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Financial reporting requirements for Dutch listed and other public interest entities

SERIE 2020/a

Entities not being an investment entity with shares listed on a regulated market in the EU/EER

For accounting periods beginning on or after 1 January 2020

December 2020

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Introduction

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

This publication is one of a series[1] that provides an overview of the financial reporting requirements that Dutch Public Interest Entities (PIEs) need to comply with. The aim of this particular publication is to provide a comprehensive list of specific[2] financial reporting requirements that entities whose registered office is in the Netherlands, with shares[3] listed in a regulated market in the EU/EER and that are not an investment entity[4] (hereafter referred to as 'listed entities'), need to apply.

This publication covers requirements for financial years starting on or after 1 January 2020.

Regulated market in the EU/EER

As referred to in article 4 paragraph 21 of Directive 2014/65/EU, a regulated market of a Member State of the European Union 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)[5] .

[1] This publication forms part of a series of publications which collectively, list the various reporting requirements that all Dutch listed and other public interest entities are required to apply. The publications are as follows:

a) Entities not being an investment entity with shares listed on a regulated market in the EU/EER
b) Entities not being an investment entity with securities, other than shares, listed on a regulated market in the EU/EER
c) Entities not being an investment entity with shares listed on a MTF and other securities listed on a regulated market in the EU/EER
d) Entities not being an investment entity with shares listed outside the EEA on a market, comparable to a regulated market
e) Listed investment entities
f) Other public interest entities as designated by article 2:398-7d NCC

[2] 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.

[3] This includes both shares and depositary receipts.

[4] An investment entity is an entity that is used for collective investment in order that the participants can share the proceeds of the investments.

[5] https://registers.esma.europa.eu/publication; select MiFID/UCITS/AIFMD/TICOU entities.

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1. Reporting requirements for listed entities

In general, the 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 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 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).

1.1 Annual financial reporting

Pursuant to article 5:25c Wft, each listed entity of which the Netherlands is the home Member State must make its annual financial reporting publicly available within four months of the end of the financial year. This 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 2.2.7).

Furthermore, pursuant to article 2:135b NCC, a listed entity 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).

A listed entity 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 within six months of the end of the financial year, pursuant to article 5:25e Wft (refer to Chapter 7).

Listed entities must prepare the financial statements, management board report and other information in accordance with Part 9, Book 2 NCC. The consolidated financial statements 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). A listed entity 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 companies 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

Pursuant to article 5:25d-1 Wft, a listed entity 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.

If a listed entity is 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). For the half-yearly financial statements of a listed entity that does not have to prepare consolidated financial statements, i.e. does not prepare half-yearly financial statements in accordance with IAS 34, 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.

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 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 Language

The management board report shall be in Dutch, unless the general meeting has decided to use another language (article 2:391-1 NCC).

2.1.3 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. Incidentally, the legislative history shows that it is not the intention of the legislator for the management board report to contain information that belongs in the financial statements (MvT by bill 29 737, no. 3, p. 25).

2.1.4 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 information to be provided

In order to be able to interpret the financial statements in a meaningful manner, the management board report must contain general information about the legal entity and the associated enterprise(s) (article 400.108 DAS). When discussing (in the management board report) the backgrounds and causes of developments in the financial data, as included in the financial statements, attention should at least be paid to the following aspects (article 400.109 DAS):

- 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
- Cash flows and financing requirements.

Attention should also be paid to the actual development during the year under review of important issues on which expectations were expressed in the previous management report or a significant degree of uncertainty was mentioned (article 400.110 DAS). The management board report also contains announcements regarding (article 2:391-2 NCC):

1. The expected course of business
2. The work 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 events
In the section on the expected course of events, in so far as there are no important interests against it, special attention should be given to:

- Investments
- Financing
- Staffing, and
- Conditions on which the development of turnover and profitability depends.

Re 2. Research and development activities
The management board report shall contain information on the work in the field of research and development. It is recommended that the announcements provide information on the nature of the research and development activities and their significance for the position and expected course of affairs of the legal entity (article 400.125 DAS).

