



Module: Shareholder Rights Directive II & The Netherlands Stewardship Code

A. Shareholders Rights Directive II

- Background

The Shareholder Rights Directive (SRD I) entered into force in 2007. Its main function was to grant minimum rights for shareholders of listed companies across the EU. A revised version (SRD II) was issued in 2017. The directive has been implemented in Dutch law on 1 December 2019. Some parts will enter into force as of 3 September 2020. The Shareholder Rights Directive II (SRD II) has been introduced due to the Action plan on EU company law and corporate governance from the European Commission. This directive has been introduced because, according to the European Commission, shareholders were not requiring accountability from board members regarding their decisions and actions. This is caused by insufficient shareholder involvement and lack of transparency. With the amendments contained in SRD II, the EU sets out to further strengthen the position of shareholders.

- Objective

The SRD II has been established to create more shareholder involvement in the governance of listed companies and creates possibilities to oversee the remuneration policy and transactions with related parties.

The SRD II requirements apply to:

- **Listed entities:** of which the shares are listed on a European stock exchange admitted to trading on a regulated market (such as Philips and Unilever);
- **Intermediaries within the custody chain:** insofar they offer services to shareholders or other intermediaries with respect to the shares of listed entities (such as De Giro);
- **Institutional investors:** insofar they invest in shares that are admitted to trading on a regulated market. This means that the requirements do not apply in case institutional investors are investing in multilateral trading facility (MTF) or organized trading facility (OTF);
- **Asset managers:** insofar they act on behalf of investors that invest in shares that are admitted to trading on a regulated market;
- **Proxy advisors:** insofar they offer services to shareholders of listed entities (voting advice bureaus that perform research, provide advice and make recommendations regarding voting behaviour on general meetings of shareholders).



What are the main requirements of the SRD II?

- Main requirements

1. Transfer or comply with requests related to the identification of shareholders

Shares of issuers are regularly held through complex cross border custody chains. These chains start with a central institution that is seated in the member state where the shares are admitted for trading on a regulated market. The central institution keeps the shares in a depot and has one or more parties that are affiliated with it and who are partners in the depot. These parties (banks, investment institutions or other central institutions) also maintain a deposit in which either other banks, investment firms or central institutions, either a private or legal person, act as beneficial owner. These chains make contact between the issuer and shareholder more difficult, especially when the chain is cross-border. An issuer only sees the shares that are registered with the central institution, except for the cases in which shareholders are required to report themselves because they are holding 3% of the shares. For information on the remaining shareholders, the issuer has to depend on the communication through the custody chain. The SRD II aims to harmonise the communication through the custody chain.

Issuers in member states of which the shares are permitted to the regulated market may identify the shareholders by intermediary parties in the custody chain. Those intermediary parties have to transfer requests for identification. Intermediary parties that receive such request may not comply with the request if the shareholder owns less than 0,5% of the issued capital.¹

Intermediaries in the custody chain have to provide information relevant for exercising shareholder rights to the shareholder and should ensure that the shareholder can communicate information to the issuer. This for example includes the result of the vote they made.²

Non-compliance with these requirements is considered to be an economic crime. Adherence of these requirements can be requested by the shareholder or issuer through the civil court.³

2. Disclosure of engagement policies and alignment of the investment strategy

The SRD II requires that institutional investors and asset managers have an engagement policy and publish this policy including an explanation of the investment strategy.



¹ Art. 49b Dutch Securities Giro Act

² Art. 2:120 (6) Dutch Civil Code (does not exist yet)

³ Economic Offences Act ([article has not entered into force yet](#))



Such disclosure increases investor awareness and the capacity of beneficial owners, such as future retirees, to make better investment decisions, to promote the dialogue between companies and their shareholders and increase shareholder engagement and enhance their accountability to stakeholders and society.

