



FYBER N.V.

**BY-LAWS OF THE
SUPERVISORY BOARD**

Adopted by the Supervisory Board on 6 December 2017

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INTRODUCTION

- 0.1 These By-Laws are established pursuant to article 21.4 of the Articles of Association and best practice provision 2.3.1 of the Dutch Corporate Governance Code.
- 0.2 These By-Laws are complementary to the provisions regarding the Supervisory Board and the Supervisory Board members as contained in applicable legislation and regulations, the Articles of Association and the rules pertaining to the relationship between Management Board and Supervisory Board as contained in the By-Laws of the Management Board (which have been approved by the Supervisory Board).
- 0.3 These By-Laws are posted on the Company's website.¹
- 0.4 The meaning of certain capitalised or uncapitalised terms used in these By-Laws is set forth in the List of Definitions attached as **Annex 1**.

CHAPTER I COMPOSITION OF THE SUPERVISORY BOARD; POSITIONS; COMMITTEES

1. SUPERVISORY BOARD PROFILE, SIZE, EXPERTISE AND INDEPENDENCE; DIVERSITY POLICY

- 1.1 The Supervisory Board shall prepare a profile of its size and composition, taking account of the nature of the Company and its affiliated enterprise (the **Supervisory Board Profile**). The Supervisory Board Profile shall address:²
 - (a) the desired expertise and background of the Supervisory Board members;
 - (b) the desired diverse composition of the Supervisory Board as expressed in the diversity policy;
 - (c) the size of the Supervisory Board; and
 - (d) the independence of the Supervisory Board members.

The current Supervisory Board Profile is attached as **Annex 2**.
- 1.2 The Supervisory Board shall draw up a diversity policy with regard to the composition of the Supervisory Board that addresses the concrete targets relating to diversity and the diversity aspects relevant to the Company, such as nationality, age, gender and background of education and professional experience.³
- 1.3 The number of Supervisory Board members is determined by the Supervisory Board after consultation with the CEO, and has a minimum of three members, with the aim of having six members.
- 1.4 The Supervisory Board shall endeavour to ensure, within the limits of its powers, that it is at all times composed so that:
 - (a) each Supervisory Board member has the specific expertise required to perform his duties within the framework of his role within the Supervisory Board Profile;⁴
 - (b) each Supervisory Board member is capable of assessing the broad outline of the overall policy;⁵

¹ Dutch Corporate Governance Code, best practice provision 2.3.1.

² Dutch Corporate Governance Code, best practice provision 2.1.1.

³ Dutch Corporate Governance Code, best practice provision 2.1.5.

⁴ Dutch Corporate Governance Code, best practice provision 2.1.4.

⁵ Dutch Corporate Governance Code, best practice provision 2.1.4.

- (c) the Supervisory Board as a whole matches the Supervisory Board Profile and that the composition of the Supervisory Board is such that the requisite expertise, background, competencies and independence are present, enabling the Supervisory Board to carry out its duties properly;⁶
- (d) at least one Supervisory Board member shall have competence in accounting and auditing;⁷
- (e) its members are able to act critically and independently of one another, the Management Board and any particular interests involved; in order to safeguard this the Supervisory Board is composed so that:⁸
 - (i) any one of the criteria referred to in Clause 1.5(a) to (e) inclusive are applicable to at most one Supervisory Board member;
 - (ii) for each shareholder, or group of affiliated shareholders who directly or indirectly hold more than ten percent of the shares in the Company, there is at most one Supervisory Board member who can be considered to be affiliated with or representing them as stipulated in Clause 1.5(f) and (g); and
 - (iii) the total number of Supervisory Board members to whom the criteria referred to in Clause 1.5 are applicable shall account for less than half of the total number of Supervisory Board members; and
- (f) all Supervisory Board members observe the restrictions regarding the nature and number of their other positions as set forth in Clause 20.

1.5 A Supervisory Board member is not independent if the following criteria of dependence apply to him. These criteria are that the Supervisory Board member concerned, his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree:⁹

- (a) has been an employee or member of the Management Board of the Company or an affiliated company in the five years prior to their appointment as Supervisory Board member;
- (b) receives personal financial compensation from the Company, or an affiliated company, other than the compensation received for the work performed as a Supervisory Board member and in so far as this is not keeping with the ordinary business operations;
- (c) has had an important business relationship with the Company or an affiliated company in the year prior to the appointment;
- (d) is a member of the management board of a company in which a member of the Management Board is a supervisory board member;
- (e) has temporarily managed the Company during the previous twelve months due to vacant seats on the Management Board, or because Management Board members were unable to perform their duties;
- (f) has a shareholding in the Company of at least ten percent, taking into account the shareholding of natural persons or legal entities cooperating with him on the basis of an express or tacit, verbal or written agreement; or
- (g) is a member of the management board or supervisory board, or a representative in some other way, of a legal entity which holds at least ten per cent of the shares in the Company's capital, unless such entity is a member of the same group as the Company.

⁶ Dutch Corporate Governance Code, Principle 2.1.

⁷ Audit Committee Decree 2016, section 2(3).

⁸ Dutch Corporate Governance Code, best practice provision 2.1.7.

⁹ Dutch Corporate Governance Code, best practice provision 2.1.8.

2. (RE)APPOINTMENT; TERM OF OFFICE; RESIGNATION

- 2.1 The members of the Supervisory Board are appointed by the General Meeting of Shareholders.
- 2.2 The Supervisory Board nominates one or more candidates for appointment, taking into account the diversity policy adopted by the Supervisory Board with regard to its composition¹⁰. Any nomination or recommendation by the Supervisory Board for appointment or reappointment of a Supervisory Board member must be in accordance with Clause 1, including the Supervisory Board Profile. On reappointment, account must be taken of the candidate's past performance as a Supervisory Board member.¹¹
- 2.3 A nomination or recommendation to the General Meeting of Shareholders to appoint a Supervisory Board member shall state the candidate's age, his profession, the amount and number of shares he holds in the Company's capital and the positions he holds or has held, insofar as these are relevant for the performance of the duties of a Supervisory Board member. Furthermore, the legal entities of whose supervisory boards he is also a member of must be listed; if those include legal entities which belong to the same group, reference to that group is sufficient. The recommendation or nomination for appointment or reappointment shall state the reasons on which it is based.¹²
- 2.4 A Supervisory Board member shall be appointed for a period of four years and may then be reappointed once for a period of four years. A Supervisory Board member may then subsequently be reappointed again for a period of two years; which appointment may be extended by at most two years. For a reappointment after an eight-year period, reasons must be provided in the report of the Supervisory Board.¹³
- 2.5 A Supervisory Board member nominated for appointment shall attend the General Meeting of Shareholders at which votes will be cast on his appointment.¹⁴
- 2.6 Supervisory Board members shall retire periodically in accordance with a rotation plan to be drawn up by the Supervisory Board in order to avoid, as far as possible, a situation in which many Supervisory Board members retire at the same time.¹⁵ The current rotation plan is attached as **0**. The Supervisory Board may at any time amend the rotation plan. Amendments to the rotation plan, however, do not permit a sitting member of the Supervisory Board to remain in office for a longer period than appointed for, or allow that he be asked to retire before his term has expired.¹⁶
- 2.7 The Supervisory Board shall ensure that the Company has a sound plan in place for the succession of Supervisory Board members that is aimed at retaining the balance in the requisite expertise, experience, diversity and independence. Due regard must be given to the Supervisory Board Profile in drawing up that plan.¹⁷
- 2.8 A Supervisory Board member shall retire early in the event of inadequate functioning, structural incompatibility of interests, and in any other instances where deemed necessary by the Supervisory Board.¹⁸

¹⁰ Dutch Corporate Governance Code, best practice provision 2.1.5.

¹¹ Section 2:142 Dutch Civil Code.

¹² Section 2:142 Dutch Civil Code.

¹³ Dutch Corporate Governance Code, best practice provision 2.2.2.

¹⁴ Dutch Corporate Governance Code, best practice provision 4.1.8.

¹⁵ Dutch Corporate Governance Code, best practice provision 2.2.4.

¹⁶ Dutch Corporate Governance Code, best practice provision 2.2.4.

¹⁷ Dutch Corporate Governance Code, best practice provision 2.2.4 also in connection with best practice provision 2.1.1.

¹⁸ Dutch Corporate Governance Code, best practice provision 2.2.3.

- 2.9 A Supervisory Board member who is temporarily charged with the management of the Company when seats on the Management Board are vacant or Management Board members are unable to fulfil their duties, shall resign from the Supervisory Board.¹⁹

3. CHAIRMAN AND VICE-CHAIRMAN

- 3.1 The Supervisory Board shall elect a Chairman and may elect a Vice-Chairman from among its members. The Chairman shall not be a former member of the Management Board and shall be independent within the meaning of Clause 1.5.²⁰

- 3.2 The Vice-Chairman replaces, and assumes the powers and duties of, the Chairman in the latter's absence. The Vice-Chairman acts as a contact for the individual members of the Supervisory Board and the Management Board on the performance of the Chairman.²¹

- 3.3 The Chairman shall act as the spokesman of the Supervisory Board and is the main contact for the CEO, the Management Board as a whole and for the shareholders.²² The CEO and the Chairman shall meet on a regular basis.²³ As a general rule, the Chairman presides over General Meetings of Shareholders.

