

Summary, conclusions and recommendations *The terms of reference of the investigation*

On 4 April 2018, the Supervisory Authority of Collecting Societies of Copyrights and Neighbouring Rights (CvTA) resolved to institute the Inquiry Committee tasked with conducting a Closer Investigation into Buma/Stemra (hereinafter: the Committee). The Committee consists of drs. L.J.E. (Leo) Smits (chairman) and prof. mr. dr. J.W. (Jaap) Winter (member).

In joint consultation with Buma/Stemra's Board of Directors, the Committee was presented with four requests. This paragraph details each of these four requests and outlines the Committee's findings followed by the conclusions where applicable. The paragraph is rounded off with a run-down of the recommendations put forward by the Committee in its treatment of the four requests.

The first request related to a detailed analysis of the findings established by accounting firm BDO and the opinion put forward by law firm NautaDutilh, including a criminal assessment of these findings. Taking up office in June 2016, Buma/Stemra's Chief Executive Officer (CEO) found himself faced with questions regarding the annual statement of accounts and the financial questions which he felt were inadequately answered. The CEO also received a report from a member of staff (whistleblower) regarding accounting malpractices. In December, the Chairman of the Board and the CEO called on NautaDutilh to deliver an opinion. NautaDutilh in turn requested BDO to carry out a forensic investigation of individuals in 2017. Buma/Stemra provided BDO with six terabytes' worth of data to be investigated. NautaDutilh returned an opinion, putting forward a criminal assessment of three findings which had emerged from BDO's investigation.

BDO's investigation focused on advance payments to IT service provider Accenture for services performed for Buma/Stemra. The investigation also dealt with the administrative processing of a number of invoices raised by a company by the name of SIS Finance. These invoices related to services which, at the time when the invoices were processed in 2015, had not yet been delivered in full. Other than this, BDO's investigation also focused on the account rendered for expenses in the administration, on withdrawals from a pension deposit scheme, on questions relating to the remuneration of Management and on the expense declaration behaviour of a number of employees, as well as the cost of a rented building in The Hague.

The CvTA asked the Committee to perform a detailed analysis of BDO's findings and of NautaDutilh's opinion on potential offences. The CvTA also asked the Committee to probe Buma/Stemra's IT organisation and the

foreign distribution. The latter element relates to monies coming in from foreign countries which are posted in the year of receipt under the collected licence fees to be distributed, even though the licence fees relate to previous years.

The second request put to the Committee was to probe the functioning of the financial function at Buma/Stemra and to establish whether it is sufficiently robust for Buma/Stemra's role as a collecting society.

In part, the third request was prompted by media reports on expenses incurred by Buma/Stemra's CEO that were published in 2017. The expenses incurred by the CEO and his expense notes are part of the Committee's detailed investigation. In doing so, the Committee also looked into the circumstances in which he joined Buma/Stemra in 2007 and his appointment into office as Buma/Stemra's CEO in 2016.

Lastly, the fourth request relates to the position of the Buma Culture Foundation. Financial problems considering the Amsterdam Dance Event were in part what prompted the Committee's detailed investigation into this matter. In 2017, it emerged that a 450,000 euro loss had been sustained over 2016. The organisation of the Amsterdam Dance Event comes under the scope of operation of the Buma Culture Foundation.

The Committee's closer investigation

Request 1: BDO's investigation and NautaDutilh's opinion, including a criminal assessment of the findings.

BDO's findings

Account rendered for expenditures

BDO sought to establish whether in accepting the account rendered for expenditures, Buma/Stemra worked towards the turnover and distribution percentage permitted for expenditures (15 percent). The Committee found that all expenditures that are less easy to accurately establish when posted in permanent general ledger accounts are duly accounted for. The probe did not reveal that the organisation worked towards the permitted expenditure percentage.

