board and their committees (e.g. nomination-, remuneration- and audit committees).



#### 2.2.5.4.3.4 Compliance with the principles and best practice provisions of the CGC and any other voluntary codes of conduct

The Decree on the content of the management report requires the entity to include in the corporate governance statement a statement of compliance with the principles and best practice provisions of the CGC that are addressed to the management board or supervisory board.

The foregoing also with regard to any other codes of conduct and corporate governance practices which the entity voluntarily or involuntarily complies with.



These disclosures are made based on the 'comply or explain' principle. They shall also state where the text of the code(s) of conduct and - if applicable - the corporate governance practices are publicly available.

*Exemption*

The requirements as described above are not applicable for entities with shares listed on a MTF (or comparable market outside the EU/EEA) with consolidated assets less than EUR 500 million.

**2.2.5.4.3.5 certain announcements prescribed in Decree article 10 Takeover Directive**

To the extent applicable, certain announcements prescribed in Decree article 10 Takeover Directive are made. This relates to the information described in paragraph 2.2.5.3.2 under c, d, f, h and i and the list of names of those who have a special right of control in the legal person under the articles of association, as referred to in article 392-1d NCC, with a description of the nature of that right

**2.2.5.4.3.6 Information by large listed entities on diversity**

**2.2.5.4.3.6.1 Scope**

This requirement is applicable to large listed entities, i.e. entities with securities listed on a regulated market in the EU/EEA (article 2:398-7a NCC) and that do not meet the criteria for medium-sized legal entities under article 2:397 NCC.

**2.2.5.4.3.6.2 Content**

The large listed entity communicates in the corporate governance statement the diversity policy regarding the composition of the executive board and the supervisory board. In doing so, the entity shall state the objectives of the policy, the manner in which the policy has been implemented and the results thereof in the past financial year. If the entity does not have a diversity policy, it shall state the reasons.

The European Commission has published non-binding guidelines on non-financial reporting. These include advice on drawing up the description of the diversity policy, in which the following subjects are put forward:

- diversity aspects: the criteria applied and the reason for their choice. These aspects generally relate to age, gender, educational background and professional experience and - where relevant in the context of the entity - geographical origin, international experience, experience with sustainability and employee participation;
- objectives: the specific, quantified as far as possible, measurable targets for the relevant aspects); and
- implementation and results: (i) the policy on succession planning, selection, appointment and evaluation, (ii) the status of the policy and (iii) the plan to meet the objectives if they are not met.

The Corporate Governance Code also contains best practice provisions on diversity policy and accountability. Refer to paragraph 2.2.5.5.3 hereafter.

**2.2.5.5 Corporate governance code notices**

**2.2.5.5.1 General**

The CGC as adopted by the Tabaksblat Committee was designated as such in 2004. At the end of 2008 the Frijns Committee presented an updated CGC. In December 2009 this amended CGC was published



in the Netherlands Government Gazette (“*Staatscourant*”) and designated as a code of conduct that must be complied with (as referred to in article 391-5 NCC). The CGC was revised by the Van Manen Committee in 2016. The revised CGC came into force on 1 January 2017 and applies for the first time to management reports for financial years commencing on or after 1 January 2017.

### 2.2.5.5.2 Scope

The CGC is applicable to:

- all companies (“*vennootschappen*”) whose registered offices are in the Netherlands and whose shares or depositary receipts for shares have been admitted to trading on a regulated market or a comparable system; and
- all large companies whose registered offices are in the Netherlands (>EUR 500 million balance sheet value) and whose shares or depositary receipts for shares have been admitted to trading on a multilateral trading facility or a comparable system.

### 2.2.5.5.3 Content

As a result, a Dutch listed entity in scope must state in its management board report whether it has complied with certain parts of the CGC or must explain in its management board report to what extent and why it has not complied (partially) with these certain parts of the CGC. The so-called ‘comply or explain’ principle. This statement forms part of the corporate governance statement described in paragraph 2.2.5.4.3.4.

The CGC prescribes that the broad outline of the corporate governance of the company should be explained each year in a separate chapter of the management board report, also by reference to the principles mentioned in this Code, and that the company should indicate explicitly in this chapter to what extent it applies or does not apply the principles and best practice provisions in the Code and, if not, why and to what extent it deviates from them.

Importantly, the explanation of any departures should in any event include the following elements:

- I. how the company departed from the principle or the best practice provision;
- II. the reasons for the departure;
- III. if the departure is of a temporary nature and continues for more than one financial year, an indication of when the company intends to comply with the principle or the best practice provision again; and
- IV. where applicable, a description of the alternative measure that was taken and either an explanation of how that measure attains the purpose of the principle or the best practice provision or a clarification of how the measure contributes to good corporate governance of the company.

Instead of in the management board report, this information can, according to the Code, be placed on the company’s website instead of in the management board report.

If the Corporate governance statement is published separately electronically (refer to paragraph 2.2.5.4.2), it is recommended that, in addition to the CGC, a brief summary of the deviations from the CGC (‘explain’) is included in the management board report.

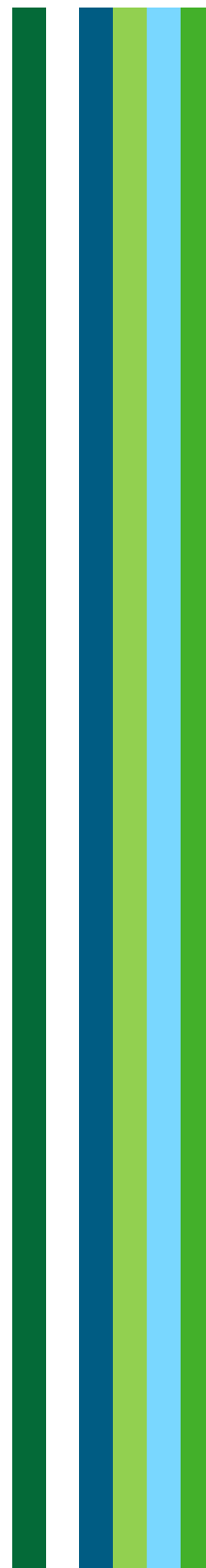
The CGC also contains a number of best practice provisions (hereinafter referred to as bpp) on the contents of the management board report. The following subjects are included in the management board report, insofar as the relevant best practice provision of the CGC is applied:

- Long-term value creation (bpp 1.1.4 CGC):



- the management board's view on long-term value creation and the strategy for its realisation, as well as describing which contributions were made to long-term value creation in the past financial year. The management board should report on both the short-term and long-term developments.
- Culture and behaviour (bpp 2.5.4 CGC):
  - the values and the way in which they are incorporated in the company and the business connected with it; and
  - the effectiveness of, and compliance with the code of conduct.
- Accountability for risks and risk management (bpp 1.4.2 CGC):
  - the execution of the risk assessment, with a description of the principal risks facing the company in relation to its risk appetite. These risks may include strategic, operational, compliance and reporting risks ;
  - the design and operation of the internal risk management and control systems during the past financial year;
  - any major failings in the internal risk management and control systems which have been observed in the financial year, any significant changes made to these systems and any major improvements planned, along with a confirmation that these issues have been discussed with the audit committee and the supervisory board; and
  - the sensitivity of the results of the company to material changes in external factors.
- Management's statement on risk management and control systems, going concern and risk factors in relation to continuity, with clear substantiation that (bpp 1.4.3 CGC):
  - the report provides sufficient insight into any failings in the effectiveness of the internal risk management and control systems;
  - the aforementioned systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies;
  - based on the current state of affairs, it is justified that the financial reporting is prepared on a going concern basis; and
  - the report states those material risks and uncertainties that are relevant to the expectation of the company's continuity for the period of twelve months after the date of the report.

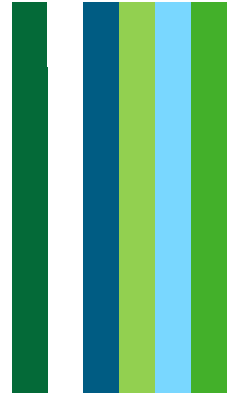
This information is included to the extent necessary in addition to the information regarding risks and risk management and regarding culture and behaviour - soft controls as described in paragraphs 2.2.2.5 and 2.2.2.6.
- Executive committee (if applicable) (bpp 2.1.3 CGC):
  - the choice to work with an Executive Committee;
  - the role, duty and composition of the Executive Committee; and
  - how the contacts between the Supervisory Board and the Executive Committee have been given shape.
- Transactions with conflicting interests (bpp 2.7.3 and 2.7.4 CGC):
  - publication of approved transactions involving conflicts of interest with management board members or supervisory board members that are of material significance to the company and/or to the relevant management board members or supervisory board members, stating the conflict of interest and a declaration that bpp 2.7.3 and 2.7.4 have been complied with.
- Transactions with shareholders (bpp 2.7.5 CGC):
  - publication of approved transactions between the company and natural persons or legal entities holding at least ten per cent of the shares in the company, together with a statement that bpp 2.7.5 has been complied with.
- Protective measures (bpp 4.2.6 CGC):
  - the management board should outline all existing or potential anti-takeover measures and should also indicate in what circumstances and by whom these measures may likely be used.



The CGC contains best practice provisions on diversity policy and accountability for diversity. In bpp 2.1.6 the CGC prescribes that the corporate governance statement should explain the diversity policy and the way that it is implemented in practice, addressing:

- I. the policy objectives;
- II. how the policy has been implemented; and
- III. the results of the policy in the past financial year.

