

Kopiëren, rechtvaardig en eenvoudig geregeld



# Today's rights management the Dutch way

---

*Transparency and governance in collective management of copyright and neighbouring rights in the Netherlands: a progress report*

## Colophon

### Publisher's information and legal notice

This is a publication by Stichting Reprecht.

**Final editing:** Lisette Blankestijn Communicatie

**Consult, editing and Preface:** Willem Wanrooij, wanrooy@dvice

**Translation:** Gateway Vertalingen

**Design:** Cascade - visuele communicatie bv

**Printing:** Schefferdrukkerij

#### Stichting Reprecht

Postbus 3060

2130 KB Hoofddorp

The Netherlands

T +31 23 799 7010

E [reprecht@cedar.nl](mailto:reprecht@cedar.nl)

#### VOI©E

Lange Voorhout 86/12

2514 EJ Den Haag

The Netherlands

T +31 70 310 91 01

E [info@voice-info.nl](mailto:info@voice-info.nl)

#### © Stichting Reprecht

*The English text of the CMO Quality Mark is an unofficial translation. In the event of any discrepancy between the Dutch text and this English translation, the Dutch text will prevail.*

#### © original Dutch text: VOI©E

*The CMO Quality Mark is governed and administered by VOI©E, the trade association of the collective management of copyright and neighbouring rights.*

*Hoofddorp, March 2013*

# Today's rights management the Dutch way

---

*Transparency and governance in collective management of copyright and neighbouring rights in the Netherlands: a progress report*

# Contents

- 5 Preface
- 6 Introduction
- 7 Pressure triggering various responses
- 7 First stage to innovative management in the Netherlands
- 8 Developing a quality mark, jointly with users
- 9 Independent investigation and certification
- 10 Guidelines for Good Governance and Integrity
- 11 Reporting abuse in a CMO – internal whistleblowing
- 11 Transparency and governance in legislation
- 12 Conclusion

## **CMO Quality Mark**

- 14 Preamble
  
- 16 Chapter I Definitions
  
- 19 Chapter II Quality Mark Criteria
- 19 II.1 (Board of) the CMO
- 20 II.2 Dealing with Rightholders
- 22 II.3 Dealing with Users and/or parties obliged to pay
- 25 II.4 Provision of information / contents of the annual report
- 27 II.5 Distribution
- 29 II.6 Cooperation of CMOs with third parties and with other CMOs
- 29 II.7 Complaints and dispute settlement procedure for User and/or parties obliged to pay

**31 Chapter III Investigation prior to granting the CMO Quality Mark**

31 III.1 Initial investigation

31 III.2 Period of validity of the CMO Quality Mark

31 III.3 Inspection

32 III.4 Extension of the period of validity of the CMO Quality Mark

32 III.5 Competence of the auditor of the Certifying Institution

**33 Appendix to Quality Mark Criteria**

**Guidelines for Good Governance and Integrity of CMOs (comprehensive summary)**

33 Preamble

36 General provisions

**37 Guideline I Good governance and supervision**

37 I.1 Introduction and considerations

41 I.2 The choice of governance model

41 I.3 Apply or explain

42 I.4 Internal independent managerial supervision in the bodies of a CMO

**45 Guideline II Integrity**

45 II.1 Introduction and considerations

46 II.2 Conflict of interest and tendering

46 II.3 Additional positions

47 II.4 Information

47 II.5 Accepting and giving gifts

47 II.6 Expenses and expense claims

**48 III Principles and best practice provisions of an example of a governance model**



# Today's rights management the Dutch way

Transparency and governance in collective  
management of copyright  
and neighbouring rights in the Netherlands:  
a progress report on the occasion of the  
IFRRO Senior Managers Forum 2013

## Preface

In recent years remarkable results have been achieved in the Netherlands in the improvement of the quality of the collective management of copyright and neighbouring rights. Stichting Reprorecht is delighted to inform you about this by means of this booklet. An important tool in quality improvement is the Quality Mark for collective management organizations for copyright and neighbouring rights (CMOs), which came into force in 2011. The CMO Quality Mark and the Guidelines for Good Governance and Integrity (an important part of this quality mark) have contributed to increasing transparency and confidence in this respect.

In the following paragraphs, we will first be looking back at how the Quality Mark and the Guidelines for Good Governance and Integrity came about. We will subsequently describe the certification process in a nutshell. After that the answer will be given to the question as to whether the new policy is already proving effective.

The second part of this booklet contains a translation of the Dutch Quality Mark and a comprehensive summary of the Guidelines for Good Governance and Integrity. Of the System of Standards and Assessment – key element of the Quality Mark's enforcement – a number of relevant examples form part of the Quality Mark translation.

We hope this will inspire you.

*Marieke Sanders-ten Holte, Chair Stichting Reprorecht*

## Introduction

Transparency and governance in the collective management of copyright and neighbouring rights are a hot issue worldwide. Governments, the corporate world and consumers require more transparency in the business operations of collective management organizations (CMOs\*) and are insisting on an improved governance structure.

This pressure on CMOs is external, but often also internal. In that case, affiliated parties desire greater clarity about their rights and entitlements. They demand of their organization that the decision-making structure is made more transparent and that more room is created for participation.

To a certain extent, this development is the result of complaints and unfavourable reports about CMOs. On the other hand, the economic relevance of collective management has increased significantly, and it is self-evident that standards that apply to the corporate sector or to public or semi-public services also enter the picture where CMOs are concerned.



## Pressure triggering various responses

In the past decade, collective management was sorted out in various countries. The management organizations carried out significant improvements or are in the process of doing so. International federations such as IFRRO and CISAC gave an excellent incentive by drawing up codes of conduct and professional rules. All over the world, international federations are investing in training and coaching, striving to improve the quality of collective management. Promoting transparency and governance is a part of this.

Besides the fact that the sector itself is searching for solutions, there are also examples of intervention by legislators. In some countries, transparency and governance are regulated through legislation concerning collective management. In some cases there is a mix: it is a subject of legislation but also of self-regulation. The situation in the Netherlands is a good example of a mix: in addition to the CMO Quality Mark, transparency and governance are also regulated by law. As an international instrument, the most obvious example is the planned EU directive on collective management.

Incidentally, improving the quality of collective management is not only being discussed in Europe. One of the first examples of a properly functioning code of conduct for CMOs comes from Australia. Eight Australian CMOs adopted a code of conduct in 2002, including independent monitoring. The subject is also the centre of attention in other parts of the world. In 2012, WIPO started a discussion about a voluntary international quality assurance standard in connection with the TAG project (Excellence in Transparency, Accountability and Governance).

## First stage to innovative management in the Netherlands

In 2007, the collective management sector in the Netherlands was confronted with the government proposals regarding the strengthening and expanding of the existing legal supervision of CMOs. Since 2003, there is an act providing for the supervision of CMOs, to be carried out by a Supervisory Commission.

The proposal of 2007 considerably extended the government's monitoring of the course of business in CMOs. Where initially there were five organizations that came under government control, according to the proposal this control would apply to all the CMOs operating in the Netherlands.

In response to this, the organizations of rightholders, together with the CMOs, created a trade association for collective management in 2008: VOI©E. By lobbying together and providing good information, it was hoped that the parliamentary discussion about the new supervision legislation could be influenced and government control limited.

In addition, the new association developed a code of conduct for CMOs. It was hoped that proper self-regulation would take the wind out of the legislator's sails. The code was specific and substantial. It covered a large number of areas. A CMO would only be able to become a member of VOI©E if it endorsed the code. A violation of the code could result in the termination of the membership and consequently reputational damage.

Users of the rights were of the opinion that the code of conduct was a step in the right direction, but they also expressed some criticism. The rules of the code had been thought up by the organizations, without any external input. The main objection raised by users was that the organizations held the monitoring of the compliance with the code in their own hands and also decided on sanctions themselves. In other words, in the eyes of the users there was insufficient independence: the organizations were being their own judge and jury. There was therefore a need for an independent quality mark.

### Developing a quality mark, jointly with users

The board of VOI©E believed that it was best if the operation of converting the code of conduct into an independent quality mark were carried out together with the corporate sector. This was a daring strategy but thankfully worked out well.

Representatives of the powerful industrial and employers' confederation VNO-NCW and of the influential umbrella organization for small and medium-sized enterprises MKB-Nederland sat down at the table with CMOs. A joint committee of rightholders and the corporate sector was established. This Stakeholders Committee took the VOI©E code of conduct as its point of departure. The rules in the code of conduct were adapted to assessable and verifiable standards, and strengthened where necessary.

The independent Certification Institute was asked to supervise the transition from code of conduct to quality mark and to take charge of monitoring the compliance in the future.

The Certification Institute provided the chairman of the Stakeholders Committee. This ensured that there was expertise in the area of certification.

The Stakeholders Committee developed a complete proposal for Quality Mark Criteria (see page 13 et seq.) and for a System of Standards and Assessment. In March 2011, these proposals were accepted by the general members' meeting of VOI©E.

**The System of Standards and Assessment consists of four parts:**

- a description of the regulation
- b standard setting
- c means enabling assessment
- d specification of the manner in which the auditor inspects\*

The development of the Quality Mark Criteria and the System of Standards and Assessment is a typical example of work in progress. New insights are constantly emerging and the Stakeholders Committee makes suggestions for modifications and additions based on them. This booklet is therefore a snapshot but the process is sufficiently far advanced to command international attention.

