

CULTURAL GOVERNANCE IN THE NETHERLANDS

A SUMMARY

Acknowledgement

The stichting Kunst & Zaken is very grateful to the Ministry of Education, Culture and Science for its financial contribution to this project.

The board and management of the stichting Kunst & Zaken truly hope that the results of this project will further enhance the support within the cultural sector for good management, governance and supervision. It goes without saying that the stichting Kunst & Zaken is prepared to continue to play an expert and inspiring part in that process.

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Preface

The importance of adequate management, governance and supervision is widely acknowledged; not only in the business sector, but fortunately to an increasing extent in the not for profit sector as well. This is understandable since proper governance normally leads to expertly, efficiently, independently and transparently operating organizations.

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Starting from this premise, and inspired by Melle Daamen*, a small group of people from within the cultural sector took the initiative, in 1998, to form the Cultural Governance Committee. In February 2000, this committee presented a report titled: Cultural Governance: quality of management and supervision in the cultural sector, containing essential suggestions for the improvement of the management and supervision of cultural organizations.

Two years later this committee, the Ministry of Education, Culture and Science and the stichting Kunst & Zaken [Arts & Business foundation] came to the conclusion that although the committee's ideas had been received with a lot of approval, they had not been implemented. This was, among other things, caused by the absence of an unambiguous set of recommendations and tools for the implementation of such recommendations.

To meet this need, a special Cultural Governance Project Group was created in January 2003, commissioned by the Ministry of Education, Culture and Science and under the responsibility of the stichting Kunst & Zaken. The project group was assisted by an Advisory Council especially set up for that purpose. Numerous discussions with representatives from the cultural sector, a survey among cultural organizations and frequent meetings of the Cultural Governance Advisory Council eventually led to the publication of 'The 23 Recommendations for Cultural Governance'.

This publication is a summary of the 'Handleiding Cultural Governance' [Cultural Governance Manual], as published by the stichting Kunst & Zaken. The manual is a guide for the practical implementation and application of the 23 Recommendations for Cultural Governance. The manual is only available in

the Dutch language and contains legal and organizational models and draft articles of association for each respective model that are ready for immediate use by the cultural sector. The information is also available on-line at www.culturalgovernance.nl.

The 23 Recommendations for Cultural Governance

In February 2000 the Cultural Governance Committee issued a report containing recommendations for enhancing management in cultural organizations. Subsequently, the stichting Kunst & Zaken in 2002 and 2003 conducted talks with numerous representatives from the sector and made additions to the recommendations. In the spring of 2003 the Cultural Governance Advisory Council reviewed the recommendations that had been drawn up. All this has led to the *23 Recommendations for Cultural Governance*.

The *23 Recommendations for Cultural Governance* are intended for all those involved in a cultural organization and interested in improving its operation. These may be organizations dedicated to the visual arts, dance, music, theatre or other forms of art. The recommendations are also applicable to the required facilities, such as museums, theatres and concert halls. Cultural Governance therefore concerns art organizations in the widest sense.

The day-to-day management of cultural organizations is the responsibility of one or more persons, who tend to be referred to as coordinators, leaders, directors or managers. In the traditional management model these persons act as proxyholders of the board of management. In the supervisory board model they constitute management. Where this summary refers to the day-to-day management of a cultural organization, the term manager or management is used with respect to both models.

For the sake of clarity the recommendations have been worded in such a manner as to be applicable to both the traditional management model and the supervisory board model. The tenor of the recommendations can be applied to all cultural organizations, irrespective of their legal form and the governance model. Obviously, an adjustment of the literal text of a recommendation may occasionally be required.

The *23 Recommendations for Cultural Governance* are an elaboration of four basic principles of proper management and supervision. Each basic principle together with the corresponding recommendations will be briefly explained on the following pages.

Division of responsibilities

A board member often plays two different roles. He or she is a supporter or adviser to the organization on the one hand and responsible for the supervision on the other. This may give rise to conflicts of interest. He who places too much emphasis upon business issues is liable to lose sight of the artistic goals. When too much emphasis is laid on artistic qualities, the business side of the organization may be frustrated. In both situations the position of the board member may be at issue. Clarity of duties and powers is therefore needed. This purpose is served by the first two recommendations.

Recommendation 1

The board of management or the supervisory board shall, on a more or less regular basis, make a detailed analysis of the desired governance model.

