

# **NCR GOVERNANCE CODE**

for Cooperatives

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Dutch National Cooperative Council  
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voor coöperatief  
ondernemen

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NCR would be happy to assist its members and other cooperatives in applying this code or answering any questions. Needless to say, we are open to any suggestions or recommendations you may have.

View the digital version of the code on  
[www.cooperatie.nl/ncr-code](http://www.cooperatie.nl/ncr-code).

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# 1 Introduction

## 1.1 Corporate governance and codes

The NCR Governance Code for Cooperatives was drawn up in 2005 and was revised for the first time in 2011. Developments surrounding corporate governance made it necessary for the NCR to draw up a new (third) version in 2015.

The intention of a corporate governance code is usually to provide a flexible set of rules that serve to professionalise the management of companies and the supervision of this management. The provisions of such a code can be taken to be widely accepted general views of good corporate governance. In addition, codes contain rules for behaviour that are aimed at furthering transparency, since greater transparency is of particular importance to financiers, shareholders, and members.

Given that a cooperative is different to a company with share capital in terms of objectives and organisation (refer to the paragraph below), cooperatives, as legal entities, deserve their own governance code.

The NCR Governance Code for Cooperatives is not binding. This code will be applied voluntarily by Dutch cooperatives. Basis of this code is Dutch company law. However, we believe that most of the principles and best practice provision in this code are based on basic cooperative assumptions that apply worldwide and that it can be helpful as guidelines towards the governance of cooperatives worldwide.

## 1.2 Cooperatives

While the management structure of listed companies is relatively uniform, the same definitely cannot be said for cooperatives. The flexible law on associations that applies to cooperatives makes it possible for cooperatives to be structured based on extremely diverse models.

Section 2:53 of the Dutch Civil Code states that a cooperative 'must have the purpose (objective) to provide for certain material needs of its members'; primarily, this therefore involves better conditions for these members. However (or perhaps, obviously) this also involves continuity regarding the interests of these members and sometimes – depending on the method of funding – the return on contributed capital. In keeping with the nature and character of cooperatives, they pay a great deal of attention to sustainability and corporate social responsibility (CSR). In this sense, many cooperatives have multiple objectives.

If a cooperative is funded by members and if these members are actually bound to the cooperative, for example by a delivery or purchase obligation, a high degree of commitment is easily understood. This will be reflected in the management structure of the enterprise. Nonetheless, a cooperative membership without obligations is also conceivable. Against this background, however, a distinction should be made between closed cooperatives of which entrepreneurs are frequently members and are deeply bound to

the cooperative, and, on the other hand, open cooperatives in which members have few or no obligations towards the cooperative.

Given that a wide variety of cooperatives exist, it is possible that under certain circumstances it may be necessary to deviate from this code in practice. The code at hand has been revised from this perspective, albeit that the closed cooperative has been chosen as the more specific starting point. Just as the flexible law on associations allows for customisation, deviations from this code should be possible, taking into consideration prevailing, cooperative-specific circumstances. This is in keeping with the much-heard call of our time for more flexibility in company law. However, the present code has a provision that requires the explanation in the event of non-compliance with one of the principles or provisions, i.e. the generally accepted principle for codes of 'comply or explain'.

## 1.3 Aim of the code; cooperative entrepreneurship

The Dutch National Cooperative Council (NCR) functions as a cooperative knowledge centre. Representatives of the NCR's members function as a platform that is of great importance to sharing knowledge. From this platform, a lot of attention is paid to governance. In discussions, the requirement was soon set that the code should not be a hindrance to good entrepreneurship, but should rather be of benefit. In addition, the significant differences between the members of cooperatives and the shareholders of (larger) companies were pointed out. The members of cooperatives are usually more involved in the cooperative, there is a lower incidence of absenteeism at meetings of the members, and the members are involved in decision making at an earlier stage. Generally speaking, it also turns out that in practice, among the membership, there is a high degree of trust in the professional and transparent functioning to the management.

This notwithstanding, it was noted that a code can be helpful when it is necessary to modify a management structure as well as in quality control and improving day-to-day management and supervision.

The NCR Governance Code for Cooperatives is aimed at improving (1) cooperative entrepreneurship, and therefore also, (2) member commitment and, (3) professional management and supervision.

## 1.4 Entrepreneurship with a membership

A cooperative is there for its members. In principle, it is not about a return on contributed capital for the benefit of third parties, but rather it is about the best delivery or purchasing terms and conditions for the members in the long term. This is the normative goal, or, in other words: the management and supervisory boards (in their supervisory role) are accountable for meeting this standard. Accordingly, 'cooperative entrepreneurship' comprises this specific aim and the related organisation pursuant to the law on associations: 'entrepreneurship with a membership'. A cooperative is therefore a democratic legal form. Given the greatly varying degrees of member commitment, and thus legal binding, the control of members within the cooperative can also vary greatly.

The commitment of members, or lack thereof, either at the grassroots level or at the top

layer of the cooperative may not frustrate good entrepreneurship within the cooperative. A balance needs to be found. If the degree of commitment is high, for example through financing obligations and/or delivery and purchasing obligations, the commitment or control of the members may also be great regarding aspects such as strategy and investments, for example.

In short, reciprocity is a key feature of cooperative entrepreneurship and is referred to in many cooperative ideologies as the cooperative principle. A well-balance management model with control that 'is earned' i.e. in accordance with the obligations entered into, supports successful good cooperative entrepreneurship.

Effective communication is of vital importance in this. Members can only exercise their control in a constructive manner if they have access to the relevant information.