- 3.4 Without prejudice to the generality of Clause 3.3, the Chairman in any case sees to it that:²⁴

- (a) Supervisory Board members, when appointed, follow the introduction programme and, as needed, additional education or training programmes;²⁵
- (b) the Supervisory Board members receive all information necessary for the proper performance of their duties in a timely manner;
- (c) there is sufficient time for deliberation and decision-making by the Supervisory Board;
- (d) the Supervisory Board and the Committees function properly;
- (e) the functioning of Management Board members and Supervisory Board members is assessed at least annually;
- (f) the Supervisory Board elects a Vice-Chairman;
- (g) the Supervisory Board has proper contact with the Management Board;
- (h) the Management Board performs activities in respect of culture;
- (i) the Supervisory Board recognises signs from the enterprise affiliated with the Company and ensures that any (suspicion of) material misconduct and irregularities are reported to the Supervisory Board without delay;
- (j) the General Meeting of Shareholders proceeds in an orderly and efficient manner;
- (k) effective communication with shareholders and bondholders is assured; and
- (l) the Supervisory Board is involved closely, and at an early stage, in any merger or takeover processes.

- 3.5 In addition, the Chairman is primarily responsible for:

- (a) ensuring the proper discharge by the Supervisory Board of its duties;
- (b) determining the agenda of Supervisory Board meetings and chairing such meetings;

¹⁹ Dutch Corporate Governance Code, best practice provision 2.3.9.

²⁰ Dutch Corporate Governance Code, best practice provision 2.1.9.

²¹ Dutch Corporate Governance Code, best practice provision 2.3.7 and 2.4.3.

²² Dutch Corporate Governance Code, best practice provision 2.4.3.

²³ Dutch Corporate Governance Code, best practice provision 2.3.6.

²⁴ Dutch Corporate Governance Code, best practice provision 2.3.6.

²⁵ Dutch Corporate Governance Code, best practice provision 2.4.5.

- (c) consulting with external advisors appointed by the Supervisory Board;
- (d) addressing problems related to the performance of individual Supervisory Board members; and
- (e) addressing internal disputes and conflicts of interest concerning individual members of the Supervisory Board and the Management Board and the possible resignation of such members as a result.

4. COMMITTEES

- 4.1 The Supervisory Board may appoint standing and/or ad hoc Committees from among its members, which are charged with tasks specified by the Supervisory Board. The composition of any Committee is determined by the Supervisory Board. If the Supervisory Board consists of more than four members, the Supervisory Board shall, in any event, establish an Audit Committee, a Remuneration Committee and a Nomination Committee.²⁶
- 4.2 The Supervisory Board remains collectively responsible for decisions prepared by Committees from among its members.²⁷ The Supervisory Board may attribute powers to a Committee. A Committee may only exercise such powers as are explicitly attributed to it and may never exercise powers beyond those exercisable by the Supervisory Board as a whole. The Supervisory Board may, partial or in full, revoke any power attributed to a Committee.
- 4.3 Each Committee must inform the Supervisory Board in a clear and timely way of the manner in which it has used delegated authority and of any major development in the area of its responsibilities. All Supervisory Board members have unrestricted access to all Committee meetings and records. The Supervisory Board shall, within the term specified in the terms of reference of the Committee concerned, receive a report from each Committee of its deliberations and findings.²⁸
- 4.4 The Supervisory Board shall establish terms of reference for each Committee and may amend these at any time. The terms of reference shall indicate the role and responsibility of the Committee concerned, its composition and the manner in which it performs its duties.²⁹
- 4.5 The Supervisory Board as a rule has no "delegated Supervisory Board member" (*gedelegeerd commissaris*). Under special circumstances, however, the Supervisory Board may resolve to appoint a "delegated Supervisory Board member", in which case best practice provision 2.3.8 of the Dutch Corporate Governance Code shall apply in full.

CHAPTER II DUTIES AND POWERS

5. GENERAL DUTIES AND POWERS; RELATION WITH THE MANAGEMENT BOARD

- 5.1 The Supervisory Board supervises the manner in which the Management Board implements the long-term value creation strategy. The Supervisory Board regularly discusses the strategy, the implementation of the strategy and the principal risks associated with it.³⁰
- 5.2 The Supervisory Board is charged with the supervision of the Management Board, the general course of affairs of the Company and the affiliated enterprise. The Supervisory Board assists the Management

²⁶ Dutch Corporate Governance Code, Principle 2.3 and best practice provision 2.3.2.

²⁷ Dutch Corporate Governance Code, best practice provision 2.3.2.

²⁸ Dutch Corporate Governance Code, best practice provision 2.3.5.

²⁹ Dutch Corporate Governance Code, best practice provision 2.3.3.

³⁰ Dutch Corporate Governance Code, best practice provision 1.1.3.

Board with advice.³¹ The responsibility for the proper performance of its duties is vested collectively in the Supervisory Board.

- 5.3 In performing its duties the Supervisory Board shall act in accordance with the interests of the Company and the affiliated enterprise, taking into consideration the interests of the stakeholders.³²
- 5.4 The Supervisory Board members shall externally express concurring views with respect to important affairs, matters of principle and matters of general interest, without jeopardising the responsibilities of individual Supervisory Board members.
- 5.5 If the Management Board works with an Executive Committee, the Supervisory Board ensures that the Management Board's expertise and responsibilities are safeguarded and that the Supervisory Board is informed adequately. In this respect the Supervisory Board pays specific attention to the dynamics and the relationship between the Management Board and the Executive Committee.³³
- 5.6 Notwithstanding the provisions of Clause 6.3 of these By-Laws and clause 11.4 of the By-Laws of the Management Board, the Supervisory Board and its individual members each have responsibility for obtaining all information from the Management Board, the internal audit function, the External Auditor and if established the (central) works council needed to enable them to carry out their duties properly as a supervisory body. If deemed necessary by the Supervisory Board, it may obtain information from officers and external advisers of the Company. The Company shall provide the necessary means for this purpose. The Supervisory Board may require that certain officers and external advisers attend its meetings.³⁴
- 5.7 Each member of the Supervisory Board has access to the books, records and offices of the Company in so far as required or as is useful for the proper performance of his duties. The Supervisory Board member shall exercise this right in consultation with the Chairman, save where the applicable terms of reference of a Committee dictate otherwise.

6. DUTIES REGARDING THE ACTIVITIES OF THE MANAGEMENT BOARD

- 6.1 The supervision of the Management Board by the Supervisory Board shall include *inter alia*:
 - (a) the long-term value creation of the Company and its affiliated enterprise and weighing of the interests of stakeholders involved;³⁵
 - (b) activities of the Management Board regarding the creation of a culture aimed at long-term value creation of the Company and its affiliated enterprise;³⁶
 - (c) the internal audit function;³⁷
 - (d) the effectiveness of the internal risk management and control systems;³⁸
 - (e) the integrity and quality of the financial reporting;³⁹
 - (f) the information- and communication technology (ICT) systems of the Company and the managing of the risks associated with cybersecurity;⁴⁰

³¹ Section 2:140 (2) DCC.

³² Section 2:140 (2) DCC and Dutch Corporate Governance Code, Principle 1.1.

³³ Dutch Corporate Governance Code, best practice provision 2.1.3.

³⁴ Dutch Corporate Governance Code, best practice provision 2.4.8 and 2.4.9.

³⁵ Dutch Corporate Governance Code, Principle 1.1 and best practice provision 1.1.2.

³⁶ Dutch Corporate Governance Code, Principle 2.5.

³⁷ Dutch Corporate Governance Code, Principle 1.3.

³⁸ Dutch Corporate Governance Code, Principle 1.5.

³⁹ Dutch Corporate Governance Code, Principle 1.5.

⁴⁰ See clause 7.1(g) of the Management Board By-Laws.

- (g) the safeguarding of the Management Board's expertise and responsibilities and process of providing information to the Supervisory Board;⁴¹
 - (h) the establishment and maintenance of internal procedures which ensure that all relevant information is known to the Management Board and the Supervisory Board in a timely fashion;⁴²
 - (i) the risks associated with the remuneration structure for employees of the Company and its affiliated enterprise,⁴³ including the members of the Executive Committee who are not Management Board members; and
 - (j) the relation with the shareholders of the Company,⁴⁴ and the compliance with laws and regulations.
- 6.2 The resolutions of the Management Board listed in **Annex 3** are subject to the approval of the Supervisory Board.
- 6.3 The Management Board shall provide the Supervisory Board with the following information in a timely manner:
- (a) a report with detailed information on, among other things, mergers and acquisitions, material investments, major organisational issues, regulatory developments and other relevant issues;
 - (b) each quarter, a report with detailed information on the financial situation and development of the Company and its Subsidiaries; and
 - (c) such information as the Supervisory Board deems necessary from time to time,

which will be drafted in the format agreed upon from time to time between the Management Board and the Supervisory Board.