Re 3. Special events not to be taken into account in the financial statements
It shall be disclosed to what extent particular events, not required to be disclosed in the financial statements, have affected expectations. This refers to events occurring after the balance sheet date.

2.2.2 Information about financial instruments

With regard to the use of financial instruments by the legal entity, the management board report must pay attention to the objectives and policy regarding the management of risks relating to financial instruments (article 2:391-3 NCC). This concerns the objectives and policy of the legal entity and the group entities whose financial data are included in its financial statements. Attention should be paid to the policy on hedging risks associated with all major types of intended transactions. After all, the use of financial instruments as tools for hedging financial risks can give rise to risks. Attention should also be paid to the price, credit, liquidity and cash flow risks incurred by the legal entity and the group entities.

2.2.3 Risk paragraph

The management board report also provides a description of the main risks and uncertainties confronting the legal entity (article 2:391-1 NCC). In DAS 400 this legal requirement is further elaborated. According to the DASB, it is not about providing an exhaustive explanation of all possible risks and uncertainties, but about a selection and representation of the most important risks and uncertainties facing a legal entity (article 400.110a DAS). Uncertainties arise as a result of the complete or partial absence of information about, insight into or knowledge of an event, its consequences, or the probability that an event will occur. Risks are the effects of uncertainties on the achievement of objectives. In the selection of the main risks and uncertainties, at least the following categories are important (article 400.110b DAS):

- 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).

Furthermore, the willingness to hedge or not hedge risks and uncertainties (so-called risk appetite) should be described in broad terms. A legal entity must also provide the following information (article 400.110c DAS):

- A description of the measures taken to control the main risks and uncertainties. If no control measures have been taken for one or more of the main risks and uncertainties, this fact must be explained;
- A description of the expected impact on the results and/or financial position should one or more of the principal risks and uncertainties materialise;
- A description of the risks and uncertainties that have had a significant impact on the legal entity during the past financial year, and their consequences for the legal entity; and
- Whether and, if so, what improvements have been or are being made to the legal entity's risk management system.

A legal entity should preferably indicate how the risk management system is embedded in the organisation and what measures ('soft controls') the legal entity has taken to influence the culture, behaviour and motivation of its employees.

The extensiveness of the information to be provided is partly determined by the size and complexity of a legal entity and its activities and the related risks and uncertainties (article 400.110c DAS).

2.2.4 Information on social aspects of entrepreneurship

In order to give a true and fair view, the law requires a balanced and complete 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 entity and group entities. Where necessary for proper understanding, the analysis includes both financial and non-financial performance indicators, including environmental and personnel matters (article 2:391-1 NCC). The DASB recommends that the management board report should also include an explanation of the main corporate social responsibility aspects relevant to the legal entity, including the (international) chain management of the legal entity (article 400.114 DAS). Responsible chain management is understood to mean the voluntary but not non-binding commitment of legal entities to exert a positive influence on the social policy and/or the environmental policy of their suppliers and customers. In the context of corporate social responsibility, it is recommended that the following aspects be included in the reporting (the management board report and/or a separate report) (article 400.118 DAS):

- General social aspects, such as the chain in which a legal entity operates and the products/services offered, the influence of the main problems and challenges on the strategy, the role of stakeholders, governance and ethics, and the interrelationship between the aspects listed below;
- Environmental aspects, e.g. information on consumption, discharges, emissions and waste and what protective measures have been taken to prevent environmental pollution;
- Social aspects, which may include labour matters, including employment conditions, employment, social security, diversity and fulfilment, as well as information on human rights, fundamental principles and rights at work and social inclusion; and
- Economic aspects, including both financial and non-financial aspects. Financial aspects include, for example, financial contributions to society (e.g. taxes) and to stakeholders. Non-financial aspects include the creation and dissemination of knowledge through research and development and training.

When reporting on these aspects, it is recommended that a distinction be made between the entity's own business operations and business activities on the one hand and the chain in which a legal entity operates on the other hand (article 400.119 DAS).