## 1.5 Supervision – management board – executive board; different models

When setting up a management board and its supervision, and organising member participation, cooperatives can choose for different models. This is possible because the applicable law on associations is flexible and allows room for different models. The choice of a particular model often has to do with scale and the degree of member commitment. The three most common models are briefly discussed below. The Dutch Civil Code contains a provision that states it is mandatory for larger cooperatives to institute a supervisory board. The statutory two-tier rules (*structuurregime*) are quite extensive and concerns, among other things, the duties and authorities of the supervisory board, as well as the appointment of its members. Traditionally cooperatives often have a supervisory board even when the statutory two-tier rules are not applicable.

Based on the idea that a cooperative is a closed form of partnership of, for and by its members, it is not unusual that these members want the management to be supervised and that in many cases the supervisory board consists (in part) of

members. If the management board also consists of members – the so-called traditional model – and if the management board deals with managing the executive board, there is a chance that there will be double supervision within the organisation: the (member) board supervises the executive board, whereby one should be aware that the management board is and remains responsible for the management, and that subsequently the supervisory board supervises the management board.

Cooperatives that have chosen to have their management board consist of professional, non-member managers, who are responsible for management are referred to as cooperatives with an 'executive model' or the 'supervisory board plus model'. The law on associations expressly allow such a model. The consequence of this model is that the members do not manage, but only supervise via the supervisory board.

In addition to the two models referred to above (the executive model or the supervisory board plus model) a third model also exists: the so-called 'hourglass model'. A distinguishing feature of this model is that the cooperative or mother cooperative restricts – or virtually restricts – its activities to the management and financing of the subsidiaries. This type of group structure offers the possibility of implementing a full or partial personnel overlap in the management board and the supervisory board of the legal entities concerned whereby the managing directors of the

mother cooperative have a seat on the supervisory board of a subsidiary. In this way a full or partial personnel overlap can exist in the management board and the supervisory board of the separate legal entities.

In this code, no preference is made regarding a particular model. It can, however, be seen in practice that the traditional model is rapidly losing ground to the executive model or the supervisory board plus model.

This has to do with the current desire for management boards to be more professional and sometimes with the increasing scale of cooperatives. Quite often, when a traditional model is replaced, its basis is changed by the introduction of a members' council (more detail on this in 1.6 below) which is granted its duties and powers by the general meeting of members.

The provisions of the code that involve management apply regardless of whether there is a 'member board' chosen by the membership, a 'manager board' appointed by the supervisory board or a mixed form of board.

## 1.6 Members – members' council

Most larger cooperatives that sometimes have several thousand members have chosen to institute a members' council. A members' council is defined by the legislator as a body of the cooperatives that can be established through indirect elections. A members' council usually takes over the role of the general meeting of members and it can also function as a discussion and consultation body. This code can be applied by cooperatives with a members' council as well as by cooperatives without a members' council. With a view to increasing member commitment, this code sets down that if, for a period of three successive years, a) the membership of a cooperative numbers more than 500 persons and/or, b) attendance at the general meeting of members amounts to less than 50% of the cooperative's members, the management board will make a proposal for establishing a members' council. The provisions concerning the general meeting of members apply in full to the members' council.

## 1.7 Dualism – one-tier board – European Cooperative Society (SCE)

It is assumed in this code that cooperatives have both a management board and a supervisory board in place. As mentioned above, otherwise, unlike for cooperatives at which application of the two-tier rules are mandatory, there is no obligation to institute a supervisory board. The law does, however, make provision for the voluntary institution of supervisory board.

The Dutch legislator has chosen for a dualistic system, in other words, a strict distinction between management and the supervision of that management. In the Anglo-American world, the one-tier system is common. In a one-tier system management and supervision are combined in a single board. The board members, including the chairman of the board (chief executive officer, CEO) and the supervisory directors, including the chairman of the supervisory board, are members of that single board. By combining executive and non-executive directors in a single board (one-tier structure) management and supervision become merged.

The Act on One-tier board came into effect on 1 January 2013, and based on this legislation, public limited companies (*Inaamloze*

*vennootschappen*) and private companies with limited liability (*besloten vennootschappen*) can institute a one-tier board on which both executive and non-executive directors have seats. However, to this day, the legislation on cooperatives does not contain any such provision. This means that, currently, if the two-tier rules apply to a cooperative, the cooperative is obliged to institute a supervisory board. In this context, reference is made to the Bill on One-tier board for Cooperatives and Mutual Insurance Societies preliminary draft (*Voorontwerp monistisch bestuursmodel coöperatie en onderlinge waarborgmaatschappij*) which includes a provision that introduces the one-tier board for cooperatives (and is in line with the one-tier board for public limited companies and private companies with limited liability). Even when the two-tier rules apply to a cooperative, the mandatory supervision task can be placed within a one-tier board. The bill is currently in the consultation phase.

Under the current law, it is however possible to opt for a one-tier board structure under the European Cooperative Society (SCE) management model. The SCE, a European legal entity, has been incorporated into our legal system and therefore falls under the Dutch laws on legal entities. As a legal entity, the SCE management model is aimed particularly at those cooperatives that have members in various EU member states. There is the possibility to choose for either a dualistic or one-tier board structure in the articles of association of an SCE.

