

Remarks

by

Dr. Gerhard Cromme

Chairman of the Government Commission

on the

German Corporate Governance Code

at the

press conference

**following the handing over of the
German Corporate Governance Code**

to

German Minister of Justice

Prof. Dr. Herta Däubler-Gmelin

on February 26, 2002

in Berlin

Madam Minister,

Thank you on behalf of myself and all my colleagues on the government commission for your kind words. This morning we handed over the German Corporate Governance Code. As you commented, we have set out rules by business for business – a task the commission was pleased to perform.

After just under six months of deliberations, the commission – which you appointed on September 6 last year – has thus completed the first part of its assignment. The second part will be the constant monitoring and annual review of corporate governance, i.e. the management and supervision of business corporations.

In appointing the commission, you gave German business the opportunity to develop a corporate governance code in an act of self-organization, for which we are extremely grateful.

With this code we are presenting a kind of “reference catalog” which can be used by all observers of German corporations – be they from Germany or abroad, from the worlds of politics, business, trades unions or from the media and the capital markets – to assess our activities.

The Corporate Governance Code provides what we hope is a clear and concise summary of the principles of good corporate governance in Germany.

Allow me to briefly explain the aim of our work: By introducing the Corporate Governance Code our aim is to make Germany more attractive to international – and national – investors. Why? We want the stock markets to value German corporations in line with their true worth. We are providing the major investment companies with comprehensible rules in order to secure the competitiveness of Germany as a financial center for industry.

The Code brings together and harmonizes a wide variety of laws and regulations. It also contains recommendations and suggestions for complying with international conventions on good corporate governance on this basis. For there is a long tradition of corporate governance in Germany which had to be adapted to new developments.

We addressed all the major criticisms – especially from the international community – leveled against German corporate governance, assessed them in the light of the German business constitution and provided suitable solutions. So the commission has not simply adopted international criticisms, we have also explained the solutions in a way which makes them understandable to the international community. To this extent, the code is also a kind of “communication document”.

These criticisms are:

- inadequate focus on shareholder interests;
- the two-tier system of executive board and supervisory board;
- inadequate transparency of German corporate governance;
- inadequate independence of German supervisory boards;
- limited independence of financial statement auditors.

We have addressed each of these five points in the provisions and rules of the code while of course also taking into consideration the legal framework.

The code

- summarizes key statutory requirements on the governance of listed companies,
- provides recommendations taking account of nationally and internationally recognized standards, and
- gives individual companies ideas for good and responsible corporate governance.

The code provides capital market participants with a catalogue for evaluating good corporate governance which will allow especially foreign investors to obtain a clear picture of the corporate governance practiced by German corporations.

In addition to the binding German version, the code will also be published in English, French, Italian and Spanish. By addressing foreign investors in their own language, we hope to gain greater acceptance for our code among the financial community.

The new Transparency and Disclosure Law (Transparenz- und Publizitätsgesetz), which you, Madam Minister, played a leading part in preparing, lays the legal foundations for application of the code. Only when the new Art. 161 of the German Stock Corporation Act (Aktiengesetz) comes into force will the executive and supervisory boards of listed companies be required to declare once a year whether they comply with the recommendations of the code and to publish such declaration. We as a commission are therefore extremely keen to see this law enacted as quickly as possible so that the “comply or explain” regulation can be applied to the fiscal year following publication of the code and the Transparency and Disclosure Law.

The future will show how many corporations accept the code without reservation and how many believe that specific provisions of the code are out of line with the individual requirements of their company. The commission is at pains to point out that justified variances from the code should not be deemed to be a flaw in the corporate governance of a company. The capital market communicators – journalists and analysts – will play a decisive role in assessing such variances.

The code as a whole has been approved by all members of the commission, even though for some members specific provisions do not go far enough or go too far. This applies in particular to the provision on company takeovers. This was a special situation in that the Securities Acquisition and Takeover Law (Wertpapiererwerbs- und Übernahmegesetz) was adopted while the commission was still working on the code. Art. 33 of this law contains a provision on the so-called neutrality duty of managements which has come in for criticism from many areas of the capital market. Against this background, the commission restricted itself to a provision in the code which describes the legal situation and additionally only makes

the suggestion that the general meeting should be consulted on takeover bids not only where legally prescribed but also in other cases, i.e. the general meeting should also be convened even when there is no legal necessity – here again, a special role falls to all capital market observers.

Here, too, we will have to await further developments, in particular the discussion at European level of the so-called takeover directive. The reactions of issuers and investors to the further development of the takeover law will also provide a valuable indication of the acceptance of the code's provisions.

As a standing commission we will observe the development of corporate governance in legislation and practice and will review the code at least once a year for possible adaptation. This is the second part of the task you assigned us, Madam Minister. In the view of the government commission, the catalog for evaluating this task is now available. I will report on developments in due course.