It often happens that a board of management increases the influence of the managers it appointed and reduces its own direct involvement by adopting the position of a "remote" board of management. From a legal point of view however the board of management remains fully responsible. The term "remote management" may therefore be given substance only if the traditional management model is in a legal sense changed into a supervisory board model. With the latter the corporate body which was originally referred to as board of management will confine itself to supervision. The new board of management will be made up by the original managers.

The recommendation to make a detailed analysis of its own governance model is not only meant for organizations structured on the supervisory board model or those intending to do so. Organizations with other governance models may also improve their governance by following this recommendation.

Recommendation 2

The board of management or the supervisory board shall make a distinction between duties of overall policy or, as the case may be, duties of supervision and supportive duties.

Supervision presupposes independence and a critical attitude. Giving support implies unqualified assistance and advice. Good cultural governance means that these two roles are strictly separated.

It is advisable to separate supervision and support and transfer them to different corporate bodies. Supervision should be performed by the board of management or the supervisory board. Support should be provided for by an Advisory Board, a Friends Association or in an informal, ad hoc manner.

For similar reasons the inclusion in the board of management or the supervisory board of a representative of the (main) sponsor or the major financier (who often wants to be involved in the management of the organization) should be discouraged.

The role of employer

Strictly speaking, good employership does not form part of cultural governance. However, in cultural organizations, which by their nature are so strongly dependent upon people, proper personnel management and individual attention to employees are essential.

In the next two recommendations the employer-employee relations are addressed between board of management or supervisory board, as employer, on the one hand and managers, as employees, on the other. The recommendations do not concern the relations between the organization and the other employees.

Recommendation 3

A delegation from the board of management or the supervisory board shall annually conduct performance evaluation discussions with the respective managers. Reports will be made of these discussions which will be filed by the board of management or the supervisory board and whose contents shall briefly be brought to the attention of the other members of the board of management or the supervisory board.

Regularly conducted performance evaluation discussions form part of generally accepted criteria for good employership. Nonetheless, this is the exception rather than the rule in cultural organizations. A board of management or supervisory board which takes its duty of supervision serious, should regularly conduct performance evaluation discussions with the managers it has appointed. The board of management or supervisory board should also assume responsibility for the managers' personnel files.

A performance evaluation discussion offers a manager the opportunity to discuss at the highest level within the organization his or her personal performance as well as the relation with the board of management or the supervisory board. In addition the performance evaluation discussion enables managers and the board of management or the supervisory board to formally assess the cooperation between the two bodies and to discuss matters that are not progressing satisfactorily.

Recommendation 4

In the event of a vacancy at management level the board of management or the supervisory board shall assume responsibility for recruitment and consider whether outside experts should be involved in the recruitment process.

In the event of the departure of a manager, the appointment of a successor should not be the responsibility of another manager or of the organization's staff, such as the personnel department. The board of management or the supervisory board has to make arrangements with regard to the responsibility for the recruitment, selection and appointment of a manager.

When a chain of command structure exists in a management team consisting of more than one manager, it may be agreed that the chairperson of that team will be responsible for (a part of) the recruitment of the other managers and that the board of management will only recruit the chairperson of the management team. It may also be agreed that all managers shall be recruited by the board of management or the supervisory board. Both versions have their drawbacks and advantages, the choice is up to the organization.

The above is not only applicable to the authority to recruit and appoint, but also the power to suspend or dismiss a manager. These powers have often been inadequately laid down in the organization's constituent documents.

Recruitment of managers

The responsibility of the board of management or the supervisory board in any case includes:

- drawing up the profile
- setting up a selection committee
- determining the recruitment procedure
- appointing the new manager

The recruitment of a new artistic leader often presents the board of management or the supervisory board with an awkward problem. The appointment of a new artistic leader usually implies a choice for a certain artistic direction. The question is whether the board of management or the supervisory board has enough expertise of the relevant artistic field to make a balanced and reasoned

decision. The board of management, the supervisory board, or the selection committee should therefore contemplate the assistance of outside experts.

Dismissal of managers

The board of management or the supervisory board is authorized to dismiss managers. In the event of a voluntary resignation the requested dismissal is formally granted. When relationships are good, the board of management or the supervisory board may indicate which date of departure would be least harmful to the organization. It is essential for the board of management or the supervisory board to be intimately involved in the process of terminating the relationship between a manager and an organization – which has often been long-standing and intense. (The chairman of) the board of management or the supervisory board should certainly play a part in the ceremonial parting, such as a reception.

