

Municipal Heating Foundation Eindhoven and the Claimcode

Introduction

Municipal Heating Foundation Eindhoven (Stichting Stadsverwarming Eindhoven, hereinafter SSE) was founded on December 22, 2015 and represents the interests of users of municipal heating in the municipality of Eindhoven. Users include all current/former owners, (re)tenants, occupants and users of houses and buildings which use municipal heating as well as other persons and institutions which use municipal heating. The foundation tries to achieve its objective by conducting (collective) actions and claiming damages both in and out of court for persons or entities as referred to above.

In this regard, SSE as collective advocate endorses the 2019 Claim Code (hereinafter Claim Code) and the principles on which it is based. This accountability document addresses the principles of the Claim Code.

The Claim Code has seven principles that can be understood as broadly supported, general views on how foundations and associations that promote collective interests and may conduct collective proceedings to that end should operate. These principles set standards for the conduct of the founders, board members, supervisory boards and advisors engaged by the foundation or association and their methods.

The following explains how SSE has implemented and is implementing the principles of the Claim Code in accordance with the "comply or explain" principle.

1. Compliance and enforcement of the Claim Code

The broad outline of SSE's governance structure, partly based on the principles of Claim Code, is explained each year on a publicly accessible part of SSE's website (www.stadsverwarming-eindhoven.nl/en/about-us). In doing so, SSE explicitly explains the extent to which it follows the provisions contained in this code and, if not, why and to what extent it deviates from them. Through this accountability document, SSE complies with the first principle of the Claim Code.

2. Advocacy of collective non-profit interests

SSE represents the non-profit interests of its statutory constituency. The board members receive no remuneration for their activities. They are, however, entitled to reimbursement of expenses incurred by them in the performance of their duties. In practice, reimbursements relate only to expenses actually incurred such as travel expenses. All fees agreed with board members are included as such, with explanatory notes, in SSE's annual financial statements.

The board represents the foundation and consists of at least three members. The power of representation is also vested in two board members acting jointly. If the board decides to dissolve the foundation, the liquidation surplus will be used for the benefit of a public benefit institution with a similar objective. SSE thus complies with the second principle of the Claim Code.

3. External funding

An interest group may enter into an agreement with a solid external financier for the purpose of financing its statutory activities. The conditions imposed by the Claim Code on such a financier and other parties involved are not relevant in the case of SSE because SSE does not

have an agreement with an external financier as meant by the Claim Code. SSE finances its activities through (voluntary) contributions from persons for whose benefit SSE acts under its statutory objective. In addition, SSE receives an annual financial contribution from Residents' Association Meerhoven (Bewonersvereniging Meerhoven, hereinafter referred to as BVM) to cover its fixed costs. In both cases, a financing agreement is not an issue.

SSE has entered into a contract of assignment with an Eindhoven law firm to provide SSE with legal assistance and also to have the foundation represented in and out of court by one or more lawyers. This contractually ensures that the lawyer acts exclusively for and on behalf of SSE and its statutory supporters. Various legal expenses insurers of SSE's statutory supporters reimburse the cost of this work in accordance with their policy conditions. The extrajudicial costs and litigation expenses collected by the lawyer do not benefit SSE, but are settled by the lawyer directly with the insurers. SSE thus complies with the third principle of the Claim Code.

4. Independence and avoidance of conflict of interest

The composition of the board is such that members can operate independently and critically with respect to each other. There are no close family or similar relationships within the board including marriage, registered partnership and unmarried cohabitation. Nor do the board members hold any main or ancillary positions that prejudice their independent and critical operation within SSE. Nor have they entered into any agreements with any person or entity with which they are involved in the capacity of board member, founder, shareholder, supervisor, partner or employee. SSE thus complies with the fourth principle of the Claim Code.