7. DUTIES REGARDING THE MEMBERS AND THE PERFORMANCE OF THE MANAGEMENT BOARD AND THE SUPERVISORY BOARD

- 7.1 The duties of the Supervisory Board regarding the members of the Management Board specifically include:
- (a) the selection and nomination of members of the Management Board,⁴⁵ the submission of proposals for the remuneration policy for members of the Management Board to the General Meeting of Shareholders, the determination of the remuneration (in accordance with the adopted remuneration policy) and the contractual employment conditions of Management Board members;⁴⁶
 - (b) determination of the number of Management Board members, the designation of the CEO⁴⁷, the approval (or proposal, where useful) of changes to the division of tasks within the Management Board or of the By-Laws of the Management Board;⁴⁸
 - (c) the assessment of the functioning of the Management Board and its individual members; the approval of additional positions of the Management Board to the extent required under the By-Laws of the Management Board;⁴⁹ and

⁴¹ Dutch Corporate Governance Code, best practice provision 2.1.3.

⁴² Dutch Corporate Governance Code, best practice provision 2.4.6.

⁴³ Dutch Corporate Governance Code, explanatory notes re Principle 1.2.

⁴⁴ Dutch Corporate Governance Code, best practice provision 4.1.1.

⁴⁵ See also clause 1.1 of the Management Board By-Laws and the terms of reference of the Nomination Committee.

⁴⁶ See also Clause 11 of these By-Laws, the terms of reference of the Remuneration Committee and clause 19 of the Management Board By-Laws.

⁴⁷ See the options in clause 2.1 of the Management Board By-Laws.

⁴⁸ See also clause 1 of the Management Board By-Laws.

⁴⁹ See also clause 19 of the Management Board By-Laws.

- (d) to address conflict of interest issues between the Company and members of the Management Board.⁵⁰
- 7.2 The duties of the Supervisory Board in relation to the members of the Supervisory Board specifically include:
- (a) the selection and nomination of members of the Supervisory Board and proposals to the General Meeting of Shareholders for the remuneration of members of the Supervisory Board;
 - (b) the determination of the number of Supervisory Board members, the appointment of a Chairman and Vice-Chairman, the establishment of Committees and defining their role, the evaluation of the functioning of the Supervisory Board, its Committees and the individual members of the Supervisory Board (including an evaluation of the of the Supervisory Board Profile and the introduction, education and training programme); the approval of other positions of Supervisory Board members to the extent required under Clause 20; and
 - (c) to address conflict of interest issues between the Company and members of the Supervisory Board (see also Clause 3.5(e)).⁵¹
- 7.3 At least once a year the Supervisory Board shall, without the Management Board being present, evaluate its own functioning, the functioning of its Committees and that of the individual Supervisory Board members, and discuss the conclusions that must be drawn on the basis thereof. Attention shall be paid to:
- (a) substantive aspects, the process, the mutual interaction and the interaction with the Management Board;
 - (b) events that occurred in practice from which lessons may be learned; and
 - (c) the desired profile, the composition, competencies and expertise of the Supervisory Board.⁵²
- 7.4 At least once a year the Supervisory Board shall, without the Management Board being present, evaluate the functioning of the Management Board as a whole and the functioning of its individual members, and discuss the conclusions that must be drawn on the basis thereof, such also in light of the succession of Management Board members.⁵³

8. CERTAIN OTHER DUTIES OF THE SUPERVISORY BOARD

- 8.1 The other duties of the Supervisory Board include:
- (a) duties regarding the External Auditor as described in Clause 10 and the terms of reference of the Audit Committee;
 - (b) the handling of complaints about actual (or suspected) misconduct regarding the functioning of members of the Management Board;⁵⁴
 - (c) monitoring the operation of the procedure for reporting actual or suspected misconduct or irregularities, appropriate and independent investigations into signs of misconduct or irregularities, and, if misconduct or irregularity has been discovered, an adequate follow-up of any recommendations for remedial actions; in cases where the Management Board itself is involved, the Supervisory Board may initiate its own investigation into any signs of misconduct and irregularities, and coordinate this investigation.⁵⁵

⁵⁰ See also clause 16 of the Management Board By-Laws; Dutch Corporate Governance Code, best practice provision 2.6.1.

⁵¹ See also Clause 17 of these By-Laws.

⁵² Dutch Corporate Governance Code, best practice provision 2.2.6.

⁵³ Dutch Corporate Governance Code, best practice provision 2.2.7.

⁵⁴ See also clause 6.6 Management Board By-Laws; Dutch Corporate Governance Code, best practice provision 2.6.2.

⁵⁵ Dutch Corporate Governance Code, best practice provision 2.6.4.

- (d) the taking of measures for the temporary management of the Company if a member of the Management Board is absent or prevented from performing his duties;
 - (e) other duties the Supervisory Board is charged with under legislation, the Articles of Association, these By-Laws, the terms of reference of a Committee or the By-Laws of the Management Board.
- 8.2 The Supervisory Board shall draw up a report to be included in the annual report of the Company describing its activities in the financial year concerned and containing the specific statements and information listed in **Annex 4**.⁵⁶
- 8.3 The Supervisory Board and the Management Board are jointly responsible for the corporate governance structure of the Company, compliance with the Dutch Corporate Governance Code and any other applicable legislation and regulations.⁵⁷

9. SUPERVISION OF FINANCIAL REPORTING

- 9.1 The Supervisory Board supervises compliance with internal procedures established by the Management Board for the preparation and publication of the Annual Report, the Annual Accounts, the interim figures and ad hoc financial information.⁵⁸
- 9.2 The Audit Committee shall regularly, and in any event as soon as possible, provide the Supervisory Board with reports on the Annual Accounts, and the interim figures, which will then be discussed at a meeting of the Supervisory Board. The Annual Accounts, the Report of the Management Board and the report of the Supervisory Board for the year just ended shall be discussed in a meeting with the Supervisory Board within four months of this year end. The interim figures of the Company for the respective period just ended shall be discussed in a meeting of the Management Board with the Supervisory Board within two months of the end of this period. These meetings are prepared by the Audit Committee.
- 9.3 The Audit Committee shall report to the Supervisory Board on its deliberations and findings regarding the issues referred to in clause 5.3 of the terms of reference of the Audit Committee, after which they will be discussed in a Supervisory Board meeting.⁵⁹
- 9.4 The External Auditor shall in any event attend the part of the meeting of the Supervisory Board at which the report of the External Auditor with respect to the audit of the Annual Accounts is discussed.⁶⁰ The Supervisory Board shall be permitted to examine the most important points of discussion arising between the External Auditor and the Management Board based on the draft management letter or the draft audit report.⁶¹
- 9.5 The line of contact between the Supervisory Board and the External Auditor is in principle through a designated member of the Supervisory Board or, if an Audit Committee has been established, the chairman of the Audit Committee. The External Auditor shall inform the chairman of the Audit Committee without delay if, during the performance of his duties, he discovers or suspect misconduct or irregularities within the Company and its affiliated enterprise. The Chairman will be informed of all details of the case by the chairman of the Audit Committee on a near time and on-going basis. If the actual (or suspected) misconduct or irregularity pertains to the functioning of a Management Board member, employees can report this directly to the Chairman.⁶²

⁵⁶ Dutch Corporate Governance Code, best practice provision 2.3.11.

⁵⁷ See Dutch Corporate Governance Code, part 'Compliance with the Code'.

⁵⁸ Dutch Corporate Governance Code 2009, best practice provision V.1.1.

⁵⁹ Dutch Corporate Governance Code, best practice provision 1.5.3 and 1.5.4.

⁶⁰ Dutch Corporate Governance Code, best practice provision 1.7.6.

⁶¹ Dutch Corporate Governance Code, best practice provision 1.7.5.

⁶² Dutch Corporate Governance Code, best practice provision 2.6.3.

- 9.6 The Supervisory Board sees to it that the recommendations made by the External Auditor are considered carefully by the Management Board and the Supervisory Board and, to the extent accepted, that they are actually carried out by the Management Board. This supervision may be delegated to the Audit Committee.

10. DUTIES REGARDING NOMINATION AND ASSESSMENT OF THE EXTERNAL AUDITOR

- 10.1 The External Auditor shall be appointed by the General Meeting of Shareholders.⁶³ The Supervisory Board nominates a candidate for this appointment to the General Meeting of Shareholders and may recommend replacement of the External Auditor. The Supervisory Board sees to it that the intended appointment will be notified to the AFM by the Company in accordance with the relevant provisions of law.⁶⁴
- 10.2 The Supervisory Board gives the External Auditor a general idea of the content of the reports relating to his functioning.⁶⁵ The Audit Committee shall report annually to the Supervisory Board on the functioning of, and the developments in, the relationship with the External Auditor. The Audit Committee shall advise the Supervisory Board regarding the nomination with respect to the External Auditor's appointment or reappointment or dismissal and shall prepare the selection of the External Auditor. The Audit Committee gives due consideration to the Management Board observations. The Supervisory Board shall take this into account when deciding its nomination to the General Meeting of Shareholders for the appointment of an External Auditor.⁶⁶
- 10.3 The main conclusions of the Supervisory Board regarding the External Auditor's nomination and the outcomes of the External Auditor selection process shall be communicated to the General Meeting of Shareholders.⁶⁷ If the Supervisory Board does not accept the Audit Committee's advice concerning the External Auditor's appointment, the reasons for this decision must be stated in the proposal to the General Meeting of Shareholders.⁶⁸
- 10.4 The Supervisory Board resolves, on a proposal submitted by the Audit Committee, on the External Auditor's engagement to audit the financial statements.⁶⁹ By way of implementation of the decision of the General Meeting of Shareholders, or as the case may be of the Supervisory Board or Management Board⁷⁰, to appoint the External Auditor, the Supervisory Board will on behalf of the Company enter into an agreement to that effect with the External Auditor.
- 10.5 When appointed, the External Auditor is requested to state explicitly to the Company:
- (a) to comply and continue to comply with the requirements regarding independency as included in the Act on the Supervision of Audit Organisations and other applicable laws and regulations; and
 - (b) that he has been informed of all matters provided for in the Management Board By-Laws, these By-Laws and the terms of reference of the Audit Committee, that he agrees with and will co-operate fully with their implementation.

