

N.V. NUON ENERGY

BY-LAWS SUPERVISORY BOARD

(in accordance with article 28 paragraph 6 of the Articles of Association)

Adopted by the Supervisory Board on 24 September 2009

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INTRODUCTION

- 0.1 These By-Laws are established pursuant to article 28 paragraph 6 of the Articles of Association and best practice provision III.1.1 of the Dutch Corporate Governance Code.¹
- 0.2 These By-Laws are complementary to the provisions regarding the Supervisory Board and the Supervisory Directors as contained in applicable legislation and regulations, the Articles of Association and the rules pertaining to the relationship between Management Board and Supervisory Board as contained in the By-Laws of the Management Board (which have been approved by the Supervisory Board).
- 0.3 These By-Laws are posted on the Company's website.²
- 0.4 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.

¹ Dutch Corporate Governance Code, best practice provision III.1.1.

² Dutch Corporate Governance Code, Principle III.1.1.

CHAPTER I COMPOSITION OF THE SUPERVISORY BOARD; POSITIONS; COMMITTEES

1. Supervisory Board Profile, Size, Expertise and Independence

- 1.1 The Supervisory Board shall prepare a profile of its size and composition, taking account of the nature of the business of the Company and its Subsidiaries and the desired expertise and background of the Supervisory Directors (the Supervisory Board Profile). The Supervisory Board shall discuss the Supervisory Board Profile with the Works Council and in the General Meeting. The current Supervisory Board Profile is attached as Annex 2. The Supervisory Board Profile is made available on written demand to the Company (for the attention of the Company Secretary) and is posted on the Company's website.³
- 1.2 The Supervisory Board shall consist of eight Supervisory Directors: four Supervisory Directors A and four Supervisory Directors B. Four Supervisory Directors A and one Supervisory Director B, not being the Chairperson, will reside in The Netherlands.
- 1.3 The Supervisory Board shall endeavour to ensure, within the limits of its powers, that it is at all times composed so that:
- (a) the Supervisory Board shall aim for a diverse composition in terms of such factors as gender and age;⁴
 - (b) the Supervisory Directors are able to act critically and independently of one another, the Management Board and any particular interest;⁵
 - (c) each Supervisory Director is capable of assessing the broad outline of the overall policy;⁶
 - (d) each Supervisory Director has the specific expertise required to perform his duties within the framework of his role within the Supervisory Board Profile;⁷
 - (e) the Supervisory Board as a whole matches the Supervisory Board Profile and that the composition of the Supervisory Board is such that it is able to carry out its duties properly;⁸
 - (f) at least one Supervisory Director is a financial expert, in the sense that he has relevant knowledge and expertise of financial administration and accounting for listed companies or other large companies;⁹ and
 - (g) all Supervisory Directors observe the restrictions regarding the nature and number of their other positions as set forth in clause 26.1 of these By-Laws.
- 1.4 A Supervisory Director is deemed independent if the following criteria of dependence do not apply to him. These criteria are that the Supervisory Director concerned, his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree:

³ Dutch Corporate Governance Code, best practice provision III.3.1.

⁴ Dutch Corporate Governance Code, Principle III.3.

⁵ Dutch Corporate Governance Code, Principle III.2.

⁶ Dutch Corporate Governance Code, Principle III.3.

⁷ Dutch Corporate Governance Code, Principle III.3.

⁸ Dutch Corporate Governance Code, Principle III.3.

⁹ Dutch Corporate Governance Code, best practice provision III.3.2.

- (a) has been an employee of the Company or Managing Director or an employee or member of the management board of an Affiliated Company in the five years prior to their appointment as Supervisory Director;
- (b) receives personal financial compensation from the Company, or an Affiliated Company, other than the compensation received for the work performed as a Supervisory Director 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;
- (d) is a member of the management board of a company in which a Managing Director is a member of the supervisory board;
- (e) holds at least ten percent (10%) of the shares in the Company's capital (including shares held by natural or legal persons that cooperate with the individual concerned under an express, tacit, oral or written agreement);
- (f) 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 percent (10%) of the shares in the Company's capital, unless such entity is a member of the same group as the Company; or
- (g) has temporarily managed the Company during the previous twelve months due to vacant seats on the Management Board, or because Managing Directors were unable to perform their duties.

2. Appointment; Term of Office

- 2.1 The Supervisory Directors are appointed by the General Meeting on nomination of the Supervisory Board.¹⁰
- 2.2 Supervisory Directors are appointed for a maximum of three terms of four years each.¹¹
- 2.3 If the number of Supervisory Directors is below the number set by the Supervisory Board under clause 1.2, then the Supervisory Board shall forthwith take measures to complete its number.
- 2.4 The General Meeting and the Works Council may make recommendations to the Supervisory Board for the appointment of persons to the position of Supervisory Director. Furthermore the meeting of A-Shareholders will have the right to make recommendations for the appointment of Supervisory Directors A and the meeting of B-Shareholders will have the right to make recommendations for the appointment of Supervisory Directors B notwithstanding the provisions of clause 2.6. The Supervisory Board shall inform these bodies timely if and for what reason and in accordance with what profile a seat must be filled on its board. If the enhanced right of recommendation as referred to in clause 2.6 applies to the seat concerned, the Supervisory Board shall give notice of this too. The Supervisory Board may set a reasonable term for the making of recommendations. A recommendation for the appointment of a Supervisory Director must be made in accordance with clause 1 of these By-Laws and take into account the Supervisory Board Profile.

¹⁰ Section 2:158 Dutch Civil Code.

¹¹ Dutch corporate governance Code , best practice provision III.3.5

- 2.5 A nomination or recommendation shall state the candidate's age, his profession, and the positions he holds or has held, insofar as these are relevant for the performance of the duties of a Supervisory Director. Furthermore, the legal entities whose supervisory boards he is also a member of must be listed; if those include legal entities which belong to the same group, reference to that group is sufficient. The recommendation and the nomination for appointment or reappointment shall state the reasons on which it is based.¹²
- 2.6 The Works Council shall have the enhanced right of recommendation as referred to in Section 2:158, subsection 6, of the Dutch Civil Code with respect to two Supervisory Directors. The Supervisory Directors recommended for nomination by the Works Council in accordance with the preceding sentence shall be Supervisory Directors A, unless the B-Shareholders and the Works Council jointly agree that a person recommended by the Works Council shall be a Supervisory Director B.
- 2.7 If the Supervisory Board objects to a recommendation referred to in clause 2.6 it shall inform the Works Council of this, stating the reasons for its objections. The Supervisory Board shall forthwith consult the Works Council with a view to reaching agreement on the nomination. If the Supervisory Board finds that no agreement can be reached, one of its members designated to represent it in this matter shall request the Enterprise Section of the Court of Appeal of Amsterdam to declare the objection founded. The request shall not be filed before four (4) weeks have passed since the commencement date of the consultations with the Works Council. The Supervisory Board shall nominate the recommended person if the Enterprise Section declares the objection unfounded. If the Enterprise Section declares the objection founded, the Works Council may make a new recommendation in accordance with the provisions of clause 2.6.
- 2.8 The Supervisory Board shall announce the nomination simultaneously to the General Meeting and the Works Council.
- 2.9 The General Meeting may reject the nomination by absolute majority of the votes cast, representing at least one third of the issued capital. If the General Meeting resolves to reject the nomination by an absolute majority that does not represent at least one third of the issued capital, a new meeting shall be convened at which the nomination may be rejected by an absolute majority of the votes cast. In this case the Supervisory Board shall make a new nomination. Clauses 2.4 to 2.8 inclusive shall apply. If the General Meeting does not appoint the nominated person and it does also not resolve to reject the nomination, the Supervisory Board shall appoint the person nominated.
- 2.10 The following persons cannot be Supervisory Directors:
- (a) persons who are employed by the Company;
 - (b) persons who are employed by a Dependent Company;
 - (c) managers and persons employed by a trade union that is normally involved in the setting of the labour conditions of the persons referred to under (a) and (b).
- 2.11 A Supervisory Director who is temporarily charged with the management of the Company when seats on the Management Board are vacant or Managing Directors are unable to fulfil their duties, shall resign from the Supervisory Board.¹³

¹² Section 2:142 subsection 3, Dutch Civil Code.