If the composition of the management board and the supervisory board diverges from the targets stipulated in the company's diversity policy and/or the statutory target for the male/female ratio, if and to the extent that this is provided under or pursuant to the law, 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.



# 3. Supervisory Board Report

## 3.1. Introduction

According to the CGC, the supervisory board accounts for the supervision exercised in a report. According to this Code, this report of the supervisory board is part of the annual accounts of the entity.

In the case of a one-tier board structure, the non-executive directors account for the supervision exercised. It follows from the explanatory notes to the code that this accountability can either form part of the management board report or be included in a separate report. The DASB recommends that the non-executive directors render account in a separate report (article 405.106 DAS).

## 3.2 Scope

The CGC is applicable to companies as described in paragraph 2.2.5.5.2.

## 3.3 Content

In the report of the supervisory board, the supervisory board accounts for the supervision exercised in the past financial year. Based on the best practice provisions of the CGC, the report shall in any event cover the subjects listed below (best practice provision 'bpp' 2.3.11 CGC):

- an account of the way in which the supervisory board was involved in the formation of the strategy and monitors its implementation (bpp 1.1.3 CGC);
- if no internal audit department has been set up for the internal audit function, the supervisory board will assess annually, partly on the basis of advice from the audit committee, whether adequate alternative measures have been taken and whether there is a need to set up an internal audit department. The supervisory board shall include in the report its conclusions and any resulting recommendations and alternative measures (bpp 1.3.6 CGC);
- a statement of the following for each supervisory board member: gender, age, nationality, principal position held, additional positions held insofar as these are relevant to the performance of the duties as a supervisory board member, date of first appointment and current term of appointment (bpp 2.1.2 CGC). A supervisory board member who is a financial expert within the meaning of article 39(1) of Directive 2014/56/EU shall also be appointed;
- a statement that, in the opinion of the supervisory board, the requirements for independence (as referred to in bpp 2.1.7 through 2.1.9 CGC) have been met and, if applicable, which supervisory board members are deemed not to be independent (bpp 2.1.10 CGC);
- a statement of the reasons for any reappointments to the supervisory board after a period of eight years (bpp 2.2.2 CGC);
- the manner in which the evaluation of the supervisory board, the separate committees and the individual supervisory board members has been conducted, the manner in which the evaluation of the management board and the individual supervisory board members has been conducted and what has been or is being done with the conclusions of the evaluations (bpp 2.2.8 CGC);
- a description of the performance of the duties of the committees during the financial year. This includes the composition of the committees, the number of committee meetings and the main topics discussed at the meetings (bpp 2.3.5 CGC); and

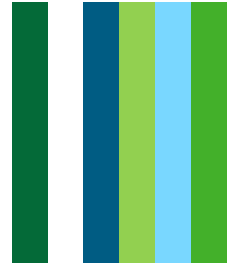




- a statement of the attendance rate of each statutory auditor at supervisory board and committee meetings (bpp 2.4.4 CGC).

The DASB has described for all these best practice provisions how they could be implemented. For a substantive description we refer to DAS 405 'Report of the Supervisory Board'.

According to the CGC, the supervisory board also has to prepare a remuneration report. The content of this report is described in Chapter 6.



# 4. Financial statements if consolidated under IFRS-EU

## 4.1 General

Entities whose securities are admitted to trading on a regulated market in the EU/EEA are required under the IFRS Regulation to prepare the *consolidated* financial statements in accordance with IFRS-EU. IFRS-EU concerns the standards and interpretations adopted by the European Commission. These entities are not required to prepare their separate financial statements (“*enkelvoudige jaarrekening*”; article 2:361-1 NCC) in accordance with IFRS-EU. However, they are allowed to do so (article 2:362-8 NCC).

Entities that are not required to prepare the consolidated financial statements in accordance with IFRS-EU may elect to do so voluntarily (article 2:362-8 NCC). In that case this chapter also applies to these entities.

## 4.2 Combinations available

For entities that prepare consolidated financial statements in accordance with IFRS-EU the combinations that are available<sup>10</sup> under NCC are:

Consolidated financial statements	Separate financial statements
2. IFRS-EU	Part 9, Book 2 NCC without application of the option to apply the measurement policies that have been used for the consolidated financial statements (plus DAS)
3. IFRS-EU	Part 9, Book 2 NCC with application of the option to apply the measurement policies which the entity used for preparing the consolidated financial statements
4. IFRS-EU	IFRS-EU plus certain applicable articles of Part 9, Book 2 NCC

Below those combinations are described in more detail.

## 4.3 Combination 2

In combination 2 the separate financial statements are prepared in accordance with Part 9, Book 2 NCC (without application of the option to apply the measurement policies that have been used for the consolidated financial statements) and the DAS. The application of combination 2 will, in most cases, produce differences in shareholders’ equity when comparing the consolidated financial statements

<sup>10</sup> Combination 1 is to prepare both the consolidated and the separate financial statements in accordance with Part 9, Book 2 NCC (plus DAS). This combination is not available for entities whose securities are admitted to trading on a regulated market in the EU/EEA.



and the separate financial statements. These differences must be disclosed in the notes to the separate statements (article 2:389-10 NCC).

The main reason for the differences between the consolidated and separate equity in this combination is due to the different principles for determining equity and results that exist between IFRS-EU and NL GAAP. Examples are the treatment of goodwill and pensions. This combination means in effect that on a consolidated basis, equity and result are determined in accordance with IFRS-EU, while on a statutory basis the net asset value of the (consolidated) subsidiaries must be determined in accordance with NL GAAP. This requires applying a double system in the entity's financial statements and will in many cases increase the administrative burden. For this reason, this combination is rarely applied and the Dutch accounting practice prefers combination 3.

## 4.4 Combination 3

### 4.4.1 General

In combination 3 the separate financial statements are prepared in accordance with Part 9, Book 2 NCC with application of the option to apply the measurement policies which the entity uses for preparing the consolidated financial statements. The application of combination 3 enables keeping equity according to the separate financial statements equal to equity according to the consolidated financial statements.

Measurement policies include policies on classification which affect the distinction between equity and debt (article 100.107 DAS). This means in fact that the entity that applies combination 3 in the separate financial statements bases the distinction between equity and debt on the economic reality as prescribed by IFRS-EU (IAS 32.15). By following the classification policies of IFRS-EU also in the separate financial statements it is consequently possible to keep equity in the separate financial statements equal to equity in the consolidated financial statements. This would not be the case if Part 9, Book 2 NCC was being followed for the distinction between equity and debt. That is since article 240.207 DAS provides the opportunity to classify issued financial instruments as equity or debt on the basis of the legal form.

Article 2:362-9 NCC determines that an entity that prepares the financial statements in accordance with IFRS-EU applies a limited number of the provisions of Part 9, Book 2 NCC. Question is whether these provisions apply to the consolidated financial statements prepared under IFRS-EU. In article 2:362-9 NCC 'financial statements' shall be read as 'separate financial statements'. After all, if only the consolidated financial statements are prepared in accordance with IFRS-EU, then the separate financial statements are prepared in accordance with Part 9, Book 2 NCC. In that case the provisions as mentioned in article 2:362-9 NCC already apply to the separate financial statements. Therefore, article 2:362-9 NCC does not apply to combination 3. This means that consolidated financial statements that are prepared in accordance with IFRS-EU, should meet IFRS-EU, but not the provisions of Part 9, Book 2 NCC.

### 4.4.2 Participating interests

#### Measurement

The option to apply combination 3 means that a legal entity prepares the separate financial statements in accordance with the IFRS-EU measurement policies applied in the consolidated financial statements. This raises the question of how participating interests that are consolidated should be measured in the separate financial statements. After all, there is no measurement policy for this in the consolidated financial statements. IFRS-EU requires such participating interests in the separate financial statements to be measured at cost, fair value, or according to the equity method. The

application of cost or fair value would create a difference between equity in the separate financial statements and the consolidated financial statements respectively. Article 2:362-8 NCC allows an entity to measure these participating interests according to the 'change in equity method' ("vermogensmutatiemethode") and when applying this method to apply the IFRS-EU measurement policies (see previous section) that have been applied in the consolidated financial statements when determining the net asset value. When applying the change in equity method these interests can be presented in accordance with (1) the net asset value method or (2) the equity method (refer to the paragraph 'Presentation' hereafter).

When measuring according to the change in equity method, the investee is regarded as a set of assets and liabilities and not as an indivisible asset. This method reflects the fact that the participating party has an economic interest in that set of assets and liabilities of the investee.

#### *Transactions between parent entity and consolidated subsidiaries*

Therefore, in case of a 100% interest, transactions and/or balance sheet positions between the parent entity and its consolidated subsidiary do not lead to differences between the equity as per the separate financial statements and the equity as per the consolidated financial statements. The effects of such transactions and/or balance sheet positions are eliminated. The eliminations as applied in the consolidated financial statements are the starting point for the eliminations in the separate financial statements in accordance with the principles of DAS 260 'The accounting for results on intercompany transactions in the financial statements'. Examples are (article 100.108 DAS):

- expected credit losses as required by IFRS 9 on loans and receivables from the subsidiary;
- differences in the accounting treatment of a lessor and a lessee for a lease between the parent entity and the subsidiary under IFRS 16;
- derivatives entered into by the parent entity where the hedged risk is with the subsidiary and hedge accounting is applied in the consolidated financial statements; and
- a financial instrument issued by a subsidiary that is held in part by the parent, with the subsidiary measuring this instrument at amortised cost and the parent measuring it at fair value.