For the sake of completeness, we mention that two board members of SSE are also board members of BVM. However, this does not affect the independent and critical operation of these board members within SSE. BVM does not interfere with the content of SSE which can be verified on the basis of public documents of the General Meeting of BVM. In addition, BVM's financial contribution is not necessary for the continued existence of SSE. In addition to SSE, other foundations receive similar financial contributions from BVM.

5. The composition, task and working method of the board

The board of SSE consists of at least three members. The board members are appointed and suspended by the board. The number of board members is determined by the board unanimously and is currently three. The board is charged with managing the foundation and represents the foundation. The power of representation also accrues to two board members acting jointly. SSE has a generally accessible website www.stadsverwarming-eindhoven.nl on which information relevant to its members under the statutes is posted. SSE communicates with its supporters via newsletters, information meetings and personally by e-mail and telephone.

The board has relevant legal and financial expertise that is necessary for adequate representation of the interests described in the statutory objective. Two board members have more than 15 years of experience as board members, of which the first board member, Ruben Trieling, has legal experience and expertise in the field of civil and administrative proceedings and the second board member, Geert van Buul, has financial experience and expertise as treasurer. The third board member, Kees Verhagen, works as an energy advisor at the 040energie association and has experience and expertise in the field of energy issues.

The fact that the board of SSE has relevant experience and expertise to adequately manage the foundation is confirmed by the fact that the Oost-Brabant District Court ruled in favor of SSE by judgment of January 16, 2022. In that judgment, the court explicitly stated that SSE has sufficient knowledge and skills. In addition, SSE has successfully supervised three trial procedures in which the foundation has demonstrated its expertise.

The board is obliged to draw up, put on paper and adopt the balance sheet and the statement of income and expenditure of the foundation annually within six months after the end of the financial year. The balance sheet and the statement of income and expenditure are examined by an expert appointed by the board. This expert reports to the board on his research.

SSE does not have a supervisory board. In doing so, SSE deviates from elaboration V.6 of the Claim Code, which requires the board to submit the balance sheet and the statement of income and expenditure and the budget to the supervisory board for approval. Nevertheless, SSE believes that the absence of a supervisory board is justifiable in this case. After all, SSE represents the interests of its supporters on a non-profit basis. The board members receive no remuneration for their work. In addition, SSE has no agreement with external funders. Finally, the balance sheet and statement of income and expenditure are examined by an expert appointed by the board and the board meets the requirement of a minimum of three members. Supporters are also actively involved through newsletters and information meetings. All this ensures that there is sufficient control and supervision and that there is no question of an interest group with strong commercial motives from which the board members benefit greatly.

Because of the absence of a supervisory board, SSE also partially deviates from elaboration V.7 of the Claim Code which requires the board to submit decisions that are (potentially) far-reaching for the interest group and its stakeholders to the supervisory board for approval. Apart from appointment and dismissal of board members, the board has not had to take any other far-reaching decisions and does not expect to have to take such decisions in the near future. In addition, SSE's statutes provide in any case that the board can only take decisions if the majority of the board members in office are present or represented. A resolution to amend the statutes or dissolve the foundation must be passed by a majority of at least two-thirds of the number of votes cast at a meeting at which at least two-thirds of all board members are present or represented.

SSE thus largely complies with the fifth principle of the Claim Code

6. Board members' fees

SSE represents the interests of its members on a non-profit basis. In accordance with the statutes of SSE, board members do not receive any remuneration for their activities. They are, however, entitled to reimbursement of the costs incurred by them in the performance of their duties. In practice, the reimbursements only relate to costs actually incurred, such as travel expenses. All remunerations agreed with board members are included as such, with an explanation, in the annual accounts of SSE. SSE thus complies with the sixth principle of the Claim Code.

7. The Supervisory Board

SSE has no supervisory board. With this, SSE deviates from principle VII of the Claim Code that the foundation has a supervisory board. Nevertheless, SSE believes that the lack of a supervisory board can be justified in this case. See explanation at point 5.

Eindhoven, March 15, 2023