

**KONINKLIJKE KPN N.V.**

**BY-LAWS OF THE SUPERVISORY BOARD**

**Adopted by the Supervisory Board on 7 December 2017  
Lastly amended on 23 October 2018**

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## INTRODUCTION

- 0.1 These By-Laws are established pursuant to article 28.10 of the Articles of Association and best practice provision 2.3.1 of the Dutch Corporate Governance Code.
- 0.2 These By-Laws are complementary to the provisions regarding the Supervisory Board and the Supervisory Board members as contained in applicable legislation and regulations, the Articles of Association and the rules pertaining to the relationship between Board of Management and Supervisory Board as contained in the By-Laws of the Board of Management and the Executive Committee (which have been approved by the Supervisory Board).
- 0.3 In its resolution adopted on 7 December 2017, the Supervisory Board unanimously declared that it will comply with and be bound by the obligations arising from these By-Laws
- 0.4 Anyone who is appointed as a Supervisory Board member must, upon assuming office, declare in writing to the Company that he accepts and agrees to the contents of these By-Laws and pledge to the Company that he will comply with the provisions of these By-Laws. These By-laws are also applicable to anyone who is designated as a substitute member for a Supervisory Board member in absence or prevented from acting.
- 0.5 These By-Laws are posted on the Company's website.<sup>1</sup>
- 0.6 The meaning of certain capitalised or uncapitalised terms used in these By-Laws is set forth in the List of Definitions attached as **Annex 1**.

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<sup>1</sup> Dutch Corporate Governance Code, best practice provision 2.3.1.

## CHAPTER I – COMPOSITION OF THE BOARD

### 1. Supervisory Board Profile, Size, Expertise and Independence; Diversity Policy

- 1.1 The Supervisory Board shall prepare a profile of its size and composition, taking account of the nature of the Company and its affiliated enterprise. The Supervisory Board Profile shall address:<sup>2</sup>
- a. the desired expertise and background of the Supervisory Board members;
  - b. the desired diverse composition of the Supervisory Board as expressed in the diversity policy;
  - c. the size of the Supervisory Board; and
  - d. the independence of the Supervisory Board members.

The current version of the Supervisory Board Profile will be published on the Company's website.

- 1.2 The Supervisory Board shall draw up a diversity policy with regard to the composition of the Supervisory Board, the Board of Management and the Executive Committee that addresses the concrete targets relating to diversity and the diversity aspects relevant to the Company, such as nationality, age, gender and background of education and professional experience.<sup>3</sup>
- 1.3 The number of Supervisory Board members is determined by the Supervisory Board, and has a minimum of five members, and a maximum of nine<sup>4</sup>.
- 1.4 The Supervisory Board shall endeavour to ensure, within the limits of its powers, that it is at all times composed so that:
- a. each Supervisory Board member has the specific expertise required to perform his duties within the framework of the Supervisory Board Profile;<sup>5</sup>
  - b. each Supervisory Board member is capable of assessing the broad outline of the overall policy;<sup>6</sup>
  - c. the Supervisory Board as a whole matches the Supervisory Board Profile and that the composition of the Supervisory Board is such that the requisite expertise, background, competencies and independence are present, enabling the Supervisory Board to carry out its duties properly;<sup>7</sup>
  - d. at least one Supervisory Board member shall have competence in accounting and auditing;<sup>8</sup>
  - e. its members are able to act critically and independently of one another, the Board of Management and any particular interests involved; in order to safeguard this the Supervisory Board is composed so that:<sup>9</sup>
    - i) any one of the criteria referred to in clause 1.5(i) to (v) inclusive are applicable to at most one Supervisory Board member;
    - ii) for each shareholder, or group of affiliated shareholders who directly or indirectly hold more than ten percent of the shares in the Company, there is at most one Supervisory Board

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<sup>2</sup> Dutch Corporate Governance Code, best practice provision 2.1.1.

<sup>3</sup> Dutch Corporate Governance Code, best practice provision 2.1.5.

<sup>4</sup> Article 23, paragraph 1, Articles of Association

<sup>5</sup> Dutch Corporate Governance Code, best practice provision 2.1.4.

<sup>6</sup> Dutch Corporate Governance Code, best practice provision 2.1.4.

<sup>7</sup> Dutch Corporate Governance Code, Principle 2.1.

<sup>8</sup> Audit Committee Decree 2016, article 2(3).

<sup>9</sup> Dutch Corporate Governance Code, best practice provision 2.1.7.

member who can be considered to be affiliated with or representing them as stipulated in clause 1.5(vi) and (vii); and

iii) the total number of Supervisory Board members to whom the criteria referred to in clause 1.5 are applicable shall account for less than half of the total number of Supervisory Board members.

f. all Supervisory Board members observe the restrictions regarding the nature and number of their other positions as set forth in clause 23.

g. The position of Supervisory Board member is not held by:

i) persons employed by the company;

ii) persons employed by a dependent company; or

iii) officers or persons employed by an employees' organisation customarily involved in the establishment of the terms of employment of the persons referred to under i) and ii).

1.5 A Supervisory Board member is not independent if the following criteria of dependence apply to him. These criteria are that the Supervisory Board member concerned, his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree:<sup>10</sup>

a. has been an employee or member of the Board of Management of the Company or an affiliated company in the five years prior to the appointment as Supervisory Board member;

b. receives personal financial compensation from the Company, or an affiliated company, other than the compensation received for the work performed as a Supervisory Board member and in so far as this is not keeping with the ordinary business operations;

c. has had an important business relationship with the Company or an affiliated company in the year prior to the appointment (which includes in any event the case where the supervisory board member, or the firm of which he is a shareholder, partner, associate or adviser, has acted as adviser to the company (consultant, external auditor, civil notary or lawyer) and the case where the supervisory board member is a management board member or an employee of a bank with which the company has a lasting and significant relationship);

d. is a member of the management board of a company in which a member of the Board of Management is a supervisory board member;

e. has temporarily managed the Company during the previous twelve months due to vacant seats on the Board of Management, or because members of the Board of Management were unable to perform their duties;

f. has a shareholding in the Company of at least ten percent, taking into account the shareholding of natural persons or legal entities cooperating with him on the basis of an express or tacit, verbal or written agreement; or

g. is a member of the management board or supervisory board, or a representative in some other way, of a legal entity which holds at least ten per cent of the shares in the Company's capital, unless such entity is a member of the same group as the Company.

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<sup>10</sup> Dutch Corporate Governance Code, best practice provision 2.1.8.

## 2. (Re)Appointment; Term of Office; Resignation

- 2.1 The members of the Supervisory Board are appointed by the General Meeting of Shareholders on a nomination of the Supervisory Board. The Supervisory Board shall simultaneously inform the general meeting and the Central Works Council of the nomination.
- 2.2 Subject to article 24 of the Articles of Association, the Supervisory Board nominates one or more candidates for appointment, taking into account the provisions of Clause 1 above, including the Supervisory Board Profile and diversity policy. In case of a reappointment, account must be taken of the candidate's past performance as a Supervisory Board member.<sup>11</sup>
- 2.3 A nomination to appoint a Supervisory Board member shall state the candidate's age, his profession, the amount and number of shares he holds in the Company's capital and the positions he holds or has held, insofar as these are relevant for the performance of the duties of a Supervisory Board member. Furthermore, the legal entities of whose supervisory boards he is also a member must be listed; if those include legal entities which belong to the same group, reference to that group is sufficient. The nomination for appointment or reappointment shall state the reasons on which it is based.<sup>12</sup>
- 2.4 A Supervisory Board member shall be appointed for a period of four years and may then be reappointed once for a period of four years. A Supervisory Board member may subsequently be reappointed for a period of two years, which appointment may be extended by at most two years. For a reappointment after an eight-year period, reasons must be provided in the report of the Supervisory Board.<sup>13</sup>
- 2.5 A Supervisory Board member nominated for appointment shall attend the General Meeting of Shareholders at which votes will be cast on his appointment.<sup>14</sup>
- 2.6 The Supervisory Board shall ensure that the Company has a sound plan in place for the succession of Supervisory Board members that is aimed at retaining the balance in the requisite expertise, experience, diversity and independence. Due regard must be given to the Supervisory Board Profile in drawing up that plan.<sup>15</sup> The Supervisory Board shall draw up a rotation plan to avoid, as far as possible, a situation in which many Supervisory Board members retire at the same time. The current rotation plan shall be published on the Company's website.
- 2.7 A Supervisory Board member shall retire early in the event of insufficient performance, structural incompatibility of interests, and in any other instances where deemed necessary by the Supervisory Board.<sup>16</sup>
- 2.8 A Supervisory Board member who is temporarily charged with the management of the Company in the event of absence or inability to act of members of the Board of Management, shall resign from the Supervisory Board.<sup>17</sup>
- 2.9 The Supervisory Board as a rule has no "delegated Supervisory Board member" (*gedelegeerd commissaris*). Under special circumstances, however, the Supervisory Board may resolve to appoint a "delegated Supervisory Board member", in which case best practice provision 2.3.8 of the Dutch Corporate Governance Code shall apply in full.