The pension deposit scheme held with PNO media

PNO Media is a pension fund for the media and the creative sector. It holds deposits of pension contributions paid in for the benefit of Buma/Stemra. It has been suggested that sums from this deposit scheme were

arbitrarily diverted to Buma/Stemra in some years, but not in other years. In the 2016 annual statement of accounts, KPMG comprehensively detailed the background of the deposit scheme and the apportionment thereof. KPMG does not report on arbitrary apportionments. The Committee analysed the deposit scheme and the withdrawals, arriving at the conclusion that the withdrawals were not transacted improperly.

Questions about remuneration and expense notes

In its reward policy, Buma/Stemra is seen to comply with the Standards for Remuneration Act. In the 2016 auditor's report, KPMG took the view that the Board of Directors needed to flesh out the policy framework in greater detail and establish clear guidelines for expense notes. NautaDutilh's opinion does not dilate on this issue. The Committee endorses the public accountant's recommendations.

Nor did NautaDutilh offer any comments regarding the expense notes of the employees probed as part of BDO's investigation. The same holds true for the Committee. However, it does strike the Committee as odd that the CEO's expense notes were not scrutinised as part of this investigation. The explanation offered by the CEO was that he had already instructed corporate detective services agency Hoffmann Bedrijfsrecherche B.V. to conduct an investigation into a number threats he had received, going on to say that he also had his expense notes investigated. The Committee fails to see a link between an investigation into the personal safety of the CEO and a probe into his expense declaration behaviour. This being the case, seizing on BDO's investigation to vet his expense notes would have been the obvious thing to do.

Rent in The Hague

NautaDutilh did not put forward any comments in respect of the rental of the building occupied by Buma/Stemra in The Hague. Similarly, there were no reasons for the Committee to explore this topic any further.

The Committee has no reason to doubt BDO's factual findings.

The opinion delivered by NautaDutilh

In response to the events investigated by BDO, NautaDutilh produced an opinion which involved an assessment of three potential offences. For the first potential offence, the deliberate disclosure of untrue statements of account, balance sheets, profit and loss accounts or notes or wilfully allowing such to be publicised,

NautaDutilh itself already noted that the actions established are 'insufficiently material'. The two other potential offences relate to forgery or the use of forged records or acting as an accessory therein or inciting such forgery or the use of forged records. NautaDutilh advised sounding out the Public Prosecutor's Office on this matter on an informal basis, and to report the matter, if deemed appropriate.

NautaDutilh elucidated its report at a meeting of Buma/Stemra's Board of Directors, pointing out that there are in fact no reasons to assume that the investigation established elements which would constitute grounds for the Public Prosecutor's Office to investigate the matter further. In its elucidation to the Board of Directors, NautaDutilh believed the chances of a successful criminal prosecution to be slim.

Based on an appraisal of the facts, the Committee arrives at the same conclusion. In 2015, the organisation's administration processed invoices raised by SIS Finance. The invoices related to services that had not yet been delivered in full at the time. In 2016, credit notes were received for these invoices. Furthermore, Accenture sent in an invoice for services which also had yet to be delivered. In this case, the services in question related to the performance of the agreement between Accenture and Buma/Stemra, for which no incitement can be said to exist.

Appraisal of NautaDutilh's opinion and the findings of BDO's investigation

The Committee examined BDO's findings and NautaDutilh's opinion. Looking at both, the Committee believes no irregularities of note took place. The CEO was of the opinion that his earlier questions had failed to be met with an appropriate answer and that a report had come in denouncing malpractices. The Committee believes the answers brought to the CEO's queries were generally appropriate and correct and that the report of malpractices was procedurally weak and without much in the way of substance and fact. This being the case, there was no need to commission a forensic investigation of individuals. Clarity could have been shed more swiftly and with less rigmarole in the matters the CEO was looking to raise.

