

**N.V. NUON ENERGY**

**BY-LAWS MANAGEMENT BOARD**

**(in accordance with article 17 paragraph 2 of the Articles of Association)**

**Adopted by the Management Board on 7 July 2009  
Approved by the Supervisory Board on 24 September 2009**

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## **INTRODUCTION**

- 0.1 These By-Laws are established pursuant to article 17 paragraph 2 of the Articles of Association.
- 0.2 These By-Laws are complementary to the provisions regarding the Management Board and the Managing Directors contained in applicable law and regulation, the Articles of Association and the rules pertaining to the relationship between the Supervisory Board and the Management Board contained in the By-Laws of the Supervisory Board.
- 0.3 These By-Laws are posted on the Company's website.
- 0.4 The meaning of certain capitalised or uncapitalised terms used in these By-Laws are set forth in the List of Definitions attached as ANNEX 1.

## **CHAPTER 1 COMPOSITION OF THE MANAGEMENT BOARD; POSITIONS**

### **1. Composition; Division of Tasks**

- 1.1 The Managing Directors are appointed by the Supervisory Board.
- 1.2 Managing Directors are appointed for a maximum of four years per term.
- 1.3 The Management Board consists of at least two Managing Directors. With due observance of the required minimum, the number of Managing Directors is determined by the Supervisory Board after consultation with the CEO.
- 1.4 Individual Managing Directors may be charged with specific parts of the managerial tasks, without prejudice to the collective responsibility of the Management Board as a whole. The Management Board remains collectively responsible for decisions, even if they are prepared by individual Managing Directors. An individual Managing Director may only exercise such powers as are explicitly attributed or delegated to him and he may never exercise powers beyond those exercisable by the Management Board as a whole.
- 1.5 The division of tasks within the Management Board is determined (and amended, if necessary) by the Management Board, subject to the approval of the Supervisory Board. Managing Directors especially charged with particular managerial tasks are primarily responsible for the risk control and monitoring of the managerial tasks concerned. The current division of tasks between the Managing Directors, which for the CEO and CFO are in addition to their respective tasks described in clauses 2 and 3 below, is set out in ANNEX 2.
- 1.6 Each Managing Director must inform the other Managing Directors in a clear and timely manner about the way in which he has used delegated powers and about major developments in the area of his responsibilities.

### **2. Chief Executive Officer**

- 2.1 The Supervisory Board appoints one of the Managing Directors as CEO.
- 2.2 Within the Management Board, the CEO is primarily responsible for:
  - (a) preparing an agenda and chairing meetings of the Management Board;
  - (b) ensuring that the Management Board functions and makes decisions in a collective manner;
  - (c) determining whether a proposed resolution should be brought to the Management Board for a vote;
  - (d) ensuring that passed resolutions are in accordance with the strategy that should lead to the realisation of the objectives of the Company as referred to in clause 6.1;
  - (e) supervising the implementation of passed resolutions and determining if further consultation with the Management Board on their implementation is required; and

- (f) consulting on an ad hoc basis with Managing Directors regarding their respective tasks.
- 2.3 Within the Management Board, the CEO is also responsible for the following matters regarding the relationship between the Management Board and the Supervisory Board:
- (a) designating Managing Directors who consult on behalf of the Management Board with Committees;
  - (b) submitting a proposed agenda and preparing meetings of the Supervisory Board in consultation with the Chairperson and supported by the Company Secretary;
  - (c) ensuring that the Supervisory Board is provided with all information necessary for the proper performance of its duties;
  - (d) overseeing and ensuring communications of the Management Board with the Supervisory Board;
  - (e) consulting regularly with the Chairperson and consulting other Supervisory Directors if deemed necessary or advisable;
  - (f) considering requests of Managing Directors to consult with particular Supervisory Directors regarding an area of expertise; and
  - (g) if requested, participating in meetings with the Audit Committee and the CFO as described in clause 3.3.
- 2.4 The CEO is assisted in the organisation of the matters set out in clauses 2.2 and 2.3 by the Company Secretary.