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<sup>11</sup> Section 2:142 Dutch Civil Code.

<sup>12</sup> Section 2:142 Dutch Civil Code.

<sup>13</sup> Dutch Corporate Governance Code, best practice provision 2.2.2.

<sup>14</sup> Dutch Corporate Governance Code, best practice provision 4.1.8.

<sup>15</sup> Dutch Corporate Governance Code, best practice provision 2.2.4 also in connection with best practice provision 2.1.1.

<sup>16</sup> Dutch Corporate Governance Code, best practice provision 2.2.3.

<sup>17</sup> Dutch Corporate Governance Code, best practice provision 2.3.9.

### 3. Chairman and Vice-Chairman

- 3.1 The Supervisory Board shall elect a Chairman and a Vice-Chairman from among its members. The Chairman shall not be a former member of the Board of Management and shall be independent within the meaning of clause 1.5.<sup>18</sup>
- 3.2 The Vice-Chairman replaces, and assumes the powers and duties of, the Chairman in the latter's absence.<sup>19</sup> The Vice-Chairman acts as a contact for the individual members of the Supervisory Board and the Board of Management on the performance of the Chairman.<sup>20</sup>
- 3.3 The Chairman shall act as the spokesman of the Supervisory Board and is the main contact for the the Board of Management, the Supervisory Board members and for the shareholders with regard to the functioning of Board of Management and Supervisory Board members.<sup>21</sup> The CEO and the Chairman shall meet on a regular basis.<sup>22</sup> As a general rule, the Chairman presides over General Meetings of Shareholders.
- 3.4 Without prejudice to the generality of clause 3.3, the Chairman is primarily responsible for:<sup>23</sup>
- a. ensuring that the Supervisory Board and its Committees function properly and in a collective manner, and discharges of their duties;
  - b. preparing an agenda (in consultation with the Company Secretary) and chairing meetings of the Supervisory Board;
  - c. ensuring that the Supervisory Board has proper contact with the Board of Management, the Executive Committee, the Central Works Council and the General Meeting of Shareholders;
  - d. ensuring that the Supervisory Board elects a Vice-Chairman;
  - e. ensuring there is sufficient time for deliberation and decision-making by the Supervisory Board;
  - f. ensuring that the Supervisory Board members receive all information necessary for the proper performance of their duties in a timely manner;
  - g. the annual assessment of the functioning of members of the Board of Management and Supervisory Board members;
  - h. ensuring that Supervisory Board members and members of the Board of Management follow their introduction programme and/or their education or training programmes, as the case may be;<sup>24</sup>
  - i. ensuring that the Board of Management performs activities in respect of culture;
  - j. ensuring that the Supervisory Board recognises signs from the enterprise affiliated with the Company and ensures that any (suspicion of) material misconduct and irregularities are reported to the Supervisory Board without delay;
  - k. chairing and ensuring that the General Meeting of Shareholders proceeds in an orderly and efficient manner;

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<sup>18</sup> Dutch Corporate Governance Code, best practice provision 2.1.9.

<sup>19</sup> Dutch Corporate Governance Code, best practice provision 2.3.7.

<sup>20</sup> Dutch Corporate Governance Code, best practice provision 2.4.3.

<sup>21</sup> Dutch Corporate Governance Code, best practice provision 2.4.3.

<sup>22</sup> Dutch Corporate Governance Code, best practice provision 2.3.6.

<sup>23</sup> Dutch Corporate Governance Code, best practice provision 2.3.6.

<sup>24</sup> Dutch Corporate Governance Code, best practice provision 2.4.5.

- l. effective communication with shareholders by the Supervisory Board, where appropriate; and
- m. the close involvement, at an early stage, of the Supervisory Board is involved closely, in any merger or takeover processes.

#### **4. Company Secretary<sup>25</sup>**

- 4.1 The Supervisory Board is assisted by the Company Secretary, who is appointed by the Board of Management, after approval by the Supervisory Board. The Company Secretary may be removed by the Board of Management after approval by the Supervisory Board.
- 4.2 All Supervisory Board members have access to the advice and services of the Company Secretary.
- 4.3 The Company Secretary sees to it that correct Supervisory Board procedures are followed and that the obligations of the Supervisory Board under the law, the Articles of Association and the by-laws are complied with. The Company Secretary furthermore facilitates the provision of information to the Board of Management and Supervisory Board. The Company Secretary shall support the Chairman in the organisation of the affairs of the Supervisory Board (information, agenda, reporting of meetings, evaluation, training programme, etc.). The Company Secretary is as such also the secretary of the Supervisory Board.
- 4.4 The Company Secretary may also perform activities for the Board of Management, as provided for in the By-Laws of the Board of Management and the Executive Committee. If the Company Secretary notes that the interests of the Board of Management and the Supervisory Board diverge, as a result of which it is unclear which interests the Company Secretary should represent, he shall report this to the Chairman.
- 4.5 The Company Secretary may delegate his duties under these By-Laws, or parts thereof, to one (or more) deputy (or deputies) appointed by him in consultation with the CEO and the Chairman. In such case, any reference to the Company Secretary in these By-Laws, shall be read as a reference to such deputy if appropriate for the matter at hand.

#### **5. Committees**

- 5.1 The Supervisory Board may appoint standing and/or ad hoc Committees from among its members, which are charged with tasks specified by the Supervisory Board. The composition of any Committee is determined by the Supervisory Board. The Supervisory Board shall, in any event, establish an Audit Committee, a Remuneration Committee and a Nomination Committee.<sup>26</sup>
- 5.2 The Supervisory Board remains collectively responsible for all matters prepared by Committees.<sup>27</sup> The Supervisory Board may attribute powers to a Committee. A Committee may only exercise such powers as are explicitly attributed to it and may never exercise powers beyond those exercisable by the Supervisory Board as a whole. The Supervisory Board may revoke any power attributed to a Committee.
- 5.3 Each Committee must inform the Supervisory Board in a clear and timely way of the manner in which it has performed its tasks and used its delegated authority and of any major development in the area of its responsibilities. All Supervisory Board members have unrestricted access to all Committee meetings and records. The Supervisory Board shall, within the term specified in the terms of reference

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<sup>25</sup> See also Clause 5 of the Board of Management By-Laws and Dutch Corporate Governance Code, best practice provision 2.3.10.

<sup>26</sup> Dutch Corporate Governance Code, Principle 2.3 and best practice provision 2.3.2.

<sup>27</sup> Dutch Corporate Governance Code, best practice provision 2.3.2.



of the Committee concerned, receive a report from each Committee of its deliberations and findings<sup>28</sup> and discuss such reports, where relevant<sup>29</sup>.

- 5.4 The Supervisory Board shall establish terms of reference for each Committee and may amend these at any time. The terms of reference shall indicate the role and responsibility of the Committee concerned, its composition and the manner in which it performs its duties. The terms of reference will be placed on the Company's website.<sup>30</sup>

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<sup>28</sup> Dutch Corporate Governance Code, best practice provision 2.3.5.