## Independent investigation and certification

The quality mark system in the Netherlands is voluntary. If a CMO has indicated that it wishes to qualify for certification, it will be investigated by the auditors of the Certification Institute. The duration of the audit depends on the size and complexity of the organization but one or two full investigation days are usually required. By means of an audit, it is investigated whether the CMO satisfies the Quality Mark Criteria. If it does, the Certification Institute will recommend certification. The Quality Mark is formally given by VOI©E, on the binding nomination of the Certification Institute.

All the CMOs in the Netherlands have subjected themselves to an audit by the independent Certification Institute. Most of the CMOs were not immediately given a certificate but had to comply with a list of points requiring improvement first. Some CMOs did receive a certificate, but also homework. They still had to rectify a number of shortcomings. From the end of 2011, every CMO in the Netherlands was able to carry the Quality Mark.

---

\* In the translation of the Quality Mark Criteria we have, where this is of interest, added (b), (c) and (d) as a kind of toolbox used by the auditor to perform the assessment and inspection in the most efficient manner possible. The toolbox also ensures that the auditor performs his assessment in the same manner at all the CMOs, where the procedure and also the contents are concerned.

Possession of the CMO Quality Mark is – just as was the case for the code of conduct – a condition for becoming a member of VOI©E. Loss of the Quality Mark means the end of the VOI©E membership.

There is an additional interest in being and remaining certified: if a CMO wishes to engage another CMO for the execution of certain tasks, a condition is that this executive CMO must also be certified. This situation arises in particular when CMOs are engaged by a collecting CMO to effect the distribution to their own group of rightholders, as in the case of the distribution of the reprography fee, public lending right fee and private copying levy.

A certificate is issued for three years. There is an annual inspection. The Certification Institute may take action in the interim if there are complaints about a CMO, or in order to verify whether the CMO has followed the instructions given during an audit.

Certification entitles a CMO to carry the CMO Quality Mark. It may use the Quality Mark logo in all its forms of communication and publicity.

The list of certified CMOs can be found on the website of the Certification Institute:

*<http://www.keurmerk.nl/NL/Gastpagina-s/Voice>*

There are special quality mark regulations. The application for a quality mark, the first audit and the follow-up inspections, the periods in which follow-up audits must take place in order to be able to continue to carry the quality mark and all matters related to the quality mark criteria are regulated in these regulations. A CMO that accepts the regulations assumes an obligation towards VOI©E to comply with the requirements of the quality mark.

When a CMO is of the opinion that the CMO Quality Mark has wrongly been taken away from it, a special dispute settlement procedure will come into effect.

## **Guidelines for good governance and integrity**

The Guidelines for Good Governance and Integrity are an important component of the CMO Quality Mark. VOI©E, the trade association for collective management, has drawn up these regulations together with the Supervisory Commission for CMOs. The Supervisory Commission for CMOs was formed by law in 2003 and carries out the government supervision of the CMOs. At this point, government supervision only applies to the performing rights society Buma and to four organizations that collect fees based on a legal monopoly position. The fees are imposed

based on the legal regulation of the reprography fee, the private copying levy and the public lending right fee. The fourth in this series is the fee in respect of the neighbouring rights for performing artists and producers of phonograms (cf. Article 12 of the Rome Convention 1961). In 2007 the government announced a new regulation of the supervision. All the CMOs in the Netherlands will come under the supervision of the Supervisory Commission for CMOs. The legislative bill regulating this has been submitted to the Senate. The new law will probably be introduced before the summer of 2013.

A special committee of VOI©E prepared the Guidelines for Good Governance and Integrity in 2011. The Supervisory Commission for CMOs was closely involved in the preparation. The Commission will have a special role where these guidelines are concerned as it has been charged with monitoring the compliance. It is an interesting situation that the rightholders have voluntarily placed the monitoring of the Guidelines for Good Governance and Integrity – a product of self-regulation – with the Supervisory Commission for CMOs, whose first task is legal supervision.

### Reporting abuse in a CMO – internal whistleblowing

Part of the Guidelines for Good Governance and Integrity is a reporting scheme for suspected abuse. This reporting scheme creates the conditions enabling the smooth and clear reporting of suspected abuse. It is important for an internally open corporate culture that suspected abuse can be reported easily, without concerns for adverse consequences for the person reporting the suspected abuse.

### Transparency and governance in legislation

As shown above, government supervision of CMOs is regulated by law in the Netherlands, and we are on the eve of significant changes in the Supervision Act. This Act contains mandatory provisions about transparency and governance. The rightholders have urged the legislator to reduce government supervision. After all, the independent CMO Quality Mark already deals with numerous matters. The self-regulation implemented by the trade association VOI©E and the corporate sector is not only just as effective but also more flexible than legislation. The government has partly met the wish of the rightholders. The government will keep certain implementation measures in reserve and will wait and see how the self-regulation works out in due course.

## Conclusion

The Dutch CMO Quality Mark has resulted in increased efficiency in a short space of time. Important reforms have been achieved in the managerial structure of a number of CMOs. The introduction of the CMO Quality Mark has paved the way towards a better service for the members. There is increased transparency for users where rates and licence terms are concerned. The CMO Quality Mark encourages CMOs to work together closely where possible and good progress has been made in this area. The cooperation in the development of the CMO Quality Mark has resulted in a number of interesting spin-offs. The CMOs have, for example, started a project to harmonize their financial affairs and reporting. The aim is also to achieve harmonization of the manner in which certain information is reported to the Supervisory Commission for CMOs.

The process has not yet been completed but the CMO Quality Mark and the Guidelines for Good Governance and Integrity have inspired the collective management in the Netherlands to improve the provision of services and information significantly. This is to the advantage of both the rightholders and the users. All of this is positive for the recognition of and regard for copyright and collective management.

# CMO Quality Mark

Version 3 - 2013

© VOI©E\*, The Hague, 2013

# CMO Quality Mark

## Preamble

### Aim of the CMO Quality Mark

The main aim of the CMO Quality Mark is to encourage collective management organizations ('collectieve beheersorganisaties') (CMOs) to provide clear information about their performance and to perform optimally by making standards assessable properly and objectively by way of quality mark criteria and to promote the assessment of these standards by an independent certifying institution. The objective of the 'Vereniging van Organisaties die Intellectueel eigendom Collectief Exploiteren ('VOI©E') (association of organizations who collectively manage intellectual property) is to promote transparency and quality in the effective enforcement by a collective management organization of the rights for which it is responsible, in the effective collection of fees and the prompt, proper payment of these monies under fair competition conditions for the stakeholders (Rightholders, Users and/or parties obliged to pay) and in the responsible provision of information by a CMO in this context. The CMO Quality Mark creates a basis for comparison and the possibility of determining best practices which can be shared.

### Role of the CMOs

A CMO protects the tangible and intangible interests of the Rightholders, who are the makers, performing artists and producers of the work and performances protected by copyright and neighbouring rights, and their successors in title.

In protecting the interests of the Rightholders, the interests of Users and/or parties obliged to pay are also taken into account. A CMO facilitates the granting of copyright and neighbouring rights licences and thus contributes to the accessibility and availability of this protected material.

### Good practice

In carrying out their activities, which are made clear and assessable through the quality mark, the CMOs will aim to work together as much as possible with other CMOs and to achieve an optimal distribution of the collected royalties.

CMOs that work in the same sector of Users and/or parties obliged to pay aim to act jointly,



in so far as reasonably possible and efficient, where the granting of a licence, invoicing, provision of information and/or other services are concerned. Where possible and perhaps worthwhile, they also aim to achieve harmonization of the criteria determining the licence fee and parameters together with other CMOs.

The CMO makes every effort, within the bounds of reasonableness and within reasonable costs, to trace Rightholders who are entitled to a collected royalty and make the royalty payable to them; in cases where this is not possible or not properly feasible, the CMO will ensure that the relevant group of Rightholders benefits indirectly from the royalty.

The CMO will inform its Rightholders about developments that are relevant to the collection and distribution when it is to be expected that these developments may have a significant impact on the amount of the royalties to be paid out.

## Procedure

The CMO Quality Mark is granted by VOI©E to a CMO that applies for the quality mark and that, after investigation and based on the binding advice from an independent certifying institution, has complied and continues to comply with the Quality Mark Criteria advised by the Stakeholders Committee. The inspection procedure is included in Appendix 7 <sup>1)</sup>.

---

1) *Appendix 7 is not included in this translation.*

# Chapter I Definitions

## **CMO (collective management organization):**

the legal entity which, in accordance with the mandate of its Rightholders and/or statutory mandate, is charged on a continuous basis with the management of the copyright and neighbouring rights entrusted to it, on a non-profit basis. In this context, 'management' is understood to be the collection and distribution of the royalties ensuing from the aforesaid rights, and also other operations in respect of these rights and their protection and enforcement.

## **CMO Quality Mark:**

a quality judgement regarding the services of a CMO, delivered by the 'Vereniging van Organisaties die Intellectueel eigendom Collectief Exploiteren ('VOI©E') (association of organizations that collectively manage intellectual property) on the basis of a binding opinion of the Certifying Institution.