¹³ Dutch Corporate Governance Code, best practice provision III.6.7.

3. Chairperson and Vice-Chairperson

- 3.1 The Supervisory Board shall appoint one of the Supervisory Directors B as Chairperson. The Chairperson shall not be a former member of the Management Board.¹⁴ The Supervisory Board shall elect from among its midst the Vice-Chairperson who replaces the Chairperson in the latter's absence and assumes in this case his powers and duties. The Vice-Chairperson shall act as contact for individual Supervisory Directors and Managing Directors concerning the functioning of the Chairperson.¹⁵ In the event of the absence or inability to act of both the Chairperson and Vice-Chairperson the Supervisory Board shall elect from among its midst a substitute.
- 3.2 The Chairperson is primarily responsible for the functioning of the Supervisory Board and its Committees. He shall act as the spokesman of the Supervisory Board and is the main contact for the CEO and the Management Board as a whole. The CEO and the Chairperson shall meet on a regular basis. The Chairperson presides over General Meetings.¹⁶
- 3.3 Without prejudice to the generality of clause 3.2, the Chairperson sees to it that:¹⁷
- (a) Supervisory Directors, when appointed, follow the induction programme and, as needed, additional education or training programmes;
 - (b) the Supervisory Directors receive all information necessary for the proper performance of their duties in a timely manner;
 - (c) there is sufficient time for consultation and decision-making by the Supervisory Board;
 - (d) the Committees function properly;
 - (e) the performance of the Managing Directors and the Supervisory Directors is assessed at least once a year;
 - (f) the Supervisory Board elects a Vice-Chairperson; and
 - (g) the Supervisory Board has proper contact with the Management Board and the Works Council.
- 3.4 In addition, the Chairperson is primarily responsible for:
- (a) ensuring the proper discharge by the Supervisory Board of its duties;
 - (b) determining the agenda of Supervisory Board meetings and chairing such meetings;
 - (c) consulting with external advisors appointed by the Supervisory Board;
 - (d) addressing problems related to the performance of individual Supervisory Directors; and
 - (e) addressing internal disputes and conflicts of interest concerning individual Supervisory Directors and the possible resignation of such Supervisory Directors.

¹⁴ Dutch Corporate Governance Code, best practice provision III.4.2.

¹⁵ Dutch Corporate Governance Code, best practice provision III.4.4.

¹⁶ See Dutch Corporate Governance Code, Principle III.4.

¹⁷ Dutch Corporate Governance Code, best practice provision III.4.1.

4. Company Secretary¹⁸

- 4.1 The Supervisory Board is assisted by the Company Secretary, who is appointed in accordance with the provisions of clause 4 of the By-Laws of the Management Board.
- 4.2 All Supervisory Directors 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, as well as the Articles of Association are complied with. The Company Secretary shall assist the Chairperson 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 delegate his duties under these By-Laws, or parts thereof, to a deputy appointed by him in consultation with the Chairperson.
- 4.5 The Company Secretary also performs activities for the Management Board, as provided for in the By-Laws of the Management Board.

5. Committees

- 5.1 The Supervisory Board may appoint standing and/or ad hoc Committees from among the Supervisory Directors, 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 and a Remuneration Committee.¹⁹
- 5.2 The Supervisory Board remains collectively responsible for decisions prepared by Committees from among the Supervisory Directors. A Committee may only exercise such powers as are explicitly attributed or delegated to it and may never exercise powers beyond those exercisable by the Supervisory Board as a whole.
- 5.3 Each Committee must inform the Supervisory Board in a clear and timely way of the manner in which it has used delegated authority and of any major development in the area of its responsibilities. All Supervisory Directors have unrestricted access to all Committee meetings and records. The Supervisory Board shall, within the term specified in the Terms of Reference of the Committee concerned, receive a report from each Committee of its deliberations and findings.²⁰
- 5.4 The Supervisory Board shall establish terms of reference (**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 of a Committee may contain more detailed rules on the composition of the Committee concerned.
- 5.5 The Terms of Reference and the composition of the Committees are posted on the Company's website.²¹
- 5.6 The Supervisory Board as a rule has no "delegated Supervisory Director" (*gedelegeerd commissaris*). Under special circumstances, however, the Supervisory Board may resolve to

¹⁸ See also clause 4 By-Laws Management Board and Dutch Corporate Governance Code, best practice provision III.4.3.

¹⁹ Dutch Corporate Governance Code, Principle III.5.

²⁰ Dutch Corporate Governance Code, best practice provision III.5.3.

²¹ Dutch Corporate Governance Code, best practice provision III.5.1.

appoint a “delegated Supervisory Director”, in which case best practice provision III.6.6 of the Dutch Corporate Governance Code shall apply in full.

6. Resignation and Suspension. Dismissal

- 6.1 The Supervisory Directors shall retire periodically in accordance with a rotation plan that is drawn up by the Supervisory Board in order to avoid, as far as possible, a situation in which many Supervisory Directors retire at the same time.²² The current rotation plan is attached as Annex 3. The Supervisory Board may amend the rotation plan at all times. Amendments to the rotation plan, however, cannot entail that a sitting Supervisory Director remains in office for a longer period than appointed for, or that he retires against his will before this period has expired. A Supervisory Director who is appointed in the interim shall retire when the person in whose place he is appointed should have retired according to the rotation plan. The rotation plan is made available on demand in writing to the Company (for the attention of the Company Secretary) and shall be posted on the Company’s website.²³
- 6.2 The Supervisory Board may on behalf of the Company file a request with the Enterprise Section of the Court of Appeal of Amsterdam to remove a Supervisory Director on grounds of neglect of duties or for other serious reasons or because of significant changes of circumstances, due to which maintaining him as a Supervisory Director cannot in reasonableness be requested from the Company.
- 6.3 The Supervisory Board shall announce vacancies at the Supervisory Board in the year to come at the annual General Meeting.
- 6.4 Supervisory Directors may be suspended by the Supervisory Board; the suspension shall be lifted by operation of law if the Company has not filed a request referred to in clause 6.2 with the Enterprise Section within one month after commencement of the suspension.
- 6.5 A Supervisory Director shall retire early in the event of inadequate performance, structural incompatibility of interests, and in other instances in which this is deemed necessary by the Supervisory Board.²⁴
- 6.6 The General Meeting may resolve to abandon its trust in the Supervisory Board by a majority of eighty percent (80%) of the votes cast, representing at least one third of the issued capital. The resolution shall be reasoned. The resolution cannot regard Supervisory Directors who were appointed by the Enterprise Section in accordance with the provisions of clause 6.8.
- 6.7 A resolution referred to in clause 6.6 shall not be adopted until after the Management Board has informed the Works Council of the proposed resolution and the reasons therefore. The notification shall be made at least thirty (30) days prior to the General Meeting at which the proposed resolution shall be discussed. If the Works Council has determined its position on the proposal, it shall communicate its view to the Management Board, the Supervisory Board and the General Meeting. The Works Council may further explain its position at the General Meeting.
- 6.8 The resolution referred to in clause 6.6 shall result in the immediate removal of the Supervisory Directors. In this case the Management Board shall forthwith request the Enterprise Section of the Court of Appeal of Amsterdam to appoint one or more Supervisory

²² Dutch Corporate Governance Code, best practice provision III.3.6.

²³ Dutch Corporate Governance Code, best practice provision III.3.6.

²⁴ Dutch Corporate Governance Code, best practice provision III.1.4.

Directors temporarily. The Enterprise Section shall take care of the consequences of an appointment.

- 6.9 The Supervisory Board shall endeavour that a new board is composed within the term stipulated by the Enterprise Section, having regard to the provisions of clause 2.

7. Reappointment

- 7.1 A Supervisory Director shall be reappointed only after careful consideration. In the event of reappointment of a resigning Supervisory Director, the way he performed his duties in the past period shall be taken into account²⁵, while the Works Council may indicate in writing to the Chairperson that it wants to meet the person concerned before making any statement as to a possible recommendation for the vacancy concerned. The Works Council shall indicate its wish for a meeting within one month after a notice was made on the reappointment. The meeting shall then be held within two (2) weeks after the wish for a meeting was communicated.
- 7.2 Reappointments should be measured against the Supervisory Board Profile. Prior to the deliberations on a reappointment, the Chairperson shall have a meeting with the resigning Supervisory Director. Deliberations on a reappointment of a Supervisory Director shall be conducted in the absence of the person involved and on the basis of a report of its meeting with the resigning Supervisory Director drafted in advance by the Chairperson.
- 7.3 The proposal for reappointment shall state the reasons for the reappointment, indicating explicitly on what grounds the Supervisory Director concerned is considered to have performed adequately.