<sup>29</sup> Dutch Corporate Governance Code, best practice provision 1.5.4.

<sup>30</sup> Dutch Corporate Governance Code, best practice provision 2.3.3

## CHAPTER II - DUTIES AND POWERS

### 6. General Duties and Powers; Relation with the Board of Management

- 6.1 The Supervisory Board is charged with the supervision of the Board of Management, the general course of affairs of the Company and the affiliated enterprise. The Supervisory Board assists the Board of Management with advice.<sup>31</sup> The responsibility for the proper performance of its duties is vested collectively in the Supervisory Board.
- 6.2 In performing its duties the Supervisory Board shall act in accordance with the interests of the Company and the affiliated enterprise, taking into consideration the interests of the stakeholders.<sup>32</sup>
- 6.3 The Supervisory Board is responsible for stimulating openness and accountability within the Supervisory Board and between the Supervisory Board and the Board of Management.
- 6.4 The Supervisory Board members shall externally express concurring views with respect to important affairs, matters of principle and matters of general interest, without jeopardising the responsibilities of individual Supervisory Board members.
- 6.5 The Supervisory Board engages early on with the Board of Management in formulating the strategy for realising long-term value creation<sup>33</sup>. The Supervisory Board supervises the manner in which the Board of Management implements the strategy. The Supervisory Board regularly discusses the strategy, the implementation of the strategy and the principal risks associated with it.<sup>34</sup>
- 6.6 Notwithstanding the provisions of clause 7.3 of these By-Laws and clause 9.4 of the By-Laws of the Board of Management and the Executive Committee, the Supervisory Board and its individual members each have responsibility for obtaining all information from the Board of Management, the internal audit function, the External Auditor and the Central Works Council needed to enable them to carry out their duties properly as a supervisory body. If deemed necessary by the Supervisory Board, it may obtain information from officers and external advisers of the Company. The Company shall provide the necessary means for this purpose. The Supervisory Board may require that certain officers and external advisers attend its meetings.<sup>35</sup>
- 6.7 Each member of the Supervisory Board has access to the books, records and offices of the Company in so far as required or as is useful for the proper performance of his duties. The Supervisory Board member shall exercise this right in consultation with the Chairman and the Company Secretary, save where the applicable terms of reference of a Committee dictate otherwise.
- 6.8 The Supervisory Board may in exercising its duties seek the assistance or advice of one or more experts, at a price and conditions to be agreed by the Supervisory Board, at the expense of the Company.

### 7. Duties regarding the Activities of the Board of Management

- 7.1 The supervision of the Board of Management by the Supervisory Board shall include *inter alia*:
- a. the long-term value creation of the Company and its affiliated enterprise and weighing of the interests of stakeholders involved;<sup>36</sup>

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<sup>31</sup> Section 2:140 (2) DCC.

<sup>32</sup> Section 2:140 (2) DCC and Dutch Corporate Governance Code, Principle 1.1.

<sup>33</sup> Dutch Corporate Governance Code, best practice provision 1.1.2.

<sup>34</sup> Dutch Corporate Governance Code, best practice provision 1.1.3.

<sup>35</sup> Dutch Corporate Governance Code, best practice provision 2.4.8 and 2.4.9.

<sup>36</sup> Dutch Corporate Governance Code, Principle 1.1 and best practice provision 1.1.2.

- b. activities of the Board of Management regarding the creation of a culture aimed at long-term value creation of the Company and its affiliated enterprise;<sup>37</sup>
- c. the internal audit function;<sup>38</sup>
- d. the effectiveness of the internal risk management and control systems;<sup>39</sup>
- e. the integrity and quality of the financial reporting;<sup>40</sup>
- f. the establishment and maintenance of internal procedures which ensure that all relevant information is known to the Board of Management and the Supervisory Board in a timely fashion;<sup>41</sup>
- g. the relation of the Board of Management with the shareholders of the Company<sup>42</sup>;
- h. compliance with laws and regulations;
- i. the institution of the Executive Committee.

7.2 The resolutions of the Board of Management listed in **Annex 2** are subject to the approval of the Supervisory Board.

7.3 The Board of Management shall provide the Supervisory Board with the following information in a timely manner:

- a. Periodic and/or ad hoc reports with relevant information on, among other things, mergers and acquisitions, material investments, major organisational issues, regulatory developments and other relevant issues;
- b. each quarter, a report with detailed information on the financial situation and development of the Company; and
- c. such information as the Supervisory Board deems necessary from time to time,

which will be drafted in the format agreed upon from time to time between the Board of Management and the Supervisory Board.

## **8. Duties regarding the Supervisory Board, the Board of Management, the Executive Committee and their members**

8.1 The duties of the Supervisory Board regarding (the members of) the Board of Management specifically include:

- a. having in place and executing a sound succession planning for the Board of Management that is aimed at retaining the balance in the requisite expertise, experience, diversity and independence<sup>43</sup>, the selection and appointment of members of the Board of Management,<sup>44</sup> the submission of proposals for the remuneration policy for members of the Board of Management to the General Meeting of Shareholders, the determination of the remuneration (in accordance with the adopted

<sup>37</sup> Dutch Corporate Governance Code, Principle 2.5.

<sup>38</sup> Dutch Corporate Governance Code, Principle 1.3.

<sup>39</sup> Dutch Corporate Governance Code, best practice provision 1.4.1 and principle 1.5.

<sup>40</sup> Dutch Corporate Governance Code, Principle 1.5.

<sup>41</sup> Dutch Corporate Governance Code, best practice provision 2.4.7.

<sup>42</sup> Dutch Corporate Governance Code, best practice provision 4.1.1.

<sup>43</sup> Dutch Corporate Governance Code, best practice provision 2.2.4

<sup>44</sup> See also clause 1.1 of the Board of Management By-Laws and the terms of reference of the Nomination Committee.

remuneration policy) and the contractual employment conditions of members of the Board of Management;<sup>45</sup>

- b. determination of the number of members of the Board of Management, the designation of the CEO<sup>46</sup>, the approval (or proposal, where useful) of changes to the division of tasks within the Board of Management or of the By-Laws of the Board of Management and the Executive Committee;<sup>47</sup>
- c. the approval of outside positions for members of the Board of Management to the extent required under the By-Laws of the Board of Management and the Executive Committee;<sup>48</sup> and
- d. to address and seek to resolve conflict of interest issues between the Company and members of the Board of Management.<sup>49</sup>

8.2 The duties of the Supervisory Board regarding (the members of) the Executive Committee specifically include:

- a. supervising the functioning and composition of the Executive Committee, paying specific attention to (i) safeguarding the expertise and responsibilities of the Board of Management; (ii) the relationship between the Board of Management and the Executive Committee; and (iii) adequate information provision to the Supervisory Board;<sup>50</sup>
- b. considering and providing feedback to the Board of Management on candidates for appointment to the Executive Committee, also in light of the diversity policy as referred to in Clause 1.2, as well as considering and providing feedback on intended suspension or dismissal of members of the Executive Committee;
- c. reviewing, at least annually, the remuneration of the members of the Executive Committee.<sup>51</sup>

8.3 The duties of the Supervisory Board in relation to the members of the Supervisory Board specifically include:

- a. the selection and nomination, in accordance with Section 2:158 Dutch Civil Code, of members of the Supervisory Board to be appointed by the General Meeting of Shareholders, and proposals to the General Meeting of Shareholders for the remuneration of members of the Supervisory Board;
- b. the determination of the number of Supervisory Board members, the appointment of a Chairman and Vice-Chairman, the establishment of Committees and defining their role, the evaluation of the functioning of the Supervisory Board, its Committees and the individual members of the Supervisory Board (including an evaluation of the Supervisory Board Profile and the introduction, education and training programme); the approval of other positions of Supervisory Board members to the extent required under clause 23; and
- c. to address and seek to resolve conflict of interest issues between the Company and members of the Supervisory Board.<sup>52</sup>

8.4 At least once a year the Supervisory Board shall, without the Board of Management being present, evaluate its own functioning, the functioning of its Committees and that of the individual Supervisory

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<sup>45</sup> See also clause 12 of these By-Laws, the terms of reference of the Remuneration Committee and clause 19 of the Board of Management By-Laws.

