



Code of good governance for universities 2013

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Introduction

Background

You have before you the Code of good governance for universities 2013. Since 1995 the universities have had boards of trustees and protocols and working agreements have been drawn up for each institution. Since then,, a corporate governance code (Tabaksblat Commission) was produced in 2003, which resulted in - amongst other things - corresponding codes being drawn up for (semi-)public institutions. Partly in view of a request from the government to draw up a code about the remuneration for the higher executives, the universities decided to combine this with a sector code of good governance. The governance section is the largest part with principles relating to governance, accountability and supervision, and builds on existing codes such as Tabaksblat, Charities (Goede Doelen) and the code of The Netherlands Association of Universities of Applied Sciences [HBO-raad]. The starting point for the code is always the most recent version of the Higher Education and Scientific Research Act (Wet op het Hoger Onderwijs en Wetenschappelijk Onderzoek - WHW). Obviously this needs to be obeyed, but does not form part of this code as such. Changes in the law will be incorporated in the code where applicable.

After the initial adoption and subsequently after every change the Code of good university governance is published by the Association of Universities in the Netherlands (VSNU), including on its website.

The code has been matched to the text of the WHW in force on 18 January 2012. On may 17th 2013 additional requirements for members of the board of trustees have been added.

Apply or explain

This code has been drawn up as a code of principles and is not a regulatory code. Deviation from the code requires explanation to the stakeholders. This is known as the 'apply or explain' principle.

Difference between public and private universities

The code must be independent of the nature of the institution's corporate personality and whether the institution is public or private. Of the 14 publicly-funded universities, 3 are now private entities (Vrije Universiteit Amsterdam, Tilburg University and Radboud University Nijmegen). This code takes account of the differences, but the position under public law is sometimes taken as the basis, such as with the terminology for the board of trustees.

It is anticipated that a number of universities will be making the move to private status in the future. For private institutions it is important that the board of trustees is viewed as an internal supervisory body. Special attention needs to be paid to the foundation or association council which performs an executive role and thereby has a role which goes beyond that of supervisor. The acknowledgement of the executive powers of the executive board must be included in the articles. The board of the private institutions retains its own powers under Civil Code book 2.

THE PRINCIPLES OF GOOD GOVERNANCE

I. Compliance with and enforcement of the Code of good governance

Code

- 1.1 According to their own tasks and powers, the executive board and the board of trustees are responsible for the formulation and implementation of the university's Code of good governance (hereinafter: the code) and for compliance with it.
- 1.2 The main outline of the university's governance structure is public and is kept up to date.
- 1.3 In describing the governance structure in the annual report, the executive board will indicate to what extent the rules included in the code are being followed and what alternative has been chosen where applicable, and why they have deviated from the code.
- 1.4 'Board of trustees' can also refer to the board of the corporate entity which forms a private university, or of another governing body of the corporate entity designated as such.

2. The executive board

The following sections from the WHW apply:

Section 9.2 WHW General powers of the executive board

1. The executive board is charged with the governance of the university as a whole and with its management, notwithstanding the powers of the board of trustees under this chapter.
2. The executive board will carry out tasks and exercise the powers which are assigned to the executive board of the institution by or under this law insofar as this chapter does not stipulate otherwise.
3. The chairman of the executive board represents the university at law and otherwise.

Article 9.3. Composition of the executive board; legal position of members

1. The executive board consists of up to three members, including the rector of the university. In making the appointments, as much account as possible will be taken of a balanced division of the seats across men and women.
2. Before appointing or dismissing a member of the executive board, the board of trustees will confidentially hear the university council or the staff council and the body within the university which has been established under the co-determination scheme referred to in article 9.30, third paragraph, second sentence, about the proposed decision to appoint or dismiss. Title 2 of this chapter does not apply. The hearing will take place at a time when it can have a substantive influence on the decision-making.
3. The chairman (president) of the executive board is appointed from the members of the executive board by the board of trustees.
4. The governance and management regulations will specify further rules concerning the nomination and appointment of the rector.
5. A member of the executive board may be dismissed prematurely for weighty reasons.
6. A member of the executive board cannot also be:
 - a. member of the board of trustees of the university concerned,
 - b. dean of a faculty or a member of the faculty board, unless a university consists of just one faculty,
 - c. member of the board of a course, insofar as this has been established under article 9.17 WHW, or
 - d. member of the board of trustees or the executive board of another university.
7. Further rules will be established by or under an order in council about the legal position of the chairman and the other members of the executive board.