## **Certifying Institution:**

the independent review institute that, on the instructions of VOI©E, performs the assessment for the granting, extending or withdrawing of the right to use the CMO Quality Mark and gives VOI©E a binding opinion for this purpose.

## **Distribution:**

the individual or collective apportioning, in accordance with the articles of association or regulations, and subsequently paying out of collected royalties, whether or not through distribution organizations, to Rightholders by a CMO.

## **CvTA: 'College van Toezicht collectieve beheersorganisaties Auteursrechten en naburige rechten' (Supervisory Commission for Collective Management Organizations (Copyright and Neighbouring Rights)):**

the Copyright Supervisory Commission as referred to in the Dutch Act on the supervision of collective management organizations for copyright and related rights (Wet toezicht collectieve beheersorganisaties auteurs- en naburige rechten) ('the Supervision Act').

**User and/or party obliged to pay:**

a legal entity or person requiring permission and/or obliged to pay a fee on account of copyright or neighbouring rights and having a legal relationship with the CMO based on a statutory obligation, a licence agreement or as a party to a standard agreement or terms.

**Copyright Disputes Committee:**

the disputes committee established in accordance with the Supervision Act and/or in accordance with agreements made between VNO-NCW, MKB-Nederland and VOI©E, which is or will be placed under Stichting Geschillencommissies voor Beroep en Bedrijf (Foundation for Professional and Commercial Complaints Boards).

**CMO Quality Mark Disputes Committee:**

a disputes committee to be established ad hoc, consisting of a representative nominated by VOI©E, a representative nominated by VNO-NCW and MKB-Nederland and an independent chairman appointed by these two representatives, who will decide by giving a binding opinion in disputes between VOI©E and a Quality Mark Applicant or Quality Mark Holder.

**Management Costs:**

the costs involved in the management of the copyright and neighbouring rights entrusted to a CMO.

**Negotiation Protocol:**

a procedure and basic premises, agreed on by VNO-NCW, MKB-Nederland on behalf of their user platform on the one hand and VOI©E on behalf of Buma, Sena, Videma and Stichting Reprorecht on the other hand, for negotiating rates and conditions in so far as these can be determined in joint consultation.

**Quality Mark Criteria:**

the assessment criteria for the CMO Quality Mark, included in Chapter II and determined by VOI©E on the advice of the Stakeholders Committee.

**Quality Mark Applicant / Quality Mark Holder:**

the legal entity applying to VOI©E for the CMO Quality Mark / the legal entity that has been granted the CMO Quality Mark by VOI©E.

**Rightholders:**

the natural persons who and legal entities that have rights based on the Dutch Copyright Act (Auteurswet) or the Dutch Neighbouring Rights Act (Wet op de naburige rechten) and are directly affiliated with a CMO, and also Rightholders not directly affiliated with a CMO in so far as equal treatment is provided for by the articles of association or regulations of the CMO or prescribed by law.

**Relevant Additional position: a position as employee, advisor or director:**

- at another CMO established in the Netherlands or abroad;
- at a Rightholder;
- at a representative organization of Rightholders;
- at a representative organization of parties obliged to pay or at a company or organization obliged to pay an annual amount in excess of EUR 50,000;
- at a supplier of services with which the CMO has a financial or contractual relationship.

**Representative Organizations of Rightholders:**

organizations of Rightholders affiliated with a CMO that represent Rightholders on the board and/or at the general meeting and/or the meeting of a CMO's affiliates.

**Stakeholders Committee:**

advisory body, composed of persons from groups of the main stakeholders (CMOs, Rightholders and Users and/or parties obliged to pay), with an independent chairman/advisor, whose task is to advise VOI©E about the certification activities and the Quality Mark Criteria.

# Chapter II Quality Mark Criteria

## II.1 (Board of) the CMO

- a) Only a CMO that collects and distributes royalties for copyright and/or neighbouring rights in the Netherlands on a regular and non-profit basis will be eligible for the CMO Quality Mark.
- b) The board of a CMO must be composed in such manner that all the categories referred to in the articles of association of Rightholders represented by the CMO are represented on the board in the proportion specified in the articles of association. The representation may be direct or through Representative Organizations of Rightholders, whether or not grouped in categories of Rightholders, or through material management powers, granted under the articles of association.

### II.1.b) auditor's 'toolbox'<sup>2)</sup>

**Standard 1:** The CMO must state in the annual report (providing names) on behalf of which category of Rightholders a member of the board holds a position on the board.

**Standard 2:** In the situation where Rightholders do not hold a position on the board of the CMO, it must be laid down in the articles of association which tangible management powers Rightholders have. This must be stated in the articles of association and the annual report.

**Assessable by means of:** Annual report; Extract from Chamber of Commerce; Minutes; Other documents; Articles of association; Interview

**Inspection/method 1:** The auditor must establish that this has been stated in the annual report. He must also establish, by means of a random inspection of the minutes and/or other documents providing details of a nomination or appointment, that this statement is correct.

**Inspection/method 2:** The auditor must establish that the tangible powers have been laid down in the articles of association. In the situation where Rightholders exercise these tangible powers through a foundation or association, the auditor must establish that [...] documents [...] are present as regards the legal entity exercising these tangible powers. (The CMO must have the relevant documents available for this purpose).

---

2) *In the case of the majority of the Quality Mark Criteria the standard, the means of assessment and the inspection/method that form part of the System of Standards and Assessment are self-evident. We have included a number of less self-evident examples of what, for the purpose of this booklet, has been named the auditor's 'toolbox' (see Preface, page 9), by way of illustration of how the auditor of the Certification Institute is guided to inspect the compliance of a CMO with the Quality Mark Criteria. All Quality Mark Criteria are dealt with in the System of Standards and Assessment, providing a full set of 'toolboxes'.*

- c) At least once a year information about the board of a CMO in the Commercial Register must be checked and, if necessary, updated.
- d) A CMO must have endorsed VOI@E's Guidelines for Good Governance and Integrity of CMOs (Appendix 4)<sup>3)</sup>. A CMO that is party to the Negotiation Protocol (Appendix 5)<sup>4)</sup> agreed on by the parties involved, VOI@E, VNO-NCW and MKB-Nederland, must have signed this protocol.
- e) A CMO must ensure that its employees and directors are aware of the CMO Quality Mark Criteria and act in accordance with these criteria. New employees and directors of a CMO, as well as freelancers and employees of any third parties engaged by the CMO to perform the primary tasks of the CMO, must receive a copy of the CMO Quality Mark Criteria, including the Guidelines for Good Governance and Integrity, on commencing their employment or taking up their position.

### **11.1.e Auditor's 'toolbox'**

**Standard:** Employees, members of the board and third parties engaged by the CMO must have been informed of the Quality Mark Criteria.

**Assessable by means of:** New employees or members of the board taking up their employment or position from 1 January 2013, as well as freelancers and employees of any third parties engaged by the CMO to perform the primary tasks of the CMO and/or the CMO's board, must have signed a statement acknowledging receipt of the CMO Quality Mark Criteria, including the Guidelines for Good Governance and Integrity; Interview.

**Inspection/method:** The auditor must establish – by means of a random inspection – that the relevant employees and workers are familiar with the CMO Quality Mark and the Quality Mark Criteria. The auditor must establish whether statements acknowledging receipt signed by new employees, members of the board or workers who have taken up their employment or position from 1 January 2013 are present.

## **11.2 Dealing with Rightholders**

- a) A CMO must make a complete set of its articles of association and regulations available and provide them on request.
- b) In its articles of association and/or regulations, a CMO must - within the limits imposed by the law – provide for the manner in which the directly affiliated Rightholders, or the

3) See page 33 and following.

4) Appendix 5 is not included in this translation.

Representative Organizations of Rightholders, have a say in the amendments to the articles of association and regulations and, where applicable, in the investment policy or in the wording and adoption of new regulations.

If a CMO has directly affiliated Rightholders, the CMO must grant the directly affiliated Rightholders the opportunity in its articles of association and regulations to have their say in a proper manner by holding a members' meeting or a meeting of affiliates or a consultation at least once a year, or by establishing a structure of sector boards. Where relevant, this will also depend on the material management powers granted in the articles of association.

- c) A CMO that reserves funds for social and/or cultural purposes must convene a meeting of members or affiliates once a year<sup>5)</sup>, at which the adoption and feedback of the social-cultural policy will be discussed and relevant resolutions can be adopted by the members or affiliates. The members or affiliates must be informed of the objective criteria underlying the amount of the sum involved and the chosen allocation or allocations of the funds. Funds destined for social and cultural purposes must be spent in the three calendar years following the calendar year in which the funds were reserved<sup>6)</sup>. If and in so far as these funds have not been spent within the aforesaid period of three years on the chosen allocation, this must be reported to the meeting of members or affiliates. A motion to destine the funds or remaining funds not spent within the specified time will then be presented to the members or affiliates for approval.

A CMO that does not convene a meeting for members or affiliates with the opportunity to have a say must grant the individual Rightholders contributing to the social and cultural funds, and who do not have the opportunity to have a say or enforce transparency, the opportunity to opt out while specifying that they do not wish to contribute to social and cultural funds.

