



**Principles for a sound remuneration policy for members of the management
boards of Dutch listed companies
Adopted 7 October 2009**

Background

The tasks of the management board, the supervisory board and the general meeting are clearly distinguished in Dutch corporate law. The management board manages the company; the supervisory board supervises and advises the management board, and the general meeting monitors both the management board and the supervisory board. Shareholders are not intended to act the part of members of the management board, or to act the part of the supervisory directors.

The division of tasks is different, however, where the remuneration of management board members is concerned. The management board determines directly or indirectly the remuneration of all the other employees of the company, but it is obviously undesirable for the members of the management board to determine their own remuneration. As a consequence, supervisory directors have been given a more executive task with regard to the remuneration of directors under the articles of association which means that the task of the general meeting has altered as well. In the case of the remuneration of the management board, the supervisory board initiates and implements the policy here and the general meeting monitors the way in which the supervisory directors do this.

The legislator gave an explicit shape to this special role allocation with respect to the remuneration of members of the management board with effect from 1 October 2004. As from that date, the general meeting has had the right to determine the remuneration policy for management board members and the right to approve schemes in the form of shares or rights to subscribe for shares. According to the law, the general meeting also determines the remuneration of individual management board members, but it is permitted for the articles of association to designate another body to perform this task. This latter option is mostly used at listed companies with a widely dispersed shareownership. Determination of the remuneration of individual management board members at such companies has mostly been transferred to the supervisory board or to the meeting of holders of priority shares, which implements policy in this regard.

This means, in practice, that the general meeting only adopts the remuneration policy for management board members at listed companies on the recommendation of the supervisory board, and the policy is subsequently implemented by the supervisory board. As is stated in principle II of the Dutch Corporate Governance Code¹: “The supervisory board shall determine the remuneration of the individual members of the management board, on a proposal by the remuneration committee, within the scope of the remuneration policy adopted by the general meeting.” Under the law, the results of that policy – the total remuneration paid to individual management board members broken down into its various components – should be presented in the explanatory notes to the annual report. In this way, the general meeting is enabled to monitor the implementation of the policy by the supervisory board.

This supervisory role of the general meeting comprises a number of elements, therefore. It involves the adoption (in advance) of a proposal for a remuneration policy for the management board, the adoption (in advance) of any amendments to this policy, the approval (in advance) of schemes in the form of shares or rights to subscribe for shares, the approval (in advance) of any changes to these schemes, and the evaluation (in retrospect) of the results of the policy, as these are formulated in the remuneration report from the supervisory board that is part of the annual report (best practice provision II.2.12 in conjunction with III.1.2 of the Dutch Corporate Governance Code).

Eumedion has drawn up the principles for a sound remuneration policy set out below in order to support Dutch and international shareholders in the listed companies with statutory seat in the Netherlands² in the supervisory task assigned to them by the law and the Dutch Corporate Governance Code with respect to the remuneration of management board members. These principles relate to the process and the accountability, as well as to the structure and content of a sound remuneration policy.

Principles replace recommendations made in 2006

The principles below replace the Eumedion recommendations on executive remuneration of October 2006. In the last few years Eumedion members have assessed the proposals for the remuneration policy for management boards on the basis of these recommendations in part and this ultimately led, on a number of occasions, to the defeat of proposals that had been submitted to the general meeting. National and international developments in the last year in particular gave rise to the reassessment of these recommendations. The Dutch Corporate Governance Code was amended in December 2008 for example, and a number of provisions for the remuneration of management board members have been tightened up in the revised version, which also incorporates a number of Eumedion’s recommendations. In addition, a number of specific remuneration principles were drafted for financial institutions in both the national and international contexts³. Another contributing factor was that a

¹ This document is based on the version of the code that was drawn up by the Corporate Governance Code Monitoring Committee and was published on 10 December 2008.

² Since the scope of Eumedion’s work is confined to the corporate governance and sustainability issues at Dutch listed companies, the principles in this document relate solely to that group of companies. Shareholders may also be able to apply the principles to other listed companies and legal persons.

³ Examples in the Netherlands are the Banking Code published on 9 November 2009 by the Netherlands Bankers’ Association, and the Principles for a Controlled Remuneration Policy published on 6 May 2009 by the Netherlands Authority for the Financial

number of the 2006 Eumedion recommendations for institutional investors and for listed companies were perceived as too prescriptive and were less well aligned with the version of the Dutch Corporate Governance Code in use at that time. In addition, a strong emphasis was placed on (relative) total shareholder return (TSR) as the only performance standard for securing a long-term bonus and this had a number of unforeseen side effects. It also became clear that remuneration proposals that proved controversial where certain stakeholders and/or society as a whole were concerned can entail loss of reputation for the company, and may be a risk factor for the company as a consequence.