Section 9.6 WHW Executive board's duty to inform

The executive board will provide the minister with the required information about the university.

2.1 Task and method of working

The following sections from the WHW apply:

Section 9.8 WHW Tasks of the board of trustees (see also point 3.1 of this code)

1. Taking account of the university's tasks as referred to in article 1.3 first paragraph, the board of trustees will supervise the performance of work and the exercise of powers by the executive board and will assist this board with advice. The board of trustees is in any case charged with:
 - a. appointing, suspending, dismissing and determining the remuneration of the members of the executive board;
 - b. approving the governance and management regulations;
 - c. approving the budget, the annual account, the annual report and the institution plan;
 - d. where applicable, approving the communal scheme referred to in article 8.1;
 - e. supervising the executive board's compliance with statutory obligations and its handling of the sector code referred to in article 2.9;
 - f. supervising the lawful acquisition and the effective and lawful allocation and utilisation of the funds obtained under articles 2.5 and 2.6;
 - g. appointing an auditor as described in section 393, first paragraph, of Book 2 of the Civil Code who reports to the board;
 - h. supervising a quality assurance system in accordance with article 1.18, and
 - i. reporting annually on the performance of the task and the exercise of the powers referred to under a to h in the university's annual report.

2. The board of trustees will at least twice a year consult with the university council or the staff council and the body within the university which has been established under the co-determination scheme referred to in article 9.30, third paragraph, second sentence.

Code

- 2.1.1 The executive board will report on the governance and management in the annual report.
- 2.1.2 In performing its task, the executive board will promote the interests of the university and will thereby take account of the interests of the bodies, institutions and persons connected to the university.
- 2.1.3 The executive board will provide the board of trustees with all the information it needs for the performance of its task in good time.
- 2.1.4 The executive board will ensure that the activities of the university are appropriately arranged administratively, legally, organisationally and financially, are transparent and can be accounted for.
- 2.1.5 The executive board will submit the internal risk management and monitoring systems to the board of trustees.
- 2.1.6 The executive board is responsible for organising effective and transparent co-determination for the staff and students of the university.
- 2.1.7 In addition to the matters listed in section 9.8 of the WHW, the executive board will submit the treasury plan to the board of trustees for approval.
- 2.1.8 The executive board will draw up a whistleblowers' procedure.
- 2.1.9 Subordinate positions held by members of the executive board require the permission of the board of trustees and are publicised.

2.2 Remuneration and appointment

The following sections from the WHW apply:

Section 9.3 WHW Composition of the executive board; legal position of members

7. Further rules concerning the legal position of the chairman and the other members of the executive board will be stipulated by an order in council. Relevant documents in this regard include the Order on the legal position of executive boards of public universities (Besluit rechtspositie leden van colleges van bestuur van openbare universiteiten) (Stb. 1998, 518) and the Policy framework for remuneration of executive board members 2000 (Beleidskader remuneratie leden CvB 2000), and account must be taken of the letter from the Minister of the Interior to Parliament of 22 December 2005.

Code

- 2.2.1 The executive board members will receive a remuneration for their work of which the level and structure are such that qualified and expert executive board members can be recruited and retained. The annual report sets out the key points of the board of trustees' remuneration policy for the university's executive board members.
- 2.2.2 The remuneration structure including severance pay is such that it promotes the university's medium and long-term interests, does not encourage behaviour by executive board members in their own interest and disregarding the interests of the university, and does not reward failing executive board members when they leave.

- 2.2.3 The board of trustees will set the remuneration of the individual members of the executive board, all this within a remuneration policy adopted by the board of trustees and taking account of the statutory context.
- 2.2.4 A member of the executive board will be appointed for a period to be determined by the board of trustees, after which they can be reappointed for a new period, following a careful assessment of their performance
- 2.2.5 The university will not provide the members of the executive board with personal loans, guarantees and similar.