## 1.8 Supervisory boards of cooperatives

Legislation, case law and this code too, expect a supervisory board to act in the interests of the business. It goes without saying that supervisory directors ensure that the interests of all the parties involved are adequately protected and promoted, but ultimately their task, alongside that of the management board, is to act in the best interests of the business. In this respect, in addition to their supervisory function, their advisory function should not be underestimated. This implies the commitment of the individual supervisory directors to the specific cooperative mission statement. A dominant presence of members of the cooperatives on supervisory boards is appropriate in this regard, especially among more closed cooperatives.

The orientation when choosing the members of the supervisory board of a cooperative is different to that when choosing the supervisory directors of a listed company. This is no surprise given that a cooperative (in principle) is not about the return on contributed capital but about a closed partnership of members, in the interests of those members. The less stringent statutory structure regime that applies to cooperatives thus also deviates on this point, among others, from the structure regime for large companies. For example, the structure regime for cooperatives allows for the possibility of

including a provision in the articles of association that stipulates that two-thirds of the supervisory directors must be members of the cooperative. This is an option that is taken up by some cooperatives and ignored by others. In practice, supervisory boards are often made up largely of members with so-called external members alongside them. This appears to work well. In this respect, it should be emphasised that it is important that there is a willingness to focus the collective supervision on the specific cooperative goal of the business. As was mentioned above, this naturally applies to all supervisory directors. However, for external supervisory directors, in particular those who have no experience in cooperative governance, this could be an additional area of attention. Attention can be paid to this point in the profile as prescribed in this code.

## 1.9 Quality of managing directors and supervisory directors

This code contains quite a number of provisions aimed at guaranteeing the quality of the management and supervision of cooperatives. Many cooperatives are large, and some operate internationally. This demands appropriate

knowledge, skills and experience. The presence of members at the top layer of a cooperative requires additional care in respect of the quality and background of those members. Both management and supervisory boards should pay constant attention to the skills of these members possess or lack, and to the possibility of these members to develop further. This code therefore also includes a provision based on which a cooperative must have a policy on the recruitment, education and supervision of young candidates.

## 1.10 Scope and monitoring

This code is intended as a guideline for cooperatives. The basis of this code is the 'comply or explain' principle.

Unlike listed companies, for instance, it is not obligatory for cooperatives to provide an explanation in the annual report in the event of non-compliance with a principle or provision. As stated earlier, various management models exist and the flexible law on associations has resulted in diverse governance solutions as well as many membership variants. Deviating from a principle or a provision of this code can therefore be well justified. However, providing an explanation is in line with the current view of good corporate governance. An explanation on the cooperative's website would suffice.

NCR will monitor compliance with this code every two years and publish the results. The aim of this is to promote the continuous sharing of ideas on cooperative entrepreneurship.

## 1.11 Advisory Committee

In drawing up this third version of the NCR Governance Code for Cooperatives, the NCR board received advice from a committee whose members included:

**CHAIR OF THE COMMITTEE:**  
**Professor Ruud C.J. Galle**  
NCR

**OTHER COMMITTEE MEMBERS:**  
**Mr P. Boer**  
Chairman of the Supervisory Board of Koninklijke FrieslandCampina N.V. and Chairman of the Board of Zuivelcoöperatie FrieslandCampina U.A.

**Mrs M.A.J. Cremers**  
Notary at Stibbe

**Mr T. van Gameren**  
Chairman of Coop Nederland U.A.

**Ms E. Holtman**  
Associate at Stibbe

**Mr H.T.J.M. van den Hout**  
Company Secretary of Oikocredit U.A.

**Mr J.M.M. Megens**  
Chairman of the Supervisory Board of NPRC

**Mr D. de Lugt**  
Chairman of the Management Board of Royal Cosun

**Mr A. van Nuland**  
Managing Director of NCR

**Ms L.A. Roodenburg**  
Cooperatives Consultant at NCR

**Mr A. Verhoeff, CA**  
Consultant

**Professor P.M. van der Zanden, CA**  
Consultant

# 2

## Scope and monitoring

### 2.1 Provisions for monitoring

To this end, the NCR makes tools available to the cooperatives, including a digital checklist. The NCR will publicly report on the results of its monitoring.

#### PROVISION 2.1.1

The management board and supervisory board are responsible for the corporate governance structure of the cooperative, and each board ensures compliance with the principles and provisions of the code based on its specific role and powers. The boards are accountable in this regard to the general meeting of members/ members' council. Any deviation from the principles and provisions of this code will be clearly explained on the website of the cooperative concerned.

#### PROVISION 2.1.2

Every two years, the NCR will monitor compliance with the code. The aim is to make an inventory of the use of the code and the quality of the explanations in the event of non-compliance.

# 3

## Management board

### 3.1 Principles for management board

#### PRINCIPLE 3.1.A

The role of the management board is to manage the cooperative, which means, more specifically, that it is responsible for achieving the cooperative's aims, the strategy and associated risk profile, determining, preparing and implementing policy, the development of results and corporate social responsibility issues that are relevant to its business.

#### PRINCIPLE 3.1.B

The management board is accountable for its management to the supervisory board and to the general meeting of members or the members' council. The management board will provide the supervisory board good time with all information necessary for the supervisory board to perform its duties.

#### PRINCIPLE 3.1.C

The management board is responsible for complying with all relevant regulations and legislation, managing the risks associated with the business activities and financing the cooperative. The management board will report and discuss with the supervisory board and the audit committee, if one has been instituted, about the internal risk management and control systems.