It is also recommended that attention be paid to (1) the dialogue with stakeholders, (2) which policy is pursued in relation to the aspect and the main considerations herein, (3) the organisation (governance structure and management information systems), (4) the implementation of the policy and the results achieved, and (5) the expectations with regard to internal and external developments that may have an effect on the societal aspects of entrepreneurship referred to above (article 400.120 DAS). The inclusion of segment information may be important in this respect.

A conceptual framework for the preparation of the report on social aspects is included in the Guidance on Corporate Social Responsibility Reporting ("*Handreiking voor Maatschappelijke verslaggeving"*, which is included in DAS 920).

2.2.5 Information about unbalanced distribution of seats on the Management Board and Supervisory Board

Book 2 NCC contained, among other things, regulations for a balanced distribution of the seats of the management board and the supervisory board (articles 166 and 276 NCC). If the seats were not equally divided between women and men, an explanation had to be provided in the management board report (article 2:391-7 NCC). These regulations lapsed with effect from 1 January 2020.

Based on earlier recommendations by the Social and Economic Council (SER), a bill was submitted to the (Dutch) House of Representatives in November 2020. This bill introduces a statutory quota of at least one-third women/men on the supervisory boards of listed entities (new article 2:142b NCC). If a supervisory board of more than one person does not consist of at least one-third women and one-third men, a person whose appointment will not result in a more balanced distribution cannot be appointed as supervisory board member, unless it concerns a reappointment within eight years or in case of exceptional circumstances. The same applies for non-executive board members if the entity has a one-tier board. Furthermore, as a large company a listed entity must have appropriate and ambitious targets for a balanced distribution of the seats of the management board and senior management.

According to this bill within ten months after year-end a listed entity must report to the SER (new articles 2:166 and 2:276 NCC):

- the number of female and male supervisory board members, management board members and senior management;

- the targets and the plan to achieve them; and
- the reasons if the targets are not achieved.

It is not yet known when the bill will be implemented.

2.2.6 Additional information to be provided

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 entities, decisions are in force that relate to:

- Information on compliance with the CGC
- Including a corporate governance statement
- Information pursuant to Article 10 Takeover Decree Directive, and
- Providing non-financial information in a non-financial statement.

Information on compliance with the Netherlands Corporate Governance Code

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 2:391-5 NCC). As a result, a Dutch listed entity must state in its management board report whether it has complied with certain parts of the aforementioned 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 below. 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.

Including a corporate governance statement

Listed entities are obliged to publish a 'corporate governance statement' which forms part of the management board report. This statement 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).

With reference to the above contents, according to the Decree on the contents of management board reports, the following statements form part of the corporate governance statement (articles 3, 3a and 3b Decree on the contents of management board reports):

i. Compliance with the principles and best practice provisions of the CGC and any other voluntary codes of conduct, as well as all relevant information about the corporate governance practices that the entity voluntarily applies. 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;
ii. 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;
iii. 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;
iv. The composition and functioning of the executive board and the supervisory board and their committees;
v. 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;
vi. To the extent applicable, certain announcements prescribed in Decree article 10 Takeover Directive 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 2:392-1d NCC, with a description of the nature of that right.

Large listed entities (i.e. entities that do not meet the criteria for medium-sized legal entities under article 2:397 NCC) are required to disclose the diversity policy with regard to the composition of the management board and the supervisory board (article 1.4 Decree on the contents of management board reports). All non-large listed entities are exempt from this requirement.

Regarding the diversity policy (point v.), the following can be noted:

- 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 CGC also contains best practice provisions (2.1.5 and 2.1.6) on diversity policy and accountability. Clause 2.1.5 states that the policy should deal with the specific objectives and the relevant aspects, such as nationality, age, gender and educational background and professional experience. If the composition of the management board and the supervisory board deviates from the objectives of the entity's diversity policy and/or from the target figure for the ratio of men to women, provision 2.1.6 states that the corporate governance statement shall explain: the current situation, what measures will be taken to achieve the desired situation and

in what period of time.

