Remarks

by

Dr. Gerhard Cromme

Chairman of the Government Commission
on the German Corporate Governance Code

at

the

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Conference

on

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Check against delivery.

Ladies and Gentlemen,

My now traditional report on corporate governance will focus today on the following issues:

- First I would like to deal briefly with the very high level of acceptance the German Corporate Governance Code continues to enjoy.
- I will then look at current issues and resolutions passed at the last meeting of the Code Commission, and finally
- I will address further current corporate governance issues.

(1) Results of the current BCCG study

Ladies and Gentlemen,
As Chairman of the Code Commission I am of course particularly pleased by the high level of acceptance the German Corporate Governance Code has now achieved.

The already high level of previous years shows a further improvement in 2007. This is true in particular of the DAX companies, who set the trend in corporate governance in Germany.

Each year the Berlin Center of Corporate Governance (BCCG), headed by Professor Axel von Werder, conducts an independent survey of acceptance of the recommendations and suggestions of the Code on behalf of the Government Commission. This year's survey was published in May. I would like to take just a quick look at the encouraging results because the survey is on display in the foyer:

We are achieving approval rates, especially among the DAX companies, of almost 100 percent, and so there is little to be gained by detailing further changes in terms of decimal places. There are just two key figures I would like to look at in a year-on-year comparison as they document the high acceptance: DAX companies on average comply with 97.3 percent, or in absolute terms 78.8, of all 81 recommendations. Only four recommendations are accepted by fewer than 90% of the DAX companies. In 2006 the figure was 96.7 percent, or in absolute terms 79.3, of the then 82 recommendations. While the level of acceptance in the M-DAX and S-DAX is lower, it is still well above 80 percent.

In view of these results I can only state again that the Code has become the accepted standard for good corporate governance in Germany. In 2002, when we first presented the Code to the public, some people in the media were less than complimentary. One stockholder association even described it as a "marketing gimmick". That was never my opinion and the BBCG surveys show each year that these assessments were off the mark. As executive and non-executive directors, you have accepted the Code for the most part and that is what matters to us on the Government Commission. And the media, too, are increasingly using the Code as a reference for good corporate governance.

(2) Resolutions of the Code Commission on June 14, 2007

Ladies and Gentlemen,
As in previous years I would like to look at some themes of the current corporate governance debate in Germany which the Government Commission also considered in its last plenary meeting on June 14. I will briefly explain the resolutions passed.

With regard to the management board, the issues include the field of tension between directorial responsibility and collective responsibility, and the capping of severance payments. Supervisory board issues relate to the establishment of a nomination committee for the stockholder representatives on the supervisory board. The currently much discussed issue of compliance relates to both the management and supervisory board.

Ladies and Gentlemen,
As you know, in its first years the Code Commission dealt mainly with the supervisory board and with management board compensation issues. However, international developments over the course of the past few years have increasingly raised governance questions relating to the management board which go beyond the subject of compensation.

Collective responsibility of the management board and unanimity principle

One of these is the question of collective responsibility and the unanimity principle. Much of this is prescribed by the Stock Corporation Act. Notwithstanding this, and particularly in diversified companies with global operations, discussion is needed of how, in corporate governance terms, the field of tension between collective responsibility and the distribution of

duties in the management board should be shaped. Certain duties can only be performed by the management board as a whole, others are best handled by the member or members responsible. But there must be no blockade and the management board must remain functional at all times.

With this in mind, the Government Commission reworded the recommendation in Section 4.2.1 sentence 2 in more concrete terms. The rules of procedure dealing with the work of the management board should govern in particular the distribution of duties among individual management board members, matters reserved for the management board as a whole, and the required majority for management board resolutions – be it unanimity or resolution by majority vote. In taking this action, the Code Commission once again had regard to one of the Code's main aims, namely to establish transparency. Companies today also disclose their rules of procedure to investors and no longer treat them as secret documents.

Management board severance payments

Another issue relating to the management board is the level of severance payments made to departing management board members. In the public debate on severance payments for management board members, a small number of albeit very spectacular cases have succeeded in discrediting the system as a whole. In such cases it is indeed reasonable to ask whether and to what extent the supervisory board in question has fulfilled its duty of care.

Decoupling severance payments from the term of appointment is one way of satisfying the requirements of both the company and the individual management board member. The long-term development of the company is not affected and the management board member remains adequately covered. For this reason a new suggestion has been added to Section 4.2.3 of the Code that in the event of new appointments or reappointments care should be taken to ensure that payments – including ancillary payments – made to a management board member on premature termination of his contract without serious cause do not exceed the value of two years' compensation – this is what is known as the severance payment cap. As an additional limitation, no more than the remaining term of the employment contract should be paid. The severance payment should be calculated on the basis of the total compensation for the past full financial year and the expected total compensation for the current financial year. By making express reference to the fact that the claim is conditional on there being no serious cause, the Code underlines the legal position that if a serious cause

exists which justifies termination of the management board member’s appointment, no severance payment at all should be awarded.