In the event of involuntary dismissal the board of management or the supervisory board plays a much more important role. In that case strict compliance with labour law provisions is essential. The parties have no interest getting involved in extensive legal proceedings. Strict compliance with applicable law is therefore required.

If the board of management or the supervisory board considers suspending a manager, prior consultation with a specialized attorney is appropriate. The legal consequences of a procedural error can be large.

Composition

The composition of the board of management is important because it constitutes the basis for the quality of management and supervision. A "balanced composition" of the board of management or the supervisory board should be pursued.

The purpose of the following eight recommendations is to make management and supervision more professional, and therefore more knowledgeable and independent.

Recommendation 5

The composition of the board of management or the supervisory board is based on a previously determined profile.

It is important to distinguish between a general profile for the board of management or the supervisory board and the profiles of the individual board members.

Drawing up a profile forces both parties, both organization and candidate, to consider what the relevant candidate can mean to the organization. It also forces the organization to consider the organization's mission, the expertise required to achieve this mission as well as the functional requirements that therefore have to be met by the board of management or the supervisory board.

A clear description of the profile enables a more specific search for suitable candidates. Lastly, a profile assists the corporate bodies that are entitled to make a (binding) nomination for a certain board of management or supervisory board position in finding suitable candidates who can actually be appointed.

A good profile also prevents that the composition of the board of management or the supervisory board fails to adequately relate to the views on the matter within the organization. The absence of a profile may easily lead to less suitable candidates being (re) appointed.

Recommendation 6

The board of management or the supervisory board shall from time to time re-evaluate the profile, but in any case upon the occurrence of each vacancy.

A profile is in danger of becoming too rigid once it has been drawn up. This may be prevented by regularly testing the contents of the profile against the changing demands of every-day practice.

Recommendation 7

No more than one former manager (or other policy-making official) of the organization shall sit on the board of management or the supervisory board.

The development of an organization is hampered if too many predecessors are watching over their successors' shoulders and have to judge their own past performance. It may however be useful to appoint a (former) manager of another, similar, organization to the board of management or the supervisory board. Even if one former colleague is appointed the danger exists of the manager in office getting the feeling that his predecessor is watching over his shoulder. It is therefore appropriate to include a provision in the organization's constituent documents which restricts the appointment of (former) employees. Such provision may for example hold that former employees are not eligible for appointment to the board during the first few years following the termination of their employment.

Recommendation 8

The board of management or the supervisory board shall also look outside its own network when recruiting new members for its board.

It is not unusual in the business world, and in the cultural sector as well, to fill vacancies with individuals who are known to the persons with the power to appoint. This cooptation system has its disadvantages.

The board of management or the supervisory board should realise that their own networks by their nature are limited. Also, the number of persons in such networks is limited while these networks are often comprised of people with similar backgrounds.

The question is whether such networks can provide candidates who meet the profile (see recommendations 5 and 9).

The wider the scope of the search, the bigger the chance of finding a suitable candidate. Please note that the costs of external recruitment are often higher than the cost of recruitment through internal cooptation.

Recommendation 9

The board of management or the supervisory board shall ensure a balanced composition of their board.

The Cultural Governance Committee argued that board members in the cultural sector are often too old. In the year 2000 the average age of board members of Amsterdam art organizations was 54. Only 4% was younger than 40. The Committee also felt that there were not enough board members from ethnic minorities. In order to arrive at a proper, evenly-balanced board of management or supervisory board, such factors should be taken into account in the process of drawing up the profile (see recommendation 5).

The board of management or the supervisory board should ask itself the question what the added value is of a member with a different background. Being young or a member of an ethnic minority can never be the sole reason for appointing someone. Someone from a different background may however introduce a much-needed new perspective that is essential to the organization's future.

Recommendation 10

At the end of a term the board of management or the supervisory board determines if fresh blood is needed and shall test candidates (including those eligible for reappointment) against the profile.

It is of the utmost importance for the board of management or the supervisory board not to get set in its habits, but to open itself up to new board members with fresh ideas. This is the only way for a board of management or supervisory board to remain "up to date".

When an organization recruits its board members on the basis of a profile, each vacancy offers the opportunity to achieve a better match between the board and the profile. This principle also holds in the event of reappointment, for example as a result of altered circumstances.