#### PRINCIPLE 3.1.D

Each management board member must be capable of assessing the broad outline of the overall policy and will have the specific expertise required for the fulfilment of the duties assigned to the role designated to him/her within the framework of the management board profile. The composition of the management board will be such that it is able to carry out its duties properly. The management board will aim for a diverse composition in terms of such factors as gender and age. A management board member will be reappointed only after careful consideration. The profile referred to above will also be applied in the case of a reappointment.

### 3.2 Provisions for management boards

#### 3.2.1 Role of the management board

##### PROVISION 3.2.1.1

The management board will submit to the supervisory board for approval:

- the operational and financial objectives of the cooperative;
- the strategy designed to achieve the objectives;
- the parameters to be applied in relation to the strategy, for example in respect
- of the financial ratios; and
- corporate social responsibility issues that are relevant to its business.

The main elements will be mentioned in the annual report.

##### PROVISION 3.2.1.2

The cooperative will have an internal risk management and control system that is suitable for the cooperative. It will, in any event, employ as instruments of the internal risk management and control system:

- risk analyses of the operational and financial objectives of the cooperative;
- guides for the layout of the financial reports and the procedures to be followed in drawing up the reports; and
- a system of monitoring and reporting regarding the risk management and internal control.

##### PROVISION 3.2.1.3

In the annual report the management board will provide:

- a description of the main risks related to the cooperative;
- a description of the design and effectiveness of the internal risk management and control systems for the main risks during the financial year; and
- a description of any major failings in the internal risk management and control systems which have been discovered in the financial year, any significant changes made to these systems and any major improvements planned, and a confirmation that these issues have been discussed with the supervisory board and the audit committee, if one has been instituted.

Regarding financial reporting risks, the management board states in the annual report that the internal risk management and control systems provide a reasonable assurance that the financial reporting does not contain any errors of material importance and that the risk management and control systems worked properly in the year under review. The management board will provide clear substantiation of this.

##### PROVISION 3.2.1.4

The management board will draw up a cooperative code of conduct. The management board, supervisory board, all members and all employees of the cooperative must comply with this cooperative code of conduct.

**PROVISION 3.2.1.5**

The management board will draw up a whistleblowing policy to ensure that employees have the possibility of reporting alleged irregularities within the cooperative of a general, operational and financial nature to the chairman of the management board or to an official designated by him, without jeopardising their legal position. Alleged irregularities concerning the functioning of managing directors will be reported to the chairman of the supervisory board.

**PROVISION 3.2.1.6**

The cooperative will have a policy regarding corporate social responsibility and sustainability. The management board will report on this policy in the year in question in the annual report on that year.

**PROVISION 3.2.1.7**

The management board will place the following documents on the cooperative's website and ensure that members and third parties have access to them:

- a) the code of conduct as described in provision 3.2.1.4;
- b) the whistleblower policy as described in provision 3.2.1.5;
- c) the profile objectives as described in provisions 3.2.2.3, 4.2.2.2 and 5.2.4.1;
- d) the resignation schedule as described in provisions 3.2.2.6 and 4.2.2.5;
- e) the procedure regarding dealing with inside information as described in provision 5.2.5.2;

- f) a social annual report every year in so far as this does not constitute an integral part of the general annual report.

On the same website, the management board provides sound reasons with regard to non-application of the NCR Governance Code and in particular to any non-compliance with the various principles and provisions of this code.

## 3.2.2 Composition of the management board

**PROVISION 3.2.2.1**

The management board of the cooperative must consist of at least two managing directors.

**PROVISION 3.2.2.2**

The annual report must contain a statement regarding the following for each managing director:

- a) gender;
- b) age;
- c) profession;
- d) principle position;
- e) nationality;
- f) other positions, in so far as they are relevant to the performance of the duties of the management board member;
- g) date of initial appointment;
- h) current term of office; and
- i) whether he/she is a member of the cooperative (via a legal entity in which he/she has a direct or indirect majority control, or otherwise).

**PROVISION 3.2.2.3**

The management board will prepare a profile of its size and composition, taking into account the aims of the of business, its activities and the desired expertise and background of the management board members. Each board member will have the specific expertise required for the fulfilment of his/her duties and should have sufficient time to perform these duties. The management board will aim for a diverse composition in terms of such factors as gender and age. At least 30% of the seats in the management board are held by women and at least 30% by men. The body appointed by the management board should approve the profile objectives of the management board.

**PROVISION 3.2.2.4**

Management board members appointed by the supervisory board in the so-called executive model or the supervisory board plus model, may be appointed for a maximum term of four years. This term can run up to the day of the next meeting of the body authorised to appoint managing directors once the four-year term has elapsed. There is no limit to the number of times managing directors can be reappointed. The reappointment of a managing director only takes place after careful consideration.

**PROVISION 3.2.2.5**

A managing director who is a member of the cooperative (via a legal entity in which he/she has a direct or indirect majority control, or otherwise) and who is appointed by the general meeting of

members or members' council in accordance with the so-called traditional model, is appointed for a maximum term of four years. A managing director member will be reappointed only after careful consideration. The maximum term is twelve years. This term can be extended to the day of the next general meeting of members or members' council.

**PROVISION 3.2.2.6**

Insofar as the management board consists of one or more managing directors as described in provision 3.2.2.5, the management board will draw up a retirement schedule in order to avoid, as far as possible, the situation in which many managing directors resign at the same time. The body authorised to appoint managing directors should approve the resignation schedule.

**PROVISION 3.2.2.7**

Before accepting another position at another legal entity, managing directors will inform the chairman of the supervisory board of this intention. Insofar as, in the opinion of the chairman of the supervisory board, acceptance of the position is of material importance to the managing director and/or the cooperative, the managing director can only accept the position after the supervisory board has given its approval.