⁶³ The External Auditor (the audit organisation) may be appointed for a term of maximum 10 years, see Section 17 EU-Regulation 537/2014 (change of responsible partner after 5 years, Section 24 Act on the Supervision of Audit Organisations)

⁶⁴ See Annex 6 of the Management Board By-Laws.

⁶⁵ Dutch Corporate Governance Code, best practice provision 1.6.2.

⁶⁶ Dutch Corporate Governance Code, best practice provision 1.6.1.

⁶⁷ Dutch Corporate Governance Code, best practice provision 1.6.4.

⁶⁸ Section 16(5) EU-Regulation 537/2014.

⁶⁹ Dutch Corporate Governance Code, best practice provision 1.6.3.

⁷⁰ See Section 2:393(2) DCC.

11. REMUNERATION OF MANAGEMENT BOARD MEMBERS

- 11.1 The Supervisory Board shall be responsible for formulating the remuneration policy of the Management Board on a proposal by the Remuneration Committee⁷¹, and its implementation. The remuneration policy, including severance payment, shall be clear and understandable, shall focus on long-term value creation for the Company and its affiliated enterprise and take into account the internal pay ratios within the enterprise. The remuneration policy shall not encourage Management Board members to act in their own interest, nor to take risks that are not in line with the strategy formulated and the risk appetite that has been established.⁷²
- 11.2 The Supervisory Board shall determine the remuneration of the individual Management Board members on a proposal by the Remuneration Committee, within the scope of the remuneration policy adopted by the General Meeting of Shareholders.⁷³
- 11.3 The Supervisory Board, or if there is one the Remuneration Committee, shall annually prepare a Remuneration Report, in which the Supervisory Board renders account of the implementation of the remuneration policy in a transparent manner.⁷⁴ This report shall also contain the information as mentioned in **Annex 5**.⁷⁵
- 11.4 The Supervisory Board shall have the power to adjust upwards or downwards the value of a variable remuneration component conditionally awarded in a particular financial year if payment thereof is unacceptable according to standards of reasonableness and fairness.⁷⁶
- 11.5 The Supervisory Board shall have the power to claim back from the managing director the variable remuneration component in part or in whole, in so far as payments were made on the basis of inaccurate information about the realisation of targets, or circumstances that such remuneration was made conditional to, that underlie the variable remuneration (*claw back clause*).⁷⁷
- 11.6 The main features of the contract of a Management Board member with the Company shall, after its conclusion, be published on the Company's website at the latest at the date of the notice convening the General Meeting of Shareholders at which the appointment of the member of the Management Board concerned shall be proposed.⁷⁸

12. RELATION WITH THE SHAREHOLDERS

- 12.1 Where appropriate, the Supervisory Board shall ensure that all shareholders and other parties in the financial markets will be provided with equal and simultaneous information about matters that may influence the share price.⁷⁹ In urgent cases when a common board decision cannot be reached timely, the Chairman of the Supervisory Board will decide on such publications and inform the Supervisory Board members immediately thereafter.
- 12.2 The Management Board and the Supervisory Board shall ensure that the General Meeting of Shareholders is adequately provided with information.⁸⁰ The Management Board and the Supervisory Board shall endeavour to procure that the General Meeting of Shareholders is provided with all requested information in time, unless this would be contrary to an overriding interest of the Company.

⁷¹ Dutch Corporate Governance Code, best practice provision 3.1.1.

⁷² Dutch Corporate Governance Code, Principle 3.1.

⁷³ Dutch Corporate Governance Code, Principle 3.2 and best practice provision 3.2.1; Section 2:135 Dutch Civil Code.

⁷⁴ Dutch Corporate Governance Code, Principle 3.4.

⁷⁵ Dutch Corporate Governance Code, best practice provision 3.4.1.

⁷⁶ Section 2:135(6) Dutch Civil Code.

⁷⁷ Section 2:135(8) Dutch Civil Code.

⁷⁸ Dutch Corporate Governance Code, best practice provision 3.4.2.

⁷⁹ See also Section 5:25i Wft and Section 5:53 paragraph 1 Wft.

⁸⁰ Dutch Corporate Governance Code, Principle 4.2.

- If the Management Board or the Supervisory Board invoke an overriding interest, they must give reasons.⁸¹
- 12.3 A proposal for approval or authorisation by the General Meeting of Shareholders shall be explained in writing. The Management Board and the Supervisory Board shall in this explanation state all the facts and circumstances that are relevant for the approval or authorisation to be granted. The explanation to the agenda shall be posted on the Company's website.⁸²
- 12.4 The Management Board and the Supervisory Board ensure that each substantial change in the corporate governance structure of the Company and in the compliance with the Dutch Corporate Governance Code will be dealt with as separate agenda items.⁸³
- 12.5 The Management Board and the Supervisory Board ensure compliance with all applicable legislation and regulations with respects to the rights of the General Meeting of Shareholders and the related rights of individual shareholders.
- 12.6 If one or more shareholders have the intention of requesting that an item be put on the agenda which may result in a change of strategy of the Company, for example as a result of the dismissal of one or several members of the Management Board or Supervisory Board, the Management Board shall respond to such request within a reasonable period of time (the **response time**). The opportunity to stipulate the response time also applies to an intention as referred above for judicial leave to call a General Meeting of Shareholders pursuant to Section 2:110 of the Dutch Civil Code. The response time shall not exceed 180 days, calculated as from the date on which the Management Board was informed by one or more shareholders of the intention to put this item on the agenda until the date of the General Meeting of Shareholders at which the item is to be dealt with. The Management Board shall use this response time for further deliberation and constructive consultation, in any event with the relevant shareholder(s), and to explore alternatives. The Supervisory Board shall monitor this.⁸⁴
- 12.7 When a takeover bid for (depository receipts for) shares in the Company is being prepared, in the event of a private bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in Section 2:107a(1)(c) of the Dutch Civil Code, and/or in the event of other substantial changes in the structure of the organisation, the Management Board shall ensure that the Supervisory Board is involved in the takeover process and/or the change in structure closely and in a timely fashion.⁸⁵
- 12.8 If a takeover bid has been announced or made for (depository receipts for) shares in the Company and the Management Board receives a request from a third competing bidder for information regarding the Company, the Management Board shall discuss such request without delay with the Supervisory Board.⁸⁶
- 12.9 The members of the Supervisory Board shall be present at the General Meetings of Shareholders, unless they are unable to attend for important reasons. Under certain circumstances, a member of the Supervisory Board may attend the General Meeting of Shareholders through means of electronic communication.
- 12.10 The Supervisory Board sees to it that the responsible partner (certifying auditor) of the firm of the External Auditor is present at the General Meeting of Shareholders and that he can address the

⁸¹ Dutch Corporate Governance Code, best practice provision 4.2.1.

⁸² Dutch Corporate Governance Code, best practice provision 4.1.4.

⁸³ Dutch Corporate Governance Code, best practice provision 4.1.3(vii).

⁸⁴ Dutch Corporate Governance Code, best practice provision 4.1.6 and 4.1.7.

⁸⁵ Dutch Corporate Governance Code, best practice provision 2.8.1.

⁸⁶ Dutch Corporate Governance Code, best practice provision 2.8.2.

- meeting. The External Auditor may be questioned by the General Meeting of Shareholders in relation to his report on the fairness of the financial statements.⁸⁷
- 12.11 The General Meetings of Shareholders are presided over by the Chairman or, in his absence, the Vice-Chairman. The Supervisory Board may designate someone else to preside over the meeting.
- 12.12 The Supervisory Board shall endeavour that minutes on the proceedings of the General Meeting of Shareholders are made available to the shareholders of the Company by publication on the Company's website no later than three months after the end of the meeting, following which the shareholders have another three months in which to respond to the report. The report is then adopted in the manner provided for in the Articles of Association,⁸⁸ by the chairman and the secretary of the meeting. The provisions of this Clause 12.12 may be disregarded if a notarial deed is drawn up of the minutes of the proceedings. After adoption the report (or the minutes as laid down in a notarial deed of proceedings) is posted as soon as possible on the Company's website. Also, results of the voting in resolutions adopted by the General Meeting of Shareholders are posted on the Company's website as soon as possible after the meeting, where they are accessible for at least one year.⁸⁹
- 12.13 A resolution of the General Meeting of Shareholders may be disclosed externally through a statement from the Chairman.