### **II.2.c Auditor's 'toolbox'**

**Standard:** see text of requirement

**Assessable by means of:** [...] in the event that the Rightholders opt out, the required correspondence with them regarding the payment/deduction.

**Inspection/method:** The auditor must establish that the CMO has complied with the conditions and procedure.

---

5) This consultation can be part of a general meeting (ed.)

6) In the case of this criterion, 2011 is the first calendar year in which the funds were reserved.

- d) In its articles of association and/or regulations, a CMO must provide for the manner in which complaints or disputes with Rightholders will be dealt with and must explain on the website how a complaint must be submitted and what the procedure is.<sup>7)</sup>
- e) A CMO must inform directly affiliated Rightholders of amendments to the articles of association and regulations and of new regulations as soon as they have been adopted and are ready for distribution. In the event of an amendment to the articles of association or amendment of the distribution rules, an obligation to provide information actively applies.

### **II.3 Dealing with Users and/or parties obliged to pay**

- a) A CMO must act in a transparent and service-oriented manner towards all its Users and/or parties obliged to pay by, with regard to them:
  - being comprehensive and clear about the rights which the CMO represents and exercises by, for example, referring to the statutory provisions and/or case law on which the consent requirement and/or the payment obligation is based, and to individual authorizations of affiliated Rightholders if applicable to the relevant use;
  - being comprehensive and clear about rates and other licence terms, standard agreements or terms applicable to the relevant category of Users and/or parties obliged to pay, including the definitions and parameters used and the licence fee calculated based on these parameters and other applicable information;
  - being comprehensive and clear about the criteria determining the licence fee;
  - providing clarity about the representativeness and the manner in which indemnity is or is not given against claims by Rightholders;
  - being comprehensive and clear about the payment terms and applicable obligations and about the possible consequences attached to a failure to comply with those payment terms and obligations;
  - treating similar cases equally within the scope of the applicable licence terms, standard agreements or standard terms.

#### **II.3.a.iv Auditor's 'toolbox'**

**Standard:** Representativeness can be made known in different ways. Examples: how many Rightholders have been paid, how many Rightholders are directly and indirectly contracted, any representation of foreign Rightholders.



**Assessable by means of:** Annual report; website of the CMO

**Inspection/method:** The auditor must establish that this information has been compiled consistently in accordance with the method chosen by the CMO.

### **II.3.a.vi Auditor's 'toolbox'**

**Standard:** Similar cases must be treated equally.

**Assessable by means of:** Interview; Documents

**Inspection/method:** The auditor must establish this by means of a random sample of five contracts or payment arrangements with Users and/or parties obliged to pay.

- b) A CMO that grants licences to Users and/or parties obliged to pay in the business sector must comply with general terms and conditions or agreements in which it has at least been regulated:
- that the CMO will in principle not withhold the licence applied for from Users and/or parties obliged to pay that are prepared to pay the applicable fee and to comply with the applicable conditions of the CMO or, where applicable, of the relevant Rightholder or Parties;
  - that the CMO, contrary to the foregoing, may withhold, suspend or cancel a licence for a special reason, if it cannot reasonably be demanded of the CMO or, where applicable, of the relevant Rightholder or Parties, to grant or continue a licence;
  - that the withholding, suspending or cancelling of a licence, other than due to the automatic ending of its term, must be effected in writing and supported by reasons.

### **II.3.b Auditor's 'toolbox'**

**Standard:** The CMO must establish a procedure to be followed in cases in which a requested licence is not granted to a User and/or party obliged to pay.

**Assessable by means of:** Procedure; List of licences not granted; Interview.

**Inspection/method:** The auditor must establish that the CMO has drawn up a procedure and must establish through interviews whether this procedure is known and followed.

- c) In so far as not provided otherwise in the Dutch Copyright Act or the Dutch Neighbouring Rights Act, a CMO must determine rates in consultation with or after consulting

representative organizations of the relevant category of Users and/or parties obliged to pay, in so far as applicable in accordance with the Negotiation Protocol, unless Rightholders have prescribed a rate based on their individual rights or if there is an effective practice of individual licences for which the conditions are agreed by the individual parties.

- d) A CMO must maintain a proper address file by at least making use of the current information of the Chamber of Commerce and endeavouring to improve the address details. A CMO must, where applicable, respect the agreements made with the representative organizations of the relevant category of Users and/or parties obliged to pay concerning the information made available by these organizations.
- e) Requests to change rate calculation bases or correct administrative errors must have been dealt with by a CMO within two months of the request of the User and/or party obliged to pay. If the request refers to a fee that has been charged, the User and/or party obliged to pay must submit the request to the CMO within three months of the fee having been charged. The submission of a request will not have a suspensive effect where the obligations of the User or party obliged to pay are concerned. A CMO must clarify how a request to change or correct an error must be submitted in writing and/or by email and/or through a website, and refer to the complaints and dispute settlement procedure. In the event that the User and/or party obliged to pay is not satisfied with the handling or result of the request or the request has not been dealt with within two months, a complaint about this may be submitted to the CMO. The complaints and dispute settlement procedure is included in Article II.7.
- f) At the request of a User and/or party obliged to pay an annual fee to a CMO, the relevant CMOs must ensure, at the earliest opportunity, that the fee will be charged by means of a joint annual invoice of all the CMOs the User and/or the aforesaid party is obliged to pay an annual fee, as soon and in so far as the latter has been established.

### ***II.3.f Auditor's 'toolbox'***

**Standard:** The relevant CMOs must, as soon as this is possible and determined, provide an annual summary invoice if the User or party obliged to pay has requested such an invoice.

**Assessable by means of:** Procedure; Website of the CMO; Records of submitted requests for a summary invoice.

**Inspection/method:** The auditor must establish that a CMO that sends annual invoices to parties obliged to pay a fee or Users has stated the possibility of requesting a summary invoice in an appropriate area of the CMO's website. The auditor must check whether such requests have been submitted and whether the CMO has complied with the procedure.

#### **II.4 Provision of information / contents of annual report**

- a) A CMO must prepare and file and publish an annual report and financial statements in accordance with Title 9 of Book 2 of the Dutch Civil Code.
- b) The annual report must in any case provide a clear understanding of the cash flows resulting from the collection and distribution. (The annual report contains a cash flow statement for which the model included in Appendix 2 <sup>8)</sup> can be used). In so far as possible and relevant, a CMO must break down the collection and distribution based on the categories of Users and/or parties obliged to pay and also Rightholders.

##### **II.4.b Auditor's 'toolbox'**

**Standard:** It is recommended that the model of the cash flow statement made available by VOI©E be used. In so far as possible and relevant, the CMO must specify in the annual report on which markets and/or in what forms of use the CMO collects fees and to which rightholders or categories of rightholders the CMO distributes the monies collected. The specification will differ for each CMO.

**Assessable by means of:** Annual report; Financial statements; Model of cash flow statement.

**Inspection/method:** The auditor must establish that the required statements are included in the annual report and/or financial statements.

- c) A CMO must, on a regular basis, provide financial and other relevant information in a uniform manner or hand this to the Supervisory Commission for CMOs for inspection based on the template included in Appendix 3 <sup>9)</sup>.
- d) In the annual report, the board of a CMO must give the standard set by the board in the budget for the amount of the management and administration costs, together with explanatory notes. If the standard has been exceeded, the reasons must be explained in the annual report.

---

8) Appendix 2 is not included in this translation.

9) Appendix 3 is not included in this translation.

- e) The annual report must furthermore contain information about:
- transfers from the result credited to funds and reserves;
  - type and results of investments and the investment policy described in an investment charter;
  - the manner in which funds are managed and distributed, in any case stating in which year the distributed funds were collected, broken down per collection year, and for which part of the funds no Rightholders were found in the three calendar years following the calendar year of collection;
  - the year in which the distribution rules were assessed;
  - the names of all the board members and the category or categories each of them represents;
  - the Relevant Additional Positions, including details about whether the position is or is not salaried <sup>10)</sup>, and a specification of the total salary, on account of their position in the CMO, of directors and persons charged with the management of the CMO; a specification that can be traced back to a single person need not be provided, in that case a confidential inspection by the Supervisory Commission for CMOs will suffice. Publishing a selection of the Relevant Additional Positions in the annual report, while referring to a complete statement on the website, is permitted.
- A CMO must annually provide the Supervisory Commission for CMOs with a list of all the additional positions of the directors, supervisors and managers and provide the Supervisory Commission for CMOs immediately with a list of the additional positions of a new director, supervisor or manager after he has been appointed.
- (if applicable) the social-cultural policy pursued in the financial year, with explanatory notes regarding the use of the funds reserved for this, whether or not in a separate annual report. <sup>11)</sup>.
- f) The following information must in any case be disclosed by the CMO through publication on its website and must be made available on demand, free of charge, to Rightholders and Users and/or parties obliged to pay:
- the annual report;
  - articles of association and distribution rules, as well as recent amendments in so far as not yet processed in these documents;
  - the complaints and dispute settlement procedure;

*10) Whether or not the position is salaried must be included from, at the latest, the annual report for the year 2013.*

*11) Must have been included from, at the latest, the annual report for the year 2013.*

- the generally applicable rates, the criteria determining the rate, the generally applicable licence terms and the generally applicable payment arrangement for services of sectors in the case of sector schemes;
  - the level of representativeness and the manner in which indemnity is or is not given against claims by unrepresented Rightholders;
  - the payment terms and consequences of exceeding these terms.
- g) The CMO must take measures to prevent information, of which it is reasonably clear that it must be treated confidentially, from falling into the hands of unauthorized third parties. A CMO must protect the privacy of persons whose interests it represents.

