

## **Recommendation and Support for the Further Development of documenta und Museum Fridericianum gGmbH**

Statement on the Results of the Commenting Procedure

(04/08/2024)

On 12/15/2023, METRUM presented the Final Report of the Organizational Review to the Supervisory Board of documenta und Museum Fridericianum gGmbH (hereinafter referred to as “gGmbH”). The public was then invited to comment on five of METRUM’s 22 recommendations specifically.

All comments were processed and analyzed by Prof. Dr. Joanna Ozga and Mira Bickert from Fulda University of Applied Sciences. The analysis is qualitative in nature, since the procedure was not designed to be representative, meaning the focus is primarily on the content of the comments.

Laid out below is METRUM’s statement on the content of the comments. We base ourselves here on the long version of the evaluation of 5/2/2024, but in some cases also refer to the individual responses, which we have also viewed.

In many cases, the comments have enhanced the process and provided important information for the implementation of the recommendations.

In our statements below, the main focus is on dealing with the critical comments, as these – as is usual with open surveys – clearly outweigh the positive comments in terms of volume (if not in terms of number). We take note of the numerous positive and affirmative, mostly short comments, but will only mention them in individual cases in our statement.

### **1. Statement on the Comments made on the Recommendation “Retention of the Finding Committee with Adjustments”**

The first major point of criticism is that selection of the Finding Committee by the Management and subsequent appointment by the Supervisory Board would lead to inappropriate political and non-art-related influence on documenta. In this regard, we would like to point out, as clearly stated in the Final Report (hereinafter referred to as “FR”), that this approach is in no way new. On the contrary, it is 100% in line with the approach adopted for previous documenta exhibitions, such as documenta 14. It is therefore clearly not the case that Management has been “bolstered” compared with past editions in this respect.

Even beyond focusing on the successes of the past, we are convinced that this approach is the right one because:

- The personal relationship between the Management of the gGmbH and the members of the Finding Committee seems to us to be a crucial success factor. This relationship has an ideal starting point with each side being free to mutually select the other (see also FR p. 24).
- The chain of appointments purely based on technical competence has to stop somewhere, because even if a technical committee were to be formed to appoint the Finding Committee, this committee would in turn still have to be appointed itself, etc.

The second major point of criticism is that the “soft quotas” recommended by us for appointments to the Finding Committee would lead to appointments with suboptimal artistic value or curatorial competence. We consider this point of criticism to be misguided: In the documenta exhibition, as we understand the brand in the analysis (FR, p. 15), artistic value is substantively and essentially linked to the diversity of perspectives. A Finding Committee consisting only of European, cis-male persons of advanced age, for instance, could not be an appropriate body for the documenta exhibition, regardless of the professional competence of its members. The previous appointments suggest that great care and a sense of proportion were already taken in the past to ensure the Committee is diverse in its composition. We are aware that a strict, binding “quota-based composition” is not possible due to the large number of perspectives that must theoretically be taken into account, which is why we explicitly (FR, p. 23) only recommend “soft quotas” to be taken as guidelines. It is up to the Management to decide upon a coherent composition of the Finding Committee as a whole.

## **2. Statement on the Comments made on the Recommendation “Two Codes of Conduct”**

The main and most serious criticism of this Recommendation is that this set-up would restrict artistic freedom. We have divided our statement in response to this criticism into three points:

1. References to existing FR content, where we explain why the existing Recommendation takes this aspect into account – one that is very important to us, and respects artistic freedom
2. An in-depth summary of the objectives of this Recommendation from METRUM’s perspective
3. Proposals for a simplified, internationally convincing rule for the public communication of the Recommendation

**Re. Point 1:** The Recommendation (clearly formulated in the FR, p. 25) does not state that the content or form of a Code of Conduct extending into the artistic/curatorial realm should be externally imposed upon the Artistic

Direction. Instead, it is explicitly stated that such an understanding of the Artistic Direction's Code of Conduct would violate and restrict artistic freedom and should therefore be rejected (FR, p. 26). We are aware that the national and international art world's trust in documenta and its professional reputation is largely based on the preservation of artistic freedom. Both our Final Report (FR, p. 13) and the evaluation of the commenting process make this clear. We therefore merely recommend that the Artistic Direction be obliged to formulate its own Code of Conduct independently and freely only after the contract has been concluded and without the involvement or approval of the Management, Supervisory Board, or Shareholders. In this Code of Conduct, the Artistic Direction should set out how – in line with its artistic concept – respect for human dignity is guaranteed in the documenta exhibition. We explicitly point out (FR, p. 26) that the interpretation of what "protection of human dignity" means in the context of upcoming exhibitions, or which definitions of, for example, "discrimination" are to be applied, should be left to the Artistic Direction. We are convinced that such an obligation does not constitute a restriction of artistic freedom: On the contrary, the mere obligation to inform the public about one's own ethical stance and to take responsibility for this stance does not pose any risk to artistic freedom.