<sup>46</sup> See the options in clause 2.1 of the Board of Management By-Laws.

<sup>47</sup> See also clause 1 of the Board of Management By-Laws.

<sup>48</sup> See also clause 20 of the Board of Management By-Laws.

<sup>49</sup> See also clause 16 of the Board of Management By-Laws; Dutch Corporate Governance Code, principle 2.7.

<sup>50</sup> Dutch Corporate Governance Code, best practice provision 2.1.3.

<sup>51</sup> Dutch Corporate Governance Code, best practice provision 3.1.3.

<sup>52</sup> See also clause 19 of these By-Laws.

Board members, and discuss the conclusions that must be drawn on the basis thereof. Attention shall be paid to:

- a. substantive aspects, the process, the mutual interaction and the interaction with the Board of Management;
- b. events that occurred in practice from which lessons may be learned; and
- c. the desired profile, the composition, competencies and expertise of the Supervisory Board.<sup>53</sup>

8.5 At least once a year the Supervisory Board shall, without the Board of Management being present, evaluate the functioning of the Board of Management as a whole and the functioning of its individual members, and discuss the conclusions that must be drawn on the basis thereof, such also in light of the succession of members of the Board of Management.<sup>54</sup>

## **9. Other Duties of the Supervisory Board**

9.1 The other duties of the Supervisory Board include:

- a. duties regarding the External Auditor as described in clause 11 and the terms of reference of the Audit Committee;
- b. the handling of complaints about (actual or suspected) misconduct regarding the functioning of members of the Board of Management;<sup>55</sup>
- c. monitoring the operation of the Company's procedures for reporting actual or suspected misconduct or irregularities, appropriate and independent investigations into signs of misconduct or irregularities, and adequate follow-up of any recommendations for remedial actions; in cases where the Board of Management itself is involved, the Supervisory Board may initiate its own investigation into any signs of misconduct and irregularities, and coordinate this investigation.<sup>56</sup>
- d. the taking of measures for the temporary management of the Company if a member of the Board of Management is absent or prevented from performing his duties;
- e. other duties the Supervisory Board is charged with under legislation, the Articles of Association, these By-Laws, the terms of reference of a Committee or the By-Laws of the Board of Management and the Executive Committee.

9.2 The Supervisory Board shall draw up a report to be included in the annual report of the Company describing its activities in the financial year concerned<sup>57</sup>

9.3 The Supervisory Board and the Board of Management are jointly responsible for the corporate governance structure of the Company and compliance with the Dutch Corporate Governance Code.<sup>58</sup>

## **10. Supervision of Financial Reporting**

10.1 The Supervisory Board supervises compliance with internal procedures established by the Board of Management for the preparation and publication of the Annual Report, the Annual Accounts, the interim figures and ad hoc financial information.

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<sup>53</sup> Dutch Corporate Governance Code, best practice provision 2.2.6.

<sup>54</sup> Dutch Corporate Governance Code, best practice provision 2.2.7.

<sup>55</sup> See also clause 8.4 Board of Management By-Laws; Dutch Corporate Governance Code, best practice provision 2.6.2.

<sup>56</sup> Dutch Corporate Governance Code, best practice provision 2.6.4.

<sup>57</sup> Dutch Corporate Governance Code, best practice provision 2.3.11.

<sup>58</sup> See Dutch Corporate Governance Code, part 'Compliance with the Code'.

- 10.2 Unless determined otherwise by the Supervisory Board, the Audit Committee shall prepare any deliberations of the Supervisory Board relating to financial reporting. The Audit Committee shall report on its deliberations and findings regarding the matters in its scope (as set out in its terms of reference) to the Supervisory Board, which will subsequently discuss such matters.
- 10.3 In particular, the Audit Committee shall report and discuss its findings regarding the Annual Accounts, and the interim figures with the Supervisory Board. The Annual Accounts, the Report of the Board of Management and the report of the Supervisory Board for the year just ended shall be discussed in a meeting of the Supervisory Board within four months of this year end. The interim figures of the Company for the respective period just ended shall be discussed in a meeting of the Supervisory Board within two months of the end of this period.
- 10.4 The Supervisory Board maintains contact with the External Auditor on regular basis. The line of contact between the Supervisory Board and the External Auditor is in principle through the chairman of the Audit Committee.
- 10.5 The External Auditor shall in any event attend the part of the meeting of the Supervisory Board at which the report of the External Auditor with respect to the audit of the Annual Accounts is discussed.<sup>59</sup> The Supervisory Board shall have access to the most important points of discussion arising between the External Auditor and the Board of Management based on the draft management letter or the draft audit report.<sup>60</sup>
- 10.6 The Supervisory Board ensures that the recommendations made by the External Auditor are considered carefully by the Board of Management and the Supervisory Board and, to the extent accepted, that they are actually carried out by the Board of Management. This supervision may be delegated to the Audit Committee.
- 10.7 The External Auditor shall inform the chairman of the Audit Committee without delay if, during the performance of his duties, he discovers or suspect misconduct or irregularities within the Company and its affiliated enterprise. If the actual (or suspected) misconduct or irregularity pertains to the functioning of a Board of Management member, the External Auditor shall report this directly to the Chairman.<sup>61</sup>
- 10.8 The Supervisory Board sees to it that the responsible partner (certifying auditor) of the firm of the External Auditor is present at the General Meeting of Shareholders and that he can address the meeting. The External Auditor may be questioned by the General Meeting of Shareholders in relation to his report on the fairness of the financial statements.<sup>62</sup>

## **11. Duties regarding Nomination and Assessment of the External Auditor**

- 11.1 The External Auditor shall be appointed by the General Meeting of Shareholders.<sup>63</sup> The Supervisory Board nominates a candidate for this appointment to the General Meeting of Shareholders and may recommend replacement of the External Auditor.
- 11.2 The Audit Committee shall report annually to the Supervisory Board on the functioning of, and the developments in, the relationship with the External Auditor. The Audit Committee shall advise the Supervisory Board regarding the nomination with respect to the External Auditor's appointment or reappointment or dismissal and shall prepare the selection of the External Auditor. The Audit Committee gives due consideration to the Board of Management observations. The Supervisory Board

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<sup>59</sup> Dutch Corporate Governance Code, best practice provision 1.7.6.

<sup>60</sup> Dutch Corporate Governance Code, best practice provision 1.7.5.

<sup>61</sup> Dutch Corporate Governance Code, best practice provision 2.6.3.

<sup>62</sup> Dutch Corporate Governance Code, best practice provision 4.1.9.

<sup>63</sup> An audit organisation may be appointed for a term of maximum 10 years, see Section 17 EU-Regulation 537/2014 (change of responsible partner after 5 years, Section 24 Act on the Supervision of Audit Organisations)

shall take this into account when deciding its nomination to the General Meeting of Shareholders for the appointment of an External Auditor.<sup>64</sup> The Supervisory Board gives the External Auditor a general overview of the reports relating to his functioning.<sup>65</sup>

- 11.3 The main conclusions of the Supervisory Board regarding the External Auditor's nomination and the outcomes of the External Auditor selection process shall be communicated to the General Meeting of Shareholders.<sup>66</sup> If the Supervisory Board does not accept the Audit Committee's advice concerning the External Auditor's appointment, the reasons for this decision must be stated in the proposal to the General Meeting of Shareholders.<sup>67</sup>
- 11.4 The Supervisory Board resolves, on a proposal submitted by the Audit Committee, on the External Auditor's engagement to audit the financial statements, which engagement shall in any case describe the scope of the audit, the audit materiality and the remuneration of the auditor.<sup>68</sup> By way of implementation of the decision of the General Meeting of Shareholders, or as the case may be of the Supervisory Board or Board of Management<sup>69</sup>, to appoint the External Auditor, the Supervisory Board will on behalf of the Company enter into an agreement to that effect with the External Auditor.
- 11.5 When appointed, the External Auditor is requested to state explicitly to the Company:
- a. to comply and continue to comply with the requirements regarding independency as included in the Act on the Supervision of Audit Organisations and other applicable laws and regulations; and
  - b. that he has been informed of all matters provided for in the Board of Management By-Laws, these By-Laws and the terms of reference of the Audit Committee, that he agrees with and will cooperate fully with their implementation.