#### Example: Expected credit loss (based on Appendix 1 to DAS 100)

Parent entity A provides a loan of 100 to its consolidated subsidiary B. The expected credit loss determined in accordance with IFRS 9 is 10 as at 31 December year 1. The net asset value of B on the basis of combination 3 is 200 on that date. In the consolidated financial statements, the loan is eliminated and there is no expected credit loss to be recognised.

In A's separate financial statements, no loss is recognised in the income statement either. The valuation difference between the receivable from A (ad 90) and the debt as part of the valuation of participation B (ad 100) is eliminated.

This elimination can, in accordance with the principles of DAS 260, be incorporated in the separate financial statements of A:

- in the book value of the consolidated participation. In that case, the book value of the loan granted is 90 and the participation value is 210; or
- as an accrual. In that case the carrying amount of the loan granted is 90, the participation value is 200 and the carrying amount of the accrued asset is 10.

For practical reasons, it is also permitted to incorporate the elimination:

- in the book value of the loan granted. In that case the book value of the loan is 100 and the participation value is 200.

Example: Differences in the accounting treatment of a lessor and a lessee (based on Appendix 1 to DAS 100)

Parent entity A (lessor) enters into a lease agreement with consolidated subsidiary B (lessee) regarding certain assets. For the lessor this lease qualifies as an operating lease under IFRS 16. This intercompany lease has no effect in the consolidated financial statements, because the effects are fully eliminated.

The application of IFRS 16 results in a difference in accounting treatment in the financial statements of the lessor and the lessee. The lessee accounts for the lease as a so-called right-of-use asset and a lease liability in the balance sheet. The asset is depreciated on a straight-line basis and the lease liability is measured at amortised cost. As a result, the total cost of the lease decreases over the life of the lease. The lessor, on the other hand, accounts for the lease off-balance and recognises the lease income on a straight-line basis over the lease term.

the separate financial statements of A, these differences between the treatment by the lessor and lessee in accordance with the principles of DAS 260 can be eliminated in the carrying amount of participation B or as an accrual.

Example: Derivatives entered into by the parent entity (based on Appendix 1 to DAS 100)

Parent entity A hedges by means of a derivative a risk incurred by consolidated subsidiary B. For the consolidated financial statements, the conditions for hedge accounting are met and are also applied, since the hedged risk and the hedging instrument (derivative) are part of the same consolidation circle.

The hedged risk and the hedging instrument (derivative) are located in different legal entities. Since the separate financial statements of A consider subsidiary B to be a set of assets and liabilities, the underlying hedged risk is included in the line-item 'subsidiary'. Hedge accounting is therefore also applied in the separate financial statements.

Example: Financial instrument issued by a subsidiary (based on Appendix 1 to DAS 100)

Consolidated subsidiary B issues listed bonds worth 100 in year 1. 10% of the bonds are held by parent entity A and 90% of the bonds are held by third parties. In the consolidated financial statements, 10% of the bonds are eliminated and the remaining 90% are measured at amortised cost.

Subsidiary B measures the bond (liability) at amortised cost of 100. A's share thereof is 10 (= 10% of 100). If A's independent position is determined on the basis of IFRS 9, A would, on the basis of its business model or on the basis of the SPPI test, measure these bonds in its separate financial statements at fair value. At the balance sheet date, the fair value of the loan is 120, of which the parent company holds 12 (= 10% of 120).

In the separate financial statements of A, the valuation difference on this intercompany relationship can be eliminated in accordance with the principles of DAS 260:

- in the book value of the consolidated participation; or
- as an accrual.

For practical reasons, it is also permitted to incorporate the elimination in the separate financial statements of A:

- in the carrying amount of the loan held

#### *Transactions with non-consolidated associates and joint ventures*

Transactions and/or balance sheet positions between the parent entity and its non-consolidated associates and joint ventures are accounted for in the separate financial statements in accordance with the accounting treatment in the consolidated financial statements (article 100.112 DAS).

#### *Possible differences between separate and consolidated equity*

The intention of the legislator to make it possible to keep the equity according to the separate financial statements in principle equal to the equity according to the consolidated financial statements does not mean that there cannot be differences between the equity and the result according to the separate financial statements and the consolidated financial statements (article 100.108 DAS). As with combination 1 (see paragraph 4.2), differences may exist in specific situations between equity according to the consolidated financial statements and equity according to the separate financial statements. Such differences are disclosed in the notes to the separate financial statements (article 2:389-10 NCC). Examples of such differences are (articles 100.110 and 111 DAS):

- transactions with a consolidated subsidiary < 100%. If there is no 100% interest in a consolidated subsidiary, differences may arise between the shareholders' equity according to the separate financial statements and the shareholders' equity according to the consolidated financial statements. This is caused by the fact that balance sheet positions and/or transactions are eliminated in full in the consolidated financial statements and proportionally in the separate financial statements;
- a consolidated subsidiary with negative equity. If a consolidated subsidiary has negative equity, this may result in a difference between equity as per the separate financial statements and equity as per the consolidated financial statements. This is the case if the parent entity does not recognize a provision for the same amount as the negative equity of the subsidiary.

#### **Presentation**

Consolidated interests (subsidiaries) are presented in the separate financial statements in accordance with (article 100.114 DAS):

- the net asset value method; or
- the equity method.

When presented under the net asset method, goodwill is recognized separately on the face of the balance sheet under the intangible assets, whereas when presented under the equity method goodwill is recognized as part of the participating interest item. In both situations, reversal of an impairment of goodwill is not permitted under the accounting policies applied in the consolidated financial statements.

The value at which the subsidiaries are included in the separate financial statements is determined in both methods on the basis of the principles applied in the consolidated financial statements. The method of presentation does not affect this. The difference between the two methods therefore only concerns the presentation of the goodwill. By applying one of these methods, the equality between the shareholders' equity in the separate financial statements and the shareholders' equity in the consolidated financial statements can be maintained.

This form of application of the equity method differs from the equity method as applied under IFRS (IAS 28) for the valuation of participating interests over which significant influence is exercised ('associates'). We emphasize that in the case of combination 3, non-consolidated participating interests that qualify as associates or joint ventures are recognized, measured and presented in the separate financial statements in accordance with the equity method as applied under IFRS. This is in line with the treatment of such non-consolidated entities in the consolidated financial statements under IFRS.

### 4.4.3 Presentation and disclosure requirements

The separate financial statements in combination 3 are prepared on the basis of Part 9, Book 2 NCC. Therefore, the presentation and disclosure requirements of Part 9, Book 2 NCC should be followed. So, the presentation and disclosure requirements of IFRS-EU in this combination cannot be followed in the separate financial statements if they deviate from them. For example, an interest that qualifies as participating interest on the basis of article 2:24c NCC is presented as an associate in the separate financial statements, even if this interest is presented in a different way under IFRS-EU in the consolidated financial statements. If IFRS-EU requires more explanation, there is of course nothing against including that information in the separate financial statements. See also the explanation at combination 4 for the applicable provisions of Part 9, Book 2 NCC.

### 4.4.4 Specific situations

In combination 3 some specific situations might become relevant in preparing the separate financial statements. These are caused by the fact that the accounting for some transactions as prescribed or permitted in IFRS-EU is not possible when applying Part 9, Book 2 NCC and DAS. These concern, for example:

- the accounting for a step by step acquisition;
- the loss of control in a subsidiary; and
- changes in parent's ownership interest in a subsidiary that does not result in loss of control.

A number of standards include provisions for the accounting for such transactions in the separate financial statements when applying combination 3. These provisions are explained below and all have in common that these transactions are accounted for in accordance with the method prescribed under IFRS-EU in the consolidated financial statements. Therefore, as a result of the accounting for these transactions, no differences arise between equity and result in the separate financial statements and equity and result in the consolidated financial statements.

#### Step by step acquisition

In a step by step acquisition, resulting in a business combination as defined in IFRS 3, the entity measures the existing interest at fair value on the acquisition date. The change in value of the existing capital interest as a result of this revaluation is recognized through profit or loss. Pursuant to article 2:390-1 NCC, the legal entity forms a revaluation reserve for the increase in value of the remaining interest, unless there are frequent price quotations for the interest held (article 214.312 DAS).

#### Loss of control in a subsidiary

In some situations a parent loses control over a subsidiary while retaining a non-controlling interest. In such a situation, the entity measures the remaining interest at fair value at the moment control is lost. The change in value of the interest is recognized through profit or loss. Pursuant to article 2:390-1 NCC, the entity forms a revaluation reserve for an increase in value of the remaining interest, unless there are frequent price quotations for the interest held (article 214.312a DAS).

#### Changes in parent's ownership interest in a subsidiary that does not result in loss of control

In these situations the difference between the transaction price and the carrying amount of the part of the net assets concerned is recognized through equity (article 214.312b DAS).