In the explanation of the investment strategy, the institutional investor has to disclose the alignment of the investment strategy and duration of the liabilities, including the contribution to long and mid term performances of the portfolio.⁴

This engagement policy also includes an explanation of the dialogues with the company, the exercising of voting rights and other rights related to shares, cooperation with other shareholders, communication with other relevant parties of the company and the management of conflicts of interest related to their involvement.⁵

Institutional investors and asset managers have to publish an explanation of how the engagement policy has been implemented on an annual basis. This also includes the manner of voting in the meeting of shareholders and the voting behaviour. And an explanation of the most important votes and use of proxy advisors.⁶ In case institutional investors and asset managers don't comply with publishing an engagement policy, they should explain this on their website.⁷

3. Disclosure of remuneration policy with respect to board members and supervisory board members

A remuneration policy is one of the key instruments for companies to align their interests with those of their board members. Therefore it is important that shareholders have the opportunity to comment on the companies remuneration policy. In order to ensure that shareholders have effective control over the remuneration policy, they should be entitled to vote in a binding or advisory manner.

Therefore, the SRD II requires listed companies to have a remuneration policy that should be adopted by the general meeting of shareholders.⁸



⁴ Art. 5:87d Financial Supervision Act

⁵ Art. 5:87c Financial Supervision Act

⁶ Art. 5:87c Financial Supervision Act

⁷ Art. 5:87c (4) Financial Supervision Act

⁸ Art. 2:135 Dutch Civil Code



Such remuneration policy should amongst others include an explanation of the contribution to the investment strategy, long term interests, sustainability of the company and a description of the fixed and variable remuneration and other bonuses.⁹ The remuneration policy should be disclosed on the website of the company, after voting, including the date and voting results.¹⁰

When board members and supervisory board members of the listed company fail to disclose the remuneration policy of the company, they can be held liable on the basis of improper performance of duties.¹¹

4. Disclose material transactions with related parties

The SRD II requires listed companies to disclose material transactions with related parties.¹² That scheme is intended to ensure adequate safeguards for the protection of the interests of companies and shareholders if the company enters into transactions with related parties. These transactions can cause damage to companies and their shareholders by appropriating the value belonging to the company by related parties. Greater transparency regarding related parties may prevent companies from entering into and submitting questionable transactions. This protects the interests of the company and the minority stakeholders and, for example enables minority stakeholders to take legal action against such transactions.

Listed companies amongst others have to disclose the type of the relationship with the company, the name of the related party and the date and value of the transaction.¹³ Related parties amongst others include shareholders, creditors and other stakeholders.¹⁴ Material transactions are transactions with inside information, or transactions between the company and natural or legal persons that own at least 10% of shares in the company, or transactions with (supervisory) board members in case of conflict of interest.

Transactions that are in line with the normal business activities and in accordance with market conditions are not considered to be material transactions and are considered to be "at arms length". However, there should be an internal procedure that is followed periodically to determine this.

⁹ Art. 2:135a (5) Dutch Civil Code

¹⁰ Art. 2:135a (6) Dutch Civil Code

¹¹ Art. 2:9 and 2:149 Dutch Civil Code and Explanatory memorandum implementation SRD II.

¹² Art. 2:167 (3), 2:168, 2:169 (2), 2:169 (5a)

¹³ Art. 2:169 (2) Dutch Civil Code

¹⁴ For more details refer to paragraph 9 of the IAS 24



Material transactions with subsidiaries are excluded. Material transactions should be approved at the general meeting of shareholders or by the supervisory board.¹⁵ Failure to comply with the decision-making rules, makes a decision of the board voidable.¹⁶

What is the impact of the SRD II on investors?

The SRD II creates an obligation for institutional investors to be more transparent about investment strategies, their engagement policy and the implementation thereof. Thus, they will have to develop and publicly disclose a policy on shareholder engagement or explain why they have chosen not to do so. The policy on shareholder engagement will have to describe how institutional investors and asset managers integrate shareholder engagement in their investment strategy, which different engagement activities they choose to carry out, and how they do so. The SRD II requires institutional investors to publicly disclose how their investment strategy is consistent with the profile and duration of their liabilities, as well as how it contributes to the medium to long-term financial and non-financial performance of their assets. If they make use of asset managers, details of this arrangement should also be publicly disclosed, in particular in respect of the alignment between the manager's strategy and investor's long-term liabilities.