2.3 Conflict of interest

Code

- 2.3.1 Any form or appearance of a conflict of interest between the university, including associated institutions, and members of the executive board will be avoided. Decisions to enter into transactions whereby a conflict of interest can occur require the prior approval of the board of trustees.
- 2.3.2 A member of the executive board must notify a potential conflict of interest immediately to the chairman of the board of trustees and to the other members of the executive board. The board of trustees will discuss the potential conflict of interest and how to remove it without the relevant member of the executive board being present.
- 2.3.3 A member of the executive board will not take part in the discussion or decision-making on a topic or transaction where they have a conflict of interest.

3. Board of trustees

The following sections from the WHW apply:

Section 9.8 WHW Tasks of the board of trustees (see under point 2.1 of this code)

3.7 Task and method of working

Code

- 3.1.1 In performing its task the board of trustees will promote the interests of the university, balanced with the interests of the bodies, institutions and persons associated with the university and in accordance with the vision of the university's position within society. The board of trustees is also responsible for the quality of its own performance.
- 3.1.2 As indicated above, another body such as the foundation council of a private university can also be designated as the board of trustees of the institution.
- 3.1.3 The board of trustees discusses its own performance and that of the individual members of the board of trustees at least once a year (without the executive board being present). The desired profile and the composition and skills of the board of trustees are also discussed (with the executive board being present). The board of trustees also discusses the performance of the executive board and of the individual members at least once a year (without the executive board being present). The board of trustees reports in the annual report about its activities and about its composition.

3.2 Independence

The following sections of the WHW apply: Section 9.7

WHW Composition of the board of trustees

4. The composition, tasks and powers of the board of trustees are such that the board can exercise proper independent supervision. The members of the board of trustees have no direct interest in the university. Nor are the members of the board employed by a ministry or members of the House of Representatives or Senate of the States General. They sit in a personal capacity and perform their role without being bound by mandate or consultation. The members of the board are appointed on the basis of profiles published in advance.

Code

- 3.2.1 The board of trustees is made up such that the members can operate independently and critically with respect to one another and with respect to the executive board.
- 3.2.2 The members of the board of trustees are independent in the following sense:
 - they receive no personal financial remuneration from the university or from a corporate entity associated with it, other than their remuneration as a member of the board of trustees;
 - they are not a member of the board of a corporate entity where a member of the university's executive board is a member of the Supervisory Board or the board of trustees;
 - they do not have any shareholding of more than ten percent in a company associated with the university.
- 3.2.3 The board of trustees will state in the annual report that it is the opinion of the board of trustees the principle of independence has been respected.

3.3 Expertise and composition

The following sections from the WHW apply: Section 9.7

WHW Composition of the board of trustees

- 1. The board of trustees consists of at least three and no more than five members.
- 2. The chairman and the other members are appointed, suspended and dismissed by Our minister. One of the members is appointed on the nomination of the university council or the staff council and the body within the university which has been established under the co-determination scheme referred to in article 9.30, third paragraph, second sentence. The nomination will include at least two names. If the nominated candidates are not appointed by Our minister, a new nomination will be made. Our minister can deviate from the second nomination with reasons. In the appointment, as much account as possible will be taken of a balanced division of seats between men and women. Our minister will appoint a member who particularly enjoys the confidence of the university council or enjoys the confidence of the staff council and the body within the university which has been established under the co-determination scheme referred to in article 9.30, third paragraph, second sentence jointly. The appointment is made for a period of up to four years.
- 3. A member can be dismissed prematurely for significant reasons.
- 4. (not included, since stated under 3.2 of this code)
- 5. The university council or the staff council and the body within the university which has been established under the co-determination scheme referred to in article 9.30, third paragraph, second sentence will be given the opportunity to advise the board of trustees on the profiles referred to in the fourth paragraph.

6. The executive board will provide functionally independent administrative support for the board of trustees. The board of trustees has a right of approval with regard to the appointment and the dismissal of the secretary to the board.
7. The members of the executive board will attend the meetings of the board of trustees, unless the board of trustees resolves otherwise. They thereby have an advisory role.
8. Rules will be established about allowances for the members of the board of trustees by or under an order in council.