## 4.5 Combination 4

If the entity applies combination 4 and prepares both the consolidated and the separate financial statements in accordance with IFRS-EU, the following articles of Part 9, Book 2 NCC also apply (article 2:362-9 NCC):

- the second last sentence of article 2:362-6 NCC, with provisions regarding financial statements that subsequently prove to be seriously deficient;
- the last sentence of article 2:362-7 NCC, in which it is stipulated that the items in the financial statements are being described in Dutch, unless the general meeting has decided to use another language;
- article 2:362-10 NCC regarding disclosure of standards used;
- article 2:365-2 NCC with respect to the legal reserve for research and development costs;
- article 2:373 NCC regarding the presentation and disclosures on equity;
- articles 2:379-1 and 2:379-2 NCC with respect to details of participating interests (at least 20%);
- article 2:380b-d NCC regarding disclosure of the trade register number;
- article 2:382 NCC with respect to disclose the average number of employees;
- article 2:382a NCC regarding the disclosure of auditor's fees;
- articles 2:383 and 2:383b through 2:383e NCC with respect to the disclosure of remuneration, loans, advances and warrantees for the benefit of the management and supervisory board;
- article 2:389-8 NCC regarding the foreign exchange translation reserve;
- article 2:389-10 NCC with respect to notes on differences between equity and result in the separate financial statements and equity and result in the consolidated financial statements;
- article 2:390 NCC regarding the revaluation reserve;
- article 2:391 NCC (Chapter 7 of Part 9, Book 2 NCC) with respect to the management board report;
- article 2:392 NCC (Chapter 8 of Part 9, Book 2 NCC) regarding the other information;
- article 2:393 NCC (Chapter 9 of Part 9, Book 2 NCC) with respect to the audit; and
- articles 2:394 and 2:395 NCC (Chapter 10 of Part 9, Book 2 NCC) regarding the publication of the financial statements.

#### 4.6 Particulars valid for both combination 3 and combination 4

There are some particulars that are valid for both combination 3 and combination 4. This concerns the determination of:

- the revaluation reserve for 'fair value through OCI' financial instruments;
- the revaluation reserve for the application of a 'deemed cost'; and
- events after the reporting date.

##### **Revaluation reserve for 'fair value through OCI' financial instruments**

There may be financial instruments that, according to IFRS-EU, should be classified as 'fair value through OCI', where changes in value are recognized in equity until sale (or impairment). Under IFRS-EU this can lead to a negative amount under equity. However, Part 9, Book 2 NCC states that a negative revaluation reserve is not allowed. The question is how a negative revaluation reserve should be presented in the separate financial statements when using combination 3 or combination 4.

The provisions of Part 9, Book 2 NCC regarding the revaluation reserve (article 2:390 NCC) are in conflict with IFRS-EU. The DASB is of the opinion that the provisions of IFRS-EU should be leading in the determination and presentation of the relevant revaluation reserve in case of combination 3 or 4. This means that when one of these two combinations is applied in the separate financial statements of the entity, in the outlined circumstance a negative revaluation reserve must be presented. This has no effect on capital protection. If IFRS-EU is applied the other reserves may be higher than if Part 9, Book 2 NCC is applied. On the other hand, when applying IFRS-EU to determine the free distributable earnings, the negative balances of the legal reserves should be deducted from the other freely distributable reserves. Hence, there is only a difference in presentation under shareholders' equity resulting in the same distributable amount. It should be stated in the notes that for the determination



of the free distributable earnings, this negative revaluation reserve is deducted from the freely distributable reserves (article 240.227b DAS).

#### **Revaluation reserve for the application of a 'deemed cost'**

An entity has the once-only option, on adoption of IFRS-EU, to designate the fair value of tangible fixed assets and certain intangible fixed assets on the adoption date as 'deemed cost'. The difference between this fair value and the carrying amount measured according to Part 9, Book 2 NCC must be recognized in Other reserves processed in the consolidated financial statements according to IFRS-EU. The question is how the valuation difference should be determined in the shareholders' equity in the separate financial statements. On the basis of article 2:390-1 NCC a revaluation reserve should be held for increases in value of tangible fixed assets and intangible fixed assets. Maintaining a revaluation reserve is therefore not related to the application of the current value system, but to increases in value compared to the historical cost price. This means that as a principle the entity shall maintain a revaluation reserve in the separate financial statements for the increase in value arising from a 'deemed cost' measurement. This revaluation reserve shall be released proportionately to Other reserves as the asset is depreciated or amortized and/or is disposed of (article 240.224a DAS).

#### **Events after the reporting date**

Under IAS 10 'Events After the Reporting Period' an entity shall recognize the effects of events after the reporting date in the financial statements (if those events relate to the current or preceding reporting period) until the financial statements are prepared ('authorised for issue'). Under NL GAAP these events must be accounted for until the financial statements are adopted by the general meeting. The question is how to deal with this in the separate financial statements when using combination 3 or combination 4. The DASB states that in this situation the events after the reporting date should be accounted for in accordance with IAS 10. This means that effects of events occurring after preparing the financial statements and that provide further information on the actual situation on the reporting date to be recognized pursuant to article 2:362-6 NCC, are not recognized (article 160.202a DAS).



## 5. Other information

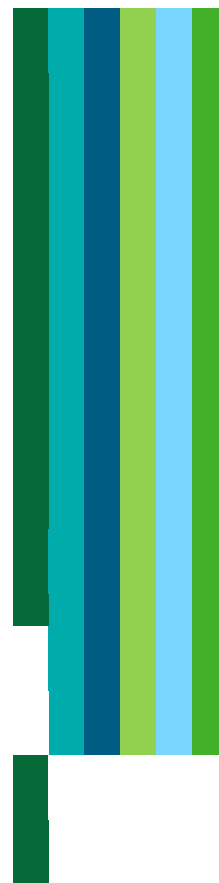
Some information of a diverse nature must be added to the financial statements and management board report in the 'Other information' section. This concerns the following information for an NV and BV (article 2:392-1 NCC):

1. the auditor's report referred to in article 2:393-5 NCC or a statement as to why it is missing;
2. a statement of the rules laid down in the articles of association regarding the appropriation of profit;
3. a list of names of those to whom a special right under the articles of association with respect to control of the legal entity accrues, with a description of the nature of that right, unless this information has been disclosed in the management board report on the basis of article 2:391-5 NCC. In that case, disclosure under Other information is not required as well;
4. a statement of the number of shares without voting rights and the number of shares giving no or only a limited right to share in the profits or reserves of the entity, stating the powers they confer; and
5. a statement of the existence of branch offices and of the countries in which there are branch offices, as well as their trade name if this differs from that of the legal person.

With respect to item 3., if such right is embodied in a share, the number of such shares each of the entitled parties holds shall be stated (article 2:392-3 NCC).

The requirement of item 3. shall not apply to the extent that Our Minister of Economic Affairs has, upon request, granted an exemption to the legal entity for important reasons; this exemption may be granted for a maximum of five years each time.

This exemption cannot be granted if this information must be reported in the management board report pursuant to article 2:391-5 NCC (article 2:392-4). Entities with shares<sup>11</sup> listed in a regulated market in the EU/EEA are obliged to include this information in the management board report as part of the corporate governance statement (refer to paragraph 2.2.5.4.3.5).



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<sup>11</sup> This includes both shares and depositary receipts.

# 6. Compensation Statement<sup>12</sup> / Remuneration Report

## 6.1 Compensation Statement

### 6.1.1 General

Entities with shares<sup>13</sup> listed in a regulated market in the EU/EEA are required to disclose the remuneration of their management board and supervisory board already for a few years. As the level of detail of these disclosures varied across companies, requirements to align the required presented information were published by the European Union in the EU Directive (2017/828/EU) about shareholder engagement. Subsequently, Book 2 NCC has been adjusted in November 2019 in order to implement this Directive, mainly by adding two new articles (135a and 135b). As a result, entities whose shares are listed on a regulated market in the EU/EEA as from financial year 2019 have to submit their remuneration policy to the general meeting for adoption at least once every four years and have to prepare a separate compensation statement ("*bezoldigingsverslag*"), in addition to the remuneration disclosures in the board of directors' report and the supervisory board report. The external auditor has to audit whether the compensation statement includes the required information.

The remuneration policy of an entity with shares<sup>14</sup> listed in a regulated market in the EU/EEA should cover certain subjects as described in article 2:135a-6 NCC (for the remuneration of the board of directors) and article 2:145-2 NCC (for the remuneration of the supervisory board).

The European Commission is still working on non-binding guidelines on the exact content and structure of the compensation statement, of which a draft version was published in 2019.

The compensation statement ("*bezoldigingsverslag*") does not replace but can be combined with the remuneration report that is required by the CGC and described in paragraph 6.2. In practice, this is usually done.

### 6.1.2 Content of compensation statement

It is required that, with regards to the compensation of each individual member of the management board and supervisory board of the entity, at least the following matters are addressed in the compensation statement (article 2:135b-3 and 145-2 NCC):

- A. the total amount of remuneration broken down by component;
- B. the relative share of the fixed and variable remuneration;
- C. the manner in which the total amount of the remuneration is consistent with the remuneration policy and contributes to the long-term performance of the entity;
- D. the way in which the financial and non-financial targets set by or on behalf of the entity have been applied;

<sup>12</sup> The articles 2:135, 135a, 135b and 145 NCC as referred to in this chapter are also applicable to a BV (article 2:187 NCC).

<sup>13</sup> This includes both shares and depositary receipts.

<sup>14</sup> This includes both shares and depositary receipts.