In addition the SRD II creates the obligation for institutional investors to facilitate the transmission of cross-border information across the investment chain to ease the identification of shareholders.

Finally the SRD II creates benefits for investors, because it increases the level and quality of engagement of asset owners and asset managers with their investee companies on contentious issues. The SRD II creates insight in the results and activities of investee companies due to the disclosure of material transactions and provides insight in the ultimate shareholders investee companies due to the identification rules. Finally the SRD II increases insight into the executive pay and the corporate performance of companies by voting rights on remuneration policies.

¹⁵ Art. 2:169 (3) Dutch Civil Code

¹⁶ Art. 2:169 (4), jo. 2:129 (6), 2:140 (5) and 2:15 (1a) Dutch Civil Code.



B. The Netherlands Stewardship Code

- Background

The Netherlands Stewardship Code ('the Code') has been published by Eumedion mid-2018 and entered into force as per 1 January 2019. Eumedion is an organization whose members are institutional investors and it promotes the interests of institutional investors in view of corporate governance and sustainability.

Society at large expects that both Dutch and non-Dutch asset owners (institutional investors) and managers that hold the overwhelming majority of the shares in Dutch listed companies and manage other people's and institutions' money, take their responsibility in playing an active role in promoting good corporate governance and sustainability practices at Dutch listed investee companies.

- Objective

The Code provides further guidance on the behaviour that is expected from asset owners and asset managers as shareholders of Dutch listed investee companies. The Code explains how asset owners (institutional investors) and asset managers can meet their stewardship responsibilities in a way that contributes to long-term value creation by Dutch listed investee companies and consequently to the long-term risk-adjusted returns on their investments. The Code also makes asset owners more accountable to their beneficiaries and asset managers more accountable to their clients. Furthermore, it accommodates companies in identifying which of its investors are committed to vote in an informed manner and are prepared to enter into a constructive dialogue. The Code should be read in conjunction with applicable legislation and regulations.¹⁷

What are the 11 principles of the Code?

The Code provides a clear-cut, state of the art set of (11) principles for stewardship by asset owners and asset managers towards Dutch listed investee companies. Asset owners and asset managers of Dutch listed companies are encouraged to commit to the principles of this Code.

¹⁷ Dutch Corporate Governance Code, SRD II, Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).



1. Having a stewardship policy - Asset owners and asset managers have a stewardship policy that describes how they integrate stewardship towards Dutch listed investee companies in their investment strategy. The stewardship policy should be aimed at preserving and enhancing value for their beneficiaries and/or clients, and should promote long-term value creation at Dutch listed investee companies. The stewardship policy should at least include the matters described in the principles of this Code and should be publicly disclosed on the asset owner's and asset manager's website. Asset owners and asset managers shall at least once a year publicly report on their website how they have implemented their stewardship policy, asset owners shall also report if and how they have integrated that policy into their arrangements with their asset managers.

Preference is given to the term 'stewardship policy' instead of 'engagement policy' that is used in the revised Shareholder Rights Directive. As described in section 2 of the preamble 'engagement' is considered to be an element of the broader concept of stewardship.

2. Monitoring on material issues - Asset owners and asset managers monitor their Dutch listed investee companies on material issues, including, but not limited to, the company's business model for creating long-term value, the company's strategy, performance and risks and opportunities, the capital structure, social and environmental impact, corporate governance and corporate actions such as mergers and acquisitions. Material issues are those matters that are likely to significantly affect the company's ability to create long-term value.