## **12. Remuneration of members of the Board of Management**

- 12.1 The Supervisory Board shall be responsible for submitting the remuneration policy of the Board of Management, on a proposal by the Remuneration Committee, for approval by the General Meeting of Shareholders,<sup>70</sup> and its implementation. The remuneration policy, including severance payment, shall be clear and understandable, shall focus on long-term value creation for the Company and its affiliated enterprise and take into account the internal pay ratios within the enterprise. The remuneration policy shall not encourage members of the Board of Management to act in their own interest, nor to take risks that are not in line with the strategy formulated and the risk appetite that has been established.<sup>71</sup>
- 12.2 The Supervisory Board shall determine the remuneration of the individual members of the Board of Management on a proposal by the Remuneration Committee, within the scope of the remuneration policy adopted by the General Meeting of Shareholders.<sup>72</sup> When drafting the proposal for the remuneration of members of the Board of Management, the remuneration committee shall take note of individual members of the Board of Management' views with regard tot the amount and structure of their own remuneration.<sup>73</sup>

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<sup>64</sup> Dutch Corporate Governance Code, best practice provision 1.6.1.

<sup>65</sup> Dutch Corporate Governance Code, best practice provision 1.6.2.

<sup>66</sup> Dutch Corporate Governance Code, best practice provision 1.6.4.

<sup>67</sup> Section 16(5) EU-Regulation 537/2014.

<sup>68</sup> Dutch Corporate Governance Code, best practice provision 1.6.3.

<sup>69</sup> See Section 2:393(2) DCC.

<sup>70</sup> Dutch Corporate Governance Code, best practice provision 3.1.1.

<sup>71</sup> Dutch Corporate Governance Code, Principle 3.1.

<sup>72</sup> Dutch Corporate Governance Code, Principle 3.2 and best practice provision 3.2.1; Section 2:135 Dutch Civil Code.

<sup>73</sup> Dutch Corporate Governance Code, best practice provision 3.2.2.

- 12.3 The Remuneration Committee shall annually on behalf of the Supervisory Board prepare a Remuneration Report, in which the Supervisory Board renders account of the implementation of the remuneration policy in a transparent manner.<sup>74</sup>
- 12.4 The Supervisory Board shall ensure that the Company and its Subsidiaries shall not grant personal loans, guarantees or the like to members of the Board of Management except within the framework of its usual business operations, on conditions which apply to all employees and with the approval of the Supervisory Board. Loans are not remitted.<sup>75</sup>
- 12.5 The Supervisory Board shall ensure that the main features of the contract of a Board of Management member with the Company are, after its conclusion, published on the Company's website at the latest at the date of the notice convening the General Meeting of Shareholders at which the appointment of the member of the Board of Management concerned shall be proposed.<sup>76</sup>

### **13. Relation with the Shareholders**

- 13.1 Where appropriate, the Supervisory Board shall ensure that all shareholders and (where relevant) other parties in the financial markets will be provided with equal and simultaneous information about matters that may influence the price of relevant financial instruments issued by the Company.<sup>77</sup>
- 13.2 The Board of Management and the Supervisory Board shall ensure that the General Meeting of Shareholders is adequately provided with information.<sup>78</sup>
- 13.3 The Board of Management and the Supervisory Board shall endeavour to ensure that the General Meeting of Shareholders is provided with all requested information in time, unless this would be contrary to an overriding interest of the Company. If the Board of Management or the Supervisory Board invokes an overriding interest, it shall state the reasons.<sup>79</sup>
- 13.4 Guidelines on contacts with shareholders are set out in **Annex 3**.
- 13.5 The Members of the Supervisory Board shall be present at the annual General Meeting of Shareholders, unless they are unable to attend for important reasons. If appropriate, and subject to the approval of the Chairman, based on the advice of the Company Secretary, a member may attend the General Meeting of Shareholders through means of electronic communication.
- 13.6 The General Meetings of Shareholders are presided over by the Chairman or, in his absence, the Vice-Chairman. The Supervisory Board may designate someone else to preside over the meeting.

### **14. Takeover situations**

- 14.1 When a takeover bid for (depository receipts for) shares in the Company is being prepared, in the event of a private bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in Section 2:107a(1)(c) of the Dutch Civil Code, and/or in the event of other substantial changes in the structure of the organisation, the Supervisory Board shall be involved in the takeover process and/or the change in structure closely and in a timely fashion.<sup>80</sup>
- 14.2 If a takeover bid has been announced or made for (depository receipts for) shares in the Company and the Board of Management receives a request from a third competing bidder for information regarding

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<sup>74</sup> Dutch Corporate Governance Code, Principle 3.4.

<sup>75</sup> Dutch Corporate Governance Code, best practice provision 2.7.6.

<sup>76</sup> Dutch Corporate Governance Code, best practice provision 3.4.2.

<sup>77</sup> See also Section 5:25i Wft and Section 5:53 paragraph 1 Wft.

<sup>78</sup> Dutch Corporate Governance Code, Principle 4.2.

<sup>79</sup> Dutch Corporate Governance Code, best practice provision 4.2.1.

<sup>80</sup> Dutch Corporate Governance Code, best practice provision 2.8.1.



the Company, such request will be discussed between the Board of Management and the Supervisory Board without delay.<sup>81</sup>

**15. Relation with the Executive Committee<sup>82</sup>**

The Supervisory Board shall maintain periodic and/or ad hoc contacts and exchanges with (members of) the Executive Committee. The CEO and the Company Secretary shall facilitate such contacts.

**16. Relation with the Central Works Council**

The Supervisory Board shall maintain the relationship with the Central Works Council as provided for in Works Council Act (*Wet op de ondernemingsraden*)<sup>83</sup> and in other arrangements covenanted with the Central Works Council.

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<sup>81</sup> Dutch Corporate Governance Code, best practice provision 2.8.2.

<sup>82</sup> Dutch Corporate Governance Code, best practice provision 2.3.1.

<sup>83</sup> See Sections 24 paragraph 2; 25 paragraph 4; 27 paragraph 2 and 30 paragraph 3 of the Works Council Act.

## **CHAPTER III - SUPERVISORY BOARD MEETINGS; DECISION-MAKING**

### **17. Frequency, Notice, Agenda and Venue of Meetings**

- 17.1 The Supervisory Board shall meet as often as deemed necessary for the proper functioning of the Supervisory Board. The Supervisory Board shall meet at least 4 times a year. Meetings shall be scheduled annually as much as possible in advance. The Supervisory Board shall also meet earlier than scheduled if this is deemed necessary by the Chairman, two other members of the Supervisory Board, or the Board of Management.
- 17.2 Meetings of the Supervisory Board are in principle called by the Company Secretary, in consultation with the Chairman. The Chairman shall in principle consult on the content of the agenda with the CEO prior to convening the meeting.
- 17.3 Save in urgent cases, to be determined by the Chairman, the agenda for a meeting shall be made available to all Supervisory Board members as early as possible, and where possible at least seven calendar days before the meeting. Supporting documentation shall be made available as soon as possible.
- 17.4 Each Supervisory Board member, the CEO, and the Board of Management collectively, has the right to request that an item be placed on the agenda for a Supervisory Board meeting.
- 17.5 Supervisory Board meetings are generally held at the offices of the Company, but may also take place elsewhere. In addition, meetings of the Supervisory Board may be held by conference call, video conference or by any other means of communication, provided that all participants can communicate with each other simultaneously.