In this context, we would also like to draw attention to a longer quote from Prof. Möllers' report: "Their protection of fundamental rights does not exempt artists in state cultural institutions, especially at management level, from any responsibility towards the state and the public. Their responsibility to the public manifests itself in the public debate about their artistic practices, in the broadest sense in criticism. For this reason alone, they owe the public transparency about decision-making processes within the framework of freedom of information rules. As a rule, they will not be able to invoke artistic freedom, without this question needing to be clarified in more detail here, in relation to freedom of information requests from the public, because these have no restrictive effect on artistic activities." (Translated quote, original wording in German reads: "Ihr Grundrechtsschutz stellt Kunstschaaffende in staatlichen Kulturinstitutionen, insbesondere auf der Leitungsebene, nicht von jeder Verantwortlichkeit gegenüber dem Staat und der Öffentlichkeit frei. Ihre Verantwortung gegenüber der Öffentlichkeit manifestiert sich in der öffentlichen Auseinandersetzung über ihre künstlerischen Praktiken, im weitesten Sinne in der Kritik. Schon aus diesem Grund schulden sie der Öffentlichkeit Transparenz über Entscheidungsvorgänge im Rahmen der Informationsfreiheitsregeln. Auf die Kunstfreiheit werden sie sich, ohne dass diese Frage hier genauer zu klären wäre, gegenüber Informationsanfragen der Öffentlichkeit in aller Regel nicht berufen können, weil diese keine einschränkende Wirkung auf künstlerische Tätigkeiten haben.") (Möllers, p. 27).

The following concerns remain: Is the gGmbH's obligation – recommended in the Final Report, to publicly distance itself from the artwork or contextualize

it in the case of artworks perceived as discriminatory though not prosecutable under criminal law, in terms of PR and in the worst case even against the will of the Artistic Direction – potentially a threat exerted by the Management with respect to the Artistic Direction? Here, too, we refer to Prof. Möllers' expert opinion: "Artists who are harshly criticized in public and therefore complain about 'censorship' or 'public pressure' indicate that they do not accept their informal responsibility in an open society. In legal terms, this complaint remains irrelevant." (Translated quote, original wording in German reads: "Künstlerinnen (sic!), die scharf öffentlich kritisiert werden und sich deswegen über „Zensur“ oder „öffentlichen Druck“ beklagen, zeigen damit an, dass sie ihre informelle Verantwortung in einer offenen Gesellschaft nicht annehmen. Rechtlich bleibt diese Klage irrelevant.") (Möllers, p. 28).

**Re. Point 2:** In this point, the Recommendation on the Codes of Conduct are to be further explained over and beyond the content of the Final Report, without altering the actual content of that Recommendation. The background to these explanations is also the fact that the many comments have given us a better understanding of where a clarification of the Recommendation could possibly help to prevent misunderstandings.

We have divided the argumentation for our Recommendation into five steps. These aim to make the argumentation clear for decision-makers and the public. They also aim to clarify where they might diverge from the Recommendation without needing to forego its essential benefits.

**Argumentation Step 1:** German criminal law leaves space for instances where works of art manifestly violate human dignity, e.g. because they are clearly anti-Semitic, anti-Muslim, sexist and/or racist, but these cannot be prosecuted under criminal law.

**Argumentation Step 2:** A preventive ban and/or subsequent "taking down" of such works of art that are not punishable under criminal law, but which in the view of the state art administration – in this case the gGmbH and its bodies/committees – nevertheless contain discriminatory content, is not recommended, as this approach would constitute censorship.

**Argumentation Step 3:** It follows from Steps 1 and 2 that it cannot be guaranteed that such discriminatory artworks will not be put on display in publicly funded exhibitions.

**Argumentation Step 4:** If this case occurs, the organizational structure of the state cultural administration must be such that three desiderata are met:

- a) The state cultural administration can convincingly demonstrate to the public, and in particular to the group discriminated against, that it has taken the utmost care to prevent something of this kind from happening while fully respecting artistic freedom. This means the impression is never created that the issue has been "taken lightly".