- E. the annual change in the remuneration over at least five financial years, the development of the entity's performance and the average remuneration, based on a full working week, of the entity's employees who are not management board members during that period, presented together in a way that makes comparison possible;
- F. if the entity has participating interests or consolidates the financial data of other entities, the remuneration charged to such participating interests or other entities during the financial year;
- G. the number of shares and share options granted and offered and the main conditions for exercising the rights;
- H. the full or partial recovery of a bonus as referred to in article 2:135-8 NCC;
- I. any deviation from the decision-making process for the implementation of the remuneration policy, as referred to in article 135a-6 under h NCC;
- J. any deviation from the remuneration policy as referred to in article 2:135a-4 NCC, with an explanation of the nature of the exceptional circumstances as referred to in article 2:135a-5 NCC, and stating the specific elements from which deviation is made; and
- K. the information referred to in articles 2:383c through 2:383e NCC, to the extent that this information is not already required under this paragraph.

With respect to item K., the additional information and further details required by the said articles can be summarised as follows (with reference to the items of article 2:135b-3 NCC mentioned above, if applicable):

- (a) a specification of the remuneration for each member of the management board, showing (1) periodically paid employee benefits, (2) remuneration payable at a later date, (3) payments on termination of employment and (4) profit-sharing and bonus payments, insofar as these amounts were charged to the entity in the financial year. For each former member of the management board, the entity shall state the amount of the remuneration, broken down into (1) payments payable in arrears and (2) payments on termination of employment;
- (a) a specification of the remuneration for each member and former member of the supervisory board, insofar as these amounts were charged to the entity in the financial year. If the entity has awarded a remuneration in the form of profit-sharing or bonus to (former) members of the supervisory board, it shall state this separately, stating the reasons underlying the decision to award the remuneration in this form.
- (d) the amount of bonuses paid to members of the management board and supervisory board that are based in whole or in part on the achievement of the objectives set by or on behalf of the entity and a statement whether these objectives were achieved in the year under review;
- (g) if the entity granted the members of the management board and supervisory board rights to subscribe for or acquire shares in the capital of the entity or a subsidiary, the following details shall be stated:
  - the exercise price of the rights and the price of the underlying shares in the capital of the entity if that exercise price is lower than the price of those shares at the time the rights were granted;
  - the number of rights not yet exercised at the beginning of the financial year;
  - the number of rights granted by the entity in the financial year with the associated conditions; if such conditions are changed during the financial year, these changes must be reported separately;
  - the number of rights exercised during the financial year, stating in any case the number of shares belonging to that exercise and the exercise prices;
  - the number of rights not yet exercised at the end of the financial year, stating: the exercise price of the rights granted, the remaining term of the rights not yet exercised, the main conditions governing the exercise of the rights, financing arrangement entered into in connection with the granting of rights and other information relevant to the assessment of the value of the duties;

- if applicable: the criteria used by the entity to grant or exercise the rights. For the rights granted to members of the supervisory board, the entity shall also state the reasons underlying the resolution to grant these rights;
- how many shares were purchased on the balance sheet date or will be purchased after the balance sheet date, or how many new shares were issued on the balance sheet date or will be issued after the balance sheet date for the purpose of exercising the rights;
- (h) the amount of the adjustment or recovery of the bonus as described in article 2:135-6 and 8 NCC;
- (i) details of the loans, advances and guarantees for the benefit of each member of the management board and supervisory board granted by the entity, its subsidiaries and the entities whose data it consolidates, indicating the amounts still outstanding, the interest rate, the main other provisions and the repayments during the financial year.

Furthermore, in the compensation statement, the entity explains how the previous vote of the general meeting was taken into account (article 135b-2 NCC).

The compensation statement does not contain any personal data referring to the family situation of individual directors (article 2:135b-5 NCC). The compensation statement shall be published on the entity's website after the general meeting and shall be accessible there for a period of ten years. If the statement remains public after these ten years, it no longer contains personal data of directors after that period (article 2:135b-6 NCC). The compensation statement is subject to an audit, in which the auditor must check whether the statement contains the information required by law (article 2:135b-7 NCC).

## 6.2 Remuneration Report

### 6.2.1 General

The CGC requires a remuneration report. The CGC is applicable to companies as described in paragraph 2.2.5.5.2.

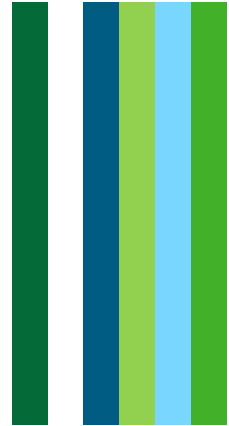
### 6.2.2 Content of remuneration report

According to principle 3.4 of the CGC, the supervisory board should render account for the implementation of the remuneration policy in a transparent manner in a remuneration report, and the remuneration report should be posted on the entity's website. The explanatory notes to the CGC state that the statutory requirements for the remuneration report are laid down in articles 2:383c through 2:383e NCC. The CGC stipulates that the remuneration committee should prepare the remuneration report (bpp 3.4.1). In this report, in addition to what is required by law in articles 2:383c through 2:383e NCC, at least the following is reported:

- I. how the remuneration policy has been implemented in the past financial year;
- II. how the implementation of the remuneration policy contributes to long-term value creation;
- III. that scenario analyses have been taken into consideration;
- IV. the pay ratios within the entity and its affiliated enterprise and, if applicable, any changes in these ratios in comparison to the previous financial year;
- V. if a management board member receives variable remuneration, how this remuneration contributes to long-term value creation, the measurable performance criteria determined in advance upon which the variable remuneration depends, and the relationship between the remuneration and performance; and
- VI. in the event that a current or former management board member receives a severance payment, the reason for this payment.

Some of these items can be combined with article 2:135b-3 NCC. In practice, bpp 3.4.1-I CGC will be combined with article 2:135b-3d NCC and bpp 3.4.2-II together with bpp 3.4.2-V CGC will be combined with 2:135b-3c NCC.

Of the three remaining items (III, IV, V) we pay special attention to bpp 3.4.1-IV CGC. One of the ways in which the entity can explain the remuneration ratios is by stating the relationship between the remuneration of the management board members and a representative reference group. In practice, this is also referred to by the term 'pay ratio'. The DASB has identified points of attention that are relevant in determining and explaining the pay ratio. In addition, the DASB has indicated that it must be explained how the pay ratio has been calculated and what choices have been made in this respect (article 404.105 DAS). In addition, the CGC requires an explanation with regard to changes in the remuneration ratios compared to the previous financial year. The DASB recommends that the reasons for this be explained in more detail (article 404.106 DAS).



# 7. Reporting on payments to governments

Pursuant to article 2:392a NCC and article 2 of the Decree of Disclosing Payments to Government Entities ("*Besluit rapportage van betalingen aan overheden*"; in this paragraph referred to as 'the Decree'), certain entities shall prepare a report on payments to government entities and publish that report. This is applicable for:

- entities which exceed the threshold amounts for large legal entities of article 2:397-1 NCC for at least two of the three criteria;
- public interest entities in scope of article 2:398-7a NCC (i.e. entities with securities listed in a regulated market in the EU/EEA, credit institutions (banks) and insurance companies); and
- issuing institutions as meant in article 5:25e Wft, i.e. entities whose securities are admitted to trading on a regulated market in the EU/EEA and whose home member state is the Netherlands; that are active in the extractive industry or in the primary forest logging.

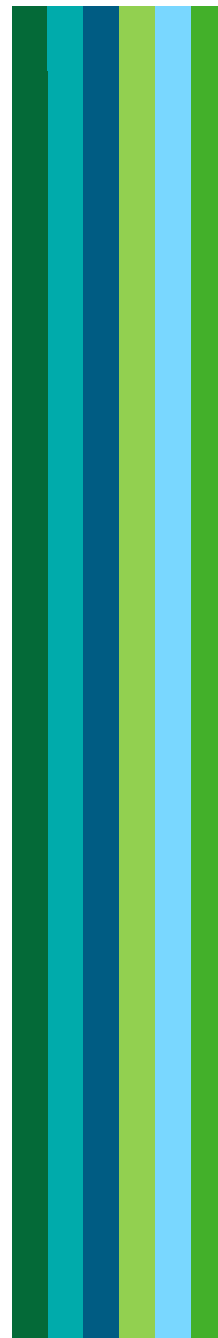
This publication does not describe the content of the report. For that we refer to the Decree.

This report is a separate report prepared and published alongside the financial statements, the management board report and the other information. The report does not have to be adopted by the general meeting or audited by an external auditor.

The Explanatory Memorandum to the Decree states the following on this report: 'The annual report on payments to government entities ('country-by-country-reporting') by entities in the extractive industry or in the primary forest logging is principally intended to provide insight into payments to government entities in exchange for extracting certain raw materials in the country concerned. The reporting reminds government entities of their responsibilities for the use of raw materials in their country. The proceeds from raw materials extraction are a significant part of government income in some countries. In the case of developing countries, those proceeds do not always flow to citizens or towards building up the state and the economy. Thanks to systematic reporting, citizens and civil-society organizations are able to get insight into the government's income at the national, regional and local levels. This allows them to put pressure on government entities in commodity-rich countries to exercise openness in the use of raw materials and the way income flows arising from them are spent. This can contribute to limiting bribery and corruption and encouraging good governance and political stability and so to improving the investment climate in those countries'.

