



ALERT SERVICE

28 MARCH 2024

VOPAK N.V.

Agenda AGM, 24 April 2024

1	Opening	
2	Discussion of the management report for the 2023 financial year	
3	Implementation of the remuneration policy for the 2023 financial year	Advisory vote
4	Discussion and adoption of the financial statements for the 2023 financial year	Resolution
5a.	Explanation of policy on additions to reserves and dividends	
5b.	Proposed distribution of dividend for the 2023 financial year	Resolution
6.	Discharge from liability of the members of the Executive Board for the performance of their duties in the 2023 financial year	Resolution
7.	Discharge from liability of the members of the Supervisory Board for the performance of their duties in the 2023 financial year	Resolution
8.	Re-appointment of Mr. B.J. Noteboom as member of the Supervisory Board	Resolution
9.	Appointment of Mr. R.L. de Visser as member of the Supervisory Board	Resolution
10.	Proposal to amend the Royal Vopak's articles of association	Resolution
11.	Proposal to authorize the Executive Board to acquire ordinary shares	Resolution
12.	Appointment of PricewaterhouseCoopers Accountants N.V. as the external auditor for the 2025 financial year	Resolution
13.	Cancellation of ordinary shares	Resolution
14.	Any other business	
15.	Closing	

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EXPLANATION

3. Implementation of the remuneration policy for the 2023 financial year

According to the 2023 remuneration report, the total IFRS costs for the termination benefits granted to Executive Board member Frits Eulderink amount € 4.861. Mr. Eulderink will step down as Chief Operating Officer and Executive Board member on 24 April 2024 at the AGM of Vopak. He will remain available and keep contributing to Vopak's strategy execution and among others certain ESG and energy transition projects until June 2025. The consecutive change of the board composition from a three-person (CEO, CFO and COO) to a two-person (CEO and CFO) Executive Board is one of the steps to streamline the organisational structure in line with Vopak's strategic goals. This will further simplify the structure, enhance execution capabilities throughout the organization and improve efficiency, according to the Vopak Supervisory Board.

The total IFRS costs for the termination benefits granted to Mr. Eulderink consist of the following elements: i) base salary, pension contributions and other fixed compensation for his advisory role in the period 25 April 2024 until 30 June 2025 (€ 1.05 million), ii) enforceable contractual obligations arising from the indefinite labour agreement when he joined Vopak in 2009, i.e. a notice period of 12 months and a severance arrangement of 12 months' base salary (equivalent to 2x base salary: € 1.248 million), iii) accelerated costs for the unvested 2022-2024 and 2023-2025 LTIP grants which are expected to vest in 2025 and 2026 respectively (€ 0.629 million) and iv) the estimated total tax levy on the payments and (estimated) vesting of the afore-mentioned LTIPs required under the Dutch income tax law regarding excessive severance payments (€ 1.924 million).

Reasons for alert

- As also identified by the Dutch legislator, the total termination benefits for Mr. Eulderink can be characterised as "excessive".
- Mr. Eulderink will receive *de facto* a severance payment of two times his last base salary. The disclosures regarding this severance payment have been confusing. The explanatory notes to the 2010 Vopak AGM agenda (the year that Mr. Eulderink was appointed as Executive Board member) only mention that the employment contract with Mr. Eulderink contains a severance arrangement that is in conformity with the guidelines of the Corporate Governance Code (i.e. a maximum of 12 months' base salary). The notice period of 12 months was not mentioned. Only the Vopak Annual Report 2022 mentions that the employment agreement of Mr. Eulderink includes a notice period of 12 months and a severance arrangement with a maximum of 12 months' base salary in case of early termination. The Annual Report 2023 includes yet another section (repeated on the [Vopak website](#)). Now the severance payment has been characterised as a deviation from the Dutch Corporate Governance Code: "Best practice provision 3.2.3 (severance payment exceeding one year's salary due to the contractual obligation arising from an in 2009 concluded employment agreement)". The company therefore failed to provide consistent information on the (potential) costs of the termination of the contract with Mr. Eulderink.
- It remains unclear whether the company was obliged to invoke the notice period of 12 months, while at the same time Mr. Eulderink will remain in office (and Vopak employee) until 30 June 2025 (i.e. he is paid twice for the same period).

10. Proposal to amend the Royal Vopak's articles of association

Vopak proposes to amend its Articles of Association to include (a.o.) i) the possibility to hold virtual-only shareholders' meetings if and when future legislation provides for such possibility and ii) to increase the threshold for submitting shareholder proposals from 1% to 3% of the issued capital.

Reasons for alert

- **Regarding the proposed inclusion of the virtual-only shareholders' meeting form:** *although the company aims to publish a protocol for virtual general meetings in the upcoming weeks (subject to internal approvals) in which the Executive Board commits to not convene virtual shareholders' meetings "with the deliberate intent of discouraging shareholder engagement or dialogue nor designed to disenfranchise shareholders of their statutory rights", no reference to this protocol is included in the proposed Articles of Association itself and is therefore not legally binding. Dutch jurisprudence with respect to disputes on the explanation of the content of the Articles of Association is rather clear: the text of the Articles of Association is leading. This means that the possibility to hold virtual-only shareholders' meetings should be interpreted on the basis of*

the proposed article itself and not also on the basis of a 'stand-alone' protocol (i.e. without any reference to it in the Articles of Association).¹

