

PRESS RELEASE

Berlin, 22 June 2016

2016 Conference Deutscher Corporate Governance Kodex:

"There is no reason why the dual system comprising Supervisory Board and Management Board should be outdated"

- **Amendments to the Code likely for 2017, after a two-year pause**

Dr Manfred Gentz, Chairman of the Regierungskommission Deutscher Corporate Governance Kodex, believes that the German dual corporate governance system has proven itself, especially thanks to developments over recent decades. The fundamental separation of executives and supervisors provides for more clarity, compared to the unitary board structure that is especially prevalent in the Anglo-Saxon world. Moreover, it is easier to integrate German co-determination into the dual corporate governance system, Gentz said at the 15th Conference Deutscher Corporate Governance Kodex on 22 June 2016, entitled: "Supervisory Board and Management Board – should the roles be re-defined?".

Gentz stated that in everyday Supervisory Board practice, given the additional duties assigned to the Supervisory Board, the differences compared to the responsibilities within a unitary board system have in fact decreased: "The responsibility of the Supervisory Board is moving closer to that of executives than it was in the past." Yet Gentz sees no need for amending the German Public Limited Companies Act (*Aktiengesetz*), to reflect this changing scope of responsibility: "Corporate governance practice has managed this situation, granting the Supervisory Board and its Chairman rights which he or she is able to exercise under ancillary competence, reflecting additional tasks. It is fair to assume that this legal interpretation, which is based on the enlarged duties of the Supervisory Board, renders a formal amendment to the Act unnecessary."

Not least against the background of ongoing discussions, Manfred Gentz emphasised at the conference that existing Code recommendations concerning the independence of Supervisory Board members are sufficient in principle – particularly since the key issue of Supervisory Board independence from the Management Board (and vice versa) is inherent to the governance system under the German Public Limited Companies Act. "We are of course aware that we will need to review this aspect time and again, in order to sustainably comply with international best practice". Hence, the Regierungskommission Deutscher Corporate Governance Kodex is currently discussing

possible amendments to the Code, to be implemented in 2017, according to which the Supervisory Board report should state the number of independent members – to be determined by the Supervisory Board – and the names of members deemed independent.

A further recommendation under discussion concerns communications between investors and the Supervisory Board. According to the German Public Limited Companies Act, apparently, this is exclusively a Management Board task. However, there are questions a German Management Board cannot answer because factual responsibility lies with the Supervisory Board alone. A recommendation in the Code might clarify that discussions concerning issues specific to the Supervisory Board are permitted with its Chairman.

Finally, the Commission is looking at whether the Code's Foreword should be extended to include guidance on desirable and necessary behaviour, especially for key executive staff and the members of the Management Board and the Supervisory Board. Such guidance could emphasize that the principles of the social market economy do not only require legality but also legitimacy of the behaviour and the decisions.

Amendments to the Code, which are required to reflect changes in the law, as well as possible clarifications regarding Management Board remuneration, are also on the Commission's agenda.

These possible adjustments and additions in 2017 would update the Code, following a two-year period without changes. As in the past, the Commission will present its proposal within the framework of a public consultation procedure.

Regierungskommission Deutscher Corporate Governance Kodex

The commission convened by the German Federal Minister of Justice in September 2001 approved the German Corporate Governance Code on 26 February 2002, which gained legal recognition by virtue of the Declaration of Conformity in accordance with Section 161 German Stock Corporation Act.

The purpose of the German Corporate Governance Code is to enhance transparency – firstly regarding the German regime for company management, and secondly regarding monitoring for domestic and international investors – in order to strengthen confidence in German corporate management.

The members of the Commission are as follows: Dr Dr h.c. Manfred Gentz (Chairman), Prof. Dr Dr Ann-Kristin Achleitner, Prof. Dr Dres h.c. Theodor Baums, Dr Joachim Faber, Mr Michael Guggemos, Dr Margarete Haase, Mr Dietmar Hexel, Dr Thomas Kremer, Dr-Ing Michael Mertin, Prof. Dr Klaus-Peter Naumann, Prof. Dr Rolf Nonnenmacher, Prof. Dr Wulf von Schimmelmann, Dr Stefan Schulte, Marc Tüngler, Daniela Weber-Rey.

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