#### ***II.4.g Auditor's 'toolbox'***

**Standard:** The CMO must ensure that its employees sign a statement of confidentiality. A statement of confidentiality must also be signed by temporary workers, trainees and other service providers that have been engaged and that have access to confidential information. In the event that service providers that have been engaged are in the employ of a third party under the terms of a contract for the provision of services with the CMO, it will suffice if the employer issues this statement of confidentiality on behalf of its employees.

**Assessable by means of:** Statements in personnel or other files.

**Inspection/method:** The auditor must establish that the signed statements of confidentiality are present.

## **II.5 Distribution**

- a) A CMO must distribute royalties based on Distribution Rules. In its Distribution Rules, a CMO must regulate the manner in which and the bases on which the royalties are distributed and paid.

#### ***II.5.a Auditor's 'toolbox'***

**Standard:** In the distribution rules, the CMO must state the bases on which the royalties are distributed and paid. With regard to deductions, withdrawals, distributions, etc. that, in accordance with the distribution rules, can be determined annually, whether or not on an ad hoc basis, or that differ from or give new content to these bases, there must be a board and/or management resolution from which it is apparent on what basis the deduction, withdrawal or distribution was made.

**Assessable by means of:** Distribution rules; interview; annual report; underlying specifications; board and/or management resolutions.

**Inspection/method:** The auditor must establish that the matters referred to are included and explained in the financial statements or annual report, the distribution rules and/or board and/or management resolutions and that, where applicable, there are specifications from which it is apparent that the CMO has complied with the standard.

- b) **The current relevance and usefulness of Distribution Rules must be assessed by the board at least once every three years. In its annual report, a CMO must report the outcome of this assessment.**
- c) **A CMO that decides that a percentage of the collection income of the relevant collection year is to be spent on social and/or cultural funds that will directly or indirectly accrue to (objectives for) the group of Rightholders represented by the CMO may reserve a maximum of 15% for this objective in accordance with the guidelines of the Supervisory Commission for CMOs.**
- d) **With effect from the collection in 2011, a CMO must distribute the collected royalties among the Rightholders in the three calendar years following the calendar year in which the payment was made by the User or party obliged to pay to or on behalf of the collecting CMO. After these three calendar years, a CMO may – in accordance with statutory or regulatory time limits – continue to reserve a reasonable and substantiated percentage of the royalty collected in the relevant calendar year for a maximum of 2 calendar years for claims of Rightholders that may arise in that period. The percentage reserved for claims and the substantiation must be stated in the annual report.**
- e) **The royalties that cannot be made available within the aforesaid period of three years and that will not or, because of the maximum having been reached, cannot be added to a reservation referred to under (c) or (d), must be added to the funds available for Distribution for all the Rightholders in the next calendar year.**
- f) **A CMO must ensure that an individual payment is provided with a clear description of the distribution rules applied, deductions and special increases or reductions, so that the Rightholders obtain a clear understanding of the calculation of the amount paid out.**

## **II.6 Cooperation of CMOs with third parties and with other CMOs**

- a) If, for its primary activities, collection and/or distribution, a CMO works together with a third party, this CMO will remain responsible for the collection and distribution based on articles of association and regulations. In an agreement with the third party with which it will work together, the CMO must lay down which conditions the third party must comply with and in what manner it must render account to the CMO. The CMO will terminate the cooperation with the third party if the latter fails seriously in the performance of the activities entrusted to it.
- b) If, for its primary activities, a CMO works together with another CMO established in the Netherlands, this CMO must hold the CMO Quality Mark or demonstrate that it meets the Quality Mark Criteria in some other manner.

## **II.7 Complaints and dispute settlement procedure for Users and/or parties obliged to pay**

- a) A complaint about a fee that has been charged must be submitted to the CMO by the User and/or party obliged to pay within three months of the fee having been charged. In the event that the handling of a request results in a change to rate calculation bases or a correction of administrative errors, as provided for in Article II.3, the complaint is admissible if this request has been submitted to the CMO by the User and/or party obliged to pay within three months of the fee having been charged.
- b) The CMO must clarify how a complaint must be submitted in writing and/or by email and/or through a website. Within at the most one month of receipt of the complaint, the CMO must send the complainant a notification containing a decision about the complaint or stating that the complaint is being dealt with.
- c) The submission of a complaint will not have a suspensive effect where the obligations of the User or party obliged to pay are concerned.
- d) The CMO must decide on the complaint within at the most two months of receipt of the complaint.
- e) In the event that the complainant has not received any notification within the period referred to under (b), the complaint will be deemed not to have been dealt with to the complainant's satisfaction. This also applies if the complainant has not received a decision on the complaint or not received a decision to the complainant's satisfaction within the period referred to under (d). In both cases, the complainant may submit the dispute that

has then arisen to the Copyright Disputes Committee within three months of the period referred to under (b) or (d) having expired or the complainant having received the decision of the CMO.

- f) The decision regarding admissibility and the hearing of disputes by the Copyright Disputes Committee will be based on the regulations of this committee. The CMO must point out to the User or party obliged to pay the possibility of lodging a complaint and an appeal with the Copyright Disputes Committee and also draw attention to its regulations <sup>12)</sup>.

*12) Until the implementation of the legislative proposal to amend the Supervision Act regarding the statutory appointment of this disputes committee, the referral to the Copyright Disputes Committee is limited to disputes about the application of rates.*



# Chapter III Investigation prior to granting the CMO quality mark

## III.1 Initial investigation

During the initial investigation by the Certifying Institution it is investigated whether the Quality Mark Criteria are met. The investigation consists of an audit at the premises of the Quality Mark Applicant.

The number of audit days needed will depend on the size and complexity of the organization. An audit (the inspection as well as the initial investigation) usually takes one working day. Half a working day at the most can be deducted from this if the CMO to be assessed shares facilities and/or working procedures with another CMO to be assessed. One working day at the most can be added to this on account of the complexity and/or size of the CMO to be assessed. The operational inspection procedure is specified in the CMO Quality Mark Inspection Procedure (Appendix 7)<sup>13)</sup>.

## III.2 Period of validity of the CMO Quality Mark

When the initial investigation has been completed with a positive outcome, the Quality Mark Applicant will be given a positive quality mark recommendation. The period of validity of the CMO Quality Mark is 3 years.

## III.3 Inspection

In principle, inspections will be carried out once a year. The amount of time involved in the regular inspection is shown in the table below<sup>14)</sup>. If it becomes apparent that services are provided on an irregular basis, and depending on the quality assurance of the Quality Mark Holder, it may be decided to carry out inspections more frequently. Furthermore, interim inspections will be carried out if complaints received by VOI@E or by the Certifying Institution give cause thereto, if interim evaluations give cause thereto, or in order to check whether instructions given by the Certifying Institution have been followed.

The costs of a higher investigation frequency or an interim inspection will be payable by the Quality Mark Applicant or the Quality Mark Holder, as the case may be.

---

13) Appendix 7 is not included in this translation.

14) Table is not included in this translation.

During an inspection, it will in any case be verified whether all or some of the criteria are met.

#### **III.4 Extension of the period of validity of the CMO Quality Mark**

Three months prior to the expiry date of the period of validity of the CMO Quality Mark, the reinvestigation must have been started. During the reinvestigation, it will be investigated whether the Quality Mark Criteria continue to be met and whether the period of validity of the CMO Quality Mark can be extended for another three years. The amount of time needed is the same as for the initial investigation.

#### **III.5 Competence of the auditor of the Certifying Institution**

The auditor carrying out the investigation must satisfy the following requirements:

- Education: at least a higher education or equivalent ability;
- Experience: two years of experience as a certification manager/auditor with a Certifying Institution or equivalent experience.

# Guidelines for good governance and integrity of CMOs

*(comprehensive summary)*

*Version spring 2013*

## Preamble

- 1) A CMO in the first place protects the tangible and intangible interests of the rightholders. In protecting the interests of the rightholders, the interests of users and/or parties obliged to pay, with and for whom arrangements must be made in the market, are also taken into account. A CMO facilitates the granting of copyright and neighbouring rights licences and thus contributes to the accessibility of this protected material. CMOs perform an important public and often complex task and must take many different interests into account. If CMOs have a legal or de facto monopoly, this entails that they must handle these interests with even greater care.
- 2) The CMOs formed a trade association in 2008, VOI©E, the aim of which is to promote the transparency and cooperation, with one another or with third parties, and thus broaden the level of support for collective management.

The CMOs have consulted the Supervisory Commission for CMOs about guidelines in which principles and rules are laid down to promote good governance and to avoid conflicts of interest or the appearance thereof.