CHAPTER II DUTIES AND POWERS

8. General Duties and Powers; Relation with the Management Board

- 8.1 The Supervisory Board is charged with the supervision of the Management Board, the general course of affairs of the Company and the business connected with it. The Supervisory Board assists the Management Board with advice.²⁶ The responsibility for the proper performance of its duties is vested collectively in the Supervisory Board.
- 8.2 In performing its duties the Supervisory 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. The Supervisory Board shall also have due regard for corporate social responsibility issues that are relevant to the enterprise.²⁷ Supervisory Directors shall perform their duties without mandate and independent of any interest in the business of the Company. They should not support one interest without regard to the other interests involved.
- 8.3 The Supervisory Board is responsible for the quality of its own performance.²⁸
- 8.4 The Supervisory Directors 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 Directors.

²⁵ Dutch Corporate Governance Code, Principle III.3; Section 2:142, subsection 3, Dutch Civil Code.

²⁶ Section 2:140 Dutch Civil Code; Dutch Corporate Governance Code, Principle III.1.

²⁷ Section 2:140 Dutch Civil Code; Dutch Corporate Governance Code, Principle III.1.

²⁸ Dutch Corporate Governance Code, Principle III.1.

- 8.5 The Management Board shall of its own accord and in a timely manner provide the Supervisory Board and its members and Committees with the information needed to function and to discharge their duties properly. The information will as much as possible be provided in writing.
- 8.6 The Supervisory Board and each Supervisory Director individually has responsibility for obtaining all information from the Management Board and the External Auditor 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.²⁹
- 8.7 Each Supervisory Director 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 Director shall exercise this right in consultation with the Chairperson and the Company Secretary, save where the applicable Terms of Reference of a Committee dictate otherwise.
- 8.8 The Supervisory Board may in exercising its duties seek the assistance or advice of one or more experts at a price agreed upon with the Supervisory Board, which is to be paid by the Company.

9. Duties regarding the activities of the Managing Directors

- 9.1 The supervision of the Management Board by the Supervisory Board shall include: (i) achievement of the Company's objectives; (ii) the strategy and risks inherent in the business activities; (iii) the structure and operation of the internal risk management and control systems; (iv) the financial reporting process; (v) compliance with the legislation and regulations; (vi) the company-shareholder relationship; and (vii) corporate social responsibility issues that are relevant to the enterprise.³⁰
- 9.2 The Supervisory Board supervises the financial reporting in accordance with clause 12 of these By-Laws.
- 9.3 The Supervisory Board shall discuss the corporate strategy and the risks of the business, the result of the assessment by the Management Board of the structure and operation of the internal risk management and control systems, as well as any significant changes thereto at least once a year.³¹
- 9.4 The following resolutions of the Management Board are subject to the approval of the Supervisory Board:
- (a) determining the operational and financial objectives of the Company;³²
 - (b) determining and amending the strategy designed to achieve the objectives;³³
 - (c) determining and amending the parameters to be applied in relation to the strategy (for example in respect of the financial ratios);³⁴

²⁹ Dutch Corporate Governance Code, best practice provision III.1.9.

³⁰ Dutch Corporate Governance Code, best practice provision III.1.6.

³¹ Dutch Corporate Governance Code, best practice provision III.1.8; see also Section 2:141 Dutch Civil Code.

³² Dutch Corporate Governance Code, best practice provision II.1.2.

³³ Dutch Corporate Governance Code, best practice provision II.1.2.

³⁴ Dutch Corporate Governance Code, best practice provision II.1.2.

- (d) corporate social responsibility issues that are relevant to the enterprise; and ³⁵
 - (e) the resolutions stated in clause 22.
- 9.5 The Management Board shall provide the Supervisory Board with the following report in a timely manner; each quarter, a report with detailed information on the financial situation and development of the Company and its Subsidiaries.

10. Duties regarding the Managing Directors and the Supervisory Directors and the performance of the Supervisory Board and the Management Board

- 10.1 The duties of the Supervisory Board in relation to the Managing Directors of the Management Board specifically include:
- (a) the selection and appointment of the Managing Directors,³⁶ the submission of proposals for the remuneration policy for the Managing Directors to the General Meeting, the determination of the remuneration (in accordance with said remuneration policy) and the contractual employment conditions of Managing Directors;³⁷
 - (b) determination of the number of Managing Directors, the designation of the CEO, the approval (or proposal, where useful) of changes to the division of tasks within the Management Board or of the By-Laws of the Management Board³⁸ and the assessment of the functioning of the Management Board and the individual Managing Directors; the Chairperson's approval of additional positions of the Managing Directors to the extent required under the By-Laws of the Management Board;³⁹ and
 - (c) to address conflict of interest issues between the Company and Managing Directors.⁴⁰
- 10.2 The duties of the Supervisory Board in relation to the Supervisory Directors specifically include:
- (a) the nomination for appointment of Supervisory Directors and proposals to the General Meeting for the remuneration of Supervisory Directors;
 - (b) the appointment of a Chairperson and Vice-Chairperson in accordance with clause 3.1 the establishment of Committees and defining their role, the evaluation of the functioning of the Supervisory Board, its Committees and the individual Supervisory Directors (including an evaluation of the of the Supervisory Board Profile and the induction, education and training programme); the approval of other positions of Supervisory Directors to the extent required under clause 26; and
 - (c) to address conflict of interest issues between the Company and Supervisory Directors.⁴¹
- 10.3 At least once a year the Supervisory Board shall, without the Management Board being present, discuss its own functioning, the functioning of its Committees and that of the individual Supervisory Directors, and the conclusions that must be drawn on the basis thereof. The desired profile, composition and competence of the Supervisory Board shall also

³⁵ Dutch Corporate Governance Code, best practice provision II.1.2.

³⁶ See also clause 1.1 of the By-Laws Management Board and the terms of reference of the Remuneration Committee.

³⁷ See also clause 14 of these By-Laws, the terms of reference of the Remuneration Committee and clause 16 of the By-Laws of the Management Board.

³⁸ See also clause 1 of the By-Laws of the Management Board.

³⁹ See also clause 17 of the By-Laws of the Management Board.

⁴⁰ See also clause 15 of the By-Laws of the Management Board; Dutch Corporate Governance Code, best practice provision III.6.5.

⁴¹ See also clause 23 of these By-Laws.

be discussed. At least once a year the Supervisory Board shall also, without the Management Board being present, discuss the functioning of the Management Board as a body and the functioning of the Managing Director, and the conclusions that must be drawn on the basis thereof. The report of the Supervisory Board shall state how the assessment of the functioning of the Supervisory Board, the separate Committees and the individual Supervisory Directors has been carried out.⁴²

11. Certain other duties of the Supervisory Board

11.1 The other duties of the Supervisory Board include:

- (a) duties regarding the External Auditor as described in clause 13 and the Terms of Reference of the Audit Committee;
- (b) the handling of complaints about alleged irregularities regarding the functioning of Managing Directors;⁴³
- (c) the taking of measures for the temporary management of the Company if a Managing Director is absent or prevented from performing his duties; and
- (d) 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 Management Board.

11.2 The Supervisory Board shall draw up a report to be included in the annual statement of the Company describing its activities in the financial year concerned and containing the specific statements and information listed in Annex 4.⁴⁴

11.3 The Supervisory Board and the Management Board are jointly responsible for the corporate governance structure of the Company, compliance with the Dutch Corporate Governance Code and any other applicable legislation and regulations.⁴⁵

12. Supervision of financial reporting

12.1 The Supervisory Board supervises compliance with internal procedures established by the Management Board for the preparation and publication of the Annual Report, the Annual Accounts, the quarterly and half-yearly figures and ad hoc financial information.⁴⁶ The Supervisory Board also supervises the establishment and maintenance of internal control mechanisms for external financial reporting as described in clause 7.1 of the By-Laws of the Management Board.⁴⁷

12.2 The Audit Committee shall regularly, and in any event as soon as possible, provide the Supervisory Board with reports on the Annual Report, the Annual Accounts, and the quarterly and half-yearly figures, which will then be discussed at a meeting of the Supervisory Board. The Annual Accounts and the Annual Report for the year just ended shall be discussed in a meeting with the Supervisory Board within five (5) months of this year end. The half-yearly and quarterly accounts of the Company for the respective period just ended shall be discussed in a meeting of the Management Board with the Supervisory Board as

⁴² Dutch Corporate Governance Code, best practice provision III.1.7.