- *According to the protocol the Executive Board could consider it to be appropriate to convene a virtual-only general meeting for reasons of 'global reach' and 'accessibility', while these reasons can very well be accommodated by convening a hybrid general meeting instead of a virtual-only meeting.*
- *The Executive Board of Vopak has full discretion to amend or supplement the protocol from time to time, without any consultation of the shareholders and/or the shareholders' meeting. This is not aligned with [Eumedion's position](#) on convening virtual-only shareholders' meetings.*
- *As the bill on holding a virtual-only meeting is still under discussion in Dutch parliament, it is uncertain whether all requirements for holding a virtual-only shareholders' meeting will remain in place. Two important requirements are: i) that shareholders have the opportunity to directly participate in the meeting via a two-way audio-visual means of communication and ii) that electronic voting at the meeting is possible.*
- ***Regarding the proposed increase of the threshold for submitting shareholder proposals:*** *this proposal will make it more difficult for minority shareholders to table items for the agenda of any future Vopak shareholders' meeting, due to higher threshold.*
- *The decision-making at the Vopak shareholders' meetings is dominated by HAL Trust that owns 48.2% of the voting rights and issued capital. Taking this specific shareholder structure of Vopak into account, the 200% increase in the required capital for submitting shareholder proposals is fairly high. Vopak has not provided any substantive reason why this increase is necessary. Moreover, not any shareholder has used its current right to submit a proposal for the Vopak shareholders' meeting agendas since this shareholder right was introduced in 2004.*
- *Vopak motivates the proposal by pointing to the statutory provision allowing shareholders to propose agenda items for the general meeting. However, the legislator has introduced a **maximum** threshold for shareholders submitting agenda items for a general meeting; it is allowed to include a lower threshold in the company's articles of association. Other Dutch AMX companies, such as Aalberts, AMG Critical Minerals, Corbion, Eurocommercial Properties and SBM Offshore (in which HAL Trust holds a substantial stake of almost 23%) still have the '1% issued capital threshold' in their articles of association.*
- *As the afore-mentioned proposals can be characterised as 'controversial proposals', such proposals should be voted on separately and not bundled together, as prescribed in best practice provision 4.1.3 sub I of the Dutch Corporate Governance Code. Vopak has not explained such a deviation from the Code.*

Contacts with company

Eumedion shared its concerns about the proposed amendments to the Vopak Articles of Association by email on March 12, 2024; the day the AGM was convened. Concerns with respect to the total IFRS costs for the termination benefits for Mr. Eulderink were flagged on March 19, 2024.

With respect to the costs of the termination benefits, Vopak's Director Global Compensation & Benefits underlined the fact that the relatively high amount is due to the contractual obligation arising from an in 2009 concluded indefinite employment agreement. Only since 1 January 2013 legislation is in place that Executive Board members of Dutch listed companies cannot be considered employees of the company. The agreements with the current Executive Board members are stipulated not to be employment agreements. For the services provided, there is a management fee in place. Next to the fee there is a variable income as well as benefits such as pension and car (all according to the remuneration policy as adopted by the Vopak shareholders' meeting). Besides this, 4 years' appointment terms apply with a possibility for re appointment as well as a notice period of 6 months. This package is different from the labour agreement that Mr. Eulderink had in place that was governed by the Dutch labour law. Therefore, excessive severance payments are no longer expected in the future.

¹ Reference is made to the verdict of the Enterprise Chamber of the Amsterdam Court of Appeal of 14 April 2011, *JOR* 2011/179, ECLI:NL:GHAMS:2011:BQ1233 (*ASMI*), paragraph 3.7, in the context of the remarks of the Advocate-General of the Supreme Court of the Netherlands regarding the explanation of decisions and articles of association in his conclusion dated 13 April 2010 in the *ASMI* case; see ECLI:NL:PHR:2010:BM0976, paragraphs 3.7.1 – 3.7.4.

With respect to the proposed amendments to the articles of association: the company's IR Officer sent the following response on March 18, 2024:

"Your position on virtual meetings is well-noted and understood. Please be assured that Vopak is proposing an amendment to its articles to allow for virtual meetings (if and when Dutch law so allows) in order to prepare for future circumstances under which a virtual meeting would be preferable over a physical meeting. Whilst Vopak reserves the right to determine, at its discretion, when circumstances would warrant a virtual meeting, we have no current intentions to switch to a fully virtual set-up.

The proposed amendment to the threshold to make shareholder proposals is simply to align Vopak's articles with existing legislation, which we have indicated clearly in the explanations to the proposed amendments. As the Dutch legal landscape evolves, Vopak believes its articles should be updated accordingly. We disagree with your characterisation that this proposal is controversial. In fact, your position that shareholders should continue to derive rights from a provision that stems from legislation that was revised more than a decade ago, is in our view unfair and could promote 'cherry-picking'.

Lastly, we disagree with your statement that Vopak diverges from the Dutch Corporate Governance Code by bundling all proposed changes to the articles into one voting item. The best practice provision you cited indicates that material changes to the articles should not be bundled with other agenda items (and Vopak complies with that approach), but there is nothing in this provision that would require further unbundling of different provisions of the proposed articles. Furthermore, we believe that the proposed amendments are predominantly of a technical nature, designed to keep in line with evolving legislation."

DISCLAIMER

This is an alert for the participants of Eumedion with regard to a specific agenda point of a general meeting of shareholders. It is not a voting advice.