**PROVISION 3.2.2.8**

The management board will ensure that the cooperative has a policy regarding the recruitment of young cooperative members who would like to be eligible for a seat on the management board

and/or supervisory board. Furthermore, the management board will ensure that these young cooperative members receive proper training and guidance from the cooperative.

### 3.2.3 Education

#### PROVISION 3.2.3.1

The management board shall conduct an annual review to identify any aspects with regard to which the managing directors require further training or education during their term of appointment. The cooperative will play a facilitating role in this respect.

Managing directors who are members of the cooperative – via a legal entity in which he/she has a direct or indirect majority control, or otherwise – and who were appointed by the general meeting of members or members' council according to the so-called traditional model, will at a minimum follow an induction programme after being appointed. This induction programme will, at a minimum, devote attention to general financial and legal matters, the financial reporting of the cooperative, aspects that are specific to the cooperative and its business activities and the responsibilities of the managing director concerned. If required, and in consultation with the chairman of the management board, persons other than the managing directors referred to above can participate in the abovementioned induction programme.

### 3.2.4 Remuneration

#### PROVISION 3.2.4.1

The level and structure of the remuneration which the management board members receive from the cooperative for their work will be such that qualified and expert managers can be recruited and retained. When the overall remuneration is fixed, its impact on pay differentials within the cooperative will be taken into account. The supervisory board will determine the remuneration of the individual managing directors, on a proposal by the remuneration committee, if such a committee has been instituted.

#### PROVISION 3.2.4.2

Before drawing up the remuneration policy and determining the remuneration of the individual managing directors, the supervisory board will analyse the objectives of the variable remuneration components taking into account the long-term objectives of the cooperative.

#### PROVISION 3.2.4.3

The supervisory board will determine the level and structure of the remuneration of the managing directors by referring to the scenario analyses carried out and with due regard for the pay differentials within the cooperative.

#### PROVISION 3.2.4.4

If a variable remuneration component exists, the supervisory board has the power to adjust the value of conditionally awarded variable

remuneration downwards or upwards if, in the opinion of the supervisory board, these would produce an unfair result due to extraordinary circumstances during the period in which the predetermined performance criteria have been or should have been achieved.

#### PROVISION 3.2.4.5

If the remuneration system has a variable remuneration component the supervisory board may recover in part or in full from the managing directors, any variable remuneration in so far as it was awarded on the basis of incorrect financial or other data regarding achieving the objectives on which the variable remuneration component is based or regarding the circumstance on which the variable component is dependent.

#### PROVISION 3.2.4.6

The cooperative may not grant the members of its management board any personal loans, guarantees or the like unless in the normal course of business and under the terms and conditions that apply to the entire staff and/or (other) members and after the approval of the supervisory board. No remission of loans may be granted.

#### PROVISION 3.2.4.7

The remuneration for a member of the management board in the event of dismissal amounts to a maximum of one year's salary of the managing director concerned. Any variable remuneration component is not taken into consideration.

### 3.2.5 Conflict of interest

#### PROVISION 3.2.5.1

Any conflict of interest or apparent conflict of interest between the cooperative and managing directors will be avoided. Decisions to enter into transactions under which managing directors would have conflicts of interest require the approval of the supervisory board.

#### PROVISION 3.2.5.2

Agreements with managing directors of a type that are also concluded with (other) members of the cooperative, or agreements with legal entities in which the managing director concerned has a direct or indirect majority control also require the approval of the supervisory board in the event that terms and conditions are agreed that deviate from what is usual practice within the cooperative.

#### PROVISION 3.2.5.3

All transactions under which managing directors would have a conflict of interest will be in any event agreed under the terms and conditions that are usual practice within the sector.

#### PROVISION 3.2.5.4

A managing director will immediately report any conflict of interest or potential conflict of interest to the chairman of the supervisory board and to the other members of the management board and will provide all relevant information. The supervisory board will decide, without the managing director concerned being present,

whether there is a conflict of interest and whether it wishes to give its approval for the transaction to proceed. If no supervisory board is appointed, the managing director reports any such conflicts of interest to the chairman of the general meeting of members or members' council, which will decide if a conflict of interest exists. If the managing director reporting the possible conflict of interest is also chairman of the general meeting of members or members' council, he/she will report the conflict of interest to the vice chairman of the general meeting of members or members' council unless otherwise set down in the articles of association and/or cooperative code of conduct.

**PROVISION 3.2.5.5**

A managing director may not take part in any discussion or decision-making that involves a subject or transaction in relation to which he/she has a conflict of interest. If as a result none of the management board members can take part in the decision-making, the supervisory board, general meeting of members or members' council can give its approval for the management board to nonetheless take part in the discussion or decision-making.

# 4

## Supervisory board

### 4.1 Principles for supervisory board

**PRINCIPLE 4.1.A**

The role of the supervisory board is to supervise the policies of the management board and the general affairs of the cooperative and its affiliated business, as well as to assist the management board by providing advice.

**PRINCIPLE 4.1.B**

In discharging its role, the supervisory board will be guided by the interests of the cooperative and its affiliates, and will take into account the relevant interests of the cooperative's members and other stakeholders. The supervisory board will also have due regard for corporate social responsibility issues that are relevant to the business activities.

**PRINCIPLE 4.1.C**

The supervisory board is responsible for the quality of its own performance.