The communication on the Article 10 Takeover Directive Decree referred to in point vi. is described in more detail in the following section. A number of announcements referred to in this Decree must be included in the corporate governance statement.

Information pursuant to Article 10 Takeover Directive Decree
A listed entity has the obligation to provide information in the management board report that is mentioned in the 'Decree Article 10 Takeover Directive' (Bulletin of Acts and Decrees 2006, 191). This Decree concerns the implementation of article 10 of EC Directive 2004/25/EC on takeover bids. In the management report, these entities have to report on:

- The capital structure of the entity;
- Restrictions on the transfer of (depositary receipts for) shares in the entity;
- Participating interests in the entity for which a notification obligation exists in accordance with Wft (articles 5:34, 35 and 43 Wft)*;
- Special control rights attached to shares and the name of the entitled party*;
- A mechanism for controlling option schemes for employees;
- Any restrictions on voting rights, terms for exercising voting rights and the issue of depositary receipts for shares*;
- Any agreement with a shareholder which may give rise to a restriction on the transfer of (depositary receipts for) shares or a restriction on voting rights;
- Regulations concerning the appointment and dismissal of directors and supervisory directors and amendment of the articles of association*;
- Powers of the management board, in particular to issue and repurchase shares*;
- 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
- 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.

Providing non-financial information in a non-financial statement
Pursuant to the Decree on the Disclosure of Non-Financial Information, listed entities 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 report. The head of the group will then provide the non-financial information for the entire group.

According to article 3 of the Decision, a legal entity shall at least disclose:

- 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 legal entity. This can only be the case in exceptional situations. The omission of information should not prevent a true and balanced understanding of the development, results, position of the legal 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.

2.2.7 Statements made by the management board
Article 5:25c-2c Wft requires that the annual financial reporting of listed entities 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.

3. Supervisory board report

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. These provisions apply to financial years commencing on or after 1 January 2017.

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).

Accountability for supervision exercised

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).

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

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'.

4. Financial statements

4.1 General
Listed entities 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. Listed 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). For listed entities that prepare consolidated financial statements the combinations that are available[6] under NCC are:

[6] 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 listed entities.

	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.

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

Article 2:362-9 NCC determines that a legal 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 2. 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.

4.3 Combination 3

4.3.1 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 legal 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 a legal entity that prepares the financial statements in accordance with IFRS-EU applies a limited number of the provisions of Part 9, Book 2 NCC. As explained under combination 2, this only relates to the separate financial statements and hence 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.

4.3.2 Participating interests

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 at net asset value and to apply the IFRS-EU measurement policies that have been applied in the consolidated financial statements when determining the net asset value. Article 100.107 DAS clarifies that these participating interests can also be presented according to the equity method, in addition to measurement at net asset value. The value for which these participating interests are included in the separate financial statements is determined on the basis of the policies as applied in the consolidated financial statements. The presentation method has no influence on this. For example, in accordance with the consolidated measurement policies, when presenting according to the equity method, an impairment of goodwill is not reversed. For that reason, this is also not carried out when measuring at net asset value. The difference between the two options therefore only concerns the presentation of the goodwill. In case of measurement at net asset value, the goodwill is presented separately under the intangible fixed assets. When applying the equity method, goodwill is part of the participating interest item. By applying one of these alternatives, the equality can be maintained between equity in the separate financial statements and equity in the consolidated financial statements.

This form of application of the equity method differs from the equity method as applied under IFRS (IAS 28) for the measurement of participating interests that are subject to significant influence on the business and financial policy, the so-called 'associates'. We emphasize that in combination 3, non-consolidated participating interests that qualify as 'associates' or as 'joint ventures' are recognised, measured and presented in the separate financial statements in accordance with the equity method as applied under IFRS. This is in line with the recognition of those non-consolidated participating interests in the consolidated financial statements under IFRS.