VOI©E has followed the advice of the Supervisory Commission for CMOs to draw up guidelines for good and ethical governance. On the advice of the Supervisory Commission for CMOs, the guidelines are based on the Tabaksblat Code<sup>15)</sup> and the guidelines and regulations for ethical governance of the public service broadcaster.

With regard to transparency regarding the choice of the governance model and the

---

15) On the 30th of December 2004, the legislator designated the Dutch Corporate Governance Code (aka Tabaksblat Code) a code of conduct to which listed companies should refer in their annual report. In the report they must indicate to what extent they have complied with the principles and best practice provisions ('the apply or explain principle'). The Tabaksblat Code was revised in 2009.

applicable principles and best practice provisions, VOI©E used the 'Cultural Governance Code' as a starting point<sup>16</sup>. As is the case for cultural institutions, CMOs implement governance, supervision and transparent reporting in different ways. In the case of CMOs, three governance models can also be seen: the 'Supervisory Board Model', the 'Board + Management Model' and the 'Board Model'. In the Netherlands, most CMOs are foundations, there are however also two associations, to which the law of associations applies as well. In one CMO, implementation and management on the one hand and supervision on the other hand are placed with separate legal entities.

Important principles that have been worked out concern the separation of supervision and implementation and the avoidance of conflicts of interest or the appearance thereof, where necessary tailored to the working procedure and status of CMOs.

The principle of transparency has now – also in the opinion of the Supervisory Commission for CMOs – been worked out sufficiently in the Supervision Act and in the criteria of the CMO Quality Mark, with assessable standards for rendering account for the policy pursued and the results achieved.

- 3) Following on from the guidelines and regulations for ethical governance of the public service broadcaster, one guideline for each theme has been opted for.
  - Guideline for the promotion of good governance and supervision;
  - Guideline for the promotion of integrity.
  
- 4) Part of the Guidelines for Good Governance and Integrity is a reporting scheme for suspected abuse<sup>17</sup>. This reporting scheme contributes to the creation of conditions enabling the smooth and clear reporting of suspected abuse.

A suspected abuse is a suspicion based on reasonable grounds concerning the CMO where the employee is employed and where a public interest is at stake, in connection with:

  - a violation of legal provisions or policy rules;
  - a danger to health, safety or the environment;
  - an inappropriate act or failure to act which threatens the proper functioning of the CMO and/or a public interest;
  - an actual or imminent waste of funds collected for rightholders.

---

<sup>16</sup> The Cultural Governance Code was developed in 2005 by Stichting Kunst en Zaken on the instructions of the Dutch Ministry of Education, Culture and Science. This code was developed based on the three most prevalent governance models and provides the relevant rules for good governance in the form of Principles and Best Practice provisions.

<sup>17</sup> The text of this scheme has not been included in this translation.

It is important for an internally open corporate culture that the threshold for reporting a suspected abuse is low, without concern for adverse consequences for the person reporting the suspected abuse. A good procedure for the internal reporting of abuse can prevent 'whistleblowing'. Not every employee is able to judge which authority to approach in the case of a suspected or actual abuse. In addition, it is important to establish an external committee that can investigate a report. For its members, VOI@E has placed an external reporting centre with an advisory, referral and also investigative function with an organization specializing in these matters.

**The reporting scheme consists of the following elements:**

- 1 Definition of terms
  - 2 The Confidential Adviser (can be an internally or externally appointed person)
  - 3 Internal reporting procedure
  - 4 Internal investigation
  - 5 External reporting to the Committee on Integrity of CMOs
  - 6 Task and composition of the Committee on Integrity of CMOs
  - 7 Procedure of the Committee on Integrity of CMOs
  - 8 Legal protection of the person making the report.
- 5) The independent supervision of the enforcement of and compliance with the Guidelines has been placed in the hands of the Supervisory Commission for CMOs.

Every CMO must state annually in what manner the Guidelines have been applied in the past year and must indicate prior to the start of the new year where and why the standard will be deviated from. Furthermore, it is the task of the rightholders and the Supervisory Commission for CMOs to call the CMOs to account for the application of the Guidelines and the explanation regarding the compliance with the Guidelines.

- 6) The Guidelines for Good Governance and Integrity of CMOs form part of the CMO Quality Mark and a CMO that wishes to obtain or keep the CMO Quality Mark must have endorsed these guidelines within three months of them coming into force. In addition to the Supervision Act, the CMO Quality Mark gives concrete form to the principles of transparency, independence and integrity.

# General provisions

- I The Guidelines, including the documents prepared by the CMO for their elaboration, apply to the employees who work at the CMOs under the terms of an employment contract and also to the members of the boards of these organizations. Although freelancers are not employees within the meaning of these Guidelines, this does not alter the fact that they must also act in accordance with these Guidelines in so far as this can reasonably be expected of them. This also applies to employees of an organization or a company that is wholly or partly engaged by the CMO on the basis of a service contract.
- II In cases not provided for by the Guidelines or in which the application is not unequivocal, the Supervisory Commission for CMOs will be consulted.
- III The Guidelines are public and can be consulted by third parties.
- IV Where 'publication' is referred to in these Guidelines, this in any case means publication through the internet. Publication is the responsibility of the board of the CMO, will be performed adequately and is accessible to everyone.
- V New employees, members of the board, as well as freelancers and employees of any third parties engaged by the CMO to perform the primary tasks of the CMO and/or the CMO's board must receive a copy of the CMO Quality Mark Criteria, including the Guidelines for Good Governance and Integrity, on commencing their employment. New employees, members of the board as well as freelancers commencing their employment or taking up their position from 1 January 2013 must sign a statement to acknowledge receipt of the CMO Quality Mark Criteria, including the Guidelines for Good Governance and Integrity.
- VI CMOs must explain annually, supported by reasons, whether and, if so, why and to what extent they have deviated from the Guidelines ('apply or explain').

# Guideline I Good governance and supervision

## I.1 Introduction and considerations

Governance, supervision and implementation are organized in different ways in the case of CMOs. There are associations and foundations, there are organizations with and without a position derived from the law, there are organizations that collect a large part of the market and others that function merely as distributing organizations.

### *Three governance models*

In the case of CMOs, three governance models can be distinguished:

- a the 'Supervisory Board Model';
- b the 'Board + Management Model';
- c the 'Board Model'.

Following on from the Cultural Governance Code, 'Principles' and 'Best Practice provisions' have been formulated for each of these governance models.

The Principles show which tasks, responsibilities and powers there are and which bodies and/or persons fulfil or carry these.

The Best Practice provisions describe the conduct which can promote good governance in practice.

The Principles for the three different governance models are different.

The Best Practice provisions apply to all the models, although there are fewer provisions for the Board Model since it does not have a separate management.

## **The governance models with their characteristics**

Description of the three main governance models:

### **A The supervisory board model**

The managerial process is in the hands of a management, consisting of one or more executive directors, of whom one or more hold the position of chief officers under the articles of association of the legal entity.

The supervisory process is in the hands of a separate body: the supervisory board.

In this governance model the supervisory and managerial processes are distinguished from each other and allocated to two bodies: the management and the supervisory board.

### **B The board + management model**

The policy is determined by the board, the other aspects of the managerial process (preparation and implementation of the policy) are delegated to a management and/or staff.

The board effectively acts mainly as supervisor.

The board carries the managerial ultimate responsibility: the tasks and responsibilities placed with the management are laid down in regulations.

### **C The board model**

The total managerial process is in the hands of the board, and the board may be supported by third parties where the implementation of the policy is concerned. The supervisory process is implemented through liaison between the board members. In accordance with provisions contained in the articles of association, third parties may play a role in the supervisory process.

#### **Remarks**

- CMOs are not obliged to choose one of the three governance models. Different governance models must be organized in such a way that the Best Practice provisions are complied with, that the general principles of good and ethical governance (including but not limited to regular evaluation and reporting) are applied in the best possible manner and that rightholders are properly represented. This must be laid down in articles of association and/or regulations. Variations are also possible within the governance models.



- Management and employees may be employed by a CMO but may also be employed by an organization or a company that is wholly or partly engaged by the CMO on the basis of a service contract. In that case, the management will act as authorized representative (holder of a power of attorney) of the board. The provisions in these guidelines apply as much as possible to the employees of this service provider and must, where applicable, form part of the contract for the provision of services.

### **Choice of governance model**

With regard to the question as to which governance model is the most desirable for a CMO, the available competences (knowledge and skills) and the desired checks and balances play a part. They are important in the managerial and supervisory process but also in the interaction between managing and supervising.

- If it is not necessary or desirable to allocate the managerial process wholly or partly to a director or coordinator, the Board Model is the most appropriate solution. The board is responsible collectively.
- If the management and the employees of a CMO have such policy competences that the managerial process can be entrusted to them entirely, the Supervisory Board Model can be opted for.
- If one or more managerial competences at management level are lacking, or if the rightholders wish to keep one or more competences in the hands of their own representatives, the Board + Management Model is the designated form of governance. The management is then mainly responsible for the implementation aspects and gives advice on the policy-related aspects, while the board mainly supervises the implementation and wishes to decide on the policy itself. The board will then remain ultimately responsible, also for the acts or failure to act of the management.