### **3. Chief Financial Officer**

3.1 The Supervisory Board appoints one of the Managing Directors as CFO.

3.2 Within the Management Board, the CFO is primarily responsible for:

- (a) formulating and communicating the Company's financial strategy;
- (b) overseeing and ensuring the integrity of the Company's Annual Accounts;
- (c) the financial reporting of the Company; and
- (d) performing any other related duties as may be prescribed from time to time by the Management Board.

3.3 Within the Management Board, the CFO is also primarily responsible for taking part in meetings of the Audit Committee to discuss:

- (a) the integrity of the Annual Accounts (including but not limited to the choice of accounting policies, application and assessments of the effects of new rules, information about the handling of estimated items in the Annual Accounts and forecasts);

- (b) the qualifications, independence, remuneration and non-auditing work of the External Auditor the Company (without prejudice to the responsibilities of the Audit Committee in the area of finance, accounting and tax);
- (c) the performance of tasks by the internal audit department of the Company and the External Auditor;
- (d) the financial reporting process;
- (e) the system of internal business controls (including but not limited to the effect of internal risk management and control systems);
- (f) compliance by the Company with laws and regulations and applicable codes of conduct in the area of finance, accounting and tax;
- (g) compliance by the Company with recommendations of the External Auditor and the Company's internal audit department;
- (h) the financing of the Company and finance-related strategies; and
- (i) the Company's tax planning.

#### **4. Company Secretary<sup>1</sup>**

- 4.1 The Management Board is assisted by the Company Secretary, who is appointed by the Management Board.
- 4.2 All Managing Directors have access to the advice and services of the Company Secretary.
- 4.3 The Company Secretary sees to it that correct Management Board procedures are followed and that the obligations of the Management Board under the law, as well as the Articles of Association are complied with. The Company Secretary shall assist the CEO in the organisation of the affairs of the Management Board (the preparing and reporting of meetings, information etc.). The Company Secretary is as such the secretary of the Management Board.
- 4.4 The Company Secretary may delegate his duties under these By-Laws, or parts thereof, to a deputy appointed by him in consultation with the CEO.
- 4.5 The Company Secretary also performs tasks for the Supervisory Board, as provided for in the By-Laws of the Supervisory Board.

### **CHAPTER II DUTIES AND POWERS**

#### **5. General Duties and Powers**

- 5.1 The Management Board is charged with the management of the Company, which means, among other things, that it is responsible for the achieving of the Company's objectives, strategy and associated risk profile, as well as the ensuing delivery of results and corporate social responsibility issues that are relevant to the enterprise. The Management Board is accountable for these matters to the Supervisory Board and the General Meeting.<sup>2</sup> The

<sup>1</sup> Compare clause 4 of the By-Laws of the Supervisory Board and Dutch Corporate Governance Code, best practice provision III.4.3.

<sup>2</sup> Dutch Corporate Governance Code, Principle II.1.

responsibility for the management of the Company is vested collectively in the Management Board.

- 5.2 The Management Board is responsible for compliance with all relevant laws and regulations, for managing the risks attached to the Company's activities and for financing the Company. The Management Board reports on these issues and discusses the internal risk management and control systems with the Supervisory Board and the Audit Committee.<sup>3</sup>
- 5.3 When discharging its duties the Management Board shall act in accordance with the interests of the Company and the business connected with it, taking into consideration the interests of the Company's stakeholders.<sup>4</sup>
- 5.4 The Management Board is itself responsible for the quality of its performance.
- 5.5 The Managing Directors shall externally express concurring views with respect to important affairs, matters of principle and matters of general interest, with due observance of the responsibilities of its individual members.
- 5.6 The Management Board is, together with the Supervisory Board, responsible for the corporate governance structure of the Company and compliance with the Dutch Corporate Governance Code. They are accountable for this to the General Meeting and will provide sound reasons for any non-application of the provisions. There should be a basic recognition that corporate governance must be tailored to the company-specific situation and that nonapplication of individual provisions by the Company may be justified.<sup>5</sup>
- 5.7 The Management Board shall ensure that employees have the possibility of reporting alleged irregularities of a general, operational and financial nature in the Company to the CEO or an official designated by him, without jeopardising their legal position. Alleged irregularities concerning the functioning of Managing Directors are reported to the Chairperson. The whistleblowers' policy is posted on the Company's website.<sup>6</sup>
- 5.8 All transactions between the Company and individuals or legal entities who hold at least ten percent (10%) of the shares in the Company must be agreed on terms that are customary for arm's-length transactions in the branch of business in which the Company and its Subsidiaries operate. Decisions to enter into transactions with such persons that are of material significance to the Company and/or to such persons require the approval of the Supervisory Board.<sup>7</sup>
- 5.9 The Management Board shall perform its activities under the supervision of the Supervisory Board.