⁴³ See also clause 5.7 By-Laws of the Management Board; Dutch Corporate Governance Code, best practice provision II.1.7.

⁴⁴ Dutch Corporate Governance Code, best practice provision III.1.2.

⁴⁵ Dutch Corporate Governance Code, Principe I.

⁴⁶ Dutch Corporate Governance Code, best practice provision V.1.1.

⁴⁷ Dutch Corporate Governance Code, best practice provision V.1.3.

much as possible within two months of the end of this period. These meetings are prepared by the Audit Committee.

- 12.3 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. Annually the Supervisory Board shall draw up a report to be added to the Annual Accounts and the Annual Report. The Annual Accounts shall be adopted by the General Meeting. The External Auditor shall receive the financial information underlying the adoption of the quarterly and/or half-yearly figures, and other interim financial reports, and shall be given the opportunity to respond to all information.⁴⁸ The External Auditor shall report his findings in relation to the audit of the Annual Accounts to the Management Board and the Supervisory Board simultaneously.⁴⁹
- 12.4 The line of contact between the Supervisory Board and the External Auditor is in principle through the chairperson of the Audit Committee. The Audit Committee is the first contact for the External Auditor if any irregularities in the contents of the financial reports are discovered.⁵⁰
- 12.5 The Supervisory Board sees to it that the recommendations made by the External Auditor are considered carefully by the Management Board and the Supervisory Board and, to the extent accepted, that they are actually carried out by the Management Board. This supervision may be delegated to the Audit Committee.

13. Duties regarding nomination and assessment of External Auditor

- 13.1 The External Auditor shall be appointed by the General Meeting. The Supervisory Board nominates a candidate for this appointment to the General Meeting and may recommend replacement of the External Auditor. The Management Board and the Audit Committee shall both advise the Supervisory Board in this regard.⁵¹
- 13.2 The remuneration of the External Auditor, and instructions to the External Auditor to provide non-audit services, shall be approved by the Supervisory Board upon proposal of the Audit Committee, and after consultation with the Management Board. The Supervisory Board may delegate this authority for approval to the Audit Committee.⁵²
- 13.3 The Management Board and the Audit Committee shall report their dealings with the External Auditor to the Supervisory Board on an annual basis, including their assessment of the External Auditor's independence (for example, the desirability of rotating the responsible partners of the External Auditor and the desirability of the External Auditor providing both auditing and non-audit services to the Company). The Supervisory Board shall take this into account when deciding its nomination to the General Meeting for the appointment of an External Auditor.⁵³
- 13.4 At least once every four years the Management Board and the Audit Committee shall conduct a thorough assessment of the functioning of the External Auditor in the various entities and capacities in which the External Auditor acts. The main conclusions of this

⁴⁸ Dutch Corporate Governance Code, best practice provision V.4.1.

⁴⁹ Dutch Corporate Governance Code, Principle V.4.

⁵⁰ Dutch Corporate Governance Code, best practice provision III.5.5.

⁵¹ Dutch Corporate Governance Code, Principle V.2.

⁵² Dutch Corporate Governance Code, Principle V.2.

⁵³ Dutch Corporate Governance Code, best practice provision V.2.2.

assessment are communicated to the General Meeting for the purpose of assessing the nomination for the appointment of the External Auditor.⁵⁴

- 13.5 Conflicts of interest and potential conflicts of interest between the External Auditor and the Company shall be resolved in the manner determined by the Supervisory Board upon proposal of the Audit Committee. Managing Directors and Supervisory Directors must inform the chairperson of the Audit Committee of issues that may compromise the required independence of the External Auditor or that may give rise to a conflict of interest or a potential conflict of interest between the External Auditor and the Company, when brought to their attention.⁵⁵
- 13.6 When appointed, the External Auditor is requested to state explicitly to the Company that he has been informed of matters provided for in the By-Laws of the Management Board, these By-Laws and the Terms of Reference of the Audit Committee, that he agrees with and will co-operate fully with their implementation.

14. Remuneration of Managing Directors

- 14.1 The Supervisory Board is responsible for the remuneration structure. The remuneration structure, including severance pay, shall be simple and transparent. It shall promote the interests of the Company in the medium and long term, may not encourage Managing Directors to act in their own interests or take risks that are not in keeping with the adopted strategy, and may not 'reward' failing Managing Directors upon termination of their employment.⁵⁶
- 14.2 Before drawing up the remuneration policy and determining the remuneration of individual Managing Directors, the Supervisory Board shall analyse the possible outcomes of the variable remuneration components and how they may affect the remuneration of the Managing Directors. The Supervisory Board shall determine the level and structure of the remuneration of the Managing Directors by reference to the scenario analyses carried out and with due regard for the pay differentials within the enterprise. In determining the level and structure of the remuneration of Managing Directors, the Supervisory Board shall take into account, among other things, the results, the share price performance and non-financial indicators relevant to the long term objectives of the Company, with due regard for the risks to which variable remuneration may expose the enterprise.
- 14.3 The Supervisory Board shall determine the remuneration of the individual Managing Directors, on a proposal by the Remuneration Committee, within the scope of the remuneration policy adopted by the General Meeting.⁵⁷
- 14.4 If a variable remuneration component conditionally awarded in a previous financial year would, in the opinion of the Supervisory Board, produce an unfair result due to extraordinary circumstances during the period in which the predetermined performance criteria have been or should have been achieved, the Supervisory Board has the power to adjust the value downwards or upwards. The Supervisory Board may recover from the Managing Directors any variable remuneration awarded on the basis of incorrect financial or other data (*clawback clause*).⁵⁸

⁵⁴ Dutch Corporate Governance Code, best practice provision V.2.3.

⁵⁵ Dutch Corporate Governance Code, best practice provision III.6.5.

⁵⁶ Dutch Corporate Governance Code, Principle II.2.

⁵⁷ Dutch Corporate Governance Code, Principle II.2.

⁵⁸ Dutch Corporate Governance Code, best practice provisions II.2.10 and II.2.11.

- 14.5 The Remuneration Committee shall annually on behalf of the Supervisory Board prepare a Remuneration Report, which contains an account of the manner in which the remuneration policy has been implemented in the past financial year, as well as an overview of the remuneration policy for Managing Directors planned by the Supervisory Board for the next financial year and subsequent years.⁵⁹ This overview shall, in any event, contain the information as set out in Annex 5.⁶⁰ The Remuneration Report is posted on the Company's website.⁶¹
- 14.6 The remuneration policy planned for the next financial year and subsequent years as specified in the Remuneration Report shall be submitted to the General Meeting for adoption.⁶² Every change to the remuneration policy shall also be submitted to the General Meeting for its approval.
- 14.7 The Supervisory Board shall determine the remuneration of the individual Managing Directors on a proposal by the Remuneration Committee, within the scope of the remuneration policy adopted by the General Meeting.⁶³
- 14.8 The main elements of the contract of a Managing Director with the Company shall be made public after it has been concluded, 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.⁶⁴
- 14.9 If a Managing Director or a former Managing Director is paid severance pay or other special remuneration during a given financial year, an account and an explanation of this remuneration shall be included in the Remuneration Report.⁶⁵

15. Relation with the shareholders

- 15.1 The Management Board and the Supervisory Board shall provide the General Meeting in good time with all information that it requires for the exercise of its powers.⁶⁶
- 15.2 The Management Board and the Supervisory Board shall endeavour to procure that the General Meeting is provided with all requested information, unless this would be contrary to an overriding interest of the Company. If the Management Board or the Supervisory Board invoke an overriding interest, they must give reasons.⁶⁷
- 15.3 The Management Board and the Supervisory Board ensure compliance with all applicable legislation and regulations with respects to the rights of the General Meeting and the related rights of individual shareholders.
- 15.4 The Managing Directors shall be present at the General Meetings , unless they are unable to attend for important reasons.