The suggestion also affects change-of-control clauses. However, the Government Commission acknowledges that reasonable alternative solutions may be justified if a management board member’s contract is terminated due to a change of control. In such cases the maximum limit should be 150 percent of the severance payment cap.

I have no wish to conceal the fact that this new suggestion is the result of very intensive, at times also controversial discussions in the Commission. The main reason for this is that there is actually no such thing as a typical severance payment situation which applies in the majority of cases. Rather, the supervisory board generally has to decide on singular situations with their own particular circumstances. On top of this, complex legal questions with serious effects under labor and company law generally have to be resolved. But in the end, true to the tradition of its work to date, the Commission once again developed a provision which also found the support of those Commission members who for the above reasons were fundamentally skeptical about introducing a provision in the Code.

With the adopted suggestion we continue to stick to the five-year “standard” term of a management board contract, which we see as the “greater good”. We would like companies and management boards to have a reliable planning period of five years in which those responsible can jointly shape the future of the company before the question of contract renewal has to be reconsidered. To prevent the remaining term of the management board contract from being the decisive criterion for the severance payment amount and to avoid strengthening calls for a general shortening of the contract term, we are now suggesting that severance payments should be decoupled from the contract term and limited to two years’ compensation. In practice this suggestion will only be relevant if something unforeseen happens in the first two years, at any rate in the first half of the contract term.

Ladies and Gentlemen,
And now to the resolutions the Government Commission passed with regard to the supervisory board.

Supervisory board nomination committee

The subject of qualifications for supervisory board members also raises questions concerning the selection and assessment of suitable candidates for stockholder representatives. These questions are among the primary tasks of the supervisory board and in international practice are dealt with by so-called nomination committees. The EU Commission also suggests the establishment of such committees.

The Government Commission has also considered this question. Firstly, a nomination committee can develop a clear profile of the qualifications a company expects from its supervisory board members. These must be regularly reviewed because companies are constantly changing and this means that the requirements on their board members can change too. Secondly, this committee can also keep a continuous eye on the national and international environment to see which people are available. Though it may be difficult for the public to believe, the market for suitable candidates to oversee large international companies is very small. And giving greater weight to the criterion of independence narrows down the field even further.

To date, selection procedures for stockholder representatives have not been very transparent. A special nomination committee can optimize the selection of qualified candidates in a clearly structured, transparent process with positive effects for corporate governance. Since this relates only to the selection of suitable stockholder representatives, the committee should be composed exclusively of supervisory board members from the stockholder side. For this reason, the Government Commission has added a new section 5.3.3 with the following recommendation: The supervisory board shall form a nomination committee composed exclusively of shareholder representatives which proposes suitable candidates to the supervisory board for recommendation to the general meeting.

This also makes it clearer than in the past that the selection of candidates for membership of the supervisory board is the sole responsibility of the supervisory board – and is not carried out de facto by the management board which can select its own controllers.

Compliance

I would now like to make some comments on compliance. This is an issue which relates to different degrees to the management board and supervisory board and also concerns cooperation between the two boards.

Compliance – meaning observance of the law, statutes and internal policies in the company – is first and foremost a management board task. This is already stated in Section 4.1.3 of the Code: The management board ensures that all provisions of law are abided by and works to achieve their compliance by group companies. In view of increasing public awareness of the importance of compliance, the Government Commission resolved to expand the Code provision to include what is really a self-evident obligation to comply with the enterprise's internal policies and to refer to this collectively as a compliance rule. This underlines the special significance of compliance as part of good corporate governance.

The Code provision describes the prevailing legal position. Under German stock corporation law it is the management board's duty, within its management competency and management obligation, to ensure that suitable measures and organizational precautions are taken to guarantee compliance with the applicable domestic and foreign laws and the enterprise's internal policies.

A violation of valid law, in particular in areas such as corruption, antitrust or insider law, is no minor offense. The fines and penalties in place are significant and bear no relation to any business advantage gained. Ultimately part of the declared aim of imposing punishment by fine is to confiscate the profit gained as a result of the violation. On top of this, the risk of injured parties asserting claims for damages has increased in recent times. Payments for damages can easily match the fine amounts. So the only rule that can apply in companies is: Zero tolerance for compliance breaches!

The management board has wide latitude for assessing and organizing the way it sets up a compliance system. The Code does not and will not demand that companies establish concrete or specific compliance systems. To this extent the Code remains true to its objective of making the German corporate governance system transparent and readily understandable for investors without taking away from management the necessary and desirable flexibility by listing items even just by way of examples.

