

Explanatory memo on the proposed modifications to the bylaws of Proximus NV of public law

On 16 December 2015, the Belgian Parliament adopted a new law on the reform of certain economic public companies (“the Amendment Law”), which entered into force of 12 January 2016. The purpose of the Amendment Law is to modernize the Law of 21 March 1991 on autonomous public sector enterprises (“the 1991 Law”) especially by:

- Increasing the flexibility of certain organizational conditions in order to create a level playing field with competitors;
- aligning the corporate governance of listed public companies with the normal rules for listed (private) companies in Belgium; and
- defining the framework allowing the government to decrease its participation below 50% plus one share, and the consequences thereof.

The board of directors prepared, for approval by the extraordinary general meeting of 20 April 2016, a new version of the bylaws incorporating the modifications made to the 1991 Law. The board also seized this modification as an opportunity to perform a thorough review of the bylaws, proposing additional changes to further improve Proximus’ corporate governance, to simplify existing or future practices and to improve the readability of the bylaws.

In summary, the proposed modifications to the bylaws of Proximus NV can be divided into the following categories:

- A. Modifications following the amendments to the 1991 Law
- B. Modifications to improve the corporate governance
- C. Modifications for reasons of simplification
- D. Modifications to improve the readability of the bylaws

A version of the bylaws which includes all of the proposed changes to the bylaws is available on www.proximus.com.

A. Modifications following the amendments to the 1991 Law

1. Creation of a “level playing field”

1.1. Reference to the competitive sector in which Proximus operates

The Amendment Law introduces the criterion of autonomous state owned companies “which mainly operate in competitive sectors”. On the basis of this criterion, Proximus benefits from the abolishment of certain restrictions which were mainly HR-related. The Amendment Law hereby aims at creating a level playing field between Proximus and its competitors in the highly competitive market in which they operate.

→ Insertion in article 1

1.2. Normal board approval quorum for the acquisition of equity participations

The Amendment Law renders the special provisions set out in article 13 of the 1991 Law regarding the acquisition of equity participations and the incorporation of subsidiaries inapplicable to Proximus. As a consequence, the special 2/3 majority approval quorum by the board which was imposed by article 13 §2 of the 1991 Law is no longer applicable. Such decisions are now subject to the generally applicable approval quorum of simple majority.

→ Deletion of article 23 paragraph 2, 1°

2. **Governance of (listed) autonomous state owned companies**

The Amendment Law's objective is to ensure that listed autonomous state owned companies are examples of good governance, without interference from the Belgian state. To this effect, the former provisions in the 1991 Law on the authority and composition of the corporate bodies as well as the appointment and dismissal of its members are no longer imposed onto Proximus in the 1991 Law. The general provisions of the Belgian Companies Code are now applicable, with some exceptions described in more detail below at each relevant article.

2.1. Appointment and dismissal of directors

The Amendment Law abandons the special regime whereby the Crown, under an Order in Council deliberated in the Council of Ministers, appointed directors directly to the Company's board without approval by the shareholders' meeting. As from now, all directors will be appointed by the shareholders' meeting taking into account the new provisions proposed in articles 16 to 18 of the bylaws, for the nomination of directors and composition of the board.

→ Modification of article 17 paragraph 3 / article 18 paragraphs 2, 3 and 5

If a board seat becomes vacant, the other directors have the right to temporarily appoint another person in replacement on the basis of the candidate(s) assessed by the nomination & remuneration committee.

→ Modification of article 21

2.2. Appointment and dismissal of the chairman and the CEO

In accordance with the Belgian Companies Code, the CEO and the chairman of the board will be appointed and dismissed by the board of directors and no longer by the Crown. As a consequence, the governance of a company such as Proximus, operating in a highly competitive market, will be organised in the same manner as other companies.

→ Modification of articles 19 and 20

2.3. Term of mandate of the CEO

The 1991 Law stated that the CEO's term of mandate was mandatorily 6 years. This is no longer applicable. In line with market practise, the bylaws do not include a fixed term of mandate. Matters such as the appointment, the duration of the mandate and its termination are decided upon by the board of directors.

→ Modification of article 20, 1st sentence

2.4. Deletion of the provisions on the management committee

The 1991 Law included many provisions detailing the composition, authority and functioning of the management committee proper to State owned companies. Already prior to the Amendment Law, a number of these provisions were no longer applicable to Proximus. The Amendment Law confirms this principle and extends it to almost all provisions relating to the management committee. As a consequence, such references to the management committee are deleted in the bylaws.

→ Deletion of article 20 paragraphs 2 and 3 and Article 27

2.5. Deletion of certain limitations on the delegation authority of the board of directors

The 1991 Law restricted the delegation authority of the board of directors. The Amendment Law renders these restrictions inapplicable. In line with market practise, a new paragraph 2 is inserted in article 22 of the bylaws with respect to the delegation authority of the board of directors.