The CMOs, in consultation with those they represent and the Supervisory Commission for CMOs, choose the form of governance suitable for them and render accountability for this in the annual report. It is recommended that this is evaluated once every three years and in the case of special events, such as a merger, growth in scale or important changes in personnel.

### **Choice of independent internal managerial supervision**

The control in or over the board rests with the rightholders or their representatives. The Supervisory Commission for CMOs has advised establishing forms of internal independent supervision of the board or of the management. This issue is unrelated to the governance model: in every governance model it must be considered whether and to what extent there will be internal independent supervision.

In order for a CMO to exercise rights collectively, significant support from the rightholders is essential. This support can only be obtained and kept if the rightholders have a direct or indirect influence on the collective management of their rights.

On the other hand, CMOs – partly on account of the public and often complex task that CMOs have – must avoid the appearance of a conflict of interest. The appearance of a conflict of interest could arise if there are solely rightholders on the board or on the supervisory board – or in specific positions on these bodies – who have a substantial interest in the distribution of the collected funds.

CMOs must also ensure that, on the bodies in which different groups of rightholders are represented with conflicting interests, these conflicting interests do not impede the proper functioning of the CMO.

CMOs that have a public impact because they operate in a substantial part of the market must furthermore prove that their policy is not unilaterally targeted at the interests of the rightholders but that they are also taking the market into consideration.

Furthermore, in order to be able to supervise properly, the board or the supervisory board must be composed in such manner that sufficient knowledge and experience is available.

For these reasons, guidelines have been drawn up for the creation of internal independent supervision in some circumstances<sup>18)</sup>. The purpose of these guidelines is to improve the transparency, independence and integrity of the board and the supervision thereof.

They can be regarded as a further substantiation of the general principles of good governance and supervision.

The CMOs, in consultation with those they represent and the Supervisory Commission for CMOs, decide on internal independent supervision in the case of the board or supervisory board and render account for this in the annual report. It is recommended that this is evaluated once every three years and in the case of special events, such as a merger, growth in scale or important changes in personnel.

## 1.2 The choice of governance model

### Principle

1 The bodies of the CMO are responsible for the choice of governance model and the compliance with these guidelines. They must render account for this in the annual report.

### Best Practice provisions

- 1 With some regularity, a careful analysis must be made of the desired governance model. Variations are possible within the governance model.
- 2 If there is any reason to change the governance model, this must be discussed with the stakeholders and the Supervisory Commission for CMOs. It is recommended that this is done once every three years and in the case of special events, such as a merger, growth in scale and important changes in personnel.
- 3 A decision to change the governance model and perhaps amend the articles of association must be provided with a careful implementation plan.
- 4 The choice of governance model or the change thereof must be explained in the annual report.

## 1.3 Apply or explain

- 1 The Principles of the governance models included in the guideline are enshrined in a CMO's articles of association. If a CMO departs from them on one or more points, this must be stated in the annual report in accordance with the 'apply or explain' principle.
  - If the Principles are departed from in the Supervisory Board Model, the supervisory board's powers to approve must be laid down in the regulations of the supervisory board and the management.

- Departures from the Principles in the Board + Management Model and the manner in which tasks are delegated to the management must be laid down in the regulations of the board and the management.
  - Departures from the Principles in the Board Model must be laid down in board regulations.
  - If a different governance model is chosen, the details of general principles of good and ethical governance must be laid down in articles of association and/or regulations.
- 2 It must be stated in the annual report to what extent the CMO complies with the Principles and Best Practice provisions of the Guidelines for Good Governance and Integrity of CMOs. In so far as this is not the case, this must be explained supported by reasons ('apply or explain').

## 1.4 Internal independent managerial supervision in the bodies of a CMO

### Principles

- I The bodies of a CMO are responsible for the choice as to whether and in what manner there is independent managerial supervision in the bodies of the CMO and compliance with this guideline. They must render account for this in the annual report.
- II The rightholders must be able to exercise such influence on the policy of the managing or supervising body, either directly or indirectly, that they can play a fully-fledged role in the system of 'checks and balances' in the CMO.

### Best Practice provisions

- 1 In the situations or circumstances referred to below CMOs must consider internal independent managerial supervision in their own bodies (supervisory board or board or committee), either in the person of one member, preferably the chairman, or several members of a supervisory board or of the board or a governing committee:
  - a in the event that there are rightholders on the supervisory board or on the board who have their own substantial interest in the distribution of the collected funds and the

appearance of a conflict of interest cannot be avoided in the decision-making process laid down in regulations;

- b in the event that there are rightholders on the supervisory board or on the board who also serve in other CMOs with which the CMO in question works together, in particular in the case of a relationship with an organization that distributes funds and that must be supervised by the CMO in question, and the appearance of a conflict of interest cannot be avoided in the decision-making process laid down in regulations;
- c in the event that different groups of rightholders who also have conflicting interests are represented on the supervisory board or on the board;
- d in the event that a CMO has a public impact because the CMO collects funds in a substantial part of the market;
- e in the event that, in groups of rightholders, there is insufficient competence to be able to guarantee the proper functioning of the body in question.

The appearance of a conflict of interest in the situation referred to under (a) and (b) can be avoided by not allowing the persons in question to participate in the decision-making process about subject matter. in respect of which the appearance of a conflict of interest may arise. This can be laid down in regulations published on the CMO's website.

- 2 The tasks and powers of the person or persons performing the internal independent managerial supervision on the supervisory board or on the board, as well as the working procedure, must be laid down in regulations. In the articles of association, the CMOs must regulate clearly the manner of and the powers for appointing, suspending and dismissing any independent members of the supervisory board or of the board.
- 3 In recruiting independent supervisors for the supervisory board or board, a CMO must preferably search outside its own network. An independent supervisor may not have been a member of the board, director or senior official at the CMO in question in the year prior to his appointment and may not carry out any activities related to the sphere of activities of this CMO. An independent supervisor may not receive a substantial payment from or through the CMO in question as a party entitled to the rights managed by this CMO. An independent supervisor may not work for one of the organizations of rightholders constituting a CMO. The position of independent supervisor is incompatible with a position

as independent supervisor on the supervisory board or on the board of another CMO if the CMOs in question have a competitive or material transactional relationship.

- 4 If there are categories of rightholders represented on the supervisory board or on the board, the chairman must be able to perform his duties independently and not bound by any instructions of one of these categories.
- 5 CMOs with members and directly affiliated rightholders must organize a formal meeting for members or affiliates at least once a year, at which, in an adequate and accessible manner, account must be rendered of the management and supervision at the CMO. It is in the interests of the CMO that as many rightholders as possible take part in the decision-making process within the CMO. For this reason, the board must aim to ensure the largest possible participation in this meeting or it must be guaranteed in some other manner that as many rightholders as possible take part in the decision-making process.
- 6 To what extent a CMO complies with the Principles and Best Practice provisions concerning independent supervision in the bodies of the CMO ('apply or explain') must be stated in the annual report.

# Guideline II Integrity

## II.1 Introduction and considerations

The purpose of this Guideline is to provide CMOs a starting point for determining standards for the integrity of the CMO. A number of themes are distinguished in the Guideline:

- 1 Conflict of interest and tendering
- 2 Additional positions
- 3 Information
- 4 Accepting and giving gifts
- 5 Expenses and expense claims

Please note: 'Employees' are understood to mean those persons who are employed by a CMO under the terms of an employment contract, including directors of a CMO, as well as members of the supervisory board or board. Although freelancers are not employees within the meaning of this guideline, this does not alter the fact that they must also act in accordance with this guideline in so far as this can reasonably be expected of them. This also applies to employees of an organization or a company that is wholly or partly engaged by the CMO on the basis of a contract for the provision of services.

Acting with integrity is an important condition for being able to focus on the quality and functioning of a CMO. The consequence of acting with integrity is that the responsibility attached to the position is accepted and that there is willingness to render account for this.

The following key concepts in any case are the guiding principle and place integrity in a wider perspective:

- Service: the actions of an employee must always and fully be aimed at the interests of the CMO and of the rightholders whose rights are managed by the CMO.
- Functionality: the actions of an employee must have a recognizable connection with the position he holds within the CMO.
- Independence: the actions of an employee may not be influenced by conflicting interests and even the appearance of this must be avoided.
- Openness: the actions of an employee must be transparent so he is able to render account for his actions at all times.

- Reliability: it must be possible to count on an employee. He must keep his agreements. Knowledge and information in his possession on account of his position must be used for the purpose for which they have been given.
- Care: an employee must treat external parties concerned with respect and must balance the interests of parties in a correct manner.

These key concepts are the touchstone for the Guideline for Integrity. It must be possible to assess conduct based on these key concepts.

## II.2 Conflict of interest and tendering

- II.2.1 Employees or their partners may not have any financial interests in companies, organizations, etc. that are connected directly or indirectly with the CMO, unless the CMO in question has granted an exemption. Any financial interests for which permission has thus been granted must be reported by the employee to the CMO in question.
- II.2.2 An employee who has family or friendly relationships or other personal relationships with a provider of services to the CMO must refrain from taking part in the decision-making process regarding the assignment concerned.
- II.2.3 An employee may not accept any facilities or services from a provider of services to the CMO which may affect his independent position in respect of the provider.
- II.2.4 Directors and members of the supervisory board or board must report investments and related transactions in sector-related companies or companies with which the CMO has a business relationship to a specifically designated official of the CMO in question or, if such an official has not been designated, to the chairman of the board.