The IT organisation

The Committee looked into the development of the IT organisation and finds that the IT system has been (sorely) tested in recent years. The IT organisation is grappling with a substantial legacy in a fast changing IT landscape and in a context of developments (such as the explosive growth in the amount of data and distributions) which are to have a major impact on any system. For all that, the Committee found that the IT

organisation is well capable of rendering a report of Buma/Stemra's financial position and to prepare a balance sheet any time when called upon. This being the case, the Committee is unable to share BDO's findings, or to endorse NautaDutilh's legal reading which suggested Buma/Stemra is unable to comply with its statutory obligations in respect of establishing its financial position.

Foreign distribution

The Committee was asked to conduct an in-depth investigation of the foreign distribution. The foreign distribution revolves around sums deriving from abroad which, in the year of receipt, are posted under the collected licence fees to be distributed insofar as the rights holders are known, even though the licence fees relate to previous years. These sums were correctly processed in the organisation's administration. The accounts entry process adheres to the appropriate steps in the treatment of foreign distribution. The analysis of the de facto process shows that the administrative processing and the recognition in the annual statement of accounts constitute a sedulous treatment in Buma/Stemra's administration. A substantial sum received from other countries is still on the books at the end of the financial year as it is not yet clear at this point in time to whom these sums are to be paid. The investigation did not show that the amount of time involved in doing so is drawn out for longer than necessary.

Request 2: Buma/Stemra's financial function

The Committee was asked to examine the functioning of the financial function at Buma/Stemra and to ascertain whether this function is sufficiently robust for Buma/Stemra's role as a collecting society.

Further to the current CEO's appointment into office a rift developed between the CEO and his management team. Right after he had been appointed, a procedure was initiated to see the COO dismissed. XXXXX as well as YYYYY have been ill for quite some time. It struck the Committee to see that all key figures within the financial function have since left Buma/Stemra. Given the de facto absence of a management team which advised the CEO on various matters, the current CEO has become a manager who largely manages the organisation on his own. Since he took up office as the CEO, there has been a strong movement within Buma/Stemra to get rid of in-house know-how and to source in outside know-how instead.

It became clear to the Committee that a problematic relationship arose between him and senior people in charge within the financial function. Moreover the Board of Directors failed to conduct robust financial

supervision, with an audit committee, which was instituted in part at the urging of the CvTA, that has no solid supervisory role of substance. This produced a situation of enfeebled management of the financial function in an in-house climate of distrust and conflict where insufficient checks & balances are seen to exist for the CEO managing the organisation on his own. This constitutes a threatening situation to Buma/Stemra.

The recent restructuring operation combines two key characteristics: firstly, there is the way in which the organisation is designed with a focus on users on the one hand and rights holders on the other, and secondly there is the decentralisation of part of the financial function in both of these branches. These two changes make it more difficult for the CEO to properly manage the financial function.

The audit committee was established by tasking the business operations committee to also serve as the audit committee. The audit committee convenes to meet four times a year. The terms of reference for the investigation by BDO and NautaDutilh were not discussed at the audit committee, nor were a lot of the elements that were put forward as topics of investigation. The relationship with the in-house statutory auditors is limited.

The creators and the publishers are represented on the Board of Directors. By definition, this acts to create a conflict of interests which has an impact on the decision-making. The Committee believes that the investigations conducted by BDO and NautaDutilh and the conclusions drawn by both probes have exacerbated the managerial situation of an inherent conflict of interests as a result of mounting internal distrust and conflict.

Buma/Stemra's Management and Board of Directors are reticent about involving the public accountant. The independent and expert public accountant is not consulted in the face of ambiguities in the organisation's business operations and reporting activities. Contact remains confined to what is appropriate in the annual cycle in a formal sense. There has been no contact ahead of BDO's investigation and NautaDutilh's opinion.

The outcomes of BDO's investigation and NautaDutilh's opinion were not such that they required changes to be brought to the 2015 annual statement of accounts, or that they required an unqualified opinion to be withheld approving the 2016 annual statement of accounts. KPMG carefully examined the elements that emerged from the investigations conducted by BDO and NautaDutilh. The financial function engaged in an intensive relationship with KPMG to this end.