## **6. Strategy and Risks**

- 6.1 The Management Board shall formulate, record and submit to the Supervisory Board for approval: (i) the operational and financial objectives of the Company; (ii) the strategy designed to achieve the objectives; (iii) the parameters to be applied in relation to the strategy,

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<sup>3</sup> Dutch Corporate Governance Code, Principle II.1.

<sup>4</sup> Dutch Corporate Governance Code, Principle II.1.

<sup>5</sup> Dutch Corporate Governance Code, Principle I.

<sup>6</sup> Dutch Corporate Governance Code, best practice provision II.1.7.

<sup>7</sup> Dutch Corporate Governance Code, best practice provision III.6.4.

for example in respect of the financial ratios; and (iv) corporate social responsibility issues that are relevant to the enterprise.<sup>8</sup>

6.2 The Management Board shall be responsible for ensuring that the Company has internal risk management and control systems that are suitable for the Company. The Management Board shall in any event employ as instruments of the internal risk management and control systems:

- (a) risk analyses of the operational and financial objectives of the Company;
- (b) a code of conduct which should be published on the Company's website;
- (c) guides for the layout of financial reports and the procedures to be followed in drawing up the reports; and
- (d) a system of monitoring and reporting.<sup>9</sup>

## 7. Financial Reporting; Annual Accounts and Annual Report

7.1 The Management Board is responsible for the quality and completeness of publicly disclosed financial reports.<sup>10</sup> The preparation and publication of the Annual Report, the Annual Accounts, the quarterly and half-yearly figures and ad hoc financial information require careful internal procedures.<sup>11</sup> The Management Board is responsible for establishing and maintaining internal procedures that ensure that all major financial information is known to the Management Board, so that the timeliness, completeness and accuracy of the external financial reporting are assured. For this purpose the Management Board shall ensure that financial information from business divisions and/or subsidiaries is reported directly to itself and that the integrity of that information is not compromised.<sup>12</sup>

7.2 The Management Board shall release the Annual Report and the Annual Accounts within five months of the end of the financial year.

7.3 The Management Board shall ensure that the information listed in ANNEX 3 is included in the Annual Report.

7.4 The internal audit department operates under the responsibility of the Management Board.<sup>13</sup> The Management Board shall consult with the External Auditor and the Audit Committee in drawing up the work schedule of the internal audit department. The Management Board shall ensure that the Audit Committee and the External Auditor take cognisance of the findings of the internal audit department.<sup>14</sup>

## 8. Relation with the External Auditor

8.1 The Management Board shall ensure that the External Auditor can properly perform his audit work, and it shall encourage both the External Auditor and the Company to properly perform and pursue the role and the policy of the Company regarding the External Auditor, as

<sup>8</sup> Dutch Corporate Governance Code, best practice provision II.1.2.

<sup>9</sup> Dutch Corporate Governance Code, best practice provision II.1.3.

<sup>10</sup> Dutch Corporate Governance Code, Principle V.1.

<sup>11</sup> Dutch Corporate Governance Code, best practice provision V.1.1.

<sup>12</sup> Dutch Corporate Governance Code, best practice provision V.1.3.

<sup>13</sup> Dutch Corporate Governance Code Principle V.3.

<sup>14</sup> Dutch Corporate Governance Code, best practice provision V.3.1.

provided for by agreement with the External Auditor, these By-Laws, the By-Laws of the Supervisory Board and the Terms of Reference of the Audit Committee.