4.3.3 Expected credit losses

In the measurement of the consolidated participating interests in the separate financial statements using the equity method, the participating interest is considered as a combination of assets and liabilities and not as an indivisible asset. This generally means that expected credit losses as prescribed in IFRS 9 on loans and receivables from participating interests in the separate financial statements are eliminated. Such an elimination follows from the principles of DAS 260 'Treatment of results on intragroup transactions in the financial statements'. The elimination can be processed in the book value of the participating interest or in the book value of the loans and receivables (article 100.107a DAS). By processing this elimination no difference will be caused between the equity and result in the separate financial statements and the equity and result in the consolidated financial statements.

4.3.4 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.

4.3.5 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 legal 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 recognised 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 legal entity measures the remaining interest at fair value at the moment control is lost. The change in value of the interest is recognised through profit or loss. Pursuant to article 2:390-1 NCC, the legal 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 recognised through equity (article 214.312b DAS).

4.4 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.

4.5 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.

4.5.1 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 recognised in equity until sale (or impairment). Under IFRS-EU this can lead to a negative amount under equity. Part 9, Book 2 NCC states that a negative revaluation reserve is not allowed though. 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 legal 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 positions of the legal reserves should be deducted from the other freely distributable reserves. Therefore, there is only a difference in presentation under shareholders' equity. So, these treatments do not lead to a different 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).

4.5.2 Revaluation reserve for the application of a 'deemed cost'

A legal 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 recognised 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 legal 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 amortised and/or is disposed of (article 240.224a DAS).

4.5.3 Events after the reporting date

Under IAS 10 'Events After the Reporting Period' a legal entity shall recognise 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 recognised pursuant to article 2:362-6 NCC, are not recognised (article 160.202a DAS).

5. Other information

The law also prescribes that the legal entity must add some information of a diverse nature to the financial statements and management board report in the 'Other information' section. This concerns the following information (article 2:392-1 NCC):

a. The auditor's report referred to in article 2:393-5 NCC or a statement as to why it is missing;
b. A statement of the rules laid down in the articles of association regarding the appropriation of profit;
c. A statement of the rules laid down in the articles of association regarding the contribution to a deficit of a cooperative or mutual insurance company, insofar as these deviate from the statutory provisions;
d. 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;
e. 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
f. 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 d., if a right is embodied in a share, the number of such shares each of the entitled parties holds shall be stated. If such a right accrues to a company ("*vennootschap*"), association ("*vereniging*"), cooperative ("*coöperatie*"), mutual guarantee company ("*onderlinge waarborgmaatschappij*") or foundation ("*stichting*"), the names of the directors thereof shall also be communicated (article 2:392-3 NCC). These provisions 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. No exemption can be granted if this information must be reported in the management board report pursuant to article 2:391-5 NCC (article 2:392-4 NCC). Listed entities are obliged to include this information in the management board report as part of the corporate governance statement (refer to paragraph 2.2.6).

6. Remuneration report/ compensation statement

6.1 General

Listed entities 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, listed entities 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. This compensation statement does not replace but can be combined with the remuneration report that is required by the CGC. In practice, this is usually done. The external auditor has to audit whether the compensation statement includes the required information.

Note that the legislative amendments have entered into force on 1 December 2019. According to the Explanatory Memorandum to the Decree establishing the date of entry into force of the Act of 6 November 2019 (Bulletin of Acts and Decrees 2019, 436), a compensation statement for the 2019 financial year had to be prepared for the first time and submitted to the general meeting in 2020, even though no new remuneration policy had yet been adopted in accordance with the Implementation Act. In that case, the first compensation statement could not yet comply with the parts referring to the new remuneration policy.

The European Commission is still working on non-binding guidelines on the exact content and structure of the compensation statement, the final version of which is expected to be published in fall 2020.

