

# 5

# things you need to know about corporate governance in 2021

## Intro

---

Below we briefly describe five hot topics in the area of corporate governance that are high on the agenda for 2021.

---

**#1 corporate purpose:** more focus on the wishes of stakeholders other than shareholders

---

**#2 digitalisation of AGMs** accelerated

---

**#3 diversity** more binding

---

**#4 stricter requirements** for transparency and accountability

---

**#5 more rules** to protect companies

# #1

---



**Enshrinement in Dutch law and encouragement to participate responsibly in social and economic life**

## Corporate purpose: more focus on the wishes of stakeholders other than shareholders

With a view to society as a stakeholder, professors have argued that the duty of care incumbent on management board members and supervisory board members to participate responsibly in social and economic life should be enshrined in law. They point to climate change, tax ethics, pay ratios within the business and diversity. Another option is to lay down the corporate purpose in the articles of association. How does the company contribute to society as a whole? The Dutch government has promised to investigate in 2021 how this form of governance can be enshrined in Dutch law and otherwise encouraged. The EU is also working on rules relating to sustainable corporate governance.

# #2

---



**Again virtual AGMs in 2021, possibly a permanent option for the future**

## Digitalisation of AGMs accelerated

The COVID-19 pandemic has accelerated the digitalisation of AGMs. In 2020, it became clear that virtual AGMs still require attention. At many companies, a live dialogue between the shareholders and the management board, supervisory board and auditor still proved difficult. In 2021, many AGMs will probably once again take place in hybrid or entirely virtual form, based on the Dutch Temporary COVID-19 Justice and Security Act (together with the announcement that it will be extended until 1 August 2021). The hybrid option could also be included in the articles of association so that it remains possible even if the temporary act no longer applies. However, the experience with the emergency law also raises the question of whether there should be a permanent arrangement to facilitate virtual AGMs in the future?

# #3

---



**Soon mandatory quota for women on supervisory or two tier boards of listed companies**

## Diversity more binding

In 2021, a quota of at least one-third women and one-third men on the supervisory board or one-tier board of companies with a Dutch listing will probably apply, and for all 'large' companies an appropriate and ambitious target figure for the supervisory board, the management board and the junior management (with the obligation to draw up a plan for this purpose and to report to the SER in addition to the management report). The SER will publish reports on the progress of these companies. It is also important for listed companies that the Corporate Governance Code Monitoring Committee in its report of 14 December 2020 expressed the expectation that listed companies would place the theme of diversity in a broad sense higher on the agenda and make greater efforts to account for it properly.

## #4

---



### Particular attention for transparency regarding ESG

## Stricter requirements for transparency and accountability

In addition to the above developments relating to diversity, there are more transparency developments regarding ESG. For example, the EU is working on amending the Directive as regards disclosure of non-financial and diversity information. IFRS is also looking at improving its standards, specifically for sustainability reporting. The new ESG Regulation (SFDR) requires financial service providers to be transparent from 10 March 2021 about investment decisions and advice with negative impacts on sustainability factors. Regarding non-ESG matters, it is worth noting that entities must enter information on their ultimate beneficial owners (UBOs) in the UBO register. Newly established entities are obliged to do so upon first listing in the commercial register. Entities that were already listed in the commercial register before 27 September 2020 have until 27 March 2022 to register UBOs. Although the commercial register does urge entities to register earlier, the statutory term is leading. Finally, the Netherlands Authority for the Financial Markets (AFM) asks audit committees to strengthen their role in the audit of the financial accounts because they are an important link in the reporting process.

## #5

---



### New rules to protect Dutch companies coming

## More rules to protect companies

A bill will soon come into force allowing listed companies to invoke a cooling-off period in the event of shareholder activism or a hostile takeover. In addition, a bill on the assessment of investments and takeovers for national security risks was submitted for consultation in 2020. Important companies and infrastructure are protected against undesirable takeovers by (domestic and foreign) companies and individuals. The bill has a reference date of 2 June 2020, allowing for retrospective assessment. A similar law relating to the telecommunications sector entered into force in 2020. Finally, the EU has adopted a regulation which outlines the framework for the screening of foreign direct investments. This regulation has been applicable since October 2020.

## Contact

---

For more information, please contact



**Geert Raaijmakers** Partner

+31 20 71 71 992

+31 6 53 68 08 43

[Geert.Raaijmakers@nautadutilh.com](mailto:Geert.Raaijmakers@nautadutilh.com)



**Maarten Buma** Partner

+31 20 71 71 197

+31 6 20 21 06 44

[Maarten.Buma@nautadutilh.com](mailto:Maarten.Buma@nautadutilh.com)

## Contributors

---

Geert Raaijmakers | Maarten Buma | Suzanne Rutten