- 8.2 The Management Board shall annually report to the Supervisory Board on its dealings with the External Auditor, particularly on his independence (including the desirability of rotation of the responsible partners of the External Auditor's firm and the desirability of non-audit work for the Company by the External Auditor who also performs the audit).<sup>15</sup>
- 8.3 At least once every four years, the Management Board shall conduct a thorough assessment of the functioning of the External Auditor within the various entities and in the different capacities in which the External Auditor acts. The main conclusions of this assessment shall be communicated to the General Meeting for the purposes of assessing the nomination for the appointment of the External Auditor.<sup>16</sup>

## **9. Relation with the Supervisory Board**

- 9.1 The CEO shall be the contact for the Chairperson and the Supervisory Directors.
- 9.2 In relation to the provision of information and the exercise of duties and powers by the Supervisory Board, the Supervisory Directors and Committees, the Management Board and the Managing Director shall act in accordance with the provisions applying to the Management Board and under or pursuant to these By-Laws, the By-Laws of the Supervisory Board, the Terms of Reference of the Committees, the Articles of Association and the applicable laws and regulations.

## **10. Relation with the Shareholders**

- 10.1 The Management Board and the Supervisory Board shall provide the General Meeting in good time with all information required to exercise its powers.<sup>17</sup>
- 10.2 The Management Board and the Supervisory Board shall provide the General Meeting with all requested information, unless this would be contrary to an overriding interest of the Company. If the Management Board and the Supervisory Board invoke an overriding interest, it shall state the reasons.<sup>18</sup>
- 10.3 A resolution for approval or authorisation to be passed by the General Meeting shall be explained in writing. In its explanation the Management Board shall deal with all facts and circumstances relevant to the approval or authorisation to be granted. The notes to the agenda shall be posted on the Company's website.
- 10.4 The Managing Directors shall be present at the General Meeting, unless they are unable to attend for important reasons.
- 10.5 The Management Board and the Supervisory Board shall procure that each substantial change in the corporate governance structure of the Company or in the Company's compliance with the Dutch Corporate Governance Code is submitted to the General Meeting for discussion under a separate agenda item.<sup>19</sup>

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<sup>15</sup> Dutch Corporate Governance Code, best practice provision V.2.2.

<sup>16</sup> Dutch Corporate Governance Code, best practice provision V.2.3.

<sup>17</sup> Dutch Corporate Governance Code, Principle IV.3.

<sup>18</sup> Dutch Corporate Governance Code, best practice provision IV.3.5.

<sup>19</sup> Dutch Corporate Governance Code, best practice provision I.2.

- 10.6 The policy of the Company on reserves and on dividends (the level and purpose of the reserves, the amount of the dividend and the type of dividend) and any changes to this policy shall be dealt with and explained as a separate agenda item at the General Meeting.<sup>20</sup>
- 10.7 A proposal to distribute a dividend shall be dealt with as a separate agenda item at the General Meeting.<sup>21</sup>
- 10.8 The Management Board and the Supervisory Board shall ensure compliance with all applicable laws and regulations related to the rights of the General Meeting and the rights of individual shareholders with respect thereto.

## **11. Website of the Company**

The Management Board shall post and update all information which is relevant to the Shareholders and which the Company is required to publish or deposit pursuant to the applicable provisions of company law and securities law applicable to it, in a separate section of the Company's website. A list of items that must be placed on the website is attached as ANNEX 4.<sup>22</sup>

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<sup>20</sup> Dutch Corporate Governance Code, best practice provision IV.1.4.

<sup>21</sup> Dutch Corporate Governance Code, best practice provision IV.1.5.

<sup>22</sup> Dutch Corporate Governance Code, best practice provision IV.3.6.

## **CHAPTER III MEETINGS OF THE MANAGEMENT BOARD; DECISION-MAKING**

### **12. Meetings of the Management Board**

- 12.1 The Management Board shall in principle meet once a week, or more often as deemed desirable or required for a proper functioning of the Management Board by any one or more Managing Directors. Meetings of the Management Board shall be called by the CEO. Save in urgent cases, to be determined by the CEO, the agenda for the meeting shall be sent at least three calendar days before the meeting to all Managing Directors. Whenever possible, an explanation in writing and/or other related documentation should be attached for each item on the agenda.
- 12.2 The Management Board shall meet in The Netherlands, unless the Management Board agrees otherwise.
- 12.3 Management Board meetings are chaired by the CEO. If the CEO is absent, one of the other Managing Directors, designated by a majority of votes cast by the Managing Directors present at the meeting, presides over the meeting.
- 12.4 The admittance to the meeting of persons other than the Managing Directors and the Company Secretary or his deputy shall be decided by majority vote of the Managing Directors present and represented at the meeting.
- 12.5 The Company Secretary or any other person designated for such purpose by the chairman of the meeting shall draw up minutes of the meeting. The minutes should provide insight into the decision-making process at the meeting. The minutes shall be adopted by the Management Board in principle at the next meeting.