CHAPTER III SUPERVISORY BOARD MEETINGS; DECISION-MAKING

13. FREQUENCY, NOTICE, AGENDA AND VENUE OF MEETINGS

- 13.1 The Supervisory Board shall meet as often as deemed necessary for the proper functioning of the Supervisory Board. The Supervisory Board shall meet at least four times a year. Meetings shall be scheduled annually as much as possible in advance. The Supervisory Board shall also meet earlier than scheduled if this is deemed necessary by the Chairman, two other members of the Supervisory Board, or the Management Board.
- 13.2 Meetings of the Supervisory Board are in principle called by the Chairman. Save in urgent cases to be determined by the Chairman the agenda for a meeting shall be sent to all Supervisory Board members at least seven calendar days before the meeting. For each item on the agenda an explanation in writing shall be provided, where possible, and/or other related documentation will be attached. The Chairman shall in principle consult on the content of the agenda with the CEO prior to convening the meeting.
- 13.3 Each Supervisory Board member, the CEO, and the Management Board collectively, has the right to request that an item be placed on the agenda for a Supervisory Board meeting.
- 13.4 Supervisory Board meetings are generally held at the offices of the Company, but may also take place elsewhere. In addition, meetings of the Supervisory Board may be held by conference call, video conference or by any other means of communication, provided all participants can communicate with each other simultaneously.

14. ATTENDANCE OF AND ADMITTANCE TO MEETINGS

- 14.1 The CEO and CFO shall be requested to attend as many of the Supervisory Board meetings as possible, to the extent the Supervisory Board does not indicate that it wishes to meet in the absence

⁸⁷ Dutch Corporate Governance Code, best practice provision 4.1.9.

⁸⁸ Dutch Corporate Governance Code, best practice provision 4.1.10.

⁸⁹ See Section 5:25m paragraph 3 and 4 Wft.

of the CEO and CFO. If requested, other Management Board members also attend meetings of the Supervisory Board.

- 14.2 A Supervisory Board member may be represented at Supervisory Board meetings by another Supervisory Board member holding a proxy in writing. The existence of such authorisation must be proved satisfactorily to the chairman of the meeting.
- 14.3 If a Supervisory Board member is frequently absent from Supervisory Board meetings he shall be held to account on this by the Chairman.⁹⁰
- 14.4 The admittance to the meeting of persons other than Supervisory Board members, and – if invited – members of the Management Board shall be decided by majority vote of the Supervisory Board members present at the meeting.

15. CHAIRMAN OF THE MEETING; REPORTS

- 15.1 Supervisory Board meetings are presided over by the Chairman or, in his absence, the Vice-Chairman. If both are absent, one of the other Supervisory Board members, designated by a majority of votes cast by the Supervisory Board members present at the meeting, shall preside.
- 15.2 A Supervisory Board member designated for such purpose by the chairman of the meeting shall draw up a report on the proceedings at the meeting. The report shall provide insight into the decision-making process at the meeting. The report shall be adopted by the Supervisory Board at the same meeting, or the next meeting.

16. DECISION-MAKING WITHIN THE SUPERVISORY BOARD

- 16.1 The Supervisory Board members shall endeavour to achieve that resolutions are, as much as possible, adopted unanimously.
- 16.2 Each Supervisory Board member has the right to cast one vote.
- 16.3 Where unanimity cannot be reached and the law, the Articles of Association or these By-Laws do not prescribe a larger majority, all resolutions of the Supervisory Board are adopted by an absolute majority of the votes cast. In the event of a tie, the Chairman has the deciding vote if more than two Supervisory Board members are present or represented. At a meeting, the Supervisory Board may only pass resolutions if the majority of the Supervisory Board members then in office are present or represented.
- 16.4 In general, resolutions of the Supervisory Board are adopted at a Supervisory Board meeting.
- 16.5 Supervisory Board resolutions may also be adopted in writing, provided the proposal concerned is submitted to all Supervisory Board members then in office and none of them objects to this form of adoption. Adoption of resolutions in writing shall be effected by statements in writing, which can also be issued through a proxy, from all the Supervisory Board members. A statement from a Supervisory Board member who wishes to abstain from voting on a particular resolution which is adopted in writing must reflect the fact that he does not object to this form of adoption.
- 16.6 The Supervisory Board may deviate from the provisions of Clauses 16.3 (last sentence), 16.4 and 16.5 if this is deemed necessary by the Chairman, considering the urgent nature and other circumstances of the case, provided that all Supervisory Board members are allowed the opportunity to participate in the decision-making process. The Chairman shall then prepare a report on a resolution so adopted, which shall be added to the documents for the next meeting of the Supervisory Board.

⁹⁰ Dutch Corporate Governance Code, best practice provision 2.4.4.

- 16.7 A resolution adopted by the Supervisory Board may be evidenced outside the Company through a statement from the Chairman.

CHAPTER IV OTHER PROVISIONS

17. CONFLICTS OF INTERESTS OF SUPERVISORY BOARD MEMBERS

- 17.1 A Supervisory Board member is alert to conflicts of interest and shall in any case not:
- (a) enter into competition with the Company;
 - (b) demand or accept (substantial) gifts from the Company for himself or for his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree;
 - (c) provide unjustified advantages to third parties to the detriment of the Company; or
 - (d) take advantage of business opportunities to which the Company is entitled for himself or for his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.⁹¹
- 17.2 A conflict of interest may exist if the Company intends to enter into a transaction with a legal entity:
- (a) in which a member of the Supervisory Board personally has a material financial interest, or
 - (b) which has a member of the management board or the supervisory board who has a relationship under family law⁹² with a Supervisory Board member.⁹³
- 17.3 A Supervisory Board member shall without delay report any conflict of interest or potential conflict of interest in a transaction that is of material significance to the Company and/or to him as a member of the Supervisory Board to the Chairman and shall provide all relevant information, including information concerning his spouse, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree. The Chairman of the Supervisory Board shall without delay report any conflict of interest or potential conflict of interest that he has to the Vice-Chairman. The Supervisory Board member concerned shall not take part in the assessment by the Supervisory Board of whether a conflict of interest exists.⁹⁴
- 17.4 A Supervisory Board member shall not take part in any deliberation and decision-making that involves a subject or transaction in relation to which he has a conflict of interest with the Company.⁹⁵
- 17.5 A Supervisory Board member who in connection with a (potential) conflict of interests does not exercise the duties and powers that he would otherwise have as a Supervisory Board member, will insofar be regarded as a Supervisory Board member who is unable to perform his duties (*belet*).
- 17.6 All transactions in which there are conflicts of interest with Supervisory Board members shall be agreed on terms that are customary in the market. Decisions to enter into transactions in which there are conflicts of interest with Supervisory Board members that are of material significance to the Company and/or to the relevant Supervisory Board members require the approval of the Supervisory Board.⁹⁶

⁹¹ Dutch Corporate Governance Code, best practice provision 2.7.1.

⁹² A relation under family-law consists between a child, his parents and their blood relatives (Section 1:197 Dutch Civil Code).

⁹³ Dutch Corporate Governance Code, best practice provision 2.7.3, first paragraph.

⁹⁴ Dutch Corporate Governance Code, best practice provision 2.7.3.

⁹⁵ Section 2:140(5) Dutch Civil Code.

⁹⁶ Dutch Corporate Governance Code, best practice provision 2.7.4.

- 17.7 The Supervisory Board is responsible for the decision-making on dealing with conflicts of interest regarding Management Board members, Supervisory Board members and majority shareholders in relation to the Company.⁹⁷

18. REMUNERATION OF SUPERVISORY BOARD MEMBERS

- 18.1 The remuneration of the Supervisory Board members is determined by the General Meeting of Shareholders. The Supervisory Board shall from time to time submit clear and understandable proposals on its remuneration to the General Meeting of Shareholders.⁹⁸ If a Supervisory Board member is required to charge VAT on his fees, this will be paid by the Company.
- 18.2 The remuneration of a Supervisory Board member may not depend on the results of the Company.⁹⁹ A Supervisory Board member may not be awarded remuneration in the form of shares and/or rights to shares in the Company's capital.¹⁰⁰
- 18.3 Apart from their remuneration, Supervisory Board members shall be reimbursed for all reasonable costs incurred in connection with their attendance of meetings, the reasonableness of such costs being assessed by the Chairman (costs incurred by the Chairman are assessed by the Vice-Chairman). Any other expenses are only reimbursed, in whole or in part, if incurred with the consent of the Chairman (or if it concerns the Chairman, the Vice-Chairman).
- 18.4 The Company and its Subsidiaries do not grant personal loans, guarantees or the like to Supervisory Board members, save as part of its usual business operations and after approval of the Supervisory Board. Pursuant to Clause 17.4, the relevant Supervisory Board member will not take part in the deliberations and decision-making within the Supervisory Board regarding this approval. Loans are not remitted.¹⁰¹

19. INTRODUCTION PROGRAMME, ONGOING TRAINING AND EDUCATION

- 19.1 All Supervisory Board members shall follow an formal introduction programme geared to their role that covers general financial, social and legal affairs, financial reporting by the Company, any specific aspects unique to the Company and its business activities, the culture and the responsibilities of a Supervisory Board member.¹⁰²
- 19.2 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 office.¹⁰³
- 19.3 The introduction course, training and education shall be facilitated and paid for by the Company.