⁵⁹ Dutch Corporate Governance Code, best practice provision II.2.10; see also clause 14.4 of these By-Laws.

⁶⁰ Dutch Corporate Governance Code, best practice provision II.2.13, see also Section 2:135 Dutch Civil Code.

⁶¹ Dutch Corporate Governance Code, best practice provision II.2.12.

⁶² Section 2:135 Dutch Civil Code.

⁶³ Dutch Corporate Governance Code, II.2 (2nd Principle); Section 2:135 Dutch Civil Code.

⁶⁴ Dutch Corporate Governance Code, best practice provision II.2.14.

⁶⁵ Dutch Corporate Governance Code, best practice provision II.2.15.

⁶⁶ Dutch Corporate Governance Code, Principle IV.3.

⁶⁷ Dutch Corporate Governance Code, best practice provision IV.3.5.

- 15.5 The General Meetings are presided over by the Chairperson or, in his absence, the Vice-Chairperson.
- 15.6 The Supervisory Board shall endeavour that a report of the General Meeting is made available to the shareholders of the Company no later than three months after the end of the meeting, following which the shareholders have another three months in which to respond to the report. The report is then adopted in the manner provided for in the Articles of Association,⁶⁸ by the Chairperson and the secretary of the meeting. The provisions of this clause 15.7 may be disregarded if a notarial deed is drawn up of the minutes of the proceedings.
- 15.7 A resolution of the General Meeting may be disclosed externally through a statement from the Chairperson or the Company Secretary.
- 15.8 The Management Board and the Supervisory Board shall procure that each substantial change to the corporate governance structure of the Company, or the compliance of the Company with the Dutch Corporate Governance Code, is submitted to the General Meeting for discussion under a separate agenda item.⁶⁹
- 15.9 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 and that he can address the meeting. The External Auditor may be questioned by the General Meeting in relation to his statement on the fairness of the annual accounts.⁷⁰

16. Relation with the Works Council

- 16.1 In accordance with Section 23 of the Works Councils Act (*Wet op de ondernemingsraden*), the Chairperson of the Management Board and the Works Council shall meet at least 6 (six) times a year. These meetings can be attended by all employees and all other Managing Directors and Supervisory Directors, unless the Works Council decides otherwise. At least 2 (two) of those meetings shall discuss the general course of affairs of the Company and (as stipulated in Section 24 of the Works Councils Act) be attended by all members or one or more representatives of the Supervisory Board, unless the Works Council decides in a certain case that this provision does not have to be applied.

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 four (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 Chairperson, three other Supervisory Directors, or the Management Board.
- 17.2 The meetings of the Supervisory Board shall be chaired by its Chairperson and take place in the Netherlands, unless the Supervisory Board agrees otherwise.
- 17.3 Meetings of the Supervisory Board are in principle called by or on behalf of the Chairperson unless three (3) or more Supervisory Directors or a Managing Director a meeting deem necessary and this meeting is not been held within fourteen (14) days upon request to the

⁶⁸ Dutch Corporate Governance Code, best practice provision IV.3.10.

⁶⁹ Dutch Corporate Governance Code, best practice provision I.2.

⁷⁰ Dutch Corporate Governance Code, best practice provision V.2.1.

Chairperson. The meeting shall than be called by the person(s) who made the request. Save in urgent cases to be determined by the Chairperson the agenda for a meeting shall be sent to all Supervisory Directors at least five (5) calendar days before the meeting. For each item on the agenda an explanation in writing shall be provided, where possible, and/or other related documentation will be attached. The Chairperson shall in principle consult on the content of the agenda with the CEO prior to convening the meeting.

- 17.4 Each Supervisory Director, the CEO, and the Management Board 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 all participants can communicate with each other simultaneously.

18. Attendance of and admittance to meetings

- 18.1 The Management Board shall be requested to attend as many of the Supervisory Board meetings as possible, to the extent the Supervisory Board does not indicate that it wishes to meet in the absence of the Management Board.
- 18.2 A Supervisory Director may be represented at Supervisory Board meetings by another Supervisory Director holding a proxy in writing. The existence of such authorisation must be proved satisfactorily to the chairperson of the meeting. A Supervisory Director may not act as proxy on behalf of more than one co-Supervisory Director.
- 18.3 If a Supervisory Director is frequently absent from Supervisory Board meetings he shall be called to account for this by the Chairperson.⁷¹
- 18.4 The admittance to the meeting of persons other than Supervisory Directors, the Company Secretary and - if invited - the Management Board shall be decided by majority vote of the Supervisory Directors present at the meeting.

19. Chairperson of the meeting; reports

- 19.1 Supervisory Board meetings are presided over by the Chairperson or, in his absence, the Vice-Chairperson. If both are absent, one of the other Supervisory Directors, designated by a majority of votes cast by the Supervisory Directors present at the meeting, shall preside.
- 19.2 The Company Secretary or any other person designated for such purpose by the chairperson of the meeting shall draw up a report on the proceedings at the meeting. The report should provide insight into the decision-making process at the meeting. The report shall be adopted by the Supervisory Board at the same meeting, or the next meeting and in witness whereof it shall be signed by the Chairperson and the Company Secretary.

20. Decision-making within the Supervisory Board

- 20.1 The Supervisory Directors shall endeavour to achieve that resolutions are, as much as possible, adopted unanimously.
- 20.2 Each Supervisory Director has the right to cast one vote. If there is a tie in votes, the Chairperson shall have a casting vote. Abstentions shall not be counted as votes.

⁷¹ Dutch Corporate Governance Code, best practice provision III.1.5.

- 20.3 Unless explicitly provided for in clause 22 of these By-Laws or otherwise in the Articles of Association, resolutions of the Supervisory Board shall be adopted by a simple majority of the votes cast.
- 20.4 Unless explicitly provided otherwise, the Supervisory Board may only pass valid resolutions if the majority of the Supervisory Directors, including at least two Supervisory Directors A then in office are present or represented. If no such quorum is present, a second meeting shall be called at which resolutions may be adopted about the issues listed on the first meeting, regardless the number of and/or class of Supervisory Directors present.
- 20.5 In general, resolutions of the Supervisory Board are adopted at a Supervisory Board meeting.
- 20.6 Supervisory Board resolutions may also be adopted in a manner other than at a meeting, in writing or otherwise, provided the proposal concerned is submitted to all Supervisory Directors then in office and none of them objects to the relevant manner of adopting resolutions. A report shall be prepared by the Company Secretary on a resolution adopted other than at a meeting which is not adopted in writing, and such report shall be signed by the chairperson and the Company Secretary Adoption of resolutions in writing shall be effected by written statements from all Supervisory Directors then in office.
- 20.7 A resolution adopted by the Supervisory Board may be evidenced outside the Company through a statement from the Chairperson and/or the Company Secretary.

21. Appointment and dismissal Managing Directors

- 21.1 The Supervisory Board shall set the number of Managing Directors at 2 (two) or more.
- 21.2 The Managing Directors are appointed by the Supervisory Board. The Supervisory Board notifies the General Meeting of the intended appointment of a Managing Director.
- 21.3 The Supervisory Board appoints one of the Managing Directors as CEO and another Managing Director as CFO. From the side of the Management Board, the contact with the Supervisory Board is maintained primarily by the CEO.
- 21.4 The Supervisory Board may suspend and dismiss a Managing Director. Suspension is always for a fixed period. Each suspension may be extended one or more times but may not last for more than three (3) months in all. If on expiry of this period no decision is taken with respect to the termination of the suspension or the dismissal, the suspension is terminated.
- 21.5 The Supervisory Board shall notify the Managing Director concerned forthwith in writing of a suspension, stating the reasons therefore. The Supervisory Board shall within fourteen (14) days after the notification give the suspended Managing Director concerned the opportunity to account for his actions orally or in writing.
- 21.6 The Supervisory Board shall not dismiss a Managing Director until after the General Meeting has been heard on the intended dismissal. The Supervisory Board shall give the Managing Director it intends to dismiss the opportunity to account for his actions to the General Meeting that is heard on the intended dismissal. He may be assisted by his legal adviser.
- 21.7 The employment relationship between a Managing Director and the Company shall in any case cease on the last day of the month in which he turned sixty-five. In very special circumstances the Supervisory Board may request the Managing Director concerned to enter into a new employment contract with the Company for a fixed term.