Recommendation 11 & 12

The board of management or the supervisory board shall draw up a phased rotation schedule; the organization shall observe a term of office of three to four years, subject to once-only reappointment; i.e. a maximum term of office of eight years.

Board members should not become complacent and should avoid becoming one too close to the organization. It is therefore advisable to stipulate the standard term of office. Special circumstances may give rise to an extension of the standard term. The interests of the organization and not those of the individual board member should be the guiding principle.

Rotation schedule

Continuity is important. The situation where at a certain moment a large part of the board of management or the supervisory board simultaneously resigns should be avoided. A rotation schedule and the observance of a maximum term of office will make matters clear.

Transparency

It is especially the board of management or the supervisory board that ought to account for the way in which the organization is managed or the supervision is conducted. Public accountability is key. Internally to the employees, but more importantly also externally to society in general through the annual report, press releases, a website etc. After all, the organization is for a large part funded by, and dependent for funding from, that same society. The following eleven recommendations put forward suggestions to further this transparency.

Recommendation 13

The management shall annually provide the board of management or the supervisory board with an overview of the positions they hold outside their own organization.

This overview also indicates to what extent it involves salaried positions. The board of management shall moreover indicate any commercial ties between the own organization and any other legal entity with which the board of management is involved on a financial or management level.

The board should gain an insight into the risks to integrity that may exist within the organization. This is part of the transparency required for good cultural governance.

It may be useful for a board of management or supervisory board to indicate in advance which type of positions held outside the organization are undesirable. For example, it is undesirable for an organization that is subsidised by a municipality to have a manager who is also a councillor in that same municipality. Restrictions may also be imposed in order to avoid a management or supervisory position with a similar (competing) organization. Sometimes such "incompatible positions" are laid down in the organization's constituent documents.

However, drawing up a pre-determined exhaustive overview is not very practical. It is preferable to provide in the employment agreement, in the articles of association or in the management's regulations that managers shall require the prior approval from the board of management or supervisory board for each position held outside the organization.

Recommendation 14

The organization shall ensure that the profile underlying the composition of the board of management or the supervisory board as a whole is made public by incorporating it into its strategic plan and the annual report.

An organization may opt for active disclosure in, for example, its website or in the annual report. One speaks of passive disclosure when an organization mails the profile to interested parties following a request to that effect. This option may be mentioned in the annual report.

In light of public accountability it is appropriate to inform the general public what the profile, and therefore the organization, requires from its board members. In this way the organization enables society to assess the quality of the board of management or supervisory board. For that reason it is essential for organizations to include the profile in its annual reports and policy documents.

Recommendation 15

The annual report of the organization shall include relevant information regarding the individual members of the board of management or the supervisory board.

From a transparency perspective it is only natural to be open about those managing the organization and supervising it. Supplying additional information about those who are not employed with the organization, but who do exercise a strong influence upon it may be especially useful for the purpose of gaining the confidence of the outside world.

Recommendation 16

The management shall, if so required or at its own initiative, duly provide the board of management or the supervisory board with all the information they may need to adequately perform its duties, whereby "no surprises" is the guiding principle. The overall strategy of the organization and how it will be implemented are part of such information. The board of management or the supervisory board shall encourage management to make its artistic goals and objectives subjects of discussion.

The "no surprises" motto is an important aspect of the flow of information between management and the board. Both require correct and timely information from the other party in order to properly perform their duties.

In order to be able to bear responsibility, board members must know what is going on. For that reason it is important that management indicates in time which developments are taking place and in particular which risks the organization is running. It is an important duty of management to duly and adequately inform the board. In difficult times this will imply more intensive contacts between the parties, sometimes also outside meetings.

Surprises will be avoided when the board has clearly described the information it requires. It is often wise to verify what board members must know in order to adequately perform their duties and bear responsibility. The board of management or the supervisory board that indicates which information it requires from management will thereby also provide the benchmarks for the policies or the type of supervision it wants to conduct.

Recommendation 17

The board of management or the supervisory board shall make arrangements with the management concerning the use of secretarial staff and other support by the organization.

The board of management or the supervisory board will in most cases consist of volunteers; support from the organization's secretarial staff will improve the quality of their performance.