### **13. Decision-making within the Management Board**

- 13.1 The Managing Directors shall endeavour to achieve that resolutions are as much as possible adopted unanimously.
- 13.2 Each Managing Director has the right to cast one vote.
- 13.3 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 Management Board are adopted by an absolute majority of the votes cast without a quorum being required. If there is a tie in votes, the CEO shall have a casting vote. Abstentions shall not be counted as votes.
- 13.4 In general, resolutions of the Management Board are adopted at a Management Board meeting.
- 13.5 The Management Board shall not pass resolutions relating to the area of expertise of a particular Managing Director in the absence of that Managing Director.
- 13.6 Management Board resolutions may also be adopted in writing provided the proposal concerned is submitted to all Managing Directors 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 Managing Directors. A statement from a Managing Director 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.

- 13.7 The Management Board may deviate from the provisions of clauses 13.5 and 13.6 if this is deemed necessary by the CEO, considering the urgent nature and other circumstances of the case, provided that all Managing Directors are allowed the opportunity to participate in the decision-making process. The CEO and the Company Secretary shall then prepare a report on any resolution so adopted, which shall be added to the documents for the next meeting of the Management Board.
- 13.8 A resolution adopted by the Management Board may be evidenced outside the Company through a statement from the CEO and/or the Company Secretary.

#### **14. Conflicts within the Management Board**

- 14.1 If Managing Directors disagree with each other and they fail to settle their difference of opinion within the Management Board or if a Managing Director refuses to accept a resolution adopted by the Management Board, the Managing Director concerned has the right to submit the matter relating to the difference of opinion or the resolution to the Chairperson. Before exercising this right, the Managing Director concerned shall first notify the other Managing Directors of his intention.
- 14.2 If a matter as referred to in clause 14.1 is not settled after being submitted to the Chairperson, the Managing Director concerned has the right to submit the matter to the Supervisory Board.

### **CHAPTER IV OTHER PROVISIONS**

#### **15. Conflicts of Interests of Managing Directors**

- 15.1 A Managing Director shall 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>23</sup>
- 15.2 A Managing Director shall immediately report any conflict of interest or potential conflict of interest that is of material significance to the Company and/or to the member concerned, to the Chairperson and to the other Managing Directors 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 upon the second degree. The Supervisory Board shall decide, without the Managing Director concerned being present, whether there is a conflict of interest.<sup>24</sup>

<sup>23</sup> Dutch Corporate Governance Code, best practice provision II.3.1.

<sup>24</sup> Dutch Corporate Governance Code, best practice provision II.3.2.

- 15.3 A conflict of interest exists, in any event, if the Company intends to enter into a transaction with a legal entity: (i) in which a Managing Director personally has a material financial interest; (ii) which has a Managing Director who has a relationship under family law with a Managing Director;<sup>25</sup> or (iii) in which a Managing Director has a management or supervisory position.<sup>26</sup>
- 15.4 A Managing Director shall not take part in any discussion or decision-making that involves a subject or transaction in relation to which he has a conflict of interest with the Company.<sup>27</sup>
- 15.5 All transactions in which there are conflicts of interest with Managing Directors shall be agreed on terms that are customary for arm's-length transactions in the branch of business in which the Company and its Subsidiaries operate. Decisions to enter into transactions in which there are conflicts of interest with Managing Directors that are of material significance to the Company and/or the relevant Managing Directors require the approval of the Supervisory Board.<sup>28</sup>
- 15.6 In the event of a conflict of interest between the Company and a Managing Director, the Company shall be represented by the Management Board and each Managing Director shall also be authorised to represent the Company. A resolution of the Management Board with respect to a matter involving a conflict of interest with a Managing Director in a private capacity shall be subject to the approval of the Supervisory Board, but the absence of such approval shall not affect the authority of the Management Board or the Managing Directors to represent the Company. The preceding shall not apply if the General Meeting has appointed one or more persons to represent the Company in the event of a conflict of interest between the Company and a Managing Director.