Instead the management board must decide on its own responsibility and at its own discretion how compliance with the statutory provisions is to be secured within its company taking into consideration the specific circumstances of the company.

So in the interests of good corporate governance, what function is assigned to the supervisory board and its audit committee in respect of compliance?

The supervisory board and its audit committee monitor the compliance measures of the management board in accordance with the general distribution of responsibilities in German stock corporations. The Government Commission has made an addition to Section 3.4 no. 2 to make clear that the management board must inform the supervisory board about relevant compliance issues. Within the supervisory board the treatment of compliance issues is generally assigned to the audit committee on account of the close links between accounting, risk management and compliance. To take account of this best practice we have amended the Code recommendation in Section 5.3.2.

One of the duties of the audit committee is to obtain information on the compliance program introduced by the management board and to assess whether it meets the legal requirements and the company's risk situation. It is not generally necessary for the audit committee to deal with details of the program or with specific compliance incidents. To this extent the supervisory board and its audit committee are not obliged to turn every stone in the company. However, in the event of serious breaches or suspicions, the audit committee must intensify its oversight.
In such cases the committee must request the management board to report on what measures have been or will be taken. Depending on the situation it may even have to take the initiative itself.

Ladies and Gentlemen,
That concludes my remarks on the main decisions of the latest meeting of the Code Commission. Let me now for the sake of good order also deal with the maintenance work that has been carried out on the Code, the "house keeping matters".

In the Code, the Government Commission always tries to provide a transparent and understandable description of the legal situation, above all for foreign investors. It also continually reviews whether Code recommendations and suggestions should be shortened or deleted, for example because changes to laws or developments in practice have made individual Code rules superfluous.

We have already modified some passages of the Code this year with this in mind. At the same time the Government Commission has the intention to continue the modifications in the future. We keep our finger on the pulse of the market and continually review the need for individual passages. In our opinion this is a major advantage of a standing commission: we concern ourselves continually with Code-related issues and ensure the Code remains up to date and flexible. At this point I wish to thank all the members of the Commission, who in some cases have devoted a great deal of time to this work and over the years have built up outstanding expertise in matters of good corporate governance.

Looking at the details we have already made several modifications this year, most of them due to the changed legal situation:

- Section 2.3.1 was modified as the Act on Electronic Commercial Registers, Cooperative Society Registers and the Company Register (EHUG) now makes it possible for certain reports and documents, including the annual report, required by law for the general meeting to be published on the company's website only, instead of also being displayed on the company's premises.

- The new version of section 2.3.2, based on the amendment to § 30 b WpHG (Securities Trading Act), allows companies to communicate the convening of the general meeting including the convening documents by electronic means only, if the legal requirements are met.

- In section 3.8 we have included the Business Judgment Rule, anchored in law by the Act on Corporate Integrity and Modernization of the Right of Avoidance (UMAG), in the Code expressly as a key legal provision. This is meant to demonstrate to foreign investors in particular that this important tool is now also available in the German legal system.

- In addition, the changes to the threshold values for voting right communications due to the Transparency Directive Implementation Act (TUG) have been taken into account and the percentages 3, 15, 20 and 30 additionally included in section 6.2.

- Section 6.6 addresses the topic of directors' dealings. The previous paragraph 1, which stated the legal requirement of the WpHG, was deleted. Unlike when the requirement was included in the Code, the disclosure of directors' dealings in Germany is no longer anything out-of-the-ordinary. Also, as a result of several changes to the law the legal provision has now become so complex that presenting it in the Code would be difficult to reconcile with the aspiration to keep the Code short and succinct.

- Section 7.1.1 has been modified to take account of the fact that the TUG has introduced additional requirements for financial reporting. This applies particularly to the preparation and publication of half-yearly financial reports, quarterly financial reports and interim communications.

(3) Further current corporate governance issues

Ladies and Gentlemen,
Those were in brief the main results of the latest meeting of the Code Commission. And now I would like to turn to one or two other current corporate governance issues. These are:

- the recommendation resolved in 2005 that the switch from management board member or management board chairman to supervisory board chairman or chairman of supervisory board committees should not be the rule,
- the performance-related compensation of supervisory board members after the decision by the Federal Court of Justice, and
- current issues in the European corporate governance debate, in particular the question of proportionality between the shareholding of an investor and his possibilities of control, also discussed under the heading "one share – one vote".

<u>Switch from management board to chairman of the supervisory board/committee</u>

The recommendation that a switch from the management board to the chair of the supervisory board or a supervisory board committee should not be the rule was included during the comparatively extensive Code revision in 2005. Since then, the same misunderstandings have frequently been repeated in the media reporting on this recommendation.