3. Enter into dialogues with executive/supervisory directors - Asset owners and asset managers are prepared to enter into dialogue with the executive and/or supervisory directors of their Dutch listed investee companies and are prepared to escalate their stewardship activities in case issues remain unresolved, where appropriate and at their discretion. In the event that an asset owner or asset manager enters into dialogue with a Dutch listed investee company on certain issues, outside the context of a general meeting, the asset owner or asset manager will disclose its full equity holding (long and short) at the request of that company.

4. Cooperate with other shareholders - Asset owners and asset managers cooperate with other shareholders in exercising stewardship activities towards Dutch listed investee companies, where appropriate and at their discretion.

5. Communicate with relevant stakeholders - Asset owners and asset managers communicate with relevant stakeholders of Dutch listed investee companies, where appropriate and at their discretion.



6. Identify, manage and remedy (potential) conflicts of interest - Asset owners and asset managers identify, manage and remedy actual and potential conflicts of interest in relation to their stewardship activities towards Dutch listed investee companies. Asset owners and asset managers publicly disclose their conflicts of interest policy in relation to their stewardship activities.

7. Exercise voting rights in an informed manner - Asset owners and asset managers exercise their voting rights and other rights attached to shares in Dutch listed investee companies in an informed manner. They publicly disclose on their website: a) at least once every quarter how they have voted their shares in Dutch listed investee companies, at an individual company level and per voting item, and b) at least annually a general description of their voting behaviour at general meetings of Dutch listed investee companies and an explanation of the most significant votes. In the event that the asset owner or asset manager casts an against or a withhold vote on a management proposal, he should explain the reasons for this voting behaviour to the company's board either pro-actively or at the request of the company.

8. Publicly disclose voting policy and how they use proxy research - Asset owners and asset managers publicly disclose their voting policy and at least annually if and how they use proxy research and/or voting services. Asset owners and asset managers that use proxy research and/or voting services ensure that their votes are cast in line with their own voting policy.

9. Consult the company's board prior to requesting an extraordinary general meeting or tabling a shareholder resolution. Asset owners and asset managers that consider exercising their right to submit a request for convening an extraordinary general meeting or for tabling a shareholder resolution at a general meeting of a Dutch listed investee company should have consulted the company's board prior to exercising this right.

10. Be present/represented at a general meeting if a resolution has been put on the agenda - If a resolution proposed by an asset owner or asset manager has been put on the agenda of a general meeting of a Dutch listed investee company, the asset owner or asset manager should be present or represented at that meeting in order to explain this resolution and, if necessary, answer questions about it.

11. Abstain from voting if their short position in the company is larger than their long position - Asset owners and asset managers will abstain from voting if their short position in the Dutch listed investee company in question is larger than their long position. Asset owners and asset managers should recall their lent shares before the voting record date for a general meeting of a Dutch listed investee company, if the agenda for that general meeting contains one or more significant matters.



Asset owners and asset managers should not borrow or lend shares for the primary purpose of exercising voting rights on these shares. Asset owners or asset managers who have lent shares will take reasonable steps to discourage that those shares are borrowed for the primary purpose of exercising voting rights.

What is the impact of the Netherlands Stewardship Code?

As from book year 2019 onwards, asset owners and asset managers are expected to report on their compliance with the principles and to disclose the specific information requested in the principles. While the Code's principles are principally focused on stewardship towards Dutch listed investee companies, the principles can also be applied to non-Dutch listed investee companies, as appropriate.

It is neither the asset owner's (institutional investors) nor the asset manager's role to manage the companies in which they invest. They do have, however, a role to play in monitoring the boards of those companies and that is why they need to gain understanding on how the boards fulfil their responsibilities.

This stewardship role of asset owners and asset managers includes the casting of informed votes at general meetings and the monitoring of and the engagement with listed companies on aspects related to the strategy, the performance and risks and opportunities of the company, the capital structure, the social and environmental impact and corporate governance.