## **16. Remuneration of Managing Directors**

- 16.1 The remuneration and contractual terms of employment of Managing Directors individually are determined by the Supervisory Board in accordance with article 16 of the Articles of Association and clause 14 of the By-Laws of the Supervisory Board, within the scope of the remuneration policy adopted by the General Meeting.
- 16.2 Managing Directors shall not profit from the activities of the Company other than through remuneration as a Managing Director.<sup>29</sup>
- 16.3 The Company and its Subsidiaries shall not grant personal loans, guarantees or the like to Managing Directors 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>30</sup>
- 16.4 Apart from their remuneration, Managing Directors shall be reimbursed for all reasonable costs incurred with the consent of the CEO, or, with respect to the CEO, incurred with the consent of the Chairperson.

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<sup>25</sup> A relationship under family law exists between a child, its parents and their blood relatives (Section 1:197, Dutch Civil Code).

<sup>26</sup> Dutch Corporate Governance Code, best practice provision II.3.2 (continued).

<sup>27</sup> Dutch Corporate Governance Code, best practice provision II.3.3.

<sup>28</sup> Dutch Corporate Governance Code, best practice provision II.3.4.

<sup>29</sup> Dutch Corporate Governance Code Principe II.2 (third paragraph).

<sup>30</sup> Dutch Corporate Governance Code, best practice provision II.2.9.

## **17. Outside Positions**

- 17.1 A Managing Director may not be a supervisory director of more than two listed companies. A Managing Director may not concurrently serve as chairperson of the supervisory board of a listed company. Membership of the supervisory board of affiliates of the Company does not count for this purpose.<sup>31</sup>
- 17.2 The acceptance by a Managing Director of membership of the supervisory board of a listed company or of other important outside positions requires the approval of the Chairperson.<sup>32</sup>
- 17.3 Managing Directors shall not without prior permission of the CEO (following consultation with the Chairperson) or, in the case of the CEO, prior permission of the Chairperson, accept any other remunerated employment position, including in an advisory or supervisory capacity.

## **18. Holding and Trading Securities**

- 18.1 As regards the possession of or transactions with securities of listed companies, all Managing Directors shall abide by the regulations regarding disclosure and inside trading that apply thereto by law or stock exchange regulations. The term "securities of listed companies" means all securities (i) that are listed or traded on a Dutch or foreign stock exchange or in respect of which such listing or trading is likely to take place soon; or (ii) in respect of which the value is also determined by the value of the securities referred to in (i).<sup>33</sup>
- 18.2 The Company shall draw up regulations governing ownership of and transactions in securities by Managing Directors, other than securities issued by the Company.<sup>34</sup>

## **19. Confidentiality**

- 19.1 No Managing Director shall, during his membership of the Management Board or afterwards, disclose in any way whatsoever to anyone whomsoever any information of a confidential nature regarding the business of the Company and/or companies in which it holds a stake, that came to his knowledge in the capacity of his work for the Company and which he knows or should know to be of a confidential nature, unless required by law. A Managing Director is allowed to disclose the above information to Managing Directors and Supervisory Directors as well as to staff members of the Company and of companies in which the Company holds a stake, who, in view of their activities for the Company and/or companies in which the Company holds a stake, should be informed of the information concerned. A Managing Director shall not in any way whatsoever utilise the information referred to above for his personal benefit.

## **20. Miscellaneous**

- 20.1 **Acceptance by Managing Directors.** Anyone who is appointed as a Managing Director 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.

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<sup>31</sup> Dutch Corporate Governance Code, best practice provision II.1.8.

<sup>32</sup> Dutch Corporate Governance Code, best practice provision II.1.8.

<sup>33</sup> Clause 18 of these By-Laws makes up the Supervisory Board By-Laws according to best practice provision III.6.5 of the Dutch Corporate Governance Code.

<sup>34</sup> Dutch Corporate Governance Code, best practice provision III.6.5.