- b) The artistic protagonists – in the case of documenta primarily the Artistic Direction – and the public are unequivocally aware that the artistic protagonists are not only responsible for the artistic design, but also for ensuring that human dignity is not violated by discriminatory content. The interpretation of this responsibility must be open to the artistic protagonists, but they must publicly face up to this responsibility in the discourse and must not evade it by saying “that wasn’t my job”.
- c) The state cultural administration must know in good time if a case of this kind will occur and prepare itself to counter it discursively. This makes it clear to the public that such discrimination will not go unanswered in the institution’s operations. Under certain circumstances, this can also include deploying contextualization and/or distancing measures in close proximity to the artwork.

**Argumentation Step 5:** In METRUM’s view, the approach formulated in our Recommendation of two Codes of Conduct on an equal footing is the most suitable tool for achieving all three desiderata described in the Argumentation Step 4: The Artistic Direction formulating its own Code of Conduct for the protection of human dignity at an early stage and at the request of the gGmbH and publishing it on the website means a) and b) are fulfilled. By conducting an in-depth, non-power-based dialogue between the Artistic Direction and the gGmbH after the Code has been drafted, the gGmbH can quickly notice if there are any divergent positions and prepare itself.

This approach using five Argumentation Steps also makes it possible to categorize possible divergent opinions and ideas:

At present, we cannot imagine any comprehensible reasons for doubting Step 1. Step 2 could possibly be questioned, but that would lead to more, not less, state intervention. Step 3 obviously follows from 1 and 2. It is conceivable that Step 4 could be questioned, either in the sense that there are additional desiderata or that some of these desiderata are not desirable at all. However, we are not aware of any convincing arguments in this direction that can be interpreted as “taking it lightly”.

The most obvious divergence would be at Step 5 – if another tool could be found that fulfills the desiderata from Step 4 in a convincing way, this tool would be just as suitable as the Codes of Conduct proposed by METRUM and could well replace this measure. METRUM is not currently aware of any such proposal, but we do not rule out that one might be found.

**Re. Point 3:** Notwithstanding these statements, there is a suspicion that the concept of the two Codes of Conduct is too complicated to swiftly and effectively refute the distorted image of a documenta or German cultural administration that violates artistic freedom, especially in an international context. Since the international recognition and appreciation of documenta

also play a central role in the successful and relevant positioning of documenta in the future, this concern must be taken very seriously. METRUM therefore proposes a number of formulations below, all of which reflect our Recommendation correctly in terms of content, albeit partially in abbreviated form.

“If documenta follows the Recommendation on the two Codes of Conduct:

- ...all artistic and curatorial decisions remain 100% in the hands of the Finding Committee and the Artistic Direction. None of these decisions will be overruled by the Management or politicians – unless punishable under criminal law.
- ...there are no bans and regulations, but instead a mutual commitment to early, non-power-based dialogue.
- ...the gGmbH and its bodies will always quickly, emphatically, and publicly counter all forms of discrimination through distancing, criticism, counter-events, and contextualization.
- ...documenta will categorically reject all demands from politicians not to show, or to take down works – as long as there is no criminal offence.
- ...the Artistic Direction of documenta may define for itself how it understands the protection of human dignity and must only commit itself to adhering to this definition in its curatorial work.
- ...the state cultural administration will have a good justification that it has taken the maximum possible care within the framework of artistic freedom to ensure that no human rights violations occur during the exhibition.
- ...there is an orderly process and a clear division of responsibilities in dealing with discrimination that is completely free of censorship and thus ultimately protects artistic freedom and enables open and controversial debate.”

To illustrate this, the diagram below shows our Recommendation in an abbreviated but clear form:



Figure 1: Illustrative Diagram Showing the Division of Responsibilities over Time in the Exhibition on those Topics relevant to the Code of Conduct

### 3. Statement on the Comments made on the Recommendation “Optimization of the Supervisory Board and Establishment of the Scientific Advisory Board”

The first major criticism of this Recommendation is that the introduction of an advisory board could act as an external control or restriction of the Artistic Direction, as experts with different opinions on the artistic content would now be represented there.

By contrast, we have had wide experience with advisory boards of cultural institutions, which show that members of these bodies act with caution and respect the responsibility and decisions of those artistically responsible.