**PRINCIPLE 4.1.D**

Each supervisory director will be capable of assessing the broad outline of the overall policy. Each supervisory director will have the specific expertise required for the fulfilment of the duties assigned to the role designated to him within the framework of the supervisory board profile. The composition of the supervisory board will be such that it is able to carry out its duties properly. The supervisory board will aim for a diverse composition in terms of such factors as gender and age. A supervisory director will be reappointed only after careful consideration. The profile referred to above will also be applied in the case of a reappointment.

## 4.2 Provisions for supervisory board

### 4.2.1 Role of the supervisory board

#### PROVISION 4.2.1.1

The supervision of the management board by the supervisory board will include:

- a) achievement of the objectives of the cooperative;
- b) corporate strategy and the risks inherent in the business activities;
- c) the design and effectiveness of the internal risk management and control systems;
- d) the financial reporting process;
- e) compliance with primary and secondary legislation;
- f) the relationship with members; and
- g) corporate social responsibility issues that are relevant to the cooperative's business.

#### PROVISION 4.2.1.2

The supervisory board and its individual members each have their own responsibility for obtaining all information from the management board and the external auditor that the supervisory board needs in order to be able to carry out its duties properly as a supervisory body. If the supervisory board considers it necessary, it may obtain information from officers and external advisers of the cooperative. The cooperative will provide the means necessary for this purpose.

The supervisory board may require that certain officers and external advisers attend its meetings.

#### PROVISION 4.2.1.3

At least once a year, the supervisory board will discuss the corporate strategy and the main risks of the business, the systematic analysis of operational risks and the appropriate mitigation of these risks, the result of the assessment by the management board of the design and effectiveness of the internal risk management and control systems, as well as any significant changes thereto. Reference to these discussions will be made in the report of the supervisory board.

#### PROVISION 4.2.1.4

The supervisory board will discuss at least once a year on its own, i.e. without the management board being present, its own functioning, the functioning of its separate committees and its individual members, and the conclusions that must be drawn on the basis thereof. The desired profile, composition and competence of the supervisory board will also be discussed. Moreover, the supervisory board will discuss at least once a year without the management board being present both the functioning of the management board as an organ of the cooperative and the performance of its individual members, and the conclusions that must be drawn on the basis thereof. The report of the supervisory board will state how the evaluation of the functioning of the supervisory board, the separate committees and the individual supervisory directors has been carried out.

#### PROVISION 4.2.1.5

The annual accounts of the cooperative will include a report by the supervisory board in which the supervisory board reports on its activities in the year under review. The report also includes the required statements regarding compliance with the provisions of this code.

#### PROVISION 4.2.1.6

The division of duties within the supervisory board and the board's working method will be laid down in terms of reference. The supervisory board's terms of reference shall include a paragraph dealing with its relations with the management board, the general meeting and/or members' council and the central works council or works council. Without prejudice to the division of duties and working method laid down in the terms of reference, in respect of the cooperative each supervisory director is responsible for the supervision to be performed by the supervisory board.

#### PROVISION 4.2.1.7

The chairman of the supervisory board will ensure that:

- a) the supervisory board members follow their induction and educational programme or training course;
- b) the supervisory board members receive in good time all information which is necessary for the proper performance of their duties;
- c) there is sufficient time for consultation and decision-making by the supervisory board;

- d) any committees of the supervisory board function properly;
- e) the performance of the managing directors and supervisory board members is assessed at least once a year;
- f) the supervisory board elects a vice-chairman; and
- g) the supervisory board has proper contact with the management board and the works council (or central works council).

#### PROVISION 4.2.1.8

The supervisory board will be assisted by a secretary. The secretary will ensure that correct procedures are followed and that the supervisory board acts in accordance with its statutory obligations and its obligations under the articles of association. He/she will assist the chairman of the supervisory board in the actual organisation of the affairs of the supervisory board (information, agenda, evaluation, training programme, etc.). The secretary will, either on the recommendation of the supervisory board or otherwise, be appointed and dismissed by the management board, after the approval of the supervisory board has been obtained.

## 4.2.2 Composition of the supervisory board

### PROVISION 4.2.2.1

The following information about each supervisory board member will be included in the report of the supervisory board:

- a) gender;
- b) age;
- c) profession;
- d) principal position;
- e) nationality;
- f) other positions, in so far as they are relevant to the performance of the duties of the supervisory board member;
- g) date of initial appointment;
- h) current term of office; and
- i) whether he/she is a member of the cooperative (via a legal entity in which he/she has a direct or indirect majority control, or otherwise).

### PROVISION 4.2.2.2

The supervisory board will prepare a profile of its size and composition, taking into account the cooperative's objectives and its business activities as well as the desired expertise and background of the supervisory board members. Each board member will have the specific expertise required for the fulfilment of his/her duties and should have sufficient time to perform these duties. The supervisory board will aim for a diverse composition in terms of such factors as gender and age as described in the profile. At least 30% of the seats in the supervisory board are held by

women and at least 30% by men. The profile for the composition of the supervisory board will be approved by the general meeting of members or members' council.

### PROVISION 4.2.2.3

At least one member of the supervisory board will be a financial-economic expert.

### PROVISION 4.2.2.4

A person may be appointed to the supervisory board for a maximum of three four-year terms. This term can run up to the day of the next meeting of the body authorised to appoint supervisory board once a four-year term has elapsed.

### PROVISION 4.2.2.5

The supervisory board will draw up a retirement schedule in order to avoid, in as far as possible, a situation in which many supervisory board members retire at the same time.

### PROVISION 4.2.2.6

A supervisory board member will resign in the event of inadequate performance or when, in the view of the supervisory board, this is deemed necessary for other reasons.