- 20.2 **Occasional non-compliance.** The Management Board may occasionally decide not to comply with these By-Laws, with due observance of applicable laws and regulations and with the prior approval of the Supervisory Board.
- 20.3 **Amendment.** These By-Laws may be amended by the Management Board at any time and without any notification being made, subject only to prior Supervisory Board approval.
- 20.4 **Interpretation.** In the event of lack of clarity or difference of opinion on the interpretation of any provision of these By-Laws, the opinion of the Chairperson shall be decisive.
- 20.5 **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 By-Laws).
- 20.6 **Complementarity to Dutch law and Articles of Association.** These By-Laws are complementary to the provisions governing the Management 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 regulations or the Articles of Association, the latter shall prevail. Where these By-Laws are consistent with the Company's Articles of Association but inconsistent with Dutch law or other applicable Dutch or EU regulations, the latter shall prevail.
- 20.7 **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 Management Board, subject to prior approval of the Supervisory Board, may replace the invalid 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 the By-Laws of the Management Board, the following terms have the following meanings:

**Annual Accounts** means the annual accounts of the Company, as referred to in Section 2:101 of the Dutch Civil Code;

**Annual Report** means the annual report of the Company drawn up by the Management Board, as referred to in Section 2:101 of the Dutch Civil Code;

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

**Audit Committee** means the Committee designated as such in clause 5 of the By-Laws of the Supervisory Board;

**By-Laws** means the By-Laws of the Management Board or the By-Laws of the Supervisory Board, depending on the context, including the annexes belonging thereto;

**CEO** means the Chief Executive Officer of the Company;

**CFO** means the Chief Financial Officer of the Company;

**Chairperson** means the chairperson of the Supervisory Board;

**Committee** as regards the Supervisory Board, each committee of the Supervisory Board as referred to in clause 5 of the By-Laws of the Supervisory Board;

**Company** means N.V. Nuon Energy and, where appropriate, the subsidiaries and possible other group companies of the Company, whose financial information is incorporated in the consolidated annual accounts of the Company;

**Company Secretary** means the company secretary 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 of the Company;

**General Meeting** means the general meeting of shareholders (*algemene vergadering van aandeelhouders*) of the Company;

**Group Company** means group company, as referred to in Section 2:24b of the Dutch Civil Code;

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

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

**Managing Director** means a member of the Management Board;

**Remuneration Committee** means the Committee designated as such in clause 5 of the By-Laws 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;

**Subsidiary** means a subsidiary of the Company as referred to 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 referred to in clause 1.1 of the By-Laws of the Supervisory Board;

**Supervisory Director** means a member of the Supervisory Board

2. Save where the context dictates otherwise, in the By-Laws of the Management Board and the Supervisory Board:
  - (a) words and expressions expressed in the singular form also include the plural form, and vice versa;
  - (b) words and expressions expressed in the masculine form also include the feminine form; and
  - (c) 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 the By-Laws of the Management Board and the Supervisory Board are inserted for ease of reference and do not form part of the By-Laws concerned for the purpose of interpretation.

**ANNEX 2**

**DIVISION OF TASKS OF THE MANAGING DIRECTORS OF N.V. NUON ENERGY**

without prejudice of the legal responsibility of every Managing Director for the Company's management as a whole

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<b>Name</b>	<b>Position</b>	<b>Task</b>
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## ANNEX 3

