

Remarks

by

Dr. Gerhard Cromme

Chairman of the Government Commission
on the German Corporate Governance Code

at the

Press Conference

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Check against delivery

Ladies and Gentlemen,

I am pleased that you accepted our invitation to come to Düsseldorf this morning. Professor Dr. Axel von Werder, Professor of Organization and Management at the Technical University of Berlin and head of the Berlin Center of Corporate Governance (BCCG), was this year commissioned by the Government Commission on the German Corporate Governance Code to conduct the fourth annual empirical survey of acceptance of the Code's recommendations and suggestions. The findings are now available and will be presented to you in detail by Professor von Werder in a few moments.

Two themes dominated the corporate governance debate in the past twelve months: the independence of supervisory board members and management board compensation. The question of management board compensation was taken up by the legislators and a bill was introduced on the disclosure of management board compensation, known as VorstOG. The question of the independence of supervisory board members was taken up by the Code Commission. I would like to make some general remarks about both these themes.

(1) Independence of supervisory board members, key findings of the BCCG survey

Ladies and Gentlemen,

As you know, in June 2005 we amended the German Corporate Governance Code in line with current developments. As a result, the number of recommendations in the Code increased from 72 to 82, while the 19 suggestions remained unchanged. The amendments essentially reflect recommendations under the company law action plan of the EU Commission. At European level, an intense discussion is taking place on transparency as an aspect of management oversight. Germany has played an active role in this discussion – not least because with our Code we have an internationally recognized description of our understanding of corporate governance.

A key aspect of the EU Commission's recommendations concerned the question of the independence of companies' supervisory bodies. It was therefore a logical step to provide a more precise definition of these rules for the supervisory board in the German Code. Eight of the ten new Code recommendations alone deal with this matter. They are:

- The chairman of the audit committee shall have specialist knowledge and experience in the application of accounting principles
- and internal control processes.
- The supervisory board shall include what it considers an adequate number of independent members.
- Elections to the supervisory board shall be made on an individual basis.
- An application for the judicial appointment of a supervisory board member shall be limited in time up to the next annual general meeting.
- Proposed candidates for the supervisory board chair shall be announced to the shareholders.
- It shall not be the rule for the former management board chairman or a management board member to become supervisory board chairman or the chairman of a supervisory board committee.
- If this is intended, special reasons shall be presented to the annual general meeting.

According to the current BCCG survey, of these eight new recommendations only two – those regarding individual elections and the move by management board members to prominent supervisory board positions – will be followed by on average fewer than 90% of the DAX companies by the end of 2006. To this extent we can describe the level of acceptance as high; especially as the two recommendations falling short of the 90% threshold have also met with high acceptance: individual elections have 85.7% acceptance and the board switch recommendation 77.8%. In its plenary meeting in June, the Government Commission will pay particular attention to progress made with the independence of supervisory board members.

Overall the findings of the survey indicate a continued increase in acceptance of the German Corporate Governance Code: At the end of 2006 and thus after the AGM season, on average 79.3 of the Code's 82 recommendations will be followed by the DAX companies. In the previous year the figure was 70.0 of the 72 recommendations then applying. This positive trend is

also reflected in the other two indices surveyed: In the M-DAX segment, 75.7 of the 82 recommendations will be met by year-end, compared with 65.4 of 72 a year earlier. The S-DAX companies will meet on average 72.9 of the 82 recommendations, against 61.8 of the 72 recommendations in 2005. For the Code's unchanged 19 suggestions, too, the already high level of acceptance continues to improve across the board, with the exception of a slight decline in the S-DAX segment. Professor von Werder will explain the details in his remarks.

A particularly encouraging aspect of the findings of the 2006 survey is that the improvements in the mid and small caps segments, i.e. in the M-DAX and S-DAX, are very pronounced: While in 2005 not one single company in the M-DAX was following all 72 recommendations then applying, by year-end 2006 as many as five M-DAX companies will have implemented the 82 recommendations now in place. In the S-DAX segment the improvements are considerable in both absolute and percentage terms.

From the Government Commission's viewpoint it is especially encouraging that the Code's new recommendations have been well received. Eight of the ten new recommendations will already be followed by on average over 90% of the DAX companies by the end of the year. Since the DAX segment sets the trend, further improvements can also be expected in the foreseeable future in the other stock market segments. This is borne out by previous experience with the implementation of the Code.

The German Corporate Governance Code is a voluntary set of rules for the business community aimed at improving transparency in corporate governance. From the Government Commission's viewpoint, the findings of the survey offer impressive evidence that this set of rules has now attained a very high level of acceptance and will be observed even more closely in the future.

(2) Current status of the compensation debate

Ladies and Gentlemen,

Last year the Government Commission decided against introducing a narrower definition of the individual disclosure of management compensation because the bill on the disclosure of management compensation was going through the legislative procedure at the time.

Nevertheless: 20 of the 30 DAX companies voluntarily undertook to disclose their management board members' salaries individually with a breakdown of their fixed salary, bonus and variable, long-term incentive components by the end of last year. However, this two-thirds share of companies was not enough in political terms and therefore the German government enacted the law on the disclosure of management compensation (VorstOG) making individual disclosure mandatory. Germany is not on its own in this. Switzerland, the United Kingdom, France, Luxembourg and the Netherlands also have binding disclosure regulations.

The disclosure law is now in force. In respect of the individual disclosure of salary components the law has adopted the Code's system. However, the law not only requires individual disclosure of fixed salary, bonus and variable, long-term incentive components but also, and correctly, pension plans, severance agreements – including in cases of change of control – as well as non-cash benefits. Against this background, the next plenary meeting of the Code Commission in June will look into how the wording of the Code should be adapted to the new legislation. Fundamentally the Commission would have preferred a voluntary arrangement, but it can link the Code more closely to the disclosure law without problem. By then it will also become clearer to what extent shareholders will use the option available in the disclosure law to authorize companies to dispense with the individual disclosure of management compensation.

We will also deal with the question of how compensation reports should be structured and incorporated in annual reports in the future. Many of the recently published annual reports for the past fiscal year already contain compensation reports. While these reports show that this matter is being implemented responsibly, they also reveal a wide range of creative approaches in the form of implementation. The aim should be to ensure the reports are as transparent and comparable as possible.

Ladies and Gentlemen,

Good corporate governance creates transparency in the interests of investors and other stakeholder groups. In my view we have this year made further considerable progress to the benefit of the German economic constitution.

By taking into account the recommendations of the EU Commission's company law action plan, Germany now has a Corporate Governance Code which largely meets the requirements of the European Union. The Government Commission on the German Corporate Governance Code is – as you know – a standing commission. This form was deliberately selected in Germany, while in other countries the commissions were frequently disbanded on completion of the code. In our view this allows us to flexibly adapt the Code to new international developments and new legislation in Germany and the European Union. However, we will not amend the Code constantly, but observe and assess developments at regular intervals. This year this concerned the new management compensation disclosure law, but generally the Commission would like to allow companies in Germany to work with the Code in its current form.

Thank you for your attention. I would now like to ask Professor von Werder to present details of the empirical survey for 2006.