20. OTHER POSITIONS

- 20.1 A Supervisory Board member shall report any other position he may have to the Supervisory Board in advance. The additional positions will be discussed at least annually at a meeting of the Supervisory Board.¹⁰⁴
- 20.2 A member of the Supervisory Board will hold no more than five supervisory memberships of boards of large companies or large foundations, with a chairmanship counted twice.¹⁰⁵

⁹⁷ Dutch Corporate Governance Code, Principle 2.7.

⁹⁸ Dutch Corporate Governance Code, Principle 3.3.

⁹⁹ Dutch Corporate Governance Code, Principle 3.3.

¹⁰⁰ Dutch Corporate Governance Code, best practice provision 3.3.2.

¹⁰¹ Dutch Corporate Governance Code, best practice provision 2.7.6.

¹⁰² Dutch Corporate Governance Code, best practice provision 2.4.5.

¹⁰³ Dutch Corporate Governance Code, best practice provision 2.4.6.

¹⁰⁴ Dutch Corporate Governance Code, best practice provision 2.4.2.

¹⁰⁵ Section 2:142a Dutch Civil Code contains detailed provisions.

- 20.3 Supervisory Board members must inform the Chairman of their other positions which may be of importance to the Company or the performance of their duties before accepting such positions. If the Chairman determines that there is a risk of a conflict of interest, the matter shall be discussed by the Supervisory Board in accordance with Clause 17. If such conflict concerns the Chairman, he will inform the Vice-Chairman who then carries out the task of the Chairman as referred to in the previous sentence. A designated person shall keep a list of the outside positions concerned of each Supervisory Board member.

21. HOLDING AND TRADING SECURITIES

- 21.1 Any holding of Shares or other securities in the Company by Supervisory Board members is for the purpose of long-term investment¹⁰⁶ (minimum holding period 1 year).
- 21.2 Supervisory Board members are bound to the Fyber N.V. Insider Trading Policy regarding securities of the Company and other securities referred to in those regulations. The Insider Trading Policy is posted on the Company's website.

22. CONFIDENTIALITY

No Supervisory Board member shall, during his membership of the Supervisory Board or afterwards, disclose in any way whatsoever to anyone whomsoever any information of a confidential nature regarding the business of the Company and/or any companies in which it holds a stake, that came to his knowledge in the capacity of his work for the Company and any companies in which it holds a stake and which he knows or should know to be of a confidential nature, unless required by law. A Supervisory Board member is allowed to disclose the above information to Management Board members and Supervisory Board members as well as to staff members of the Company and companies in which the Company holds a stake who, in view of their activities for the Company and companies in which the Company holds a stake, should be informed of the information concerned. A Supervisory Board member shall not in any way whatsoever utilise the information referred to above for his personal benefit.

23. MISCELLANEOUS

- 23.1 **Acceptance by Supervisory Board members.** Anyone who is appointed as a Supervisory Board member must, upon assuming office, declare in writing to the Company that he accepts and agrees to the contents of these By-Laws and pledge to the Company that he will comply with the provisions of these By-Laws. These By-Laws are also applicable to anyone who is designated as a substitute member for a Supervisory Board member in absence or prevented from acting.
- 23.2 **Occasional non-compliance.** Subject to applicable law and regulation, the Supervisory Board may occasionally decide at its sole discretion not to comply with these By-Laws.
- 23.3 **Amendment.** These By-Laws may be amended by the Supervisory Board at its sole discretion without prior notification. Prior to amendment of these By-Laws the Management Board shall be consulted.
- 23.4 **Interpretation.** In case of uncertainty or difference of opinion on how a provision of these By-Laws should be interpreted, the opinion of the Chairman shall be decisive.
- 23.5 **Governing law and jurisdiction.** These By-Laws are governed by the laws of the Netherlands. The courts of the Netherlands have exclusive jurisdiction to settle any dispute arising from or in connection with these By-Laws (including any dispute regarding the existence, validity or termination of these rules).

¹⁰⁶ Dutch Corporate Governance Code, best practice provision 3.3.3.

23.6 **Complementarity to Dutch law and Articles of Association.** These By-Laws are complementary to the provisions governing the Supervisory Board as contained in Dutch law, other applicable Dutch, or EU regulations and the Articles of Association. Where these By-Laws are inconsistent with Dutch law, other applicable Dutch or EU rules and regulations or the Articles of Association, the latter shall prevail. Where these By-Laws are consistent with the Articles of Association but inconsistent with Dutch law or other applicable Dutch or EU rules and regulations, the latter shall prevail.

23.7 **Partial invalidity.** If one or more provisions of these By-Laws are or become invalid, this shall not affect the validity of the remaining provisions. The Supervisory Board may replace the invalid provisions by provisions which are valid and the effect of which, given the contents and purpose of these By-Laws is, to the greatest extent possible, similar to that of the invalid provisions.

* * * * *

ANNEX 1

LIST OF DEFINITIONS

1. In these By-Laws, the following terms have the following meanings:

Affiliated Company has the meaning attributed to it in Section 5:48 of the Financial Supervision Act (*Wet op het financieel toezicht*).

Annual Accounts means the annual accounts of the Company as referred to in Sections 2:101 and 2:361(1) of the Dutch Civil Code.

Articles of Association means the articles of association of the Company.

Audit Committee means the audit committee of the Supervisory Board.

By-Laws means the By-Laws of the Management Board or the By-Laws of the Supervisory Board, depending on the context, including the annexes belonging thereto.

CEO means the chief executive officer, who is also the chairman of the Management Board of the Company.

CFO means the chief financial officer of the Company.

Chairman means the chairman of the Supervisory Board.

Committee means each committee of the Supervisory Board.

Company means Fyber N.V., and, where appropriate, the subsidiary companies and possible other group companies of the Company, whose financial information is incorporated in the consolidated Annual Accounts.

External Auditor means the accounting and auditing firm that, in accordance with Section 2:393 of the Dutch Civil Code, is charged with the audit of the Annual Accounts.

General Meeting of Shareholders means the general meeting of shareholders of the Company.

Group Company has the meaning attributed to it in Section 2:24b of the Dutch Civil Code.

in writing means by letter, by e-mail, WhatsApp or by message which is transmitted via any other current means of communication and which can be received in written form.

Management Board means the management board of the Company.

Nomination Committee means the nomination committee of the Supervisory Board.

Remuneration Committee means the remuneration committee of the Supervisory Board.

Remuneration Report means the remuneration report of the Supervisory Board regarding the remuneration policy of the Company as drawn up by the Remuneration Committee.

Report of the Management Board means the report of the management board of the Company drawn up by the Management Board, as referred to in Sections 2:101 and 2:391 of the Dutch Civil Code.

Subsidiary has the meaning attributed to it in Section 2:24a of the Dutch Civil Code.

Supervisory Board means the supervisory board of the Company.

Supervisory Board Profile means the profile for the size and composition of the Supervisory Board, as designated in Clause 1.1.

Vice-Chairman means the vice-chairman of the Supervisory Board.

2. Save where the context dictates otherwise, in these By-Laws:
 - (a) unless a different intention clearly appears, a reference to a Clause or Annex is a reference to a clause or annex of these By-Laws;
 - (b) words and expressions expressed in the singular form also include the plural form, and vice versa;
 - (c) words and expressions expressed in the masculine form also include the feminine form; and
 - (d) a reference to a statutory provision counts as a reference to this statutory provision including all amendments, additions and replacing legislation that may apply from time to time.
3. Headings of clauses and other headings in these By-Laws are inserted for ease of reference and do not form part of these By-Laws for the purpose of interpretation.

ANNEX 2

SUPERVISORY BOARD PROFILE

1. Description of the nature and size of the Company and its Subsidiaries

Under clause 1.1 of these By-Laws the nature and size of the Company and its subsidiaries must be taken into account when determining the size and composition of the Supervisory Board. The Company is a public company with limited liability (*naamloze vennootschap*), incorporated under the laws of the Netherlands. The Company (together with its subsidiaries, the Group) is a holding company focused on digital advertising technology. Headquartered in Berlin, Germany, with subsidiaries in, inter alia, Petach Tikva, Israel and San Francisco, California, the Group operates in the field of digital advertising, with a strong focus on mobile, programmatic and video advertising. Its technology platforms connect app developers, media companies and digital publishers worldwide with advertisers, enabling them to efficiently monetize their content by giving streamlined access to a wide range of advertising revenue sources, such as ad networks, demand-side platforms, agencies and direct advertisers.

The markets for mobile and especially in-app advertising, one of the Company's focus areas, is relatively new, highly volatile and intensely competitive, so that the business strategies of the Company will by nature evolve very rapidly.

2. Description of the desired composition of the Supervisory Board

The Company aims to have a Supervisory Board of **six** members who bring to the table their professional relevant background, in either the Company's target markets or/and financial markets, taking into account the relevant criteria about independence and diversity that follow from the Dutch Corporate Governance Code and the Dutch Civil Code respectively. The Company in the long term aims at having a Supervisory Board with all members being independent; however, for an interim period the minimum aim is having three out of six members being independent in the meaning of the Dutch Corporate Governance Code.