Code

- 3.3.1 The board of trustees will draw up a profile of its size and composition, taking account of the nature of the university, its activities and the desired expertise. At least one member of the board of trustees has financial expertise. The profile is published.
- 3.3.2 Every member of the board of trustees must be able to assess the outline of the complete policy of the university. Each member of the board of trustees has the specific expertise required to fulfil their task, within their role in the context of the profile of the board. In addition, each member of the board of trustees has to meet the following requirements:
 - Members are familiar with the principles of good governance and will act accordingly;
 - Members have a demonstrable insight in and experience with complex administrative processes in both non-profit and profit organisations;
 - Members have enough time and energy available to actively contribute to the fulfilment of their tasks as members of the board of trustees;
 - Members are actively engaged in both societal and political networks of persons and institutes which are relevant to the university;
 - Members are able to independently present to the board of trustees their own provisional views and judgements and to reach a joint decision with the board through open communication.
- 3.3.3 A member of the board of trustees will only be reappointed after careful consideration by the other members of the board.
- 3.3.4 A member of the board of trustees is appointed for a period of four years, after which they can be reappointed for a fresh period up to two times following a careful assessment of the member's performance.
- 3.3.5 The board of trustees will draw up a resignation rota. This is published.
- 3.3.6 The board of trustees can appoint an audit committee and a selection/remuneration committee from amongst its members. If this is not done, the entire board will carry out these tasks.
- 3.3.7 The provisions of paragraphs 1 and 2 of section 9.7 WHW do not apply to the private universities. They will adopt rules for the various aspects taking account of the statutory provisions.

3.4 Remuneration for members of the board of trustees

The following sections from the WHW apply:

Section 9.7 WHW: Composition of the board of trustees

8. Rules will be established about allowances for the members of the board of trustees by or under an order in council.

Code

- 3.4.1 The minister or the executive board of the private entity will establish the remuneration for the members of the board of trustees.
- 3.4.2 The remuneration paid to a member of the board of trustees is not dependent on the university's results.
- 3.4.3 The notes to the annual accounts will contain the information prescribed by law concerning the level and structure of the remuneration for the individual members of the board of trustees.

4. Financial management

4.1 Financial reporting

Code

- 4.1.1 The executive board is responsible for the quality and completeness of the published financial reports. The board of trustees will ensure that the executive board adequately fulfils this responsibility.
- 4.1.2 The board of trustees will determine - in consultation with the executive board - how the external auditor is involved with the content and publication of financial reports other than the annual accounts (such as the interim reports).
- 4.1.3 The executive board is responsible for establishing and maintaining internal procedures (administrative organisation and internal auditing) which ensure that all relevant financial information is known to the executive board, so that the timeliness, completeness and accuracy of the internal and external financial reports are safeguarded. The board of trustees will supervise the establishment and maintenance of these internal procedures.

4.2 The external auditor (see WHW section 9.8 paragraph 1g, specified at point 2.7 of this code)

Code

- 4.2.1 The external auditor is appointed by the board of trustees. The awarding of the instruction and the remuneration for the external auditor are approved by the board of trustees.

4.3 The relationship with the university's governing bodies

Code

- 4.3.1 The external auditor will in any case attend the meeting of the board of trustees at which the external auditor's report on the audit of the annual accounts is discussed and where the decision is made on whether to approve or adopt the annual accounts.
- 4.3.2 The external auditor will be provided with the financial information which forms the basis for the calculation of the interim financial reports and other interim financial announcements and he will be given the opportunity to comment on all information.
- 4.3.3 The external auditor's report under Civil Code section 2:393 paragraph 4 contains the information which the external auditor wishes to bring to the attention of the executive board and the board of trustees with regard to the audit of the annual accounts and the associated audits.

4.4 Market activities

Code

- 4.4.1 The university can carry out activities which are not funded from public funds (the state contribution). The executive board will ensure that these activities are in keeping with the university's mission and do not conflict with the activities funded from public funds.
- 4.4.2 The executive board will be responsible for ensuring that the market activities are carried out in accordance with the relevant code of conduct.

5. Social accountability

Code

- 5-1 The executive board will adopt a vision of the university's position in society as a starting point or element of its policy. The executive board will translate that vision into a mission and goals for the university. The executive board will give insight into the achievement of the goals and communicate about this with the community, the government and the other stakeholders and reports on this in the annual report, all this in consultation with the board of trustees.