→ Deletion of the reference to article 22 paragraph 2 in article 23 paragraph 2, 5°

→ Modification of article 22 paragraph 2

2.6. Abandonment of unilateral rights of the Belgian state to intervene in the company's governance

The Amendment Law puts an end to a number of measures of extraordinary control and unilateral intervention by the Belgian state in the governance of listed autonomous state owned companies, namely:

- the appointment and mission of the government commissioner;
→ Deletion of article 30 paragraphs 1, 2 and 3
- the obligation of the board of directors to report yearly to the minister on the company's public service obligations;
→ Deletion of article 30 paragraph 5
- the right of the competent minister to submit a decision taken by the competent corporate body to the approval of the budget minister if it impacts the federal budget;
→ Deletion of article 30 paragraph 4
- the right of the competent minister to annul a decision taken by the competent corporate body;

- Deletion of article 30 paragraph 4
- the right of the competent minister or of the government commissioner to impose upon the competent corporate body to deliberate on a certain topic;
 - Deletion of article 30 paragraph 6
- the obligation to submit the full annual accounts to the competent minister and the budget minister;
 - Deletion of the last part of article 31 paragraph 5, and of article 42 paragraph 3
- the exceptional review of the full annual accounts by the court of auditors;
 - Deletion of article 42 paragraph 2, section 2.

2.7. Deletion of provisions by the Amendment Law

- The Amendment Law confirms the inapplicability of articles 19 and 20 of the 1991 Law.
 - Deletion of article 15, 2nd sentence
- The wording that the CEO exercises his/her mandate full time must not be specified in the bylaws. This wording was also removed in article 20 §4 of the 1991 Law.
 - Deletion in article 16 paragraph 2
- Since article 17 §4 and article 21 §4 of the 1991 Law are deleted, these provisions are removed in the bylaws.
 - Deletion in article 20 paragraph 3 and deletion of article 29 sections 2 and 3

3. Possibility to allow a (majority) shareholder in the company's share capital following which the equity stake of the Belgian state in the company would drop below 50% plus one share

On the basis of the new article 54/7 of the 1991 Law, the Belgian State has the option to decrease its equity stake in Proximus' share capital to less than 50% plus one share. All transactions carried out by the Belgian state which would have this effect, must comply with the requirements and mandatory procedure imposed by the Amendment Law. Outside of this framework, the principle remains that no new shares, convertible bonds or warrants can be issued to other shareholders if this would result in the Belgian state holding less than 50% plus one share of Proximus' share capital.

→ Modification of article 6 paragraph 1 / article 12 paragraph 1

B. Modifications to improve corporate governance

1. Decrease of the maximum number of directors in the board of directors

To guarantee an efficient and qualitative deliberation, the board of directors will have maximum 14 directors instead of maximum 16 directors as set out in the current bylaws.

→ Modification of article 16 paragraph 1

2. Number of independent directors

The requirement that at least three directors have to be independent in the meaning of article 526ter of the Belgian Companies Code¹ is kept in the bylaws. It must be read in combination with the modified article 18 paragraph 3 which aims at increasing the number of independent directors to more than three.

→ Modification of article 16 paragraph 1 and article 18 paragraph 3

3. Decrease of the duration of a board mandate

In line with the recommendation of the Belgian Corporate Governance Code 2009, the term of a director's mandate is changed from 6 to 4 years.

→ Modification of article 18 paragraph 1

4. Appointment of new directors by the general meeting

In line with the recommendations of the Belgian Corporate Governance Code 2009, the board can only propose candidate directors for appointment who are selected by the nomination & remuneration committee. In view of the shareholding reflection in the board of directors, the nomination & remuneration committee will (amongst other things) take the principle of a reasonable representation of significant stable shareholders into account. Each shareholder holding at least 25% of the shares has a right, laid down in the bylaws, to propose directors to the Board for appointment by the general meeting pro rata its shareholding. The other directors, excluding the CEO, have to be independent in the meaning of article 526ter of the Belgian Companies Code.

→ Modification of article 18 paragraphs 2 and 3

5. Independent director whom is no longer independent

To assure that an independent director remains truly independent, each independent director who is no longer independent in the meaning of article 526ter Belgian Companies Code, has to resign within one month.

→ Deletion in article 18 paragraph 4

¹ The Belgian Companies Code and the Belgian Corporate Governance Code 2009 require the presence of at least 3 independent directors.

6. Deletion of the provisions on the management committee

A limited number of provisions of the 1991 Law still refer to a management committee proper to State owned companies. These provisions remain applicable to Proximus. However, Proximus does not have a management committee in the sense of article 524bis of the Belgian Companies Code. Therefore, all references to the management committee are deleted in the bylaws to avoid unnecessary confusion with the applicable provisions of the 1991 Law.

→ Modification of Article 16 paragraph 3 and 4 / Article 17 paragraph 1 and paragraph 5 / Article 26 paragraph 3

C. Modifications for simplification

1. Possibility to keep an electronic share register

In accordance with the Belgian Companies Code, the company is allowed to keep its share register in electronic form.

