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LEGAL UPDATE

The Dutch Senate approves gender quota for large companies

Date: 30 September 2021

On 28 September 2021, the bill (*Wetsvoorstel) to improve gender diversity on corporate boards* was approved by the Dutch Senate. The new Act aims at improving gender diversity at the top of large companies.

The Act contains two measures to achieve this. The first is to introduce a gradual quota for companies whose shares or depositary receipts are listed on a regulated Dutch market. On appointing supervisory directors or non-executive directors to a one-tier board, these companies must ensure that at least one-third of the supervisory or non-executive directors are women and at least one-third are men. For a supervisory board composed of three members, this means that at least one member must be a woman and at least one member must be a man. A supervisory board composed of four members must appoint two women and two men. An appointment contrary to this statutory provision will be null and void but this will not affect the legal validity of the decision-making. This means that all resolutions adopted by the supervisory board or one-tier board in the period between the appointment and the appointment being declared null and void continue to be legally valid.

An exemption to the gradual quota may be made under exceptional circumstances. For instance, if an entire supervisory board of a company has resigned or if the company is in a bad way and cannot take the time to strike a proper balance. An exemption is also made for existing supervisory or non-executive directors whose performance is satisfactory. They may be re-appointed for up to eight years after their first appointment, even if such re-appointment does not contribute to an improved gender balance.

As a second measure, large public and private limited companies must formulate appropriate and ambitious gender balance targets to improve the gender balance at board, supervisory board and senior management level. Until 1 January 2020, a target scheme was in place at large public and private limited companies based on an apply-or-explain principle. This is now being replaced by a stricter scheme with increased reporting obligations and more enforcement powers. As well as there being gender balance targets, a plan must be drafted on how to achieve those targets. Companies must report their targets and the efforts made, in a specific year, to achieve them in their management report. Added to that, they must report to the Dutch Social Economic Council ("SER") on an annual basis. A company is classified as '*large'* if the financial statements meet at least two of the following three criteria for two years running: (i) a balance sheet total of more than 20 million euros, (ii) net sales of over 40 million euros and/or (iii) on average 250 or more employees during the financial year.

The definitive date for this to enter into force is not yet known. The target date is 1 January 2022.

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