6.2 Remuneration policy

According to article 2:135-1 NCC, a listed entity should have a policy regarding the remuneration of the management board, and this policy should cover the subjects described in article 2:135a-6 NCC. These subjects are:

a. An explanation of the way in which the remuneration policy contributes to the entity's business strategy, long-term interests and sustainability;
b. A description of the various components of the fixed and variable remuneration, stating their relative share;
c. An explanation of the way in which the remuneration policy takes account of the remuneration and terms of employment of the entity's employees;
d. An explanation of the way in which the remuneration policy takes account of (i) the identity, mission and values of the entity and its affiliated enterprise, (ii) remuneration relationships within the entity and its affiliated enterprise, and (iii) social support;
e. If the entity grants variable remuneration: (i) the financial and non-financial targets set by or on behalf of the entity on which the granting of the variable remuneration depends, and an explanation of the way in which these targets contribute to the objectives referred to under a., (ii) the methods to be used to determine to what extent the financial and non-financial targets set by or on behalf of the entity have been achieved, (iii) the period for which the remuneration is payable, if any, and (iv) a description of the possibility of reclaiming the remuneration referred to in article 2:135-8 NCC;
f. If the entity grants share-based remuneration: (i) a description of the remaining term of the rights not

yet exercised, (ii) a description of the period during which the management board member may not yet transfer the acquired shares insofar as applicable, and (iii) an explanation of the way in which the share-based remuneration contributes to the objective referred to under a);

g. A description of the term of the contracts with management board members and the applicable periods of notice, the main features of supplementary pension schemes and early retirement schemes, the conditions for termination, as well as the payments relating to the termination;
h. A description of the decision-making process used to adopt, review and implement the remuneration policy;
i. If the policy is revised: (i) a description and explanation of the significant changes and (ii) a description and explanation of how shareholders' votes and views on the remuneration policy and the compensation statements since the previous vote on the remuneration policy at the general meeting have been taken into account.

If the entity has established a works council by virtue of statutory provisions, it must be given the opportunity to advise on this. If the advice has not been followed or has not been followed in full, a written substantiation of the deviation must be offered to the general meeting (article 2:135-3 NCC). Under exceptional circumstances it is permitted to temporarily deviate from the remuneration policy (at the latest until a new policy has been adopted). The remuneration policy determines the procedure to be followed and the parts from which deviation is permitted (article 2:135-4 NCC).

The remuneration policy is submitted to the general meeting for adoption at least once every four years (article 2:135a-1 NCC). If the policy is not adopted by the general meeting, the entity shall remunerate the management board members in accordance with the existing policy or practice and submit a revised policy for adoption to the next general meeting (article 2:135-9 NCC). The remuneration policy and the date and outcome of the vote on that policy shall be published on the entity's website after the general meeting (article 2:135a-7 NCC).

Supervisory board
The requirements of article 2-135a NCC concerning the remuneration policy equally apply to the remuneration of the supervisory board (article 2:145-2 NCC).

6.3 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 (articles 2:135b-3 and 2:145-2 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;
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;

• 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 2:135b-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).

6.4 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 the new 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, vi) 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

7.1 Entities active in the extractive industry or in the primary forest logging

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*"; in this paragraph referred to as 'the Decree'), listed entities active in the extractive industry or in the primary forest logging shall prepare a report on payments to government entities and publish that report. 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 listed 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.

Listed 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 of the Financial Supervision Act (article 6 of the Decree).

The report must be made publicly available and sent to the AFM within six months of the end of the financial year (article 5:25e and m Wft).

7.2 Banks and investment firms

Banks (as referred to in article 1:1 Wft) and investment firms (as referred to in article 4-1.2 of the Capital Requirements Regulation) are also subject to specific provisions to disclose specific country-by-country information (article 3 Decree Implementing Disclosure Requirements of the Capital Requirements Directive). They are required to disclose the following information on a consolidated basis, for each state in which they or their participating interests have an establishment:

a. The name, nature of the activities and geographical location
b. The turnover
c. The average number of employees, expressed in full-time equivalents
d. The profit or loss before tax
e. The tax on profit or loss, and
f. Government subsidies received.

This information can be included in the financial statements or in a separate report, which in the case of a statutory audit is audited by an external auditor.

8. Deadlines

8.1 Preparation of financial statements

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).