21.8 The remuneration and other employment conditions of each Managing Director is set by the Supervisory Board within the framework of the remuneration policy set by the General Meeting.

22. Approval of Management Board resolutions

22.1 The following Management Board resolutions shall require the prior approval of the Supervisory Board:

- (a) to issue and acquire shares in and debt instruments issued by the Company, or of debt instruments issued by any limited partnership or general partnership in which the Company is a fully liable partner;
- (b) an application for admission to trading of the instruments referred to in clause 22.1(a) on a regulated market or a multilateral trading facility as referred to in Article 1:1 of the *Wet op het financieel toezicht* (Financial Supervision Act) or a system comparable to a regulated market or multilateral trading facility from a state which is not a member state or an application for withdrawal of such admission;
- (c) to enter into or cancel any long-term co-operative relationship between the Company or a Dependent Company and another legal entity or company, or in its capacity as a fully liable partner in a limited partnership or general partnership, if such cooperation or cancellation has a substantial impact on the Company;
- (d) to have the Company or a Dependent Company take or dispose of any interest in the share capital of another company worth no less than fifty million euros (EUR 50,000,000), or such other amount as the Supervisory Board may (annually) adopt and communicate in writing to the Management Board, subject to a minimum of fifty million euros (EUR 50,000,000) - or if lower, at least equal to one-fourth of the issued capital with reserves of the Company according to its balance sheet with explanatory notes -, or radically increase or reduce any such interest;
- (e) to make divestments in the Benelux involving an amount of at least fifty million euro (EUR 50,000,000) or if lower, at least equal to one-fourth of the issued capital with reserves of the Company according to its balance sheet with explanatory notes, and to make investments involving an amount of at least equal to one-fourth of the issued capital with reserves of the Company according to its balance sheet with explanatory notes;
- (f) agreeing to the creation of any mortgage, charge, debenture, pledge, lien or other encumbrance or security interest over any of the assets, property, undertaking or uncalled capital of the Company which involves or might involve an amount (including related costs) in excess of fifty million euros (EUR 50,000,000);
- (g) to report bankruptcy or apply for a suspension of payments;
- (h) to propose a reduction in the issued capital;
- (i) to acquire own Shares by the Company;
- (j) to annually adopt or amend an Industrial Plan and any subsequent industrial plan;
- (k) to change the nature of the business of the Company as set out in the Industrial Plan;
- (l) the contribution of assets other than as described in the Industrial Plan;

- (m) to enter into any transaction in excess of fifty million euro (EUR 50,000,000) outside the ordinary course of business which is not at arm's length basis or on market conforming conditions;
- (n) related party transactions with an entity within the group of the Partner in excess of fifty million euro (EUR 50,000,000), except in the ordinary course of the trading and sourcing business;
- (o) to close down material operations of the Company;
- (p) to terminate the employment contracts of a substantial number of employees of the Company or a Dependent Company at the same time or within a short period of time;
- (q) to implement radical changes in the working conditions of a substantial number of employees of the Company or a Dependent Company;
- (r) to submit a proposal to amend the Articles of Association;
- (s) to submit a proposal to dissolve the Company; and
- (t) to submit a proposal for a merger or demerger as defined in Title 7, Book 2 of the Dutch Civil Code.

22.2 For the application of the provisions of clause 22.1, except for the provisions of clause 22.1 under (h), (i), (r), (s) and (t) (the latter only with respect to mergers or demergers involving an amount of less than fifty million euro (EUR 50,000,000)), a resolution of the Management Board approving a resolution of any body of a company in which the Company participates shall be treated as a resolution of the Management Board to enter into a transaction, if the resolution to be approved would be subject to the prior express approval provided for in clause 22.1 if it were a resolution of the Management Board.

22.3 After consulting the Management Board, the Supervisory Board is authorised to subject other Management Board resolutions than those listed in clause 22.1 to its approval. Those other resolutions must be described clearly and notified to the Management Board in writing.

22.4 A resolution of the Supervisory Board relating to one or more of the items referred to in Article 22.1 under (a) (only in case of an issuance of shares which materially affects the total proportion of issued class A and class B Shares in terms of voting rights), (b), (d) (the latter only in case of a disposal of an interest in a company that is located in the Benelux and only when the amount involved at least equals fifty million euro (EUR 50,000,000)) and (e) (only in case of divestments made in the Benelux), (f) up to and including (t), and 22.2 (relating to one or more of the items referred to in this sentence) can only be adopted with a majority of at least two third of the votes cast, which votes in favour will have to include the votes of two Supervisory Directors A (not being a Works Council nominee). A resolution of the Supervisory Board relating to one or more of the other items as referred to in clause 22.1 and 22.2 and a resolution of the Supervisory Board pursuant to clause 22.3 can be adopted with a simple majority of the votes cast.

22.5 The absence of approval by the Supervisory Board of a resolution as referred to in clauses 22.1, 22.2 and 22.3 shall not affect the authority of the Management Board or the Managing Directors to represent the Company.

- 22.6 The CEO shall submit a written request to the Supervisory Board to obtain approval for the resolutions listed in clause 22.1. The request shall be accompanied by all information relevant for the assessment if approval should be granted.
- 22.7 If the implementation of an intended resolution which requires the approval from the Supervisory Board is of an urgent nature, the CEO shall submit the resolution to the Chairperson for his approval. If the CEO is absent, the vice-chairperson of the Management Board shall submit the intended resolution for approval to the Chairperson; in his absence, to the Vice-Chairperson and if both are absent to another Supervisory Director. If both the Chairperson and the acting Chairperson of the Supervisory Board are absent, the procedure to follow is that a Supervisory Director shall be contacted in alphabetical order of surname. If the procedure set out in this clause 22.7 is followed, the Supervisory Directors shall be notified as soon as possible of this in writing.
- 22.8 If the Chairperson, or his deputy in his absence, has approved a resolution that is to be adopted by the Management Board, the Management Board may consider such approval as being given by the Supervisory Board itself.

CHAPTER IV OTHER PROVISIONS

23. Conflicts of interests of Supervisory Directors

- 23.1 A Supervisory Director shall immediately report any conflict of interest or potential conflict of interest that is of material significance to the Company and/or to him to the Chairperson 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 Supervisory Director concerned shall not take part in the assessment by the Supervisory Board of whether a conflict of interest exists.⁷²
- 23.2 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 Supervisory Director personally has a material financial interest; (ii) which has a Managing Director who has a relationship under family law with a Supervisory Director;⁷³ or (iii) in which a Supervisory Director has a managerial or supervisory position.⁷⁴
- 23.3 A Supervisory 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.⁷⁵
- 23.4 All transactions in which there are conflicts of interest with Supervisory 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 Supervisory Directors that are of material significance to the Company and/or to the relevant Supervisory Directors require the approval of the Supervisory Board.⁷⁶

24. Remuneration of Supervisory Directors

- 24.1 The remuneration of the Supervisory Directors is determined by the General Meeting. The Supervisory Board shall from time to time submit proposals on its remuneration to the

⁷² Dutch Corporate Governance Code, best practice provision III.6.1.

⁷³ A relationship under family law exists between a child, its parents and their blood relatives (Section 1:197 Dutch Civil Code).

⁷⁴ Dutch Corporate Governance Code, best practice provision III.6.1 (continued).

⁷⁵ Dutch Corporate Governance Code, best practice provision III.6.2.

⁷⁶ Dutch Corporate Governance Code, best practice provision III.6.3.

General Meeting. If a Supervisory Director is required to charge VAT on his fees, this will be paid by the Company.