### LIST OF INFORMATION TO BE INCLUDED IN THE ANNUAL REPORT

- II.1.2 CG Code The broad outline of: (i) the operational and financial objectives of the Company, (ii) the strategy designed to achieve the objectives, (iii) the parameters to be applied in relation to the strategy, and (iv) corporate social responsibility issues that are relevant to the enterprise.<sup>35</sup>
- II.1.4 CG Code The Management Board shall provide (i) a description of main risks related to the strategy of the Company, (ii) a description of the design and effectiveness of the internal risk management and control systems for the main risks during the financial year and (iii) a description of any major failings in the internal risk management and control systems which have been discovered in the financial year, any significant changes made to these systems and any major improvements planned, and a confirmation that these issues have been discussed with the Audit Committee and the Supervisory Board.<sup>36</sup>
- II.1.5 CG Code As regards financial reporting risks the Management Board states in the Annual Report that the internal risk management and control systems provide a reasonable assurance that the financial reporting does not contain any errors of material importance and that the risk management and control systems worked properly in the year under review. The Management Board shall provide clear substantiation of this.
- II.1.6 CG Code A report on the sensitivity of the results of the Company to external factors and variables.
- II.3.4 CG Code Publication of all transactions in which there are conflicts of interest with Managing Directors that are of material significance to the Company and/or the Managing Directors concerned.<sup>37</sup>
- III.6.3 CG Code Publication of all transactions in which there are conflicts of interest with Supervisory Directors that are of material significance to the Company and/or the Supervisory Directors concerned.<sup>38</sup>
- III.6.4 CG Code Publication of all transactions between the Company and legal or natural persons who hold at least ten percent (10%) of the shares in the Company.<sup>39</sup>
- I.1 CG Code In a separate chapter: the broad outline of the corporate governance structure of the Company, partly by reference to the principles mentioned in the Dutch Corporate Governance Code, indicating expressly to what extent it applies the best practice provisions in the Dutch Corporate Governance Code and, in the event of non-appliance, why, and to what extent, it does not apply it.

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<sup>35</sup> . By-Laws MB clause 6.1.

<sup>36</sup> By-Laws MB clause 6.2.

<sup>37</sup> By-Laws MB clause 15.5.

<sup>38</sup> By-Laws SB clause 23.4.

<sup>39</sup> By-Laws MB clause 5.8.

## NOTES TO THE ANNUAL ACCOUNTS

### II.2 (2nd Principle)

CG Code        The information prescribed by law on the level and structure of the remuneration of the individual Managing Directors.

III.7 CG Code    The information prescribed by law on the level and structure of the remuneration of the individual Supervisory Directors.

## ANNEX 4

### LIST OF ITEMS TO BE PLACED ON THE COMPANY'S WEBSITE

- II.1.3 CG Code A code of conduct.<sup>40</sup>
- II.2.14 CG Code Essential elements upon conclusion of contract with Managing Director and in any event no later than the date of the notice calling the General Meeting where the appointment of the Managing Director will be proposed. These elements shall in any event include the amount of the fixed salary, the structure and amount of the variable remuneration component, any agreed redundancy scheme and/or severance pay, any conditions of a change-of-control clause in the contract with a Managing Director and any other remuneration components promised to the Managing Director, pension arrangements and performance criteria to be applied.
- III.1.7.1 CG Code Whistleblower Policy.<sup>41</sup>
- II.2.12 CG Code The Remuneration Report.
- III.1.1. CG Code By-Laws of the Supervisory Board.<sup>42</sup>
- III.3.1 CG Code Supervisory Board Profile.<sup>43</sup>
- III.3.6 CG Code Rotation Plan of the Supervisory Board.<sup>44</sup>
- III.5.1 CG Code Terms of Reference and composition of the Committees.<sup>45</sup>
- II.16.5 CG Code By-Laws private investments of Managing Directors en Supervisory Directors (as part of the By-Laws of the Management Board i.c. the By-Laws of the Supervisory Board).<sup>46</sup>
- IV.3.6 CG Code The Company shall place and update all information which is relevant to the shareholders and which it is required to publish or deposit pursuant to the provisions of company law and securities law and regulation applicable to it, on a separate part of the Company's website.<sup>47</sup>
- The By-Laws of the Management Board.<sup>48</sup>
- IV.3.8 GC Code The notes to the agenda if a right of approval is granted to the General Meeting by law or under the Articles of Association, or the Management Board requests an authorisation.<sup>49</sup>
- IV.3.13 GC Code An outline policy on bilateral contacts with the Company's shareholders.

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<sup>40</sup> By-Laws MB, clause 6.2(b).

<sup>41</sup> By-Laws MB, clause 5.7.

<sup>42</sup> By-Laws SB, clause 0.3.

<sup>43</sup> By-Laws SB, clause 1.1.

<sup>44</sup> By-Laws SB, clause 6.1.

<sup>45</sup> By-Laws SB, clause 5.5.

<sup>46</sup> By-Laws MB, clause 18; By-Laws SB, clause 27.

<sup>47</sup> By-Laws MB, clause 11.

<sup>48</sup> By-Laws MB, clause 0.3.

<sup>49</sup> By-Laws MB, clause 10.3.