3. Description of the desired expertise and background of the individual members of the Supervisory Board

A person shall be suitable for performing the duties of a member of the Supervisory Board if he or she strives to comply with (the majority of) the following criteria:

- (a) knowledge of and experience in financial, legal, economic, commercial, social and marketing areas
- (b) experience with (the management or supervision of the management of) a listed company
- (c) national and international experience with groups of companies
- (d) experience with corporate governance
- (e) experience with organisational processes
- (f) knowledge of and experience and affinity with the business of the Company and its Subsidiaries
- (g) knowledge of information and communication technology systems (ICT) and related cyber security risks (disruption, failure or abuse of ICT)
- (h) expertise on the field of technological innovation

- (i) expertise on the field of new business models
- (j) to be able, also by having a sufficient amount of available time, to supervise and promote the policy of the Management Board and the general course of affairs within the Company timely and adequately and to assist the Management Board with the preparation and implementation of its policy
- (k) to be able to operate independently and critically in relation to the other members of the Management Board and the Supervisory Board and to take measures in the absence of the Management Board to provide for the management of the Company
- (l) to be prepared to take a seat in the Audit Committee, the Remuneration Committee and/or the Nomination Committee
- (m) to be prepared to do an introduction, education or training programme
- (n) to be prepared to approve of these By-Laws
- (o) not to have a conflict of interest at the time of appointment
- (p) to be prepared and able to act as Chairman and/or Vice-Chairman
- (q) to be prepared and able to lead the General Meeting of Shareholders
- (r) to be prepared and able to temporarily manage the Company if one or more members of the Management Board are absent or unable to perform their duties
- (s) to be a team player
- (t) to match with the composition of the Supervisory Board at the time of appointment]

4. Diversity policy of the Supervisory Board

The Supervisory Board shall draw up a diversity policy with regard to the composition of the Supervisory Board that addresses the diversity aspects relevant to the Company, such as nationality, age, gender, and education and work background.¹⁰⁷

5. Size and composition of the Supervisory Board

- (a) Point of departure at all times is that the size of the Supervisory Board must be such that the Supervisory Board as a whole can perform its duties effectively and responsibly and that each individual member of the Supervisory Board is able to make a contribution by his specific qualities.
- (b) Without prejudice to the provisions of Clause 5(a) above, the Supervisory Board endeavours to achieve that it consists of six members.
- (c) The Supervisory Board must at all times be so composed that Clause 1.4 of these By-Laws is complied with as much as possible.

6. Miscellaneous

- (a) The Supervisory Board discusses at least once a year, without the Management Board being present, the composition and competence of the Supervisory Board.¹⁰⁸
- (b) Each change to the Supervisory Board Profile will be discussed at the General Meeting of Shareholders.¹⁰⁹

¹⁰⁷ Dutch Corporate Governance Code, best practice provision 2.1.5

¹⁰⁸ Dutch Corporate Governance Code, best practice provision 2.2.6.

¹⁰⁹ Section 2:158 Dutch Civil Code.

- (c) This Supervisory Board Profile must be taken into account on each (re)appointment of members of the Supervisory Board.¹¹⁰
- (d) This Supervisory Board Profile is posted on the Company's website.¹¹¹

¹¹⁰ Dutch Corporate Governance Code, Principe 2.2.

¹¹¹ Dutch Corporate Governance Code, best practice provision 2.1.1.

Fyber N.V.
ROTATION PLAN
SUPERVISORY BOARD MEMBERS

A member of the Supervisory Board is appointed for a period of four years by the General Meeting of Shareholders and may then be reappointed once for another four-year period.

After this eight-year period, the Supervisory Board member may be reappointed again for a period of two years, which may be extended by another two years. This 2 x 2 years' extension is subject to justification in the Report of the Supervisory Board.

Name (year of birth)	First appointment	Last re-appointment	Possible re-appointment¹⁾	Possible re-appointment¹⁺²⁾	Retirement deadline
D. van Daele (1961)	2013	2016	(2020 ²⁾)	(2022 ²⁾)	2020 (2024 ²⁾)
Y. Valler (1970)	2017	-	2021		2025 (2029 ²⁾)
K. Sehnaoui (1978)	2017 ¹⁾	-	2021		2025 (2029 ²⁾)
vacant					
vacant					
vacant					

1) For approval by the General Meeting of Shareholders

2) In addition, subject to justification in the Report of the Supervisory Board

The (re)appointment terms are based on the Dutch Corporate Governance Code in its current version (8 December 2016).

ANNEX 3

LIST OF APPROVAL SUPERVISORY BOARD

The approval of the Supervisory Board is required for:

- (a) the allocation of duties of the Management Board to individual members of the Management Board;¹¹²
- (b) the establishment of an Executive Committee;¹¹³
- (c) all transactions between the Company and natural or legal persons who hold at least 10% of the shares in the Company that are of material significance to the Company and/or such persons;¹¹⁴
- (d) all transactions in which there are conflicts of interest with Management Board members that are of material significance to the Company and/or the relevant Management Board members;¹¹⁵
- (e) all transactions in which there are conflicts of interest with Supervisory Board members that are of material significance to the Company and/or the relevant Supervisory Board members;¹¹⁶
- (f) determining the operational and financial objectives of the Company;
- (g) determining and amending the strategy designed to achieve the objectives;
- (h) determining and amending the parameters to be applied in relation to the strategy (for example in respect of the financial ratios);
- (i) the corporate social responsibility issues that are relevant to the company;
- (j) all investments that are outside the scope of ongoing business, and in particular, but not only, investments by acquisition of other companies, purchase of real estate;
- (k) any issuance of debt instruments or other financial market instruments;
- (l) new policies and changes to existing policies of the Company; and
- (m) all other acts that require the approval by legislation, the Articles of Association, the By-Laws of the Management Board, the By-Laws of the Supervisory Board, the Dutch Corporate Governance Code or any other applicable legislation.

¹¹² Management Board By-Laws, clause 1.8.

¹¹³ Management Board By-Laws, clause 4.1.

¹¹⁴ Management Board By-Laws, clause 6.7.

¹¹⁵ Management Board By-Laws, clause 17.6.

¹¹⁶ Supervisory Board By-Laws, Clause 17.6.



Decision Making Authority Fiber Bodies (I/II)

	Supervisory Board (SB)	Management Board (MB)	Corporate Management (CM)
Budget and Strategy	<ul style="list-style-type: none"> Group strategy Approval of annual budgets All acquisitions and JVs (including asset deals) All disposals Strategic Agreements, partnerships >€10m or 10% Group revenues 	<ul style="list-style-type: none"> Subsidiary budgets Entry in new markets All new product decisions leading the company into new fields, e.g. new product launches / significant new product features 	<ul style="list-style-type: none"> Launch of new product features (subject to expenditure)
Legal and Governance	<ul style="list-style-type: none"> Any changes to corporate and legal residence, governance etc. of holding Incorporation and closing of subsidiaries Appointment of Group Auditors (subject to GM approval) Key Group policies, e.g. Accounting policies, Insider trading policies Financial guarantees > €1m Adoption of annual accounts (subject to GM approval) 	<ul style="list-style-type: none"> Change in company name, corporate and legal structure, by-laws, residence, corporate identity of an entity other than the holding Appointment of subsidiary auditors Litigations and legal actions >€100k Any dealings of company with Senior Management >€5k (other than employee compensation) Profit transfer agreements Financial guarantees <€1m 	<ul style="list-style-type: none"> Litigations and legal actions <€100k Delegation of authority to senior management within authority of subsidiary
Personnel	<ul style="list-style-type: none"> Appointment MB (subject to GM approval) Compensation policy, incentive schemes (incl. SOP) Compensation Management Board (subject to GM approval) Initiation or change of collective bonus or pension schemes 	<ul style="list-style-type: none"> See Hiring Matrix (Slide 7) (MB 11.9.2015) All non-ordinary contracts and bonuses at subsidiary level with values >€100k Entering or modifying collective bargaining agreements 	<ul style="list-style-type: none"> See Hiring Matrix (Slide 7) (MB 11.9.2015)

3

Decision Making Authority Fiber Bodies (II/II)