### **18. Attendance of and Admittance to Meetings**

- 18.1 The CEO and the other members of the Board of Management shall attend the Supervisory Board meetings, to the extent the Supervisory Board does not indicate that it wishes to meet (partially) in the absence of the CEO and/or other members of the Board of Management.
- 18.2 The Supervisory Board may invite persons other than Supervisory Board members, the Company Secretary and members of the Board of Management – such as members of the Executive Committee – to its meeting. In case a Supervisory Board member objects to such invitation, the Supervisory Board shall decide on such invitation by a majority vote of its members present at the meeting.
- 18.3 A Supervisory Board member may be represented at Supervisory Board meetings by another Supervisory Board member holding a proxy in writing. The existence of such proxy must be proved satisfactorily to the chairman of the meeting and the Company Secretary.
- 18.4 If a Supervisory Board member is frequently absent from Supervisory Board meetings he shall be held to account on this by the Chairman.<sup>84</sup>

### **19. Chairman of the Meeting; Reports**

- 19.1 Supervisory Board meetings are presided over by the Chairman or, in his absence, the Vice-Chairman. If both are absent, one of the other Supervisory Board members, designated by a majority of votes cast by the Supervisory Board members present at the meeting, shall preside.
- 19.2 The Company Secretary or any other person designated for such purpose by the chairman of the meeting shall draw up a report on the proceedings at the meeting. The report shall provide insight into

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<sup>84</sup> Dutch Corporate Governance Code, best practice provision 2.4.4.

the decision-making process at the meeting. The report shall be adopted by the Supervisory Board, normally at the next meeting.

**20. Decision-making within the Supervisory Board**

- 20.1 The Supervisory Board members shall endeavour to achieve that resolutions are, as much as possible, adopted unanimously.
- 20.2 Where unanimity cannot be reached and the law, the Articles of Association or these By-Laws do not prescribe a larger majority, all resolutions of the Supervisory Board are adopted by an absolute majority of the votes cast. Each Supervisory Board member has the right to cast one vote. In the event of a tie, the Chairman has the deciding vote if more than two Supervisory Board members are present or represented. At a meeting, the Supervisory Board may only pass resolutions if the majority of the Supervisory Board members then in office are present or represented.
- 20.3 In general, resolutions of the Supervisory Board are adopted at a Supervisory Board meeting.
- 20.4 Supervisory Board resolutions may also be adopted in writing, provided the proposal concerned is submitted to all Supervisory Board members then in office and none of them objects to this form of adoption. Adoption of resolutions in writing shall be effected by statements in writing from all the Supervisory Board members. A statement from a Supervisory Board member who wishes to abstain from voting on a particular resolution which is adopted in writing must reflect the fact that he does not object to this form of adoption.
- 20.5 The Supervisory Board may deviate from the provisions of clauses 20.2 (last sentence) and 20.4 if this is deemed necessary by the Chairman, considering the urgent nature and other circumstances of the case, provided that all Supervisory Board members are allowed the opportunity to participate in the decision-making process.
- 20.6 The report of a Supervisory Board meeting shall reflect the resolutions passed in that meeting. If no unanimity was reached on a decision, the report shall include the votes of each of the Supervisory Board members. In case resolutions are passed under the provisions of clauses 20.4 or 20.5, the Company Secretary shall prepare a report on a resolution so adopted, which shall be added to the documents for the next meeting of the Supervisory Board.
- 20.7 A resolution adopted by the Supervisory Board may be evidenced outside the Company through a statement from the Chairman and the Company Secretary.

## CHAPTER IV - OTHER PROVISIONS

### 21. Remuneration of Supervisory Board Members

- 21.1 The remuneration of the Supervisory Board members is determined by the General Meeting of Shareholders. The Supervisory Board shall from time to time submit clear and understandable proposals on its remuneration to the General Meeting of Shareholders.<sup>85</sup> If a Supervisory Board member is required to charge VAT on his fees, this will be paid by the Company.
- 21.2 The remuneration of a Supervisory Board member may not depend on the results of the Company.<sup>86</sup> A Supervisory Board member may not be awarded remuneration in the form of shares and/or rights to shares in the Company's capital.<sup>87</sup>
- 21.3 Apart from their remuneration, Supervisory Board members shall be reimbursed for all reasonable costs incurred in connection with their attendance of meetings, the reasonableness of such costs being assessed by the Chairman or the Company Secretary on his behalf (costs incurred by the Chairman are assessed by the Vice-Chairman or the Company Secretary on his behalf). Any other expenses are only reimbursed, in whole or in part, if incurred with the consent of the Chairman or the Company Secretary on his behalf (or if it concerns the Chairman, the Vice-Chairman or the Company Secretary on his behalf).
- 21.4 The Company and its Subsidiaries do not grant personal loans, guarantees or the like to Supervisory Board members, save as part of its usual business operations on conditions which apply to all employees and with the approval of the Supervisory Board. The relevant Supervisory Board member will pursuant to clause 22.5 not take part in the deliberations and decision-making within the Supervisory Board regarding this approval. Loans are not remitted.<sup>88</sup>

### 22. Conflicts of Interests of Supervisory Board Members

- 22.1 The Supervisory Board is responsible for dealing with conflicts of interest regarding members of the Board of Management, Supervisory Board members and majority shareholders in relation to the Company.<sup>89</sup>
- 22.2 A Supervisory Board member is alert to conflicts of interest and shall in any case not:
- a. enter into competition with the Company;
  - b. demand or accept (substantial) gifts from the Company for himself or for his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree;
  - c. provide unjustified advantages to third parties to the detriment of the Company; or
  - d. take advantage of business opportunities to which the Company is entitled, for himself or for his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.<sup>90</sup>
- 22.3 A conflict of interest may amongst others exist if the Company intends to enter into a transaction with a legal entity:

<sup>85</sup> Dutch Corporate Governance Code, Principle 3.3.

<sup>86</sup> Dutch Corporate Governance Code, Principle 3.3.

<sup>87</sup> Dutch Corporate Governance Code, best practice provision 3.3.2.

<sup>88</sup> Dutch Corporate Governance Code, best practice provision 2.7.6.

<sup>89</sup> Dutch Corporate Governance Code, Principle 2.7.

<sup>90</sup> Dutch Corporate Governance Code, best practice provision 2.7.1.

- a. in which a member of the Supervisory Board personally has a material financial interest, or
- b. which has a member of its management board or supervisory board who has a relationship under family law<sup>91</sup> with a Supervisory Board member.<sup>92</sup>

22.4 A Supervisory Board member shall without delay report any actual or potential, direct or indirect conflict of interest in a matter that is of material significance to the Company and/or to the member concerned to the Chairman and shall provide all relevant information, including information concerning his spouse, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree. The Chairman of the Supervisory Board shall without delay report any actual or potential, direct or indirect conflict of interest that he has to the Vice-Chairman. The Supervisory Board shall decide, without the Supervisory Board member being present, whether a conflict of interest exists.<sup>93</sup>

22.5 A Supervisory Board member shall not take part in any deliberation and decision-making that involves a subject or transaction in relation to which he has a direct or indirect conflict of interest with the Company.<sup>94</sup>

22.6 All transactions in which there are conflicts of interest with Supervisory Board members shall be agreed on terms that are customary in the market. Decisions to enter into transactions in which there are conflicts of interest with one or more Supervisory Board members that are of material significance to the Company and/or to the relevant Supervisory Board members require the approval of the Supervisory Board.<sup>95</sup>

## **23. Other Positions**

23.1 A Supervisory Board member shall report any other position he may have to the Supervisory Board in advance of taking on such other position. Such other positions will be discussed at least annually at a meeting of the Supervisory Board.<sup>96</sup>

23.2 Supervisory Board members must inform the Chairman and the Company Secretary of their other positions which may be of importance to the Company or the performance of their duties before accepting such positions. If the Chairman determines that there is a risk of a conflict of interest, the matter shall be discussed by the Supervisory Board in accordance with clause 21. If such conflict concerns the Chairman, he will inform the Vice-Chairman who then carries out the task of the Chairman as referred to in the previous sentence. The Company Secretary shall keep a list of the outside positions concerned of each Supervisory Board member.

23.3 A member of the Supervisory Board will hold no more than five supervisory memberships of boards of Dutch large companies or large foundations, with a chairmanship counted twice. If a member of the Supervisory Board also holds an executive position, he will hold no more than two supervisory memberships of boards of Dutch large companies or large foundations and no chairmanships of such boards.<sup>97</sup>

## **24. Holding and Trading Securities**

24.1 Supervisory Board members are bound to the Code of Conduct on Insider Trading of the Company as posted on the Company's website.