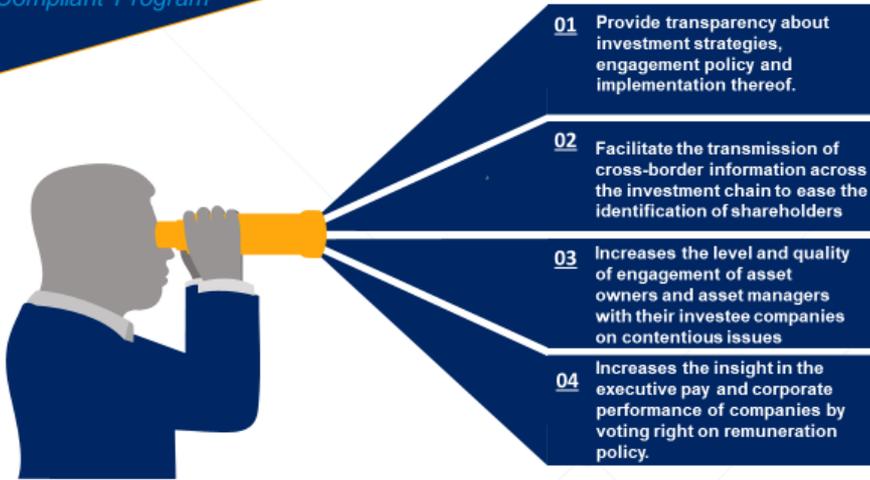
Engagement is conducting a meaningful dialogue with listed companies, amongst others related to issues that are the subject of votes at general meetings. This can help to build trust and develop mutual understanding that supports the objective of long-term value creation by companies. To advance the goals of engagement, asset owners and asset managers are, where appropriate and at their discretion, also expected to cooperate with other shareholders and to communicate with other stakeholders of the company.

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SRD II obligations for indicated parties

<p>1. Transfer or comply with requests related to the identification of shareholders</p>	<ul style="list-style-type: none"> ■ Applies to: Issuers and intermediary parties in the custody chain ■ Issuers may identify the shareholders by intermediary parties in the custody chain. Intermediary parties have to transfer requests for identification to the shareholder. ■ This includes information relevant for exercising shareholder rights and the result of the vote they made.
<p>2. Disclosure of engagement policy and alignment of the investment strategy</p>	<ul style="list-style-type: none"> ■ Applies to: Institutional investors and asset managers ■ Publish an engagement policy on their website and annually publish an explanation how the engagement policy has been implemented, and how the investment strategy and duration of the liabilities are aligned. ■ This includes the contribution to long and mid term performances of the portfolio. The engagement policy amongst others includes: an explanation of the supervision of the companies and strategy, the exercising of voting rights, cooperation with other shareholders and communication with other relevant parties of the company.
<p>3. Disclose of remuneration policy with respect to board members and supervisory board members</p>	<ul style="list-style-type: none"> ■ Applies to: Listed companies ■ Have a remuneration policy that is adopted by the general meeting of shareholders and disclose the remuneration policy on the website of the company after voting, including the date and voting results
<p>4. Disclose material transactions with related parties</p>	<ul style="list-style-type: none"> ■ Applies to: Listed companies ■ Publically disclose material transactions with related parties and obtain approval of the General Meeting of Shareholders or the Supervisory Board. ■ Material transactions: transactions with insider information, or transactions between the company and natural or legal persons that own at least 10% of the shares in the company, or transactions with (supervisory Board members) in case of conflict of interest. ■ Related parties: shareholders, creditors and other stakeholders.



11 Principles of the Code

1	Having a stewardship policy		5	Communicate with relevant stakeholders		9	Consult the company's board prior to requesting an extraordinary general meeting or tabling a shareholder resolution	
2	Monitoring on material issues		6	Identify, manage and remedy (potential) conflicts of interest		10	Be present/represented at general meeting if a resolution has been put on the agenda	
3	Enter into dialogs with executive/ supervisory directors		7	Exercise voting rights in an informed manner		11	Abstain from voting if their short position in the company is larger than their long position	
4	Cooperate with other shareholders		8	Publicly disclose voting policy and how they use proxy research				