The principles set out below build on the provisions contained in the revised Dutch Corporate Governance Code of December 2008. They go further, however, on a number of points, such as principles 8 en 9, because it had not been possible for the revised Dutch Corporate Governance Code to take sufficient account of the recent conclusions reached in the national and international discussion on sound remuneration policies. In these new principles Eumedion emphatically endorses the mandate of the supervisory board to fashion a suitable remuneration policy for the management board, but this does not diminish in any way the power of the general meeting with regard to adopting the policy. More emphasis will be placed on adequate accountability in retrospect for the policy adopted in advance and the scope this implies, so that the general meeting can monitor implementation of the remuneration policy. This will be found in principles 4 and 5 for example, which include recommendations that follow on from the existing legal regulations in the United Kingdom and the impending legal regulations in the United States, stipulating that the report on the implementation of the remuneration policy for the relevant financial year (the remuneration report) must be put to a vote annually at the general meeting. It is also recommended to evaluate the remuneration policy as a whole at least once every four years and to allow the general meeting to decide on the continuation of this policy or the amendments to it. In this sense, the principles are less prescriptive and mandatory than the 2006 recommendations.

Markets and De Nederlandsche Bank (the Dutch Central Bank), which was subsequently worked out in more detail by these authorities. In an international context, the European Commission presented the proposed directive to amend the European Capital Requirements Directive on 13 July 2009. This proposed directive introduces supervision of the remuneration practices at banks within the European Union. Other examples are the remuneration code for the 26 biggest British banks published on 12 August 2009 by the FSA, the British financial services authority; the agreements on remuneration reached between the French government and the French banks on 25 August 2009; and the recommendations of 15 September 2009 from the Financial Stability Board to the G20 heads of government concerning remuneration in the financial sector. These recommendations were adopted by the G20 on 25 September 2009.

Eumedion principles

Process and accountability

1. The supervisory board⁴ is responsible for the drafting of a remuneration policy for the management board, as well as for the implementation and the results of this policy.
2. The remuneration policy for the management board and amendments to this are adopted by the general meeting. Schemes in the form of shares or rights to subscribe for shares and amendments to such schemes are submitted separately to the general meeting for its approval.
3. The supervisory board renders account in the remuneration report for the implementation and the results of the remuneration policy for the management board. The remuneration report shows how the actual payments derive from the remuneration policy adopted, so as to enable the general meeting to monitor the implementation of this policy.
4. Companies are recommended to put the remuneration report to a vote as a separate item on the agenda at the general meeting. If the supervisory board does not put the remuneration report to a vote at the general meeting, shareholders are unable to express their opinion directly on the implementation of the remuneration policy by the supervisory board. In that event, shareholders may take the remuneration report into consideration when deciding on their voting behaviour for other items on the agenda, such as giving discharge to the supervisory board and the possible (re)appointment of individual supervisory directors.
5. The supervisory board assesses annually, partly on the basis of the results, whether the remuneration policy for the management board is still appropriate for the company. The remuneration policy for the management board is comprehensively evaluated at least once every four years and the general meeting adopts continuation of the existing policy or modifications to this policy.

Structure and content

6. The remuneration policy for the management board is aligned with the long-term strategy of the company and the corresponding goals. The remuneration policy for the management board contains no stimuli that may be detrimental to the task entrusted to the management board of serving the long-term interests of the company.
7. The structure and the amount of the remuneration of management board members are in keeping with the company's general remuneration policy. The supervisory board realizes that management board members are required to serve as examples to the other employees of the company.
8. The remuneration of management board members is based on a fixed salary. Any variable elements of the remuneration are subject to a maximum determined in advance. The (conditional)

⁴ In the event that the company has decided to include executive directors and supervisory directors in a single company body (a one-tier management structure), the principles set out in this document that apply to "the supervisory board" also apply to the supervisory or non-executive directors. Wherever this document refers to "the management board" or "members of the management board" it should also be understood to refer to executive directors in the case of companies with a one-tier management structure.

granting and payment of variable elements of remuneration depend on the achievement of goals established in advance and also on the manner in which these goals have been achieved⁵.

9. The term for the unconditional granting of long-term variable remuneration elements is long enough to do justice to the long-term strategy of the company and the corresponding goals. This term is generally at least three years.
10. The supervisory board has discretionary powers relating to the unconditional granting of long-term variable remuneration elements in order to counteract unfair consequences, such as in the event of a takeover and/or dismissal.
11. The rules relating to variable elements of remuneration contain a provision that variable remuneration elements that have already been made unconditional and/or have been paid can be recovered if it becomes clear in due course that they have been wrongly granted (in part), on the basis of incorrect (financial) information. In this event, the supervisory board initiates a procedure to recover the remuneration elements in question.

⁵ The risks taken are among the factors that can be borne in mind in this context.