In accordance with article 3-2 of the Decree, this report does not apply to entities whose payments to government entities are included in a consolidated report on payments to government entities prepared in accordance with article 5 of the Decree or the laws of a Member State.

Entities which prepare and publish a report that meets the reporting requirements of a third country that, pursuant to article 47 of Directive 2013/34/EU, are considered equivalent to the requirements of chapter 10 of that Directive, are exempt from the requirements of the Decree except for the obligation to publish that report as meant by article 2:392a-2 NCC and article 5:25e Wft (article 6 of the Decree).



Entities that are active in the extractive industry or in the primary forest logging whose securities are admitted to trading on a regulated market in the EU/EEA and whose home member state is the Netherlands must make this report publicly available and sent to the AFM within six months of the end of the financial year (article 5:25e and m Wft).

Other entities that are active in the extractive industry or in the primary forest logging must make the report publicly available within twelve months of the end of the financial year (article 2:392a-2 NCC)





# 8. Deadlines

## 8.1 Preparation of financial statements

For an entity whose securities are listed on a regulated market in the EU/EEA, the period for preparing the annual accounts - consisting of the financial statements, the management board report, other information and the statements made by the management board report (article 5:25c-2c Wft) - is set at four months after the end of the financial year.

This period cannot be extended (articles 101-1 and 210-1 NCC) and no exemption to prepare financial statements can be granted (articles 101-7 and 210-8 NCC).

For other entities: the annual accounts must be prepared by the management board within five months of the end of the financial year (article 2:101 and 210 NCC).

The five month period for preparing the annual accounts may be extended by the general meeting by a maximum of five months (articles 2:101 and 210 NCC). In order to take a decision on extension, a general meeting must formally be convened and the decision-making process has to be recorded in minutes. This then creates a maximum period for the preparation of the annual accounts of ten months after the end of the financial year.

## 8.2 Disclosure period for annual accounts

An entity whose securities are listed on a regulated market in the EU/EEA must make its annual accounts publicly available within four months after the end of the financial year (article 5:25c-1 Wft). This must be announced by means of a press release with a reference to the website of the issuer where the information is fully available (article 5:25m-3 Wft).

The financial statements must be adopted by the general meeting. A general meeting is to be held at least once a year. Where the articles of association of an NV do not provide for a shorter term, the annual meeting shall be held within six months after year-end (article 2:108 NCC). There must be a period of at least 42 days between the date on which the annual accounts including the financial statements have been made publicly available and the date of the general meeting (article 5:25ka Wft).

The AFM has been appointed as the official mechanism for central storage of regulated information including annual accounts (article 5:52m Wft). The annual accounts of a listed entity must be sent to the AFM within five days after adoption of the financial statements (article 5:25o-1 and 4 Wft), but not later than six months after the end of the financial year (article 5:25o-2 Wft). Subsequently, the AFM sends these annual accounts to the Trade Register within three days (article 5:25o-3 and 5 Wft). By sending these documents to the AFM the entity has met its filing obligations for these documents (article 2:394-8 NCC).

Listed entities on a regulated market in the EU/EEA must prepare their annual accounts using the European Single Electronic Format (ESEF), which requires the use of XHTML (refer to next paragraph). If the financial statements are not adopted within six months after the end of the financial year, this must be notified to the AFM and the AFM sends the annual accounts drawn up earlier (within four



months after the end of the financial year) as well as the notification that the annual accounts have not yet been adopted to the Trade Register (article 5:25o-3 Wft).

For other entities: the prepared annual accounts have to be adopted by the general meeting. A general meeting is to be held at least once a year. Where the articles of association of an NV do not provide for a shorter term, the annual meeting shall be held within six months after year-end (article 2:108 NCC). Between the date on which the (prepared) annual accounts are available for inspection by shareholders and members and the actual adoption of the annual accounts, a period of at least several days must elapse (15 days for NVs (article 2:115-1 NCC and 8 days for BVs (article 2:225 NCC)). It is also laid down by law that, after adoption of the annual accounts, they must be made public within eight days by filing them with the Trade Register (article 2:394-1 NCC).

If the annual accounts have not been adopted within two months after the expiry of the prescribed period of five or six months for preparation, or the extended period of a maximum of ten months, the (as yet unadopted) annual accounts must be made public (filed) without delay. A published but not yet adopted ('provisional') set of financial statements must explicitly mention that they have not yet been adopted (article 2:394-2 NCC). The reason why the annual accounts have not yet been adopted does not have to be stated. In any case, the annual accounts have to be published no later than twelve months after the end of the financial year (article 2:394-3 NCC). As long as the annual accounts of an NV have not been adopted, no dividend may be paid (article 2:105 NCC). Any interim dividend paid out, insofar as permitted by the articles of association and the law, may be regarded as an advance payment on the final dividend. Within the framework of (and after) the adoption of the annual accounts, it will be decided once a year whether the (annual) profit will be distributed or added to the reserves. In the system of law, any other distribution is an interim distribution, which will be deducted from the freely distributable reserves in the (not adopted) annual accounts.

### 8.3 Electronic filing

EU Regulation 2018/815 of 17 December 2018 stipulates that entities with securities listed on a regulated market in the EU/EEA must prepare their annual financial reports in XHTML format. If the annual financial report includes consolidated financial statements prepared in accordance with IFRS-EU, the following elements must be marked up using Inline XBRL, a variant of XBRL:

- the numbers disclosed in:
  - the statement of financial position;
  - the statement of profit or loss and other comprehensive income;
  - the statement of changes in equity; and
  - the statement of cash flows; and
- certain disclosure notes. For financial years starting on or after 1 January 2022 most disclosure notes must be marked up. This is further specified in a separate Annex to the Regulation.

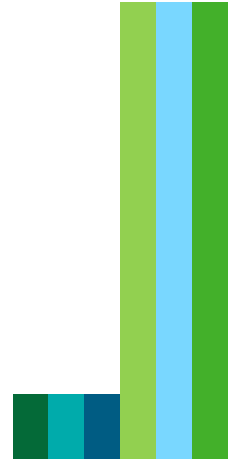
For other entities: publication will take place, in principle, by filing the annual accounts with the Trade Register. In late 2015, the Trade Register Act was amended in connection with (the obligation to) file documents in the Trade Register electronically. This obligation to file via SBR (Standard Business Reporting) will be introduced in stages by means of a decree (Decree on Electronic Filing of Trade Register). According to this decree, the annual accounts of a small legal entity and a micro-sized legal entity must be filed electronically via SBR as of the financial year starting on or after 1 January 2016. For a medium-sized legal entity, this obligation applies as of the financial year 2017. Small legal entities and micro legal entities can also use the online service of the Chamber of Commerce as an alternative to SBR. Medium-sized legal entities will temporarily (until 1 January 2023) be offered the option of filing annual accounts via an online service using SBR.

For large legal entities, the decree does not yet include an obligation to file electronically via SBR. According to a draft amendment of the decree dated 11 May 2022, large legal entities will be required to file their financial statements via SBR as of financial year 2023.

In the Decree on electronic filing of the Trade Register, certain legal entities are (for the time being) exempt from the obligation to file via SBR. These include

- medium-sized group entities, if the head of the group is an issuing institution or a large enterprise. Electronic filing by these legal entities will be regulated simultaneously with the supplement to the decree aimed at large legal entities (see previous paragraph);
- non-Dutch legal entities and companies as listed in article 4.3.4 of the 2008 Trade Register Decree.

Appendix 1 contains an overview of the deadlines for preparing, adopting, making publicly available and filing financial reporting.



# 9. Penalties for non-compliance with financial reporting obligations

## 9.1 Criminal penalties

### 9.1.1 Criminal penalties for all entities

For all entities non-compliance with the following legal requirements concerning the annual accounts, as laid down in Title 9 Book 2 NCC, constitutes an economic offence (article 1-4 Economic Offences Act). This concerns:

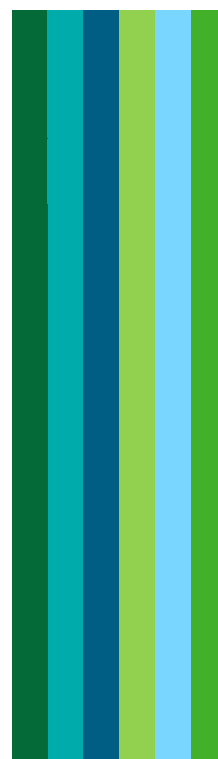
- notifying all members or shareholders if, after the adoption of the annual accounts, it appears that these are seriously deficient, and filing a notice to this effect with the Trade Register, including an auditor's report if required (article 2:362-6 NCC, last sentence));
- the granting of an assignment to audit the financial statements (article 2:393-1 NCC);
- filing the annual accounts with the Trade Register of the Chamber of Commerce no later than 12 months after the end of the financial year (article 2:394-3 NCC);
- various regulations for the publication of the annual accounts in a manner other than by means of filing with the Trade Register of the Chamber of Commerce (article 2:395 NCC); and
- complying with an order of the Enterprise Chamber concerning the manner in which the financial statements accounts, the management board report or the other information must be arranged (article 2:451-2 NCC).

The Economic Offences Act stipulates a fine and/or imprisonment as a penalty for violating these regulations. The deliberate publication of misleading financial statements or other misleading information may also constitute a criminal offence under certain circumstances. The Penal Code prescribes a criminal penalty for this offence, which is essentially a special form of forgery.