### PROVISION 4.2.2.7

Before accepting a position at another legal entity, supervisory board members will inform the chairman of the supervisory board of this intention. Insofar as, in the opinion of the chairman of the supervisory board, acceptance of the position is

of material importance to the supervisory board member and/or the cooperative, the supervisory board member can only accept the position after the supervisory board has given its approval. If the chairman of the supervisory board intends to accept a position at another legal entity, he will inform the vice chairman of the supervisory board. The vice chairman will assess whether or not the position is of material importance to the supervisory board member and/or the cooperative. Afterwards, the supervisory board will grant or refuse approval unless set down otherwise in the articles of association and/or the cooperative code of conduct.

### PROVISION 4.2.2.8

The supervisory board will consider instituting, using its own resources, an audit committee, a remuneration committee and a selection & appointment committee.

### PROVISION 4.2.2.9

If an audit committee is instituted, it will in any event focus on supervising the activities of the management board with respect to:

- i. the operation of the internal risk management and control systems, including supervision of the enforcement of relevant regulations and legislation, and supervising the operation of codes of conduct;
- ii. the provision of financial information by the cooperative (choice of accounting policies, application and assessment of the effects of new rules, insight into the handling of

estimated items in the financial statements, forecasts, the work of internal and external auditors, etc);

- iii. compliance with recommendations and observations of internal and external auditors;
- iv. the role and functioning of the internal audit function;
- v. the policy of the cooperative on tax planning;
- vi. relations with the external auditor, including, in particular, his/her independence, remuneration and any non-audit services for the cooperative;
- vii. the financing of the cooperative; and
- viii. the application of information and communication technology.

Even when an audit committee has been instituted, the supervisory board remains responsible for supervising the management board in respect of the subjects mentioned above. Minutes will be taken at the meetings of an audit committee. These minutes will always be appended to the agenda of the supervisory board.

### PROVISION 4.2.2.10

At least one member of the audit committee will be a financial-economic expert.

### PROVISION 4.2.2.11

If a remuneration committee has been instituted, it may have the following duties:

- a) making a proposal to the supervisory board for the remuneration policy to be pursued; and
- b) making a proposal for the remuneration of the individual members of the management

board, for adoption by the supervisory board; such proposal will, in any event, deal with the remuneration structure and the amount of the fixed remuneration, the variable remuneration components to be awarded, pension rights, redundancy pay and other forms of compensation to be awarded, as well as the performance criteria and their application.

Even when a remuneration committee has been instituted, the supervisory board remains responsible for supervising the management board in respect of the subjects mentioned above.

#### PROVISION 4.2.2.12

If a selection and appointment committee has been instituted, it will in any event focus on:

- a) drawing up selection criteria and appointment procedures for supervisory board members and management board members;
- b) periodically assessing the size and composition of the supervisory board and the management board, and making a proposal for the composition profile of the supervisory board and management board;
- c) periodically assessing the functioning of individual supervisory board members and management board members, and reporting on this to the supervisory board and management board;
- d) making proposals for appointments and reappointments; and
- e) supervising the policy of the management board on the selection criteria and appointment procedures for senior management.

Even when a selection and appointment committee has been instituted, the supervisory board remains responsible for supervising the management board in respect of the subjects mentioned above.

#### PROVISION 4.2.2.13

A delegated supervisory board member (gedelegeerd commissaris) has a special duty. The delegation may not extend beyond the duties of the supervisory board itself and may not include the management of the cooperative. It may entail more intensive supervision and advice provision and more regular consultation with the management board. The delegation shall be of a temporary nature only. The delegation may not detract from the role and power of the supervisory board. The delegated supervisory director remains a member of the supervisory board.

#### PROVISION 4.2.2.14

The supervisory board member who temporarily takes a place on the management board in the event of the absence or disqualification of managing directors, temporarily resigns from the supervisory board in order to take up management duties.

## 4.2.3 Education

#### PROVISION 4.2.3.1

After being appointed, all supervisory board members will follow an induction programme, which, in any event, covers general financial and legal affairs, financial reporting by the cooperative, any specific aspects that are unique to the cooperative and its business activities, and the responsibilities of the supervisory board member concerned. The supervisory board shall conduct an annual review to identify any aspects with regard to which the supervisory board members require further training or education during their term of appointment. The cooperative will play a facilitating role in this respect.

## 4.2.4 Remuneration

#### PROVISION 4.2.4.1

The general meeting of members or the members' council sets the remuneration of supervisory board members. The remuneration is not dependent on the result of the cooperative.

## 4.2.5 Conflict of interest

#### PROVISION 4.2.5.1

Any conflict of interest or apparent conflict of interest between the cooperative and supervisory board members will be avoided. Decisions to enter into transactions under which supervisory board

members would have conflicts of interest require the approval of the supervisory board.

#### PROVISION 4.2.5.2

Agreements with supervisory board members similar to (other) members of the cooperative or agreements with legal entities in which a supervisory board member has a direct or indirect majority control will require the approval of the supervisory board in the event that the terms and conditions that are agreed upon deviate from what is common practice within the cooperative.

#### PROVISION 4.2.5.3

All transactions in which there are conflict of interest with supervisory board member will be agreed on the terms and conditions that are customary in the sector concerned.

#### PROVISION 4.2.5.4

A supervisory board member will immediately report any conflict of interest or potential conflict of interest to the chairman of the supervisory board and to the other members of the supervisory board and will provide all relevant information. The supervisory board will decide, without the supervisory board member concerned being present, whether there is a conflict of interest and whether it wishes to give its approval for the transaction to proceed.

