

Date: 30 January 2019

Ref.: The Commission, Regierungskommission Deutscher Corporate Governance Kodex - Consultation concerning the reform of the German Corporate Governance Code.

***BETTER FINANCE**, the European Federation of Investors and Financial Services Users, is the dedicated representative of financial services users at European level. It counts about fifty national and international members and sub-member organizations in turn comprising about 4.5 million individual members. Our organization acts as an independent financial expertise centre to the direct benefit of the European financial services users (shareholders, other investors, savers, pension fund participants, life insurance policy holders, borrowers, etc.) and other stakeholders of the European financial services who are independent from the financial industry. As such its activities are supported by the European Union since 2012.*

***BETTER FINANCE** is the most involved European end user and civil society organisation in the EU Authorities' financial advisory groups, with experts participating in the Securities & Markets, the Banking, the Occupational Pensions and Insurance and Reinsurance Stakeholder Groups of the European Supervisory Authorities; as well as in the European Commission's Financial Services User Group (FSUG), and in the European Financial Reporting advisory Group (EFRAG). Its national members also participate in national financial regulators and supervisors bodies when possible.*

For further details please see our website: <http://betterfinance.eu/>

Recommendation 2.2.1 and 3.7

BETTER FINANCE considers that individual investors continue to face many obstacles in exercising their voting rights and actively engage in the governance of the companies they invest in, especially cross-border shareholders. The cancellation of the Code recommendation to let the AGM vote **essential structural measures, such as inter-company agreements and transformations (2.2.1)**, will be detrimental to shareholders. This also holds true in case of a takeover (3.7), shareholders should have the opportunity to voice their opinion on whether they support or oppose the deal proposed by the board/s. While such proposals may be beneficial for corporate management personnel, they may not necessarily be in the best interests of shareholders.

Recommendation 2.3.2

We strongly believe that individual shareholders should have the opportunity to exercise their voting rights by distance. The absence of a clear recommendation to companies on facilitating the exercise of shareholders' rights in person or by proxy may lead to a lack of transparency and to a less viable CG system. Therefore, the Code should retain the recommendation to companies

to appoint a proxy that – exclusively upon instructions of shareholders – exercises their voting rights. We furthermore propose to amend the new Code by facilitating the vote execution through independent proxy providers, in particular shareholder associations since these are the only ones providing proxy voting services to individual shareholders. For example, BETTER FINANCE has developed **Voting Guidelines** in order to provide clear, coherent and transparent guidance to European shareholders. They constitute a European-wide set of general guidelines according to which proxy votes of private investors will be executed via shareholder associations in the framework of [EuroVote](#).

Apply or explain

BETTER FINANCE agrees with the introduction of the “**apply and explain**” principle to the German corporate governance code. We believe that explanations provided by companies are often still insufficient. They either simply state that they had departed from a recommendation without any further explanation or provide only a general or limited explanation. As these explanations are used by investors to make their investment decisions and assess the value of a company, we welcome the apply and explain approach as this will lead companies to provide clear explanations for the benefit of the whole German corporate governance system. We would however recommend a clarification in the justification of the Code that the apply and explain approach only holds true for the 30 Code principles not for each and every recommendation. Furthermore, it should be only a suggestion, not a recommendation.

Supervisory Board

BETTER FINANCE agrees with the introduction of the **recommendations B3, B4, and B8**. The disclosure of this information to shareholders is designed to enhance transparency and will have a positive impact on investor awareness.

We are strongly in favour of **board diversity** and we believe companies should be precise and transparent about their recruitment policies and about the profile of directors. **Recruitment and diversity policies** should be transparent and very well communicated to shareholders of the company both via the website and the annual report. It would be also advisable to disclose before the AGM the name of the next chairperson as well as of the non-executive members together with appropriate details of their backgrounds, especially current and recent external (board and management) positions, age, and date of joining the company and board. What is the most important is to ensure a minimum number of truly independent directors in order to avoid potential conflicts of interests.

BETTER FINANCE furthermore welcomes the introduction of a recommendation to limit the maximum number of mandates for non-executive board members (**B5**) as well as maintaining the comparable recommendation for executives (**B6**). We consider board members should be able to devote sufficient time to their mandates and their availability may be impacted by too many mandates (overboarding).

Executive pay

BETTER FINANCE believes that companies could benefit from remuneration policies which stimulate longer-term value creation and genuinely link pay to long-term performance. Poor remuneration policies and/or incentive structures lead to unjustified transfers of value from companies, their shareholders and other stakeholders to executives. Therefore, and taking into account existing oversight possibilities, shareholders should be enabled to exercise better oversight of remuneration policies applying to directors of listed companies and the implementation of those policies.

A total of 17 recommendations and one suggestion concern the issue of executive pay. BETTER FINANCE considers that this issue is given a too predominant weighting in the draft Code. While we acknowledge the importance of this topic for shareholders. We would have welcomed a less intense intervention and too concrete specifications for the supervisory board. We would have preferred that the draft code also in this area would have been streamlined. Too detailed specifications in our view are neither needed nor necessary. Quite the contrary, they limit flexibility and the freedom of contract of the parties to the contract.

BETTER FINANCE recommends to keep the well-established model tables which standardize pay disclosure and by that support comparability.