### 9.1.2. Additional criminal penalties for certain listed entities

In addition to the failures for all entities, for issuing entities as meant in article 1-b Wftv (refer to paragraph 10.1) also the following failures constitute an economic offence:

- compliance with an order of the Enterprise Chamber by a Dutch entity regarding the manner in which it must provide further information to the Netherlands Authority for the Financial Markets (AFM) on the application of the financial statements' regulations (article 2:452-4 NCC);
- compliance with an order of the Enterprise Chamber by an entity established under the law of another state to make a public announcement explaining that the annual financial reporting does not comply with certain provisions of the Wft or explaining how those provisions will be applied in the future (article 2:455-2 NCC).



## 9.2 Civil claim for compliance with annual accounts obligation

If an entity wrongfully fails to comply with the annual accounts obligations, such as the obligation to publish (see also paragraph 8.2), any interested party may go to court to enforce compliance. Any interested party may claim from the entity compliance with the publication of the annual accounts in the manner prescribed in Title 9 Book 2 of the Dutch Civil Code (article 2:394-7 NCC). This civil claim can be filed with the court of the district in which the - defaulting - entity has its registered office.

The same applies to non-compliance with the obligation to have the financial statements audited. If an entity has wrongfully failed to have its annual accounts audited by an authorised auditor, any interested party may apply to the court (article 2:393-8 NCC). The civil claim for compliance with the audit of the financial statements can also be filed with the court of the district in which this entity is established.

## 9.3 Directors' liability

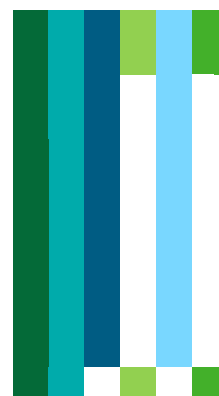
For directors of an NV and BV not complying or not complying on time with the obligation to publish the annual accounts can also lead to joint and several liability. Failure to comply with the obligation to publish the annual accounts constitutes improper performance of duties by the management board. In case of bankruptcy, the legal presumption arises that this improper performance is an important cause of the bankruptcy, so that the directors can be jointly and severally liable towards the estate for the amount of the debts of the entity. This creates a reversal of the burden of proof. The director has the heavy burden of proving that there is no connection between his (improper) performance of duties and the bankruptcy.

If the financial statements and/or the management board report, or interim reporting, give a misleading presentation of the state of affairs of the entity, the directors shall be jointly and severally liable to third parties for any damage suffered by third parties as a result.

## 9.4 Enterprise Chamber

If the financial statements of an entity do not meet the statutory requirements, interested parties may institute annual account proceedings before the Enterprise Chamber of the Amsterdam Court of Appeal (section 16 Judicial procedure of Title 9 Book 2 NCC). An interested party may submit a petition regarding a financial statements procedure to the Enterprise Chamber of the Amsterdam Court of Appeal within a period of nine months after the adoption or filing of the financial statements with the Chamber of Commerce, or – for a listed entity the financial reporting of which is subject to supervision by the AFM pursuant to the Wtftv (refer to Chapter 10) - within nine months after the discovery of a shortcoming that was not apparent from the financial statements.

For other entities this term is two months.



# 10. Supervision by the AFM of financial reporting of certain listed entities

## 10.1 Scope

Pursuant to article 1-b of the Financial Reporting Supervision Act (Wftv), the AFM supervises compliance with the financial reporting requirements by securities issuers (as referred to in article 1 of the Wft) whose home member state is the Netherlands:

- with their registered office in the Netherlands and whose securities are admitted to trading on a regulated market in the EU/EEA or to trading on a system comparable to a regulated market in the EU/EEA in a state that is not a member state;
- with their registered office abroad and whose securities are admitted to trading on a regulated market within the EU/EEA.

### *Exemption*

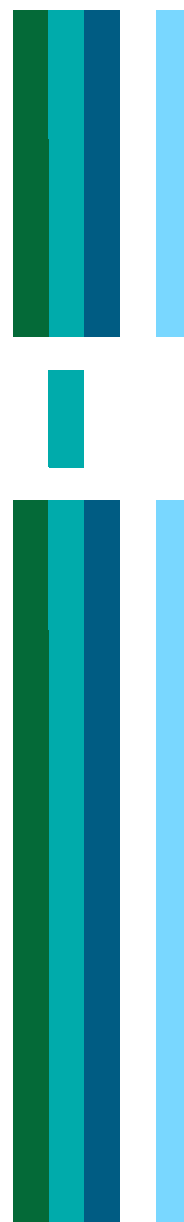
This AFM supervision (and therefore this Chapter) does not apply to a securities issuer that has only issued bonds or non-equity securities with a nominal value per unit of at least EUR 100,000.

## 10.2 General

The most important task of the AFM under the Wftv concerns the supervision of the application by the listed entities concerned of the financial reporting requirements with respect to:

- the adopted financial statements;
- the management board report;
- other information;
- the statements concerning the financial statements and the management board report as referred to in article 5:25c-2c Wft;
- the half-yearly financial reporting (financial statements, management board report and the statements as referred to in article 5:25d-2c Wft); and
- the annual report on payments to governments by entities active in the extractive industry or in the primary forest logging in accordance with article 5:25e Wft.

The AFM exercises this task based on the financial reporting submitted to it. The AFM tests a number of the financial reporting submitted to it on a random basis and on the basis of a risk analysis and performs thematic research into the manner in which the rules for reporting certain items have been applied. The AFM also compares the application of the reporting requirements within a sector. The AFM will therefore not assess all financial reports or subject all financial publications to an in-depth investigation. The AFM's supervision takes place after adoption of the financial statements and is based on the financial reporting and public information drawn up by an entity. The AFM can use public information, other external sources or the requested and obtained further explanation. However, the



AFM is not permitted to use information obtained in the context of another supervisory duty, for example the supervision of public accountants, for the supervision of financial reporting.

If the AFM has reason to doubt whether the annual financial reporting complies with the regulations, it may request a further explanation. The AFM is obliged to maintain the confidentiality of this request. If the entity fails to comply or complies insufficiently with the request of the AFM, the AFM may try to enforce this through the intervention of the Enterprise Chamber. If the requested further explanation, whether or not provided through the intervention of the Enterprise Chamber, dispels the doubts raised by the AFM, the latter will close the internal review. However, if the further explanation does not remove the doubts that have arisen, this may lead to the AFM's opinion that the financial reporting does not comply with the relevant regulations.

The AFM is obliged to maintain the confidentiality of information obtained during the performance of its supervisory duties regarding financial reporting. Further disclosures provided by an entity at the request of the AFM also remain confidential. This information may only be used by the AFM to assess whether the financial reporting complies with the applicable regulations. Such information obtained in this so-called pre-procedural phase may, however, be used at a later stage of the proceedings.

If the AFM is of the opinion that the financial reporting does not comply with the applicable requirements, it will notify the entity of this opinion in writing. The AFM may accompany this notification with a recommendation to the entity to publish a notice in which the entity (article 3-2 Wtffv):

- explains how the reporting requirements will be applied in the future and describes their consequences for financial reporting; or
- explains which parts of the financial reporting do not comply with the reporting requirements of Part 9, Book 2 NCC or of IFRS-EU.

If the entity has provided this notice to the public and the AFM agrees with the content of this notice, the matter is closed. If the entity does not comply with the recommendation of the AFM, the AFM may appeal to the Enterprise Chamber.

### 10.3 Annual accounts proceedings at the request of the AFM

The AFM may also request an annual accounts procedure (1) if the entity has failed to comply sufficiently with the request of the AFM for a further explanation, (2) if the AFM has made a notification to the entity without making a recommendation or (3) if the entity has insufficiently complied with a recommendation to make a notice publicly available in case the AFM is of the opinion that the financial reporting, or part thereof, does not comply with the regulations (article 4 Wtffv).

If the AFM has filed a petition with the Enterprise Chamber for the revision of the financial statements, it will make this fact public, but not before the AFM has given the listed entity the opportunity (within a reasonable period) to make this public itself.