	Supervisory Board (SB)	Management Board (MB)	Corporate Management (CM)
Commercial Agreements	<ul style="list-style-type: none"> Commercial agreements >€10m / 10% gross revenues Group All contracts with prepayments or financial commitments, performance guarantees and/or penalties >€5m 	<ul style="list-style-type: none"> Approval of General Terms of Sales (GTS) for subsidiaries -> delegated to GC! (MB 11.9.2015) All contracts >€1m annual value or length / notice period > 1 year All contracts with prepayments or financial commitments, performance guarantees and/or penalties -> see Developer Fund (MB 11.9.2015) Contracts with liability >€500k / €100k 	<ul style="list-style-type: none"> All contracts with >€500k annual contract value Material deviations from liability / payment terms of GTS (CEO: minor deviations from GTS) Every contract with liability >€200k
Expenditures	<ul style="list-style-type: none"> Unbudgeted Opex: >€1m Capex (incl. IT development projects, land and buildings) Budgeted capex >€5m Unbudgeted Capex >€1m Purchase of any land or buildings 	<ul style="list-style-type: none"> Opex <ul style="list-style-type: none"> Budgeted Opex: >€250k pa Unbudgeted Opex: >€50k pa Capex (incl. IT development projects): >€50k pa Lease/sales-leaseback agreements > 1 year Asset disposal with book value >€10k 	<ul style="list-style-type: none"> Opex <ul style="list-style-type: none"> Budgeted Opex: >€50k pa Unbudgeted Opex >€10k Capex (incl. IT d
Financing	<ul style="list-style-type: none"> Any borrowing >€5m, any capital market issuance (equity, debt) Any intercompany loans >€5m Hedging policies 	<ul style="list-style-type: none"> All borrowings/loans <€5m Any intercompany loans >€100k Factoring agreements Any loans to third parties Deposits >€1m or non-A-rated banks Any commitment with no secured financing in place Any hedging or other derivative agreement Asset pledges and other collaterals (incl. covenants) 	<ul style="list-style-type: none"> Supplier financing up to €1m in aggregate, e.g. extended payment terms (but not borrowings) Deposits <€1m at A-rated banks Cash planning of subsidiary and formulation of associated financing needs

ANNEX 4

INFORMATION TO BE INCLUDED IN THE SUPERVISORY BOARD REPORT¹¹⁷

The annual report of the Supervisory Board shall in any case contain the following information:

- (a) an account of the involvement of the Supervisory Board in the establishment of the strategy, and the way in which the Supervisory Board monitors its implementation;¹¹⁸
- (b) if there is no internal audit function, the conclusions and any recommendations of the audit committee regarding the need for an internal audit function and assessment of alternative measures;¹¹⁹
- (c) the absenteeism rate at Supervisory Board meetings and Committee meetings of each Supervisory Board member;¹²⁰
- (d) a statement that in the opinion of the Supervisory Board Clause 1.4(e), 1.5 and 3.1 of these By-Laws have been complied with and which member or members of the Supervisory Board, if any, shall not be deemed independent;¹²¹
- (e) a reference as to how the evaluation of the Supervisory Board, the Committees and the individual members of the Supervisory Board described in Clause 7.3 of these By-Laws has been carried out and what has been of will be done with the conclusions from the evaluations;¹²²
- (f) a reference as to how the evaluation of the Management Board and the individual members of the Management Board described in Clause 7.4 of these By-Laws has been carried out and what has been or will be done with the conclusions from the evaluations;¹²³
- (g) the arguments for reappointment of a member of the Supervisory Board after a period of eight years;¹²⁴
- (h) a reference to the Supervisory Board resolutions pursuant to Clauses 23.2 and 23.3 of these By-Laws, to the extent of material significance;
- (i) for each Committee: a report on how it has performed its duties in the financial year; details of its existence, its composition, number of meetings and the main issues discussed;¹²⁵
- (j) the following information on each Supervisory Board member:¹²⁶ (i) gender; (ii) age; (iii) nationality; (iv) chief position; (v) other positions to the extent relevant for the performance of his duties as member of the Supervisory Board; (vi) date of initial appointment and term of appointment of relevant member of Supervisory Board.

¹¹⁷ Dutch Corporate Governance Code, best practice provision 2.3.11.

¹¹⁸ Dutch Corporate Governance Code, best practice provision 1.1.3.

¹¹⁹ Dutch Corporate Governance Code, best practice provision 1.3.6.

¹²⁰ Dutch Corporate Governance Code, best practice provision 2.4.4.

¹²¹ Dutch Corporate Governance Code, best practice provision 2.1.10.

¹²² Dutch Corporate Governance Code, best practice provision 2.2.8(i) en (iii).

¹²³ Dutch Corporate Governance Code, best practice provision 2.2.8(ii) en (iii).

¹²⁴ Dutch Corporate Governance Code, best practice provision 2.2.2.

¹²⁵ Dutch Corporate Governance Code, best practice provision 2.3.5.

¹²⁶ Dutch Corporate Governance Code, best practice provision 2.1.2.

ANNEX 5

EXTERNAL AUDITOR INDEPENDENCE POLICY

The policy set out below was adopted by the Supervisory Board on 6 December 2017, on a proposal of the Audit Committee and after consultation with the Management Board.

1. Policy

The Company and its Subsidiaries use the services of the External Auditor to the extent this does not prejudice the independence of the External Auditor.

2. Terms of Reference

The External Auditor must be independent within the meaning of EU Regulation 537/2014 on specific requirements regarding statutory audit of public-interest entities, the Act supervision audit firms (*Wet toezicht accountantsorganisaties* (Wta)) and the Regulation on the independence of auditors with respect to assurance assignment (*Verordening inzake de onafhankelijkheid van accountants bij assurance-opdrachten* (ViO)) of the Royal Dutch Professional Organisation of Auditors (*Koninklijk Nederlandse Beroepsorganisatie van Accountants*).

The Audit Committee sees to it that the external auditor complies with the relevant recommendations, provisions and statutory provisions, and may request more detailed explanations and written confirmations from the external auditor that these provisions are followed.

3. Audit Services

In addition to complying with section 5 paragraph 1 of the EU Regulation, the firm of the External Auditor that conducts the statutory audit of a public-interest entity shall not render any other services to this entity in addition to the audit services.¹²⁷

The External Auditor or any other member of the network to which the external auditor or its firm belongs, may directly or indirectly only render auditing services to the Company and the enterprises its controls during:

- (a) the period between the beginning of the period audited and the issuing of the audit report; and
- (b) the financial year immediately preceding the period referred to in point (a) in relation to non-audit services.¹²⁸

Audit services is the audit of the annual financial reports of the Company, the assessment of interim financial reports that are disclosed, services that are traditionally provided by the external auditor and that are related to filings and obligations under legislation or regulations, and services that only the external auditor as such can reasonably provide.

The External Auditor does not need to go through a tender process for each individual engagement.

4. Rotation of the External Auditor and Partners responsible for Audit Services

In order to prevent that the External Auditor and the Company become too close, the number of years a firm of an external auditor may be engaged and a certain person may be part of the audit team of the External Auditor, is capped.

¹²⁷ Section 24b par 2 Act supervision audit firms (*Wet toezicht accountantsorganisaties* (Wta)). This provision also applies to other parts of a network of which the external auditor's firm is a part of, as set out in more detail in Section 24b par 2 Wta.

¹²⁸ Section 5 EU Regulation 537/2014.

The External Auditor charged with the statutory audit must be replaced after a maximum period of ten years after the start of their involvement. The External Auditor is not allowed to work on a new assignment for the Company until at least four years have expired from the date of its replacement.¹²⁹

Partners in the audit team of the External Auditor who are charged with essential audit tasks must be replaced after a maximum period of five years after the start of their involvement.¹³⁰

The Audit Committee shall also supervise the risks of dependency of other members of the audit team of the External Auditor who are involved with the audit for a significant period. The Audit Committee shall consult the responsible partner of the External Auditor regularly on safeguards set up by the External Auditor to assess the risk of dependency and to reduce it to an acceptable minimum level.

5. Appointment of the External Auditor

The External Auditor shall be appointed in accordance with Clause 10 of these By-Laws. If the decision is taken to call in the services of another External Auditor, the tender process approved by the Audit Committee shall be followed.

6. Staff transfer restrictions

The Company and the External Auditor shall agree on a policy regarding the restriction of staff transfers from the Company and its group to the organisation of the External Auditor and vice versa, taking into account all relevant legislation and regulations.¹³¹ This policy is subject to the approval of the Supervisory Board.

¹²⁹ Section 17 EU Regulation 537/2014.

¹³⁰ Section 24 Wta.

¹³¹ Like art. 42 of the Regulation on the independence of auditors with respect to assurance assignment (*Verordening inzake de onafhankelijkheid van accountants bij assurance-opdrachten* (ViO)) of the Royal Dutch Professional Organisation of Auditors (*Koninklijk Nederlandse Beroepsorganisatie van Accountants*)

ANNEX 6

INFORMATION TO BE INCLUDED IN THE REMUNERATION REPORT

The Remuneration Report shall contain an account of the manner in which the remuneration policy has been implemented in the past financial year, as well as an overview of the remuneration policy planned by the Supervisory Board for the next financial year and subsequent years.¹³²

The overview shall furthermore, in any event, contain the following information:¹³³

- (a) how the implementation of the remuneration policy contributes to long-term value creation;
- (b) that scenario analyses have been taken into consideration;
- (c) the pay ratios within the Company and its affiliated enterprise and, if applicable, any changes in these ratios in comparison with the previous financial year;
- (d) in the event a Management Board member receives variable remuneration: how this remuneration contributes to long-term value creation, the measurable performance criteria determined in advance upon which the variable remuneration depends and the relationship between the remuneration and performance; and
- (e) in the event that a current or former Management Board member receives a severance payment, the reason for this payment.

¹³² Dutch Corporate Governance Code, best practice provision 3.4.1 (j).

¹³³ Dutch Corporate Governance Code, best practice provision 3.4.1 (ii), (iii), (iv), (v) and (vi).