8.2 Disclosure period for annual accounts

The annual accounts must be made 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 a public limited liability company ("*naamloze vennootschap, N.V.*") 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 with its registered office in the Netherlands 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). From 1 January 2020, listed entities 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).

8.3 Electronic filing

EU Regulation 2018/815 of 17 December 2018 stipulates that starting for financial years as from 1 January 2020 listed entities 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. For financial years 2020 and 2021 only a few notes have to be marked up in the financial reports. This is further specified in a separate Annex to the Regulation.

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

In general, the consequences for non-compliance with financial reporting obligations for listed entities are the same as for non-listed entities. Differences for listed entities are:

- Additional situations that constitute an economic offence; and
- Term for institution of annual account proceedings before the Enterprise Chamber.

9.1 Criminal penalties

Failure to comply with certain statutory provisions concerning the financial statements, as laid down in Part 9, Book 2 NCC, constitutes an economic offence (article 1 sub 4 of the Economic Offences Act). In addition to the failures for non-listed entities, for listed entities these are:

- Compliance with an order of the Enterprise Chamber by a listed 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 a listed 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 Enterprise Chamber

If the financial statements of a listed entity do not meet the statutory requirements, interested parties may institute annual account proceedings before the Enterprise Chamber of the Amsterdam Court of Appeal (Book 2 Title 16 NCC Judicial procedure). 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 within nine months after the discovery of a shortcoming that was not apparent from the financial statements. For non-listed entities this term is two months.

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

10.1 General

The most important task of the AFM under the Wtfv concerns the supervision of the application by listed entities 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);
- 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 a listed 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 a listed 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 phasse 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 requirements to be imposed on it, it will notify the listed entity of this opinion in writing. The AFM may accompany this notification with a recommendation to the listed entity to publish a notice in which the entity (article 3-2 Wtfv):

- 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 of IFRS-EU.

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

10.2 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 Wtfv).

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
Annual reporting		
Preparation by the board and publication by the entity	Within four months after the end of the financial year	• Annual financial statements with auditor's report; • Annual management board report; • Report of supervisory board; • Other information; • Statements made by management board (refer to paragraph 1.1); • Compensation statement.
	Within six months after the end of the financial year	• Report on payments to governments (certain listed entities, refer to paragraph 7.1).
Adoption and voting by general meeting	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	• Adoption: Annual financial statements with auditor's report • Voting: Profit appropriation and an advisory vote on the compensation statement. At least every four years approval of remuneration policy.
Filing with AFM	Within four months of the end of the financial year	• Annual financial statements with auditor's report • Annual management board report • Other information.
	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	• Adopted financial statements with auditor's report • Annual management board report • Other information.
	Within six months after the end of the financial year	• Report on payments to governments (certain listed entities, refer to paragraph 7.1).
Half-yearly reporting		
Preparation and publication	As soon as possible, but no later than 3 months after the end of the first six months financial period	• Half-yearly financial statements • Half-yearly management board report • Statements made by management board (refer to paragraph 1.2) • If audited /limited reviewed, the report of the auditor.

Appendix 2 List of abbreviations

AFM	Autoriteit Financiële Markten (Netherlands Authority for the Financial Markets)
AMvB	Algemene Maatregel van Bestuur (Decree)
Bpp /bpp	Best practice provision
CGC	(Netherlands) Corporate Governance Code
DAS	Dutch Accounting Standards
DASB	Dutch Accounting Standards Board
EEA	European Economic Area
EER	Europese Economische Ruimte
ESMA	European Securities and Markets Authority
EU	European Union
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
MTF	Multilateral Trading Facility
NCC	Netherlands Civil Code
NL GAAP	Netherlands Generally Accepted Accounting Principles
PIE	Public Interest Entity
SER	Sociaal-Economische Raad (Social and Economic Council)
Wft	Wet op het financieel toezicht (Financial Supervision Act)
Wtfv	Wet toezicht financiële verslaggeving (Financial Reporting Supervision Act)