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# Appendix 1. Overview of deadlines and content financial reporting

	Deadline	Content
<b>An entity with shares listed on a regulated market in the EU/EEA</b>		
<b>Annual reporting</b>		
Preparation by the board and publication by the entity	Within four months after the end of the financial year	<ul style="list-style-type: none"> <li>• Annual financial statements with auditor’s report;</li> <li>• Annual management board report;</li> <li>• Report of supervisory board;</li> <li>• Other information;</li> <li>• Statements made by management board (refer to paragraph 1.1);</li> <li>• Compensation statement.</li> </ul>
	Within six months after the end of the financial year	<ul style="list-style-type: none"> <li>• Report on payments to governments (certain listed entities, refer to chapter 7).</li> </ul>
Adoption and voting by general meeting	<ul style="list-style-type: none"> <li>• NV: within six months after the end of the financial year, or a shorter term if required by the articles of association, and at least 42 days after publication of the annual accounts;</li> <li>• BV: no fixed term; general meeting to be held at least once a year.</li> </ul>	<ul style="list-style-type: none"> <li>• Adoption: Annual financial statements with auditor’s report;</li> <li>• Voting: Profit appropriation and an advisory vote on the compensation statement. At least every four years approval of remuneration policy.</li> </ul>
Filing with AFM	Within four months of the end of the financial year	<ul style="list-style-type: none"> <li>• Annual financial statements with auditor’s report;</li> <li>• Annual management board report;</li> <li>• Other information.</li> </ul>
	Within 5 days after adoption, but ultimately 6 months after the financial year-end, or ultimately 6 months after financial year-end a notification that the annual accounts have not yet been adopted	<ul style="list-style-type: none"> <li>• Adopted financial statements with auditor’s report;</li> <li>• Annual management board report;</li> <li>• Other information.</li> </ul>
	Within six months after the end of the financial year	<ul style="list-style-type: none"> <li>• Report on payments to governments (certain listed entities, refer to chapter 7).</li> </ul>
<b>Half-yearly reporting</b>		
Preparation and publication	As soon as possible, but no later than 3 months after the end of the first six months financial period	<ul style="list-style-type: none"> <li>• Half-yearly financial statements;</li> <li>• Half-yearly management board report;</li> <li>• Statements made by management board (refer to paragraph 1.2);</li> <li>• If audited /limited reviewed, the report of the auditor.</li> </ul>

An entity with securities other than shares listed on a regulated market in the EU/EEA and whose home member state is the Netherlands		
Deadline	Content	
<b>Annual reporting</b>		
Preparation by the board and publication by the entity	Within four months after the end of the financial year	<ul style="list-style-type: none"> <li>Annual financial statements with auditor’s report;</li> <li>Annual management board report;</li> <li>Other information;</li> <li>Statements made by management board* (refer to paragraph 1.1).</li> </ul>
	Within six months after the end of the financial year	<ul style="list-style-type: none"> <li>Report on payments to governments (certain listed entities, refer to chapter 7).</li> </ul>
Adoption and voting by general meeting	<ul style="list-style-type: none"> <li>NV: within six months after the end of the financial year, or a shorter term if required by the articles of association;</li> <li>BV: no fixed term; general meeting to be held at least once a year.</li> </ul>	<ul style="list-style-type: none"> <li>Adoption: Annual financial statements with auditor’s report;</li> <li>Voting: Profit appropriation.</li> </ul>
Filing with AFM	Simultaneously with publication by the entity	<ul style="list-style-type: none"> <li>Annual financial statements with auditor’s report;</li> <li>Annual management board report;</li> <li>Other information.</li> </ul>
	Within 5 days after adoption, but ultimately 6 months after the financial year-end, or ultimately 6 months after financial year-end a notification that the annual accounts have not yet been adopted	<ul style="list-style-type: none"> <li>Adopted financial statements with auditor’s report;</li> <li>Annual management board report;</li> <li>Other information.</li> </ul>
	Within six months after the end of the financial year	<ul style="list-style-type: none"> <li>Report on payments to governments (certain listed entities, refer to chapter 7).</li> </ul>
<b>Half-yearly reporting*</b>		
Preparation and publication	As soon as possible, but no later than 3 months after the end of the first six months financial period	<ul style="list-style-type: none"> <li>Half-yearly financial statements;</li> <li>Half-yearly management board report;</li> <li>Statements made by management board (refer to paragraph 1.2);</li> <li>If audited / limited reviewed, the report of the auditor.</li> </ul>

\* Not applicable for entities that have listed securities other than shares with a nominal value of at least EUR 100,000 per security (refer to paragraph 1.1).

Deadline		Content
<b>An entity with shares listed on a MTF in the EU/EEA and with other securities listed on a regulated market in the EU/EEA</b>		
<b>Annual reporting</b>		
Preparation by the board and publication by the entity	Within 4 months after the end of the financial year.	<ul style="list-style-type: none"> <li>• Annual financial statements with auditor’s report;</li> <li>• Annual management board report (including remuneration report, refer to chapter 6);</li> <li>• Report of supervisory board;</li> <li>• Other information;</li> <li>• Statements made by management board (refer to paragraph 1.1).</li> </ul>
	Within 6 months after the end of the financial year.	<ul style="list-style-type: none"> <li>• Report on payments to governments (certain listed entities, refer to chapter 7).</li> </ul>
Adoption and voting by general meeting	<ul style="list-style-type: none"> <li>• NV: within 6 months after the end of the financial year, or a shorter term if required by the articles of association;</li> <li>• BV: no fixed term; general meeting to be held at least once a year.</li> </ul>	<ul style="list-style-type: none"> <li>• Adoption: Annual financial statements with auditor’s report;</li> <li>• Voting: Profit appropriation and an advisory vote on the compensation statement. At least every four years approval of remuneration policy.</li> </ul>
Filing with AFM	Simultaneously with publication by the entity.	<ul style="list-style-type: none"> <li>• Annual financial statements with auditor’s report;</li> <li>• Annual management board report;</li> <li>• Other information.</li> </ul>
	Within 5 days after adoption, but ultimately 6 months after the financial year-end, or ultimately 6 months after financial year-end a notification that the annual accounts have not yet been adopted.	<ul style="list-style-type: none"> <li>• Adopted financial statements with auditor’s report;</li> <li>• Annual management board report;</li> <li>• Other information.</li> </ul>
	Within 6 months after the end of the financial year.	<ul style="list-style-type: none"> <li>• Report on payments to governments (certain listed entities, refer to chapter 7).</li> </ul>
<b>Half-yearly reporting</b>		
Preparation and publication	As soon as possible, but no later than 3 months after the end of the first 6 months financial period.	<ul style="list-style-type: none"> <li>• Half-yearly financial statements;</li> <li>• Half-yearly management board report;</li> <li>• Statements made by management board (refer to paragraph 1.2);</li> <li>• If audited / limited reviewed, the report of the auditor.</li> </ul>

	Deadline	Content
<b>An entity with shares listed on a MTF in the EU/EEA</b>		
<b>An entity with shares listed outside the EU/EEA on a market comparable to a regulated market in the EU/EEA</b>		
<b>An entity with shares listed outside the EU/EEA on a market comparable to a MTF</b>		
<b>Annual reporting</b>		
Preparation by the board	Within five months after the end of the financial year and possibility to extend to a maximum period of ten months after the end of the financial year	<ul style="list-style-type: none"> <li>• Annual financial statements with auditor’s report;</li> <li>• Annual management board report (including remuneration report, refer to chapter 6);</li> <li>• Report of supervisory board;</li> <li>• Other information.</li> </ul>
	Within 12 months after the end of the financial year.	<ul style="list-style-type: none"> <li>• Report on payments to governments (certain listed entities, refer to chapter 7).</li> </ul>
Publication by the entity	<ul style="list-style-type: none"> <li>• Within eight days after adoption;</li> <li>• If not adopted: within two months after preparation;</li> <li>• No later than 12 months after the end of the financial year</li> </ul>	<ul style="list-style-type: none"> <li>• Annual financial statements with auditor’s report;</li> <li>• Annual management board report (including remuneration report, refer to chapter 6);</li> <li>• Report of supervisory board;</li> <li>• Other information.</li> </ul>
	Within 12 months after the end of the financial year.	<ul style="list-style-type: none"> <li>• Report on payments to governments (certain listed entities, refer to chapter 7).</li> </ul>
Adoption and voting by general meeting	<ul style="list-style-type: none"> <li>• NV: within 6 months after the end of the financial year, or a shorter term if required by the articles of association;</li> <li>• BV: no fixed term; general meeting to be held at least once a year.</li> </ul>	<ul style="list-style-type: none"> <li>• Adoption: Annual financial statements with auditor’s report;</li> <li>• Voting: Profit appropriation.</li> </ul>
Filing with AFM	Not applicable	
<b>Half-yearly reporting</b>		
Preparation and publication	Not required	No requirements. If prepared, the standards of the applicable GAAP for interim reporting apply.

# Appendix 2. List of abbreviations

<b>AFM</b>	Autoriteit Financiële Markten (Netherlands Authority for the Financial Markets)
<b>AMvB</b>	Algemene Maatregel van Bestuur (Decree)
<b>Bpp/bpp</b>	Best practice provision
<b>BV</b>	Besloten vennootschap (private limited liability company)
<b>CGC</b>	(Netherlands) Corporate Governance Code
<b>CSRD</b>	Corporate Sustainability Reporting Directive
<b>DAS</b>	Dutch Accounting Standards
<b>DASB</b>	Dutch Accounting Standards Board
<b>EEA</b>	European Economic Area
<b>ESMA</b>	European Securities and Markets Authority
<b>EU</b>	European Union
<b>IAS</b>	International Accounting Standards
<b>IFRS</b>	International Financial Reporting Standards
<b>NFRD</b>	Non-Financial Reporting Directive
<b>MIFID</b>	Markets in Financial Instruments Directive
<b>MTF</b>	Multilateral Trading Facility
<b>MvT</b>	Memorie van Toelichting (Explanatory Memorandum)
<b>NCC</b>	Netherlands Civil Code
<b>NL GAAP</b>	Netherlands Generally Accepted Accounting Principles
<b>NV</b>	Naamloze vennootschap (public limited liability company)
<b>PIE</b>	Public Interest Entity
<b>SER</b>	Sociaal-Economische Raad (Social and Economic Council)
<b>Wft</b>	Wet op het financieel toezicht (Financial Supervision Act)
<b>Wtfov</b>	Wet toezicht financiële verslaggeving (Financial Reporting Supervision Act)

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