## II.3 Additional positions

- II.3.1 An employee may not hold any additional positions that are incompatible with the interests of the CMO.
- II.3.2 A CMO must in any case disclose the relevant additional positions of the directors, members of the supervisory board or board and also specify whether or not the holder of the position receives remuneration. A definition of relevant additional positions is given in Chapter I of the Quality Mark Criteria.
- II.3.3 The costs incurred by an employee in connection with an additional position on account



of his activities (as holder of the additional position) must be paid by the body where the additional position is held.

- II.3.4 An employee who wishes to hold an additional position other than on account of his activities, must discuss this intention within the CMO.
- II.3.5 An employee may not receive any income, other than as provided for in II.3.3. – in whatever form – for activities carried out in an additional position on account of his or her position (as holder of the additional position).

## **II.4 Information**

An employee must treat information in his possession on account of his position as employee with due care and correctly.

## **II.5 Accepting and giving gifts**

- II.5.1 Employees may not, on account of their position, accept any gifts, services or promises to do or refrain from doing something.
- II.5.2 Employees may not give business contacts any gifts or render them any services in a personal capacity but only on behalf of the CMO.
- II.5.3 Gifts, services and donations from third parties which exceed an amount of 50 euros and are received by an employee on account of his position must be reported and, if required, are the property of the CMO.
- II.5.4 An employee may not receive any gifts, services and donations from third parties on account of his position at his home address. Should this nevertheless happen, the employee must report this to the CMO.

## **II.6 Expenses and expense claims**

- II.6.1 Employees will solely be reimbursed for any expenses for, for example, diners, excursions, events and travelling, if the amount and functionality of these expenses can be demonstrated and if they were reported beforehand, where possible.
- II.6.2 An employee may not claim any expenses already reimbursed in some other manner.
- II.6.3 Expense claims will be settled in accordance with an administrative procedure laid down for this purpose.

### III. Principles and best practice provisions of a governance model <sup>19)</sup>

#### The board + management model

##### Principles of the Board + Management Model

- I In the Board + Management governance model, the board has all the powers which have not been granted to other bodies by law or the articles of association <sup>20)</sup>. The board develops and pursues a policy aimed at quality management where the provision of services to rightholders is concerned and, where applicable, to users and/or parties obliged to pay.
  
- II In any case, the board is responsible for and has the power of decision as regards the following subjects:
  - 1 the strategy, including the policy that must result in the achievement of the objectives stated in the articles of association;
  - 2 the financing of the strategy;
  - 3 the compliance with all relevant legislation and regulations;
  - 4 the provisions for managing the functioning of the organization by means of adequate risk management and control systems;
  - 5 the annual plan and the related budget;
  - 6 the annual report and financial statements;
  - 7 the entering into or ending of long-term or important joint ventures;
  - 8 legal acts, such as taking out loans, providing security and purchasing or selling property subject to registration, the value of which exceeds a certain amount;
  - 9 the amending of the articles of association;
  - 10 the management regulations;
  - 11 the main features of the policy on the terms and conditions of employment for the employees;
  - 12 the accepting of additional positions by the management.
  
- III With regard to each of the above subjects, the board may delegate tasks and the daily implementation, including the preparation of board resolutions, to the management.

---

*19) The Board+Management Model is taken here as an example, in order to explain how principles and best practice provisions as regards governance models have been elaborated in the Guidelines for Good Governance and Integrity.*

*20) Just as, in the case of an association, powers have been granted by law to the general membership meeting and, in the case of a foundation, powers may be granted in the articles to the meeting of affiliated rightholders.*

The framework for this must be laid down in management regulations.

IV In addition, the board has the following powers:

- 1 to appoint, dismiss and suspend the management;
- 2 to determine the terms and conditions of employment of the management;
- 3 to supervise the management and the general course of business within the CMO;
- 4 to advise the management;
- 5 to represent the CMO in the case of a conflict of interest with or the absence or inability to act of the management;
- 6 to appoint the external auditor;
- 7 to be able to inspect all books and documents at any time.

**Best Practice provisions concerning the management in a Board + Management Model**

- 1 A pre-drafted profile must be used for the recruitment and selection of executive managers.
- 2 The board must consider whether to involve experts from outside the CMO in the procedure for selecting executive managers.
- 3 A delegation from the board must hold a performance review with all the executive managers every year. The results of these reviews must be discussed by the board. A report must be made of the performance reviews and the discussion of them, which must be filed by or on behalf of the board.
- 4 The structure and the amount of remuneration of the executive managers must be in keeping with the character of the CMO. They must receive remuneration for their work which, as regards amount and structure, will be such that qualified persons can be recruited and retained. With regard to the annual income as well as any severance pay agreed on, it applies that they must be such that the interests of the CMO are furthered in the medium to long term, the executive managers are not induced to act in their own interests while disregarding the interests of the CMO and failure in the event of dismissal is not 'rewarded'. The remuneration must be determined by the board, and this may be delegated to a number of board members, such as the executive committee.

- 5 In the case of a one-member management, management regulations must be drawn up. The managerial tasks, responsibilities and powers delegated by the board must be laid down in these regulations. In the case of a multi-member management, the management regulations must also clarify how the tasks, responsibilities and powers are divided and how the management operates as a collective. The management regulations must be determined by the board.
- 6 Executive managers must report every additional position to the board. As a basic premise, it applies that prior permission is required for paid additional positions and for unpaid additional positions with a potential conflicting interest.
- 7 The management must provide the board – whether or not on request, and promptly – with all the information necessary for the board to perform its task properly. In so far as the preparation and/or implementation of board resolutions have not been delegated to the management but are the responsibility of one or more members of the board, they must provide the board, promptly, with all the information required. Agreements about the contents and frequency of the regular provision of information must be laid down in writing.

**Best Practice provisions concerning the board in a Board + Management Model**

- 1 A pre-drafted profile must be used for the recruitment and selection of members of the board, containing a description of the board and the required qualities of members of the board.
- 2 The board must evaluate the profile on a regular basis but in any case when a vacancy arises.
- 3 The board must be composed in such a manner that the members are able, independently of one another, the management and particular interests, to perform as good members of the board and as good supervisors and advisors of the management.
- 4 Not more than one former executive manager (or other policy-making official) may hold a position on the board. This person may not be the chairman of the board.
- 5 The board must ensure that the composition of the board is well-balanced and fits in with the objectives of the CMO.

- 6 The board must draw up a phased rotation schedule.
- 7 Before the expiry of a term of appointment, the board must discuss the desirability of a reappointment. Both the performance of the person involved and the most recent profile will be considered in this respect. Attention must also be given to the question as to whether replacement is desirable.
- 8 A CMO must apply a term of appointment of three or four years, with reappointment being possible once or twice. The maximum term of office is therefore nine or twelve years. In the case of a change of position from ordinary member to chairman, a maximum term of twelve or sixteen years applies.
- 9 Members of the board must retire early when this is required, such as in the case of unsatisfactory performance, a fundamental difference of opinion, an incompatibility of interests, or otherwise.
- 10 The chairman of the board must be appointed to the position. The chairman will be responsible for the adequate performance of the board and is the primary point of contact for the members of the board and the management.
- 11 A member of the board must report every additional position to the board. The acceptance or continuation of a position which could result in interests conflicting with those of the CMO requires the approval of the board.
- 12 The board must ensure that it evaluates its own performance, both internally and in respect of the management, annually. The results of this evaluation and the ensuing agreements must be laid down.
- 13 The board must discuss the course of business within the CMO with the management on a regular basis. At least once a year, the board must discuss and resolve on the strategy, the general policy and the financial state of affairs. This includes the budget, the financial statements and the systems used within the CMO regarding the administrative organization and internal control.

- 14 It is recommended that, from time to time, the board has contact with important employees who report to the management.
- 15 The board and the management must discuss the desirability of taking out liability insurance for the CMO and themselves.
- 16 In so far as the course of business is discussed with stakeholders, this must be done by the board or the management or the board and the management jointly, depending on the subject.
- 17 The board must have an open relationship with the employees of the CMO and their bodies, such as the works or personnel council.
- 18 The board must consult an external auditor at least once a year. The financial statements and the risk management and control systems must in any case be discussed. The board must receive a copy of all the reports submitted by the external auditor to the management.
- 19 The board must ensure that employees are able to report suspected or actual irregularities of a general, operational or financial nature, without endangering their legal position (reference is made to Appendix IV 'Model regulations regarding whistleblowers'<sup>21)</sup>).
- 20 The board must meet in accordance with an established schedule. In the case of frequent absences, the relevant members of the board must be called to account for this. As a rule, the management will participate in meetings of the board. The board must meet at least once a year without the management being present.
- 21 In the annual report, a CMO must include the profile of the board and the relevant – former – additional or other positions of the members of the board and the management. (A definition of relevant additional positions is given in Chapter I of the Quality Mark Criteria). In so far as members of the board have been appointed on the nomination or with the approval of third parties, this must also be reported.

Kopiëren, rechtvaardig en eenvoudig geregeld

