

PRESS RELEASE

Frankfurt/Main, 2 November 2016

Proposals for Code amendments 2017 published

- **Good corporate governance orients itself towards the also ethically aligned principles of the social market economy**
- **More transparency for a better governance assessment by stakeholders**
- **Clear recommendation for the Chairman of the Supervisory Board as regards communication with investors**

With the beginning of the consultation process on 2 November 2016, the Regierungskommission Deutscher Corporate Governance Kodex (Regierungskommission) published and explained the proposed changes for amendments to the German Corporate Governance Code on the Code website (www.dcgk.de). The interested public is invited to comment in writing upon the proposed Code amendments between now and 15 December 2016. Statements received on time will be considered in the final consultancy of the Regierungskommission in February 2017. For the first time, all statements tendered by companies, associations and from the field of science are to be published on the Regierungskommission's website, unless participants object to a publication.

“With the present proposals for amendments to the Code, the Regierungskommission stays true to its chosen path, in particular opting for reasonable transparency standards in order to implement a good corporate governance. Supervisory boards and management boards are to make their decisions based on a comprehensive set of relevant information. This and well-reasoned explanations in case of non-compliance with recommendations of the Code will then provide the basis for investors to form an opinion on the practised corporate governance. The increasing public discussion about corporate governance shows that we are on the right track in Germany. With a lean and efficient Code, we would like to continue to promote the public debate in future, and as such the awareness for good corporate governance in companies, instead of promoting the 'ticking off' of checklists due to small-scale rules”, says Dr Manfred Gentz, Chairman of the Regierungskommission Deutscher Corporate Governance Kodex.

Good corporate governance is defined by legal and legitimate conduct

It is not only on the back of current discussions in business and among the broader public that the Regierungskommission intends to clarify by a supplement to the Code's foreword that good corporate governance, oriented towards sustainable creation of value, also ethically follows the principles of the social market economy. These principles do not only demand legality, they also question the legitimacy of conduct and decisions and thus require responsibility, as is intended to be set out in the Code in future.

Shareholders play an important role in the assessment of the practised governance of a company. In Europe and on an international level, the responsibility of institutional investors is being increasingly emphasised. The Regierungskommission intends to take up the debate pro-actively by calling upon institutional investors to actively and responsibly exercise their ownership rights within the scope of a consistent and transparent framework geared towards sustainability (section 2.1.3).

Code continues to focus on transparency

The Regierungskommission continues to count on reasonable transparency as the basis to assess good corporate governance.

As such, enterprises shall in future make the fundamental principles of their compliance management systems transparent (section 4.1.3). According to the Regierungskommission, this will enable investors and the interested public to form their own opinion on the compliance efforts of the respective company and strengthen trust in a responsible corporate governance. In this context, only the fundamental principles of the compliance management system are to be described in the internet. Following the idea of a best-practice compliance system, employees and third parties are to be given the possibility of anonymously providing information about misconduct in the company.

In future, companies shall provide information about the appropriate number of independent supervisory board members representing shareholders - as assessed by the supervisory board - , and the names of these members in the Corporate Governance Report (section 5.4.1 (4)).

To enhance the information provided, shareholders shall in future be able to obtain CVs and an overview of the main activities of supervisory board members nominated for election. This information shall be updated on an annual basis and published in the internet.

The Regierungskommission welcomes the fact that the legislator and the Frankfurt Stock Exchange have abolished the obligation for listed companies to submit extensive quarterly reports. Nevertheless, from the perspective of the Regierungskommission, interim information to the shareholders about changes

in business prospects and the risk-situation that the company is exposed to in addition to annual and semi-annual reports shall be considered as best practice (section 7.1.1).

Suggestions from investor-discussions taken up

Partly as a result from many discussions between the Regierungskommission and German and international investors, the Regierungskommission also proposes that the supervisory board develops requirement profiles – in addition to the specific objectives it is already obliged to set out today – regarding its composition. In this context, the composition of the supervisory board will also be required to take the shareholder structure into account (section 5.4.1 (2)).

For quite some time, another topic on the corporate governance agenda has been the question as to what extent the supervisory board is allowed to answer shareholders' questions outside the annual general meeting. It is a fact that discussions between the chairman of the supervisory board and investors have become common practice in many larger enterprises, and now form part of good corporate governance. In order to emphasise this as being best practice, the Regierungskommission intends to recommend that the chairman of the supervisory board be prepared (within an appropriate framework) to discuss topics relevant to the supervisory board with investors. These are issues the supervisory board alone is responsible for, and has to decide upon on its own. Regarding questions the management board and the supervisory board can only decide upon together, discussions will be held either by the management board on its own or by the chairman of the supervisory board together with the management board (section 5.2 (2)). Following this recommendation, the chairman of the supervisory board will have certain discretion with whom and when he/she would like to conduct a discussion.

Chairman of the Audit Committee to remain independent

Despite new statutory regulations in the course of the German Audit Reform Act (AReG) and the Reform of the EU Statutory Audit Market, the Regierungskommission will continue to value it as best practice when the chairman of the audit committee is independent, and has not been a member of the company's management board within the past two years. As before, the chairman of the supervisory board shall not additionally chair the Audit Committee.

Clarifications in the Code

In addition to the new material Code amendments, the Regierungskommission suggests a few clarifications, which result from practical experience with recommendations already applied.

Among other things, section 4.2.3 (2) is to clarify that within the multi-year assessment for the determination of variable compensation elements, future - not past- aspects shall be taken into account in principle. In addition, it is to be specified that multi-year, variable compensation elements proportionally included in the calculation of severance payments in the case of premature termination of a management board member's contract, should not be paid out ahead of schedule (section 4.2.3 (4)).

The Regierungskommission also proposes a number of non-material Code amendments reconciling legal changes, or which serve for a better legibility of the Code.

During this year's revision of the Code, the Regierungskommission once again adhered to the principle of deleting all parts that became unnecessary. Section 6.2, for example, which includes two transparency suggestions, is to be deleted as, according to the Regierungskommission, the issues are already sufficiently covered now, among others, by national and European law.

Note to editors:

Regierungskommission Deutscher Corporate Governance Kodex

The Regierungskommission 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 Regierungskommission are as follows: Dr Dr h.c. Manfred Gentz (Chairman), Prof. Dr Dres h.c. Theodor Baums, Dr Joachim Faber, Michael Guggemoos, Dr Margarete Haase, Dr Thomas Kremer, Claudia Kruse, 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, Jens Wilhelm.

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