I therefore wish to spell it out again clearly: the formulation that such a switch should "not be the rule" does not mean that the Code excludes or fundamentally rejects such a switch. On the contrary, it must be possible, especially with very large and very complex companies. Naturally, the relevant candidate must not be tainted and he must be clear about his new role and its differences versus the management board chair.

The Government Commission also distinguishes clearly between the supervisory board chair and the chair of a supervisory board committee on the one hand and the chair of the audit committee on the other. Here we are quite categorical in our opinion that the supervisory board chairman should never simultaneously be the chair of the audit committee.

Incidentally, the claimed automaticism of the switch from management board chair to supervisory board chair simply does not exist at listed companies in Germany. The misunderstanding is evidently founded in the fact that most observers only look at the group of 30 DAX companies. Among these companies the proportion of management board chairmen switching to the supervisory board chair is indeed high. But there are good reasons for this: in large, global companies well-founded knowledge of the company, its structures and capabilities and its strategy are of particularly high importance. If we widen our view to include the M-DAX and Tec-DAX companies, the picture changes significantly. An internal analysis by the Deutsches Aktieninstitut shows that in 100 companies considered only roughly 20 percent of the supervisory board chairmen came from the company's management board over a period of five years. This cannot be referred to as automaticism.

And if you look at the moves to the supervisory board chair that have taken place at DAX companies in 2006 and 2007, you will see that as a rule they have been extensively justified and explained, and all that counted was the specific situation of the company.

I am also very glad that the Federal Government has not followed the ideas of those who have demanded a statutory ban. Such a law would have been totally different than the Management Compensation Disclosure Act for example. Disclosure of individual directors' salaries establishes a requirement to inform shareholders, whereas a statutory ban would have raised questions of the basic right to exercise one's profession. It would also have left open where the new supervisory board chairmen were to come from, whether they would really have been more independent and whether people want to have the banks back in the supervisory board chair.

Supervisory board compensation

Turning briefly to the topic of supervisory board compensation. As a result of the decision of the Federal Court of Justice on Mobilcom, the scope for structuring the variable and stock-based component of supervisory board compensation has been narrowed.

The Government Commission continues to hold the opinion that the compensation of supervisory board members should include both a fixed component and a performance-related component – also possibly based on long-term stock performance. In practice there correctly seems to be a trend towards the fixed component accounting for a higher share of total compensation.

More and more, supervisory board work is becoming a full-time job. In recent days there has been a public discussion on the subject of limiting the number of supervisory board seats a person may hold. The Stock Corporation Law establishes a maximum of ten. That is too many, and it was for that reason the Government Commission in the first version of the Code recommended that management board members of a listed company should not hold more than five supervisory board posts. Even these five seats can only be a maximum in view of the increasing tasks these people have to deal with. In many cases it is advisable to stay well below this number. However, each case is individual. As the responsibilities of supervisory board members increase, total compensation will also tend to increase, and an appropriate fixed salary and a variable, performance-related component are surely a sensible combination. The Code leaves it to companies how they – within the framework of applicable company law – structure the split into fixed and variable compensation components. However, compensation and its components are a key subject when it comes to securing qualified supervisory board members.

"One share – one vote"

This brings me to my final current issue, in which I would briefly like to involve this year's European corporate governance discussion. One important focus of this discussion last year, besides the adoption of the shareholders' rights directive, was the extensive study carried out for the EU Commission into the subject of "Proportionality between capital and control", also referred to more succinctly under the heading "one share – one vote". This study examines empirically and exactly the deviations from the so-called "one share – one vote" principle in the member states. Deviations exist for example as a result of multiple voting shares, different share categories such as A and B shares, found particularly in the Nordic countries, but also in the form of non-voting preference shares for example in Germany or greater voting rights for long-term shareholders as in France. Based on the study the European Corporate Governance Forum has also concerned itself with the issue.

I would like to single out three findings of the study which are important from a German perspective.

- Firstly: The study shows that there is a variety of different established corporate governance rules in Europe in the area of "one share – one vote".

- Secondly: To the surprise of many foreign observers Germany is clearly one of the countries which have relatively few deviations from "one share – one vote". Apart from the VW Law with its historical background there are really only the non-voting preference shares. In contrast to the multiple voting shares these belong to the less drastic deviations. The lack of a voting right is offset by the preferential dividend.

- Thirdly: The conclusions to be drawn from the study are not yet certain. However no-one can seriously think that it would be feasible or even sensible to abolish deviations from the "one share – one vote" principle. The task of the EU Commission now is to analyze the results of the study precisely and consider whether to take regulatory action in this area. We should monitor this process closely.

Ladies and Gentlemen,
That brings me to the end of my report on the status of corporate governance in Germany. After the discussion with you I look forward to handing over the podium to experts who know more than others about the key subject of this year's conference – the European Company.