At this point, however, we would like to reiterate the envisaged role of the Advisory Board: The Advisory Board should primarily be available to all decision-makers as a discussion partner in times of crisis and change. In such cases, it provides internal and confidential information, in particular international perspectives and assessments. The Advisory Board has no decision-making powers of its own, and for this reason alone cannot restrict artistic action. Therefore, nowhere in the Report is it stipulated that the Artistic Direction must coordinate its concepts with the Advisory Board or anything similar.

This leads to the second point of criticism of the Recommendation: the recommended composition of the Supervisory Board of 5 to 9 people, including the Chair of the Scientific Advisory Board as well as representatives of the city, federal state and federal government, is criticized on a variety of counts. Consequently, it is feared that the Supervisory Board would, on the one hand, have too little expertise and, on the other, would comprise too few people to guarantee a diversity of perspectives.

In response to the first aspect, it should be noted that the Recommendation provides for the integration of expertise through the Chair of the Scientific Advisory Board having a permanent voting seat on the Supervisory Board. With regard to the second aspect, it should be pointed out that, in our experience, the ability of a supervisory body to work depends crucially on it not being too large (FR, p. 29): a group that is too large finds it much more difficult to involve all its members in the discussion and decision-making process than a small one. It should also be noted that the voting members of the Supervisory Board of the gGmbH are currently exclusively state officials. Especially since the federal government no longer holds the two non-voting seats, there has been a complete lack of any art-specific perspective. This situation had already been criticized in the Report of the Expert Advisory Panel (p. 108).

However, through studying the comments, we have come to the conclusion that our Recommendation needs adaptation in one respect: we would like to withdraw the idea that the federal government should appoint the Chair of the Scientific Advisory Board. Such a procedure would de facto restrict the self-determination of the Advisory Board too much. Should the size of the Supervisory Board tend towards nine persons, this would suggest a second position should be provided so as to appropriately represent the federal government (because, in line with the adapted proposals, the Chair of the Advisory Board is no longer elected by the federal government). The obvious composition of the Supervisory Board would thus be: 3 city, 3 federal state, 2 federal government, 1 Chair of the Scientific Advisory Board (a total of 9 persons); or 2 city, 2 federal state, 1 federal government, 1 Chair of the Scientific Advisory Board (a total of 6 persons).

#### **4. Statement on the Comments made on the Recommendation “Clarification of the Tasks of Management and Artistic Direction”**

The main criticism of this Recommendation is that it bolsters the Management in comparison to the Artistic Direction, thereby running counter to its positively assessed role as an “enabler”.

In our view, there appears to be a serious misunderstanding in this instance. It is not intended that the Management should be “bolstered”. On the contrary: the recommended division of tasks is explicitly and closely oriented



to the distribution of roles in successful past editions of the documenta exhibition (clearly formulated in the FR, p. 30). If, in line with our Recommendation, this division of roles were to be set out in writing for the first time in Rules of Procedure, this tried and tested division of responsibilities would become more binding. In any case, it would then be impossible for the Management, with reference to the overall responsibility of the Management pursuant to the German Law on Limited Liability Companies (GmbHG), to encroach upon the interests of the Artistic Direction.

In this context, we would also like to note that we clearly recommend that the title of “General Director” – a post held by the Management of documenta 15 – be discontinued. In the German cultural landscape at least, it implies significantly greater co-determination in programming than the division of tasks we have proposed.

The fact that the Management concludes the contract with the Artistic Direction in line with our Recommendation does not, to our mind, constitute any significant bolstering. This is a formal act where the Management must fully comply with the selection of the Finding Committee.

Finally, we fully agree with the comment raised a number of times that the work of the education department is part of the artistic concept of the exhibition and must therefore not be directed by the Management. This is precisely why the Final Report stipulates that this department be managed under the professional guidance of the Artistic Direction (FR, p. 30).

## **5. Statement on the Comments made on the “Management Board” Recommendation**

The main criticism of this Recommendation is that a Management Board would increase bureaucracy and create “yet another body”.

In our experience, a fixed management team where all department heads discuss all matters together with the Management and Artistic Direction is best practice in all comparable institutions.

If there were no such body or if the membership of this team were not clearly defined (as has sometimes happened in the past), non-transparent and informal meeting routines would arise (see also: Report of the Expert Advisory Panel, p. 122ff). Our recommendation aims to ensure through transparency and formalization that no informal power structures arise, that all specialist competencies are represented in the decision-making process, and that the flow of information between Management, Artistic Direction and specialist departments is a smooth one.