Request 3: Expense notes, initial nomination and appointment into office of the CEO

The CEO himself commissioned the services of Hoffmann Bedrijfsrecherche B.V. to vet his expense notes. All expense notes carried the approval of the Chairman of the Board. The Committee draws on the elements included by Hoffmann Bedrijfsrecherche B.V. in its report and finds that it is unclear which standards were adopted to approve the CEO's expense notes. Stand-out elements are substantial purchases in the area of personal ICT equipment and the purchase of business class airline tickets.

XXX

YYY

The Committee found that a strict selection procedure was observed in the run-up to the appointment into office of a new CEO, whereby the appointments committee spoke to six people, and two assessments were carried out. When one of the two remaining candidates withdrew as he refused to comply with the procedural requirements, this left the current CEO as the sole candidate. The profile set out the requirement for the new CEO to be experienced in heading up a similar organisation. This requirement was dropped. The Committee was unable to establish whether, after the new CEO had been appointed into office, systematic efforts were made to remove the shortcomings flagged up in the assessment conducted by Volta, an executive search agency. What is known is that the CEO picked one of Volta's partners as his coach.

Request 4: The Buma Culture Foundation and its relationship with Buma/Stemra

The Amsterdam Dance Event is Buma Culture's main activity. The Committee is of the opinion that the financial administration of the Amsterdam Dance Event showed weak points, which allowed matters to result in an unexpected 450,000 euro shortfall for 2016. However, given the foundation's financial resources, combined with the grant from Buma, it would have been easy enough for Buma Culture itself to absorb the acute liquidity deficit which arose in early 2017.

Yet the root cause of this financial problem is the administrative disentwining in 2016, which meant that unforeseen situations that would previously have been flexibly dealt with in the current account relationship with Buma/Stemra, now needlessly became a problem.

Buma/Stemra's involvement with Buma Culture is such that it is difficult for the Committee to explain why Buma/Stemra's Board of Directors and Management take the view that Buma Culture is not a group organisation of Buma Association (Vereniging Buma) within the meaning of art. 2: 24b Civil Code, for which Buma/Stemra is required to consolidate the financial results in its annual statement of accounts as Buma/Stemra is able to exercise dominant control over Buma Culture or holds central control over Buma Culture.

The role of the Board of Directors

In the investigation into the four requests, in all cases the role of the Board of Directors comes into focus in a variety of ways. The Committee sees that applicable laws and regulations lead to divergent interests being lumped together in the way the supervision is designed. In some cases, oppositions are seen to exist between creators and publishers. These oppositions manifest themselves within the Board of Directors itself and have an impact on its functioning. The Committee believes that these oppositions also have repercussions in the organisation. In addition, the organisation is seen to anticipate these oppositions in putting forward proposals. In some cases, the position adopted, both within the Board of Directors and in the organisation, is more determined by these oppositions than by views on the actual substance of proposals or events. The Committee believes this came to the fore in the failing of the financial supervision, but equally in the way the forensic investigation of individuals was commissioned. Even in respect of the appointment of the CEO, the Committee noticed that the perception was one of a leader who defends the interests of the creators or as someone who tends to be more favourably disposed towards the publishers. The oppositions arising from the applicable laws and regulations call for governance that has a mitigating effect on these oppositions. The same applies to the organisation's management. The shortfalls established by the Committee boil down to an insufficient understanding of the effects of these oppositions and an unduly unambitious policy and policy implementation aimed at counteracting the said shortfalls.

Recommendations

Article 1.2. of the Inquiry Committee Institution Decision specifies that the Committee is to conduct an independent investigation into the functioning of the Buma Association, the Stemra Foundation (Stichting Stemra) and the Buma Culture Foundation associated therewith, and that the Committee is to put forward

recommendations to improve the said functioning, where possible. Where appropriate, recommendations have been included in the report where it discusses the four requests. These recommendations have been gathered below.

Request 1: BDO's investigation and NautaDutilh's opinion, including a criminal assessment of the findings.