A cultural organization has to record its policy, its decisions and therefore its own history. The time spent on, and the attention paid to this by the board of management or the supervisory board is often insufficient. "Who prepares the minutes of the board meeting?" and "Who is going to make the report of the performance evaluation discussions with the manager?" These are questions that are asked but that seldom lead to a fundamental discussion on the role and the division of tasks of those involved. Yet it would do no harm to consider this from time to time. In the event of board members or supervisors being held liable for example, the availability of minutes and lists of decisions is crucial. In some organizations the manager also holds the position of secretary to the board of management. Generally speaking this is an undesirable situation, since in that event the manager is also his own employer.

Recommendation 18

The board of management or the supervisory board shall appoint the accountant.

A representative of the board of management or the supervisory board shall consult with him/her at least once a year.

As an external expert the accountant assesses the financial side of the organization's activities and annually has to approve the annual report and accounts.

The accountant assists the board in the performance of its duties of supervision. For that reason it is important for the accountant not to be appointed by the manager. He or she would in that case after all appoint his or her own supervisor.

Upon appointment of the accountant the board of management or the supervisory board may also add specific wishes to the assignment. For example, the accountant may be involved in drawing up and verifying the organization's quantitative data.

In many organizations the contacts with the accountant are maintained by the managers only. In light of the duty to supervise it is desirable that direct contact exists at least one a year between (a delegation of) the board of management or the supervisory board and the accountant.

Recommendation 19

The board of management or the supervisory board shall consult and decide at least once a year about: (a) the general policy and the strategy, (b) the financial situation, including the budget and the annual accounts, (c) its method of operation and division of tasks, and (d) its own functioning also in relation to management.

This meeting shall be mentioned in the annual report. The minutes of the meeting need not be disclosed.

The board of management or the supervisory board is advised to build in a moment of contemplation from time to time in order to avoid being carried away by the day-to-day issues.

Recommendation 20

The board of management or the supervisory board shall discuss the advisability of taking out insurance against directors' liability.

Liability has become a hot issue in recent years. Whereas initially this concerned the business sector only, it now also applies to the not for profit sector.

Since board members have been found liable it is useful to consider the advisability of taking out insurance. An important question in that respect is whether risks are being run that cannot be borne.

Board members often leave the financial side of their duties to the treasurer or the treasurer-manager combination. In doing so they neglect their duties and run major risks in the event of being held liable. The board of management as a whole is responsible for the financial management.

Recommendation 21

Members of the board of management or the supervisory board shall resign prior to the end of their term when such is required in the event of inadequate performance, structurally disagreeing views, conflict of interests or otherwise.

The board members' actions should always be guided by the organization's interests. This means that their actions should be judged from that perspective.

The risk of someone being in office too long is generally much larger than the chances of someone resigning too soon. In general it is therefore advisable for board members not to remain in office for an unnecessarily long period of time.

The shift from the traditional management model to a supervisory board model is an example of a situation in which it is advisable for all board members to resign from their positions. This would be the very time for an organization to make a new start. It should also not be ruled out for that matter that former board members are appointed to the newly formed supervisory board, but all appointments must be made on the basis of a newly drawn up profile for such a board (recommendation 5).

Recommendation 22

The board of management or the supervisory board shall meet according to a fixed schedule. In the event of frequent absence this matter will be taken up with the member of the board in question.

A fixed schedule of meetings offers various benefits. Board members will know the dates of meetings well in advance. As a result they will less often be prevented from attending. It is also a good idea to provide the organization with a list of the times at which matters may be submitted to the board of management or the supervisory board.

Recommendation 23

The board of management or the supervisory board shall explain in each annual report of the organization to what extent it has complied with these recommendations on Cultural Governance.

First of all this is a way in which the organization may demonstrate to the outside world that it supports "good management and supervision". Since transparency is an important element of cultural governance, this is an opportunity for an organization to show, independent from others, how its internal affairs have been arranged.

This recommendation is furthermore relevant if the organization receives financial support, such subsidies or private grants. Most providers of financial support already require some sort of reporting. Audiences and visitors however are also interested parties entitled to information.

Lastly, reporting on the extent to which the *23 Recommendations for Cultural Governance* are complied with may also serve as a means to verify to what extent this self-regulatory device of the cultural sector serves its purpose.

Cultural Governance Advisory Council 2004

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The following organizations were involved in the realization of the 23 Recommendations for Cultural Governance:

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Directie Overleg Dans
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Holland Festival
Internationaal Filmfestival Rotterdam
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