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<sup>91</sup> A relation under family-law consists between a child, his parents and their blood relatives (Section 1:197 Dutch Civil Code).

<sup>92</sup> Dutch Corporate Governance Code, best practice provision 2.7.3, first paragraph.

<sup>93</sup> Dutch Corporate Governance Code, best practice provision 2.7.3.

<sup>94</sup> Section 2:140(5) Dutch Civil Code.

<sup>95</sup> Dutch Corporate Governance Code, best practice provision 2.7.4.

<sup>96</sup> Dutch Corporate Governance Code, best practice provision 2.4.2.

<sup>97</sup> Section 2:142a Dutch Civil Code contains detailed provisions.

## 25. Introduction Programme, Ongoing Training and Education

- 25.1 All Supervisory Board members shall follow an introduction programme, geared to their role, that covers general financial, social and legal affairs, financial reporting by the Company, any specific aspects unique to the Company and its business activities, the culture and the relationship with the Central Works Council and the responsibilities of a Supervisory Board member.<sup>98</sup>
- 25.2 The Supervisory Board shall annually identify any aspects with regard to which the Supervisory Board members require further training or education during their term of office.<sup>99</sup>
- 25.3 The introduction programme, training and education shall be facilitated and paid for by the Company.

## 26. Confidentiality

No Supervisory Board member shall, during his membership of the Supervisory Board or afterwards, disclose in any way whatsoever to anyone whomsoever any information of a confidential nature that came to his knowledge in his capacity as Supervisory Board member and which he knows or should know to be of a confidential nature, unless such disclosure is required by law. A Supervisory Board member is allowed to disclose the above information to members of the Board of Management and Supervisory Board members as well as to staff members of the Company who, in view of their activities for the Company, should be informed of the information concerned. A Supervisory Board member shall not in any way whatsoever utilise the information referred to above for his personal benefit.

## 27. Miscellaneous

- 27.1 **Occasional non-compliance.** Subject to applicable law and regulations, the Supervisory Board may incidentally decide at its sole discretion to deviate from these By-Laws.
- 27.2 **Amendment.** These By-Laws may be amended by the Supervisory Board at its sole discretion without any notification being made. Prior to amendment of these By-Laws the Board of Management shall be consulted.
- 27.3 **Interpretation.** In case of uncertainty or difference of opinion on the interpretation of any provision of these By-Laws, the opinion of the Chairman, to be formed after consultation with the Company Secretary, shall be decisive.
- 27.4 **Governing law and jurisdiction.** These By-Laws are governed by the laws of the Netherlands. The courts of the Netherlands have exclusive jurisdiction to settle any dispute arising from or in connection with these By-Laws (including any dispute regarding the existence, validity or termination of these rules).
- 27.5 **Complementarity to Dutch law and Articles of Association.** These By-Laws are complementary to the provisions governing the Supervisory Board as contained in Dutch law, other applicable Dutch, or EU regulations and the Articles of Association. Where these By-Laws are inconsistent with Dutch law, other applicable Dutch or EU rules and regulations or the Articles of Association, the latter shall prevail. Where these By-Laws are consistent with the Articles of Association but inconsistent with Dutch law or other applicable Dutch or EU rules and regulations, the latter shall prevail.
- 27.6 **Partial invalidity.** If one or more provisions of these By-Laws are or become invalid, this shall not affect the validity of the remaining provisions. The Supervisory Board may replace the invalid

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<sup>98</sup> Dutch Corporate Governance Code, best practice provision 2.4.5.

<sup>99</sup> Dutch Corporate Governance Code, best practice provision 2.4.6.

provisions by provisions which are valid and the effect of which, given the contents and purpose of these By-Laws is, to the greatest extent possible, similar to that of the invalid provisions.

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## ANNEX 1

### LIST OF DEFINITIONS

1. In these By-Laws, the following terms have the following meanings:

**affiliated company** has the meaning attributed to it in Section 5:48 of the Financial Supervision Act (*Wet op het financieel toezicht*).

**Annual Accounts** means the annual accounts of the Company as referred to in Sections 2:101 and 2:361(1) of the Dutch Civil Code.

**Articles of Association** means the articles of association of the Company.

**Audit Committee** means the audit committee of the Supervisory Board.

**Board of Management** means the management board of the Company.

**By-Laws** means the By-Laws of the Board of Management and the Executive Committee or the By-Laws of the Supervisory Board, depending on the context, including the annexes belonging thereto.

**CEO** means the chief executive officer, who is also the chairman of the Board of Management.

**CFO** means the chief financial officer of the Company, who is also a member of the Board of Management.

**Chairman** means the chairman of the Supervisory Board.

**Committee** means each committee of the Supervisory Board.

**Company** means Koninklijke KPN N.V., and, where appropriate, the subsidiary companies and possible other group companies of the Company, whose financial information is incorporated in the consolidated Annual Accounts.

**Company Secretary** means the company secretary of the Company appointed in accordance with clause 4 of the By-Laws of the Board of Management and the Executive Committee.

**Executive Committee** means the executive committee of the Company as referred to in the By-Laws of the Board of Management and the Executive Committee, consisting of the Board of Management and certain key officers of the company.

**External Auditor** means the accounting and auditing firm that, in accordance with Section 2:393 of the Dutch Civil Code, is charged with the audit of the Annual Accounts.

**General Meeting of Shareholders** means the general meeting of shareholders of the Company.

**group company** has the meaning attributed to it in Section 2:24b of the Dutch Civil Code.

**in writing** means by letter, by e-mail, or by message which is transmitted via any other current means of communication and which can be received and stored in written form.

**Nomination Committee** means the Nomination & corporate governance committee of the Supervisory Board.

**Remuneration Committee** means the remuneration committee of the Supervisory Board.



**Remuneration Report** means the remuneration report of the Supervisory Board regarding the remuneration policy of the Company as drawn up by the Remuneration Committee.

**Report of the Board of Management** means the report of the management board of the Company drawn up by the Board of Management, as referred to in Sections 2:101 and 2:391 of the Dutch Civil Code.

**Reserved Matters** means the matters designated in accordance with the By-Laws of the Board of Management and the Executive Committee, which shall be managed and resolved exclusively by the Board of Management, i.e. without the other members of the Executive Committee.

**Subsidiary** has the meaning attributed to it in Section 2:24a of the Dutch Civil Code.

**Supervisory Board** means the supervisory board of the Company.

**Supervisory Board Profile** means the profile for the size and composition of the Supervisory Board, as designated in clause 1.1.

**Vice-Chairman** means the vice-chairman of the Supervisory Board.

**Central Works Council** means the central works council of the Company.

2. Save where the context dictates otherwise, in these By-Laws:
  - i. unless a different intention clearly appears, a reference to a clause or Annex is a reference to a clause or annex of these By-Laws;
  - ii. words and expressions expressed in the singular form also include the plural form, and vice versa;
  - iii. words and expressions expressed in the masculine form also include the feminine form; and
  - iv. a reference to a statutory provision counts as a reference to this statutory provision including all amendments, additions and replacing legislation that may apply from time to time.
3. Headings of clauses and other headings in these By-Laws are inserted for ease of reference and do not form part of these By-Laws for the purpose of interpretation.