- 24.2 The remuneration of a Supervisory Director may not depend on the results of the Company.⁷⁷
- 24.3 Apart from their remuneration, Supervisory Directors shall be reimbursed for all reasonable costs incurred in connection with their attendance of meetings, the reasonableness of such costs being assessed by the Chairperson (costs incurred by the Chairperson are assessed by the Vice-Chairperson). Any other expenses are only reimbursed, in whole or in part, if incurred with the consent of the Chairperson or the Company Secretary on his behalf (or if it concerns the Chairperson, the Vice-Chairperson or the Company Secretary on his behalf).
- 24.4 The Company and its Subsidiaries do not grant personal loans, guarantees or the like to Supervisory Directors, save as part of its usual business operations. Loans are not remitted.⁷⁸
- 24.5 Supervisory Directors shall not in any way derive personal gains from company activities other than via the remuneration for their supervisory directorship or as reimbursement of travel and accommodation expenses incurred in the performance of their duties. This means that, to avoid every semblance of misuse, they must accept limitation on their freedom with regard to other transactions and the acceptance of additional positions.

25. Introduction programme, ongoing training and education⁷⁹

- 25.1 Upon appointment, a Supervisory Director shall follow an induction programme that covers general financial and legal affairs, financial reporting by the Company, any specific aspects unique to the Company and its business activities, and the responsibilities of a Supervisory Director.
- 25.2 The Supervisory Board shall conduct an annual review to identify any aspects with regard to which the Supervisory Directors require further training or education during their term of office.
- 25.3 The induction course, training and education shall be facilitated and paid for by the Company.

26. Other positions

- 26.1 Supervisory Directors shall limit the number and nature of their other positions so as to ensure due performance of their duties as Supervisory Directors. They will hold no more than five memberships of supervisory boards in Dutch listed companies, with a chairmanship counted twice.⁸⁰
- 26.2 Supervisory Directors must inform the Chairperson 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 Chairperson determines that there is a risk of a conflict of interest, the matter shall be discussed by the Supervisory Board in accordance with clause 23 of these By-Laws. The Company Secretary shall keep a list of the outside positions concerned of each Supervisory Director.

⁷⁷ Dutch Corporate Governance Code, Principle III.7.

⁷⁸ Dutch Corporate Governance Code, best practice provision III.7.3.

⁷⁹ Dutch Corporate Governance Code, best practice provision III.3.3.

⁸⁰ Dutch Corporate Governance Code, best practice provision III.3.4.

27. Holding and trading securities

- 27.1 If at any time one or more Supervisory Directors start holding shares in the Company, the object must be long-term investment, and not short-term profit.⁸¹ The portfolio of (depository receipts for) shares held in the Company (including option rights and convertible bonds) of the Supervisory Directors jointly shall each year be published in the annual report.
- 27.2 As regards the possession of or transactions with securities of listed companies, all Supervisory 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).⁸²
- 27.3 The Company shall draw up regulations governing ownership of and transactions in securities by Supervisory Directors, other than securities issued by the Company.⁸³

28. Particulars of Supervisory Directors

- 28.1 The annual report of the Supervisory Board shall as a minimum contain the following information on each Supervisory Director⁸⁴: (i) age; (ii) nationality; (iii) date of initial appointment and the current term of his appointment; (iv) principal position; (v) additional positions to the extent relevant for the performance of his task as a Supervisory Director; (vi) particulars of agreements under which gains are made on termination of the membership of the Supervisory Board or any other position with the Company; (vii) gender; (viii) profession.

29. Confidentiality

- 29.1 No Supervisory Director shall, during his membership of the Supervisory 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 any 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 Supervisory Director is allowed to disclose the above information to Managing Directors and Supervisory Directors as well as to the Company Secretary. A Supervisory Director shall not in any way whatsoever utilise the information referred to above for his personal benefit.

30. Miscellaneous

- 30.1 **Acceptance by Supervisory Directors.** Anyone who is appointed as a Supervisory 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.
- 30.2 **Amendment.** These By-Laws may be amended from time to time on the proposal of the Management Board or the Supervisory Board. Prior to amendment of these By-Laws on the proposal of the Supervisory Board the Management Board shall be consulted.

⁸¹ Dutch Corporate Governance Code, best practice provisions III.7.2.

⁸² Clauses 27.2 and 27.3 of these By-Laws make up the By-Laws as meant in best practice provision III.6.5 of the Dutch Corporate Governance Code.

⁸³ Dutch Corporate Governance Code, best practice provision III.6.5.

⁸⁴ Dutch Corporate Governance Code, best practice provisions III.1.3.

- 30.3 **Interpretation.** In case of uncertainty or difference of opinion on how a provision of these By-Laws should be interpreted, the opinion of the Chairperson shall be decisive.
- 30.4 **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).
- 30.5 **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.
- 30.6 **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 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.
- 30.7 These By-Laws are adopted by the Supervisory Board in the meeting of 24 September 2009.

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ANNEX 1

LIST OF DEFINITIONS

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

Affiliated Company Affiliated Company means a company that would qualify as “affiliated listed institution” (*gelieerde uitgevende instelling*) in Section 5:48 of the Financial Supervision Act (*Wet op het financieel toezicht*) provided that for the purpose hereof (i) neither the Company nor the Affiliated Company needs to be listed and (ii) the Affiliated Company does not need to be a public company incorporated under the laws of the Netherlands (*naamloze vennootschap*), and regardless of the fact whether this Act is applicable to the Company and/or to the Affiliated Company;

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;

A-Shares means the issued and outstanding ordinary shares of class A in the capital of the Company;

A-Shareholders means the holders of A-Shares;

B-Shareholders means the holders of B-Shares;

B-Shares means the issued and outstanding ordinary shares of class B in the capital of the Company;

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, means 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 subsidiary companies 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;

Dependent Company has the meaning ascribed thereto in the Articles of Association;

Dutch Corporate Governance Code means the code of conduct, as referred to in Section 2:391, subsection 5, of the Dutch Civil Code, as amended as per 1 January 2009 by the Corporate Governance Code Monitoring Committee, as further amended from time to time;

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;

Industrial Plan means industrial plan as instituted by the Company and its Partner and as further amended from time to time;

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;

Partner means Vattenfall AB;

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;

Shareholders Agreement means [●];

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;

Supervisory Director A means a Supervisory Director recommended by the A-Shareholders;

Supervisory Director B means a Supervisory Director recommended by the B-Shareholders;

Vice Chairperson means the vice chairperson of the Supervisory Board;

Works Council means the central works council (*centrale ondernemingsraad*) of the Company.

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

SUPERVISORY BOARD PROFILE

1. SIZE AND COMPOSITION OF THE SUPERVISORY BOARD OF N.V. NUON ENERGY

- 1.1 The basic principle is that the size of the Supervisory Board is such that the Supervisory Board for the whole will be able to carry out its duties effectively and responsibly and that every individual Supervisory Director will be able to contribute its specific expertise.
- 1.2 Without prejudice to the abovementioned in 1.1, the Supervisory Board will consist of eight Supervisory Directors.
- 1.3 The composition of the Supervisory Board shall at all times be such that it will be as much as possible in compliance with clause 1.3 of the By-Laws of the Supervisory Board.
- 1.4 The composition and qualities of the Supervisory Board as a whole should be in line with the Company's size, portfolio, nature and culture of the Company. The composition should be as varied as possible in terms of background, age, gender, experience.
- 1.5 In the Supervisory Board should be present international knowledge and experience in the following fields:
- general management;
 - finance, economics and accounting;
 - health & strategy;
 - safety;
 - sustainability & environment;
 - personnel & organization among which participation in decision-making;
 - technology;
 - energy sector among which European energy markets and energy companies;
 - privatization, mergers and acquisitions;
 - marketing and retail;
 - legal affairs;
 - trading activities;
 - public affairs (at a national as well as an international level); and
 - the business of the Company (production and distribution of electricity, gas and en heat).

2. INDIVIDUAL SUPERVISORY DIRECTORS

- 2.1 Individual Supervisory Directors should be prepared and willing to fulfil the role as Supervisory Director according to Dutch Law, the Dutch Corporate Governance Code, the Articles of Association, the Shareholders Agreement and the By-Laws of the Supervisory Board.
- 2.2 At the moment of his/her appointment each Supervisory Director should subscribe to the Company's values, each member should fit in the overall Supervisory Board composition described above, and should not have a conflicting interest with the Company.