→ Modification of article 10 paragraph 1

2. Replacement of the chairman of the board

The chairman, if he is not able to attend a board meeting, assigns, at his discretion, the best suited director to act as chairman at a specific board meeting. If an assignment by the chairman of the board is not possible, the chairman of the audit & compliance committee will act in his replacement. In this situation, the chairman of the audit & compliance committee is considered a suitable replacement in view of his close involvement in monitoring the financial and governance aspects of the company.

→ Modification of article 24 paragraph 1

D. Modifications to improve the readability of the bylaws

1. Deletion of dates of previous changes of provisions of the bylaws (as indicated at the beginning of each article)

A number of articles in the bylaws refer to the exact date of the latest change made in that specific article. Such references are removed.

→ Deletion of references in all articles

2. Deletion of articles without relevant content

The transitory provisions at the end of the bylaws are no longer relevant.

→ Deletion of articles 49, 50, 51 and 52

3. Deletion of wording which is not relevant or outdated

- The reference to article 71 in the 1991 Law on the incorporation of the Belgian Institute for Postal Services and Telecommunications in this sentence has no added value.
→ Deletion in article 17 paragraph 3
- The chairman or the CEO decides on the most appropriate location to hold the board meetings.
→ Deletion in article 23 paragraph 3, 1st sub-paragraph
- The chairman determines, depending on the agenda and the specific circumstances of a board meeting, if and how many board members are entitled to participate via telephone or video conference.
→ Deletion in article 23 paragraph 3, 2nd sub-paragraph
- A director can give a valid special power of attorney to another director in case he cannot participate to a board meeting, by any means (i.e., by e-mail, fax, letter,...) as long as its existence can be established. The format in which it should appear, must not be described in an exhaustive manner in the bylaws.
→ Deletion in article 23 paragraph 3, 3rd sub-paragraph
- The minutes of the board of directors are kept on paper and electronically. The legal provisions on safeguarding corporate documents are taken into account.
→ Deletion in article 23 paragraph 4

4. Deletion of wording which reflects basic legal principles and/or legal provisions incorporated in other applicable laws

- The 1991 Law already provided for the option, instead of the obligation, to offer newly issued shares to the company's personnel in the event that shares are issued to another person than the Belgian state. The wording of article 7 paragraph 2 of the bylaws is now aligned with the provisions of article 60/1 §1 and §4 of the 1991 Law.
→ Modification of article 7 paragraph 2
- The bylaws are not the appropriate medium to stipulate only this one procedural obligation of the Belgian state towards the company in the event of a share transfer (which is also already described in the 1991 Law).
→ Deletion of article 11 paragraph 1
- The principle that the board of directors is entitled to receive all relevant information and documentation from the CEO is an elementary director's right and must not be specified in the bylaws.
→ Deletion of article 22 paragraph 3

- This one specific delegation authority by the board of directors is part of a larger competence set out in article 11 of the 1991 Law which is applicable to the company. A partial reproduction in the bylaws is unnecessary.
→ Deletion of article 22 paragraph 4

- The specific composition and competence of the audit & compliance committee, the nomination & remuneration committee and the strategic & business development committee was extensively described in article 25 paragraph 2 of the bylaws. This elaborate description of the composition and competence of the board committees in the bylaws is not required under the Belgian Companies Code. The Belgian Companies Code imposes the existence of an audit committee and a remuneration committee while the board of directors determines their composition and powers. The board is also authorised to create any additional committees it deems necessary, as it has done within Proximus through the creation of a strategic & business development committee. Details on the composition, competence and activities of Proximus' committees are included in the (annual) reports made available to the shareholders at the annual shareholders' meeting. Furthermore, as required by the Belgian Corporate Governance Code, this is also explained in more detail in Proximus' corporate governance charter.
→ Modification of article 25 paragraph 2

- The manner of representation of the Belgian state at the company's shareholders' meeting bylaws is an obligation imposed upon the Belgian state by the 1991 Law. The bylaws are not the appropriate medium to stipulate only this one procedural obligation of the Belgian state towards the company.
→ Modification of article 35 section 1

- The right of shareholders to ask questions at a general meeting (regardless of whether such shareholder submitted written questions in advance of the meeting) is not limited to the matters set out in article 38bis section 1 of the bylaws. A shareholder is free to ask the questions he wishes.
→ Modification of article 38bis section 2

- Article 40 of the bylaws included a list of decisions to be taken by the shareholders' meeting with a 75% approval majority. This special majority is required in accordance with provisions of the Belgian Companies Code and the 1991 Law. It is not necessary to include the list in the bylaws. By not doing so, Proximus avoids the necessity to amend its bylaws if the law would change.
→ Modification of article 40

5. Insertion of wording to confirm the principle of legal limitations

Article 13 of the bylaws describes the acquisition of own shares by the company. This acquisition is subject to specific legally imposed limitations. A general reference to these limitations is included here without inserting a detailed description since the specific legal provisions may be changed in the future.

→ Modification of article 13, 1st sentence