## ANNEX 2

### LIST OF APPROVAL ITEMS SUPERVISORY BOARD

The approval of the Supervisory Board is required for:

#### ***Business matters***

- (a) resolutions by the Board of Management to approve the annual plan of the Company (which has incorporated any annual plans of Subsidiaries);
- (b) resolutions by the Board of Management regarding divestments, mergers and acquisitions with a financial interest in excess of the sum of EUR 25,000,000;
- (c) other resolutions by the Board of Management with a financial interest in excess of the sum of EUR 50,000,000, excluding resolutions in the ordinary course of business or that have been expressly provided for in an approved annual plan;
- (d) the expansion of business activities to a new type of business activities, that may materially affect the existing business activities, the business management or the image of the Company;
- (e) the closure, in whole or in part, or the transfer of an essential part of the business of the Company,
- (f) entering into, terminating or materially amending joint venture agreements that are of essential significance to the Company;

items (b) to (e) also include such activities at Subsidiaries, whereby the relevant effects are to be assessed on the total Company

#### ***Corporate matters***

- (g) in conformity with article 21 of the Articles of Association of the Company, resolutions of the Board of Management concerning:
  - i. the issue and acquisition of shares of the Company and debt instruments issued by the Company or of debt instruments issued by a limited partnership (commanditaire vennootschap) or a general partnership (vennootschap onder firma) in respect of which the Company is a general partner with full liability;
  - ii. co-operation in the issue of depositary receipts for shares in the Company;
  - iii. application for listing or withdrawal of listing on any stock exchange of the securities referred to under i and ii;
  - iv. the entering into or termination of long-term co-operation of the Company or a dependent company with any other company or legal entity or as fully liable partner in a limited partnership or general partnership if such co-operation or termination is of fundamental importance to the Company;
  - v. the acquisition of a participation worth at least a quarter of the value of the issued capital plus reserves according to the Company's balance sheet plus explanatory notes, by the Company or a dependent company in the capital of another company, and any substantial increase or decrease of such participation;

- vi. investments requiring an amount equal to at least a quarter of the Company 's issued capital plus reserves according to its balance sheet plus explanatory notes;
  - vii. a proposal to alter the articles of association of the Company<sup>100</sup>;
  - viii. a proposal to dissolve the Company<sup>101</sup>;
  - ix. a petition for bankruptcy or a request for suspension of payments;
  - x. a proposal to reduce the issued capital of the Company;
  - xi. the termination of the employment of a considerable number of the Company 's employees or of a dependent company's employees simultaneously or within a short period of time;
  - xii. a significant change in the employment conditions of a considerable number of the company's employees or of a dependent company's employees;
- (h) the following resolutions regarding dividend<sup>102</sup>:
- i. a resolution of the Board of Management to distribute an interim dividend or to make interim distributions out of the distributable part of the shareholders' equity.
  - ii. a resolution of the Board of Management to pay all or part of the dividend on ordinary shares in shares in the Company instead of cash.
  - iii. the proposal of the Board of Management to the general meeting to pay dividends to holders of ordinary shares chargeable to the distributable part of its equity, whether to be made in cash or in whole or in part in shares in the Company.
- (i) a proposal to merge or demerge the Company<sup>103</sup>
- (j) the following resolutions with regard to any Subsidiaries:
- i. application for listing or withdrawal of listing on any stock exchange of the securities of the Subsidiary;
  - ii. issuance of debt instruments by the Subsidiary, other than to the Company or any other Subsidiary in the course of intra-group financing arrangements;
  - iii. a petition for bankruptcy or a request for suspension of payments of the Subsidiary;
- (k) in addition to (i) above, the following resolutions with regard to any Subsidiaries worth at least a quarter of the value of the issued capital plus reserves according to the Company's balance sheet plus explanatory notes:
- i. a resolution to alter the articles of association that entails an essential change in the manner in which KPN exercises its rights as a shareholder or as member of the supervisory board in a such Subsidiary;
  - ii. a resolution to dissolve the Subsidiary;

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<sup>100</sup> Also art. 43 Articles of Association

<sup>101</sup> Also art. 43 Articles of Association

<sup>102</sup> Art. 31 and 32 Articles of Association

<sup>103</sup> Art. 43 Articles of Association

- iii. a resolution to merge or demerge the Subsidiary;

### ***Functioning of the Board of Management***

- (l) the allocation of duties of the Board of Management to individual members of the Board of Management;<sup>104</sup>
- (m) the adoption of the By-Laws of the Board of Management and the Executive Committee
- (n) the establishment of an Executive Committee;
- (o) the appointment and removal of the Company Secretary<sup>105</sup> and the chief internal auditor<sup>106</sup>;
- (p) any resolution of the Board of Management, against which the CEO has cast his vote in the voting of the Board of Management<sup>107</sup>.

### ***Conflicts of interest***

- (q) all transactions between the Company and natural or legal persons who hold at least 10% of the shares in the Company that are of material significance to the Company and/or such persons;<sup>108</sup>
- (r) all transactions in which there are conflicts of interest with members of the Board of Management that are of material significance to the Company and/or the relevant members of the Board of Management;<sup>109</sup>
- (s) all transactions in which there are conflicts of interest with Supervisory Board members that are of material significance to the Company and/or the relevant Supervisory Board members;<sup>110</sup>

### ***Other resolutions***

- (t) any resolutions which the Supervisory Board has further subjected to its approval in a resolution which was clearly specified in writing and of which the Board of Management was informed in writing
- (u) all other acts that require the approval by legislation, the Articles of Association, the By-Laws of the Board of Management and the Executive Committee, the By-Laws of the Supervisory Board, the Dutch Corporate Governance Code or any other applicable legislation.

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<sup>104</sup> Board of Management By-Laws, clause 1.8.

<sup>105</sup> Board of Management By-Laws, clause 5.1.

<sup>106</sup> Board of Management By-Laws, clause 9.2

<sup>107</sup> Art. 21, paragraph 1, sub B, Articles of Association

<sup>108</sup> Board of Management By-Laws, clause 6.7.

<sup>109</sup> Board of Management By-Laws, clause 17.6.

<sup>110</sup> Supervisory Board By-Laws, clause 19.6.

## ANNEX 3

### GUIDELINES ON CONTACTS WITH SHAREHOLDERS

In the normal course of business members of the Board of Management and Supervisory Board members will have contacts with (major) shareholders. In general these contacts are and should be limited to subjects, which form part of the usual investor relations activities. Selective disclosures are not allowed and the only information on the Company that will be provided is information that can also be obtained from the public domain.

It is however possible that a large shareholder needs to be consulted when this is necessary to let the company form an opinion about the feasibility of an intended transaction.

For both situations certain guidelines are necessary to provide clarity on do's and don'ts in relation to contacts with shareholders. This will result in avoidance of misunderstandings and prevent infringement of securities legislation (rules on disclosure of inside information).

#### I. Contacts from a general Investor Relations Perspective

General contacts from an IR perspective are possible, provided that no selective disclosures can be made. The following guidelines apply:

In principle, no member of the Board of Management and no Supervisory Board member will have contacts on an individual basis, and each member of the Board of Management Board or Supervisory Board member will be accompanied by the CEO and/or CFO or a representative from the Investor Relations department. In case the contact relates to members of the Board of Management, the contact may take place by two members of the Supervisory Board together, or one member of the Supervisory Board and the Company Secretary. In case the Chairman of the Supervisory Board or the CEO deem that a deviation of these principles is warranted in particular circumstances in the interest of the company, they may decide to do so, while maintaining strictly within the boundaries of the law and while ensuring they can at all times render account of such decision and of the respective contacts.

The only information about the Company that will be provided is public information.

In case of an intended disclosure by the shareholder, the latter should be made aware of the fact that the Company will have to issue a press release if this disclosure would make the Company privy to inside information.

#### II. Contacts from a governance perspective

The support of a (major) shareholder can be a prerequisite for the Company to form an opinion about the feasibility of an intended (transformational) transaction. It is a legitimate concern that the Company wishes to take this into consideration in the decision-making process.

This would be the case if a transaction is subject to approval of the General Meeting of Shareholders. This form of contact would normally represent a disclosure of inside information. The following guidelines apply:

No member of the Board of Management and no Supervisory Board member will have contacts on an individual basis and each member will be accompanied by the CEO and/or CFO, a representative of the Investor Relations department and/or the Company Secretary.

The provision of inside information to the major shareholder should be limited to the information, which is necessary for the shareholder to form its opinion about the transaction.

The provision of inside information should be limited to a small group of people

Both the Company and shareholder should confirm in writing that the information is confidential and that the latter undertakes not to trade the relevant securities (which include relevant bonds) until announcement of the transaction or such time as the information no longer qualifies as inside information.