Supervisory Directors should represent the following qualities:

- (a) integrity;
- (b) able to operate independently and critically vis-à-vis the other Supervisory Directors and the Managing Directors;

- (c) an open eye for the interests of the Company and its various stakeholders;
- (d) aware of international trends in society;
- (e) a social antenna/an antenna for inter-personal dynamics;
- (f) proven success/prominence in society;
- (g) analytical and critical but solution-oriented;
- (h) having enough time available to fulfil his task adequately;
- (i) prepared to be evaluated periodically;
- (j) willing to accept to participate in Committees; and
- (k) willing to follow induction and training programs.

3. VARIOUS

- 3.1 The Supervisory Board shall also have due regard for corporate social responsibility issues that are relevant to the enterprise.⁸⁵
- 3.2 The Supervisory Board shall discuss at least once a year, without the Management Board being present, the desired profile and the composition of the Supervisory Board and its functioning. The functioning of its Committees and the Supervisory Directors shall also be discussed. The report of the Supervisory Board shall state how the evaluation of the functioning of the Supervisory Board, the separate Committees and the individual Supervisory Directors has been carried out.⁸⁶
- 3.3 Every modification of the Supervisory Board Profile will be discussed with the General Meeting and with the Works Council.⁸⁷
- 3.4 On the occasion of each appointment and re-appointment of a Supervisory Director this Supervisory Board Profile has to be respected.⁸⁸
- 3.5 This Supervisory Board Profile will be available on written request to the Company (for the attention of the Company Secretary (1.1 By-Laws of the Supervisory Board) and shall also be posted on the website of the Company.⁸⁹

⁸⁵ Dutch Corporate Governance Code, Principle III.1.

⁸⁶ Dutch Corporate Governance Code, best practice provision III.1.7.

⁸⁷ Section 2:158 Dutch Civil Code.

⁸⁸ Dutch Corporate Governance Code, Principle III.3.

⁸⁹ Dutch Corporate Governance Code, best practice provision III.3.1.

ANNEX 3

ROTATION PLAN SUPERVISORY BOARD

Name	2010	2011	2012	2013
Mr. L.G. Josefsson (chairman)				X
Mr. D. Andresen				X
Mr. T. Hatakka				X
Mrs. L. Boeren				X
Mr. D. Haank				X
Mr. J. Schraven				X
Mr. P. Bouw				X
Vacancy				X

ANNEX 4

LIST OF INFORMATION TO BE INCLUDED IN THE SUPERVISORY BOARD REPORT

The annual report of the Supervisory Board shall in any case contain the following information:

- (1) a reference to the discussions on the corporate strategy and business risks, and the result of the assessment by the Management Board of the structure and operation of the internal risk management and control systems, as well as any significant changes thereto, which were held by the Supervisory Board in the year under review;⁹⁰
- (2) a list of the Supervisory Directors who have often been absent from Supervisory Board meetings;⁹¹
- (3) a statement that in the opinion of the Supervisory Board clause 1.3(f) of the By-Laws of the Supervisory Board has been satisfied and which member(s) of the Supervisory Board, if present, should not be deemed independent;⁹²
- (4) a reference to the discussions described in clause 10.3 of the By-Laws of the Supervisory Board;⁹³
- (5) the Supervisory Board Profile;
- (6) for each Committee as referred to in clause 5 of the By-Laws of the Supervisory Board: a report on how it has performed its duties;⁹⁴ details of its existence, its composition, number of meetings and the main issues discussed;⁹⁵
- (7) the following information on each Supervisory Director:⁹⁶ (i) age ; (ii) nationality; (iii) date of initial appointment and term of appointment; (iv) chief position; (v) other positions, to the extent relevant for the performance of his duties as Supervisory Director; (vi) details of agreements under which benefits are derived on termination of membership of the Supervisory Board or any other position at the Company; (vii) gender; (viii) profession; and
- (8) the report of the Supervisory Board shall include the principal points of the remuneration report concerning the remuneration policy of the Company. This shall describe transparently and in clear and understandable terms the remuneration policy that has been pursued and give an overview of the remuneration policy to be pursued. The full remuneration of the individual Managing Directors, broken down into its various components, shall be presented in the remuneration report in clear and understandable terms.⁹⁷
- (9) the aspects of diversity in the composition of the Supervisory Board that are relevant to the Company and shall state what specific objective is pursued by the Supervisory Board in relation to diversity. In so far as the existing situation differs from the intended situation, the Supervisory Board shall account for this in the report of the Supervisory Board and shall indicate how and within what period it expects to achieve this aim.⁹⁸

⁹⁰ Dutch Corporate Governance Code, best practice provision III.1.8.

⁹¹ Dutch Corporate Governance Code, best practice provision III.1.5.

⁹² Dutch Corporate Governance Code, best practice provision III.2.3.

⁹³ Dutch Corporate Governance Code, best practice provision III.1.7.

⁹⁴ Dutch Corporate Governance Code, Principle III.5.

⁹⁵ Dutch Corporate Governance Code, best practice provision III.5.2.

⁹⁶ Dutch Corporate Governance Code, best practice provision III.1.3.

⁹⁷ Dutch Corporate Governance Code, II.2 (2nd Principle).

⁹⁸ Dutch Corporate Governance Code, best practice provision III.3.1.

ANNEX 5

INFORMATION TO BE INCLUDED IN THE REMUNERATION REPORT

The Remuneration Report shall describe transparently and in clear and understandable terms the remuneration policy that has been pursued and give an overview of the remuneration policy to be pursued. The full remuneration of the individual Managing Directors, broken down into its various components, shall be presented in the remuneration report in clear and understandable terms.⁹⁹

The Remuneration Report shall contain an account of the manner in which the remuneration policy has been implemented in the past financial year, as well as an overview of the remuneration policy planned by the Supervisory Board for the next financial year and subsequent years. The report shall explain how the chosen remuneration policy contributes to the achievement of the long-term objectives of the Company and its affiliated enterprise in keeping with the risk profile. The overview shall in any event contain the following information.¹⁰⁰

- (a) an overview of the costs incurred by the Company in the financial year in relation to Management Board remuneration; this overview shall provide a breakdown showing fixed salary, annual cash bonus, shares, options and pension rights that have been awarded and other emoluments; shares, options and pension rights must be recognised in accordance with the accounting standards;
- (b) a statement that the scenario analyses referred to in best practice provision II.2.1 have been carried out;
- (c) for each Managing Director the maximum and minimum numbers of shares conditionally granted in the financial year or other share-based remuneration components that the Managing Director may acquire if the specified performance criteria are achieved;
- (d) a table showing the following information for incumbent Managing Directors at year-end for each year in which shares, options and/or other share-based remuneration components have been awarded over which the Managing Director did not yet have unrestricted control at the start of the financial year: (i) the value and number of shares, options and/or other share-based remuneration components on the date of granting; (ii) the present status of shares, options and/or other share-based remuneration components awarded: whether they are conditional or unconditional and the year in which vesting period and/or lock-up period ends; (iii) the value and number of shares, options and/or other share-based remuneration components conditionally awarded under (i) at the time when the Managing Director obtains ownership of them (end of vesting period), and (iv) the value and number of shares, options and/or other share-based remuneration components awarded under (i) at the time when the Managing Director obtains unrestricted control over them (end of lock-up period);
- (e) if applicable: the composition of the peer group of companies whose remuneration policy determines in part the level and composition of the remuneration of the Managing Directors;
- (f) a description of the performance criteria on which the performance-related component of the variable remuneration is dependent in so far as disclosure would not be undesirable because the information is competition sensitive, and of the discretionary component of the variable remuneration that can be fixed by the Supervisory Board as it sees fit;
- (g) a summary and account of the methods that will be applied in order to determine whether the performance criteria have been fulfilled;

⁹⁹ Dutch Corporate Governance Code, Principle above best practice provision II.2.10.

¹⁰⁰ Dutch Corporate Governance Code, best practice provision II.2.13.

- (h) an ex-ante and ex-post account of the relationship between the chosen performance criteria and the strategic objectives applied, and of the relationship between remuneration and performance;
- (i) current pension schemes and the related financing costs;
- (j) agreed arrangements for the early retirement of Managing Directors; and
- (k) if a Managing Director or former Managing Director is paid severance pay or other special remuneration during a given financial year, an account and an explanation of this remuneration shall be included in the Remuneration Report.