#### PROVISION 4.2.5.5

A supervisory board member may not take part in any discussion or decision-making that involves

a subject or transaction in relation to which he/she has a conflict of interest. If as a result none of the supervisory board members can take part in the decision-making, the chairman of the general meeting of members or members' council can give approval for the supervisory board to nonetheless take part in the discussion or decision-making.

**PROVISION 4.2.5.6**

The supervisory board is responsible for the decision-making on dealing with conflicts of interest involving managing directors, supervisory board members and the external auditor in relation to the cooperative.

# 5

## Members

### 5.1 Principles for members

**PRINCIPLE 5.1.A**

Good cooperative entrepreneurship requires the fully-fledged participation of the members in the decision-making in departments, areas, districts, the members' council and/or the general meeting. It is in the interest of the cooperative that as many members as possible take part in the decision-making process. The general meeting of members or members' council should be able to exert influence on the policies of the management board and supervisory board in such a way as to play a fully-fledged role in the system of checks and balances within cooperative.

**PRINCIPLE 5.1.B**

The control of the members should serve to support successful cooperative entrepreneurship. In order to make constructive use of their control, the members must have access to correct and relevant information. Effective communication is of

vital importance to this end. The degree of control over various aspects should correspond to the degree of involvement and reciprocity, regarding, for instance, the obligations of the members in respect of such factors as funding, and delivery and purchasing.

**PRINCIPLE 5.1.C**

Management board decisions on a major change in the identity or character of the cooperative or its activities will be subject to the approval of the general meeting of members or members' council.

**PRINCIPLE 5.1.D**

Members will act in keeping with the principle of reasonableness and fairness and in compliance with the cooperative code of conduct in relation to the cooperative, the organs of the cooperative and their fellow members.

## 5.2 Provisions for members

### 5.2.1 Benefits policy and discharge

#### PROVISION 5.2.1.1

The reserves and discharge policy of the cooperative (the amount and use of reserves, the amount of payments, refunds and discounts for members) is dealt with and accounted for as a separate item on the agenda of the general meeting of members or members' council.

#### PROVISION 5.2.1.2

The approval of the policies implemented by the management board (discharge of managing directors from liability) and the approval of the supervision performed by the supervisory board (discharge of supervisory board members from liability) are voted on separately at the general meeting of members or members' council.

### 5.2.2 Information provision to members

#### PROVISION 5.2.2.1

The management board and the supervisory board shall provide the general meeting of members or members' council in good time with all information that it requires for the exercise of its powers.

#### PROVISION 5.2.2.2

The management board and the supervisory board shall provide the general meeting of members or members' council with all requested information,

unless this would be contrary to an overriding interest of the cooperative. If the management board and the supervisory board invoke an overriding interest, they must give reasons.

#### PROVISION 5.2.2.3

The management board is responsible for the quality and completeness of (financial) reports disclosed to the members. The supervisory board will ensure that the management board fulfils this responsibility.

### 5.2.3 External auditor

#### PROVISION 5.2.3.1

The external auditor is appointed by the general meeting of members or members' council. The supervisory board will nominate a candidate for this appointment and the management board advises the supervisory board on this nomination.

#### PROVISION 5.2.3.2

The management board invites the external auditor to attend the general meeting of members or members' council meeting at which the annual accounts are dealt with. The presence of the external auditor at the general meeting of members or members' council does not detract from the general duty of the management board and the supervisory board to render account to the general meeting of members or members' council or their duty to provide all requested information to the general meeting of members or members' council (unless there is an important

reason for not doing so). The external auditor can be questioned only in respect of his audit and audit report. Primary responsibility for the content of the financial statements rest with the management board.

#### PROVISION 5.2.3.3

At least once every four years, the supervisory board and the audit committee (if one has been instituted) will conduct a thorough assessment of the functioning of the external auditor within the various entities and in the different capacities in which the external auditor acts. The main conclusions of this assessment will be communicated to the general meeting/ members' council for the purposes of assessing the nomination for the appointment of the external auditor.

### 5.2.4 Members' council

#### PROVISION 5.2.4.1

If, for a period of three successive years:

- i) the membership of a cooperative numbers more than 500 persons, and/or
- ii) the attendance at the general meeting amounts to less than 50% of the cooperative's members, the management board will make a proposal to the general meeting to amend the articles of association to allow a members' council to be established. This is within the power of the general meeting.

If, pursuant to its articles of association, the cooperative has a members' council, the

members' council proposes a profile for its size and composition. This profile should reflect the membership and should aim for a high-quality and diverse composition.

### 5.2.5 Abuse of inside information

#### PROVISION 5.2.5.1

When deciding on (whether or not to proceed) with a transaction with the cooperative and/or fellow members, managing directors, supervisory directors and/or members will make no improper use of information which they have acquired as parties involved in day-to-day policy or in the determination of day-to-day policy, in the supervision of policy and the general affairs of the cooperative or that derives in some other way from their direct involvement in the business of the cooperative, as long as this information is not (yet) generally known to other members. These members will not further disseminate this information insofar as the information concerned can be regarded as being information that is not expected to be made known to the (other) members.

#### PROVISION 5.2.5.2

Insofar as the cooperative issues certificates, participatory interests or other negotiable instruments as proof of participation in the member capital, the management board will draw up a set of regulations aimed at preventing the abuse of inside information in the trading of these units, participatory interests or other instruments.



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