



Mr. S. Dekker
Minister for Legal Protection
Ministry of Justice and Safety
PO Box 20301
2500 EH Den Haag
The Netherlands

7 February 2019

Dear Mr. Dekker,

USS and RPMI Railpen's response to a public consultation on a draft bill to introduce a response time of a maximum of 250 days that can be invoked by the executive board of a Dutch listed company

USS and RPMI Railpen welcome the opportunity to comment on the draft bill, published on 7 December 2018, which allows Dutch listed companies to invoke a statutory response time of up to 250 days, and corresponding suspension of shareholder rights, in the situation of shareholder activism or a hostile public bid.

By way of background, Universities Superannuation Scheme Ltd (USS) is the largest pension scheme in the UK, with total fund assets of over €73 billion. The scheme's trustee is Universities Superannuation Scheme Ltd (USSL), a corporate trustee, which provides scheme management and trusteeship. USS Investment Management, a wholly owned subsidiary of Universities Superannuation Scheme Ltd, is the principal investment manager and advisor to USSL. As an institutional investor that takes its fiduciary obligations seriously, USS aims to be an engaged and responsible steward of the companies and assets in all markets in which we invest, taking into account local market standards and best practice. RPMI Railpen oversees the management of around €32bn on behalf of the UK Railways Pension Trustee Company Limited.

We are writing to express our significant concerns relating to this proposed new legislation. It is our view that this is an unduly harsh provision that damages shareholder protections to the detriment of good corporate governance, efficient markets and sustainable value creation. Indeed, this proposal runs counter to the growing emphasis in European financial markets on investor stewardship—which encourages active and responsible engagement and exercising of shareholder rights.

We believe an introduction of such an extreme provision would work against the interests of institutional investors and their beneficiaries—including pension funds and pensioners. It could lead to the entrenchment of ineffective company managers and disenfranchisement of institutional investors by breaching the chain of accountability between those who manage the capital and those

who provide it. This would ultimately carry economic disadvantages and put Dutch companies and the Dutch market in an unfavourable light from the perspective of the global institutional investment community which, in turn, could have a detrimental long-term impact on stakeholders in the Dutch economy such as employees.

As you know, almost 90% of the shares in Dutch listed companies are owned by institutional investors, many of whom are based outside the Netherlands. Given the open nature of the Dutch economy it is important to maintain the long-term trust of these investors in the Dutch corporate governance system.

The bill's objective is to promote a careful decision-making process in situations of shareholder activism and a hostile takeover. However, in line with the comments already provided to you by the Dutch shareholder association Eumedion, both USS and RPMI Railpen are of the opinion that Dutch listed companies already have adequate means to protect themselves against short-term oriented shareholder activists.

As USS learnt from its engagement with AkzoNobel at the time of the PPG approach, when we attempted to nominate an independent director to the Supervisory Board, many Dutch listed companies already have provisions in their articles of association which make it very difficult for shareholders to nominate their own candidates for the executive and supervisory board and to dismiss incumbent executive or supervisory board members.

Additional legislation is therefore not deemed necessary as it would negatively impact the position of shareholders to hold management to account by diluting the checks and balances that should be in place in any well-functioning national corporate governance system.

To conclude, a suspension of shareholder rights would be viewed as a backward step for Dutch corporate governance and effective stewardship and will lessen the confidence of national and international investors in the Dutch market. We are therefore of the view that the introduction of a statutory response time is unwarranted and would respectfully encourage you to reconsider this proposal.

Yours sincerely



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