In its investigation of this request, the Committee is not putting forward any recommendations.

Request 2: Buma/Stemra's financial function.

Following in the footsteps of KPMG, the Committee advises the Board of Directors to flesh out the policy framework in respect of the expenses charged to the 'Management' cost centre in greater detail and to establish clear guidelines for expense notes for the benefit of Management. In doing so, due consideration should be given to the guidelines and the scope of application specified in this regard by VOICE, a branche organisation.

In order to establish the costs per licence category, the Committee recommends implementing an *activity-based costing* system, so that Buma/Stemra does not just found accountability and control on an arbitrarily determined allocation of costs, as is currently the case with the allocation of costs between the legal entities Buma Association and Stemra Foundation.

The Committee recommends putting in place a CFO under the articles of association alongside the CEO, who has direct access to the Supervisory Board. The Supervisory Board is to make sure that the relevant arguments and views in connection with major decisions to be made are expressly discussed.

The Committee believes it is necessary for the Supervisory Board to be actively involved in Buma/Stemra's financial management through the institution of an audit committee of independent experts who are in direct contact with Buma/Stemra's in-house statutory auditors.

The Committee advises charting the implications of the 2017 restructuring operation, as an exercise in which the corporate financial function and the public accountant are to be emphatically involved. Due to the recent decentralisation of the financial function it is to be recommended that the central functional management is strengthened, to ensure that Buma/Stemra's Management has a due understanding of and a grip on the local implementation at all times. The same applies to the legal function. The Committee advises reconsidering the

split in functions that has been implemented, or at least to expressly put measures in place that act to restore the full responsibility for the organisation's financial management and accountability.

Buma/Stemra is currently calling on the services of hired outside experts. The Committee urges for the reinforcement of the financial function that has been set afoot to be continued, for vacancies to be filled, new employees to be inducted into these functions and for the organisation to cautiously drive down the use of temporary employees.

The Committee recommends vigorously tackling fiscal matters and to arrive at arrangements with the Dutch Tax and Customs Administration on the corporation tax as quickly as possible.

To minimise the risks as much as possible, it is customary internationally for service organisations to be required to submit a so-called ISA3402 statement at regular intervals. Through this statement the service provider shows that management and accountability are compliant, with an independent expert stating his opinion on the matter. The Committee advises Buma/Stemra to demand this type of statements from outside service providers from now on.

The Committee recommends reassessing the existing procedures to promote compliance with (reporting) rules and embedding the recalibrated procedures within the organisation by way of periodically rendering account on the set-up, the existence and the operation of the internal control of processes for the benefit of professional rights holders and setting up appraisals thereof by an independent expert.

The Committee is of the opinion that the organisation has turned a corner with the priorities of the CIO. The Committee also considers it paramount that the system is unburdened, that a members' portal is set up and adjustments are implemented in line with the General Data Protection Regulation (GDPR) and other security measures. The Committee recommends continuing on the path now travelled.

The Committee advises exploring how the supply of information to the CvTA could be improved. The Committee calls for the opportunities to be explored to improve the tools available to the CvTA in order to effectively perform its supervisory duties.

Request 3: Expense notes, initial nomination and appointment into office of the CEO.

The Committee recommends establishing which documents need to be included in staff's personnel record files and to check whether these documents are actually included in their record files. The organisation also needs to determine for which employees a Certificate of Good Conduct (Verklaring Omtrent het Gedrag - VOG) is required. Recommendations in respect of expense notes were put forward under the previous request.

Request 4: The Buma Culture Foundation and its relationship with Buma/Stemra.

The Committee recommends to examine in detail whether Buma Culture is a group organisation of the Buma Association, within the meaning of art. 2: 24b Civil Code, for which Buma/Stemra is required to consolidate the financial results in its annual statement of accounts. The management and accountability is to be brought in line with the managerial interference.

Pre-empting the above, the Committee recommends aligning the allocation of grants and the financial planning of Buma Culture activities.