

PRESS RELEASE

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14th Conference “German Corporate Governance Code” No juridification of the 'comply-or-explain' principle by EU legislation

- **Regulation must not lead to thoughtless 'box-ticking'**

"The principle of 'comply or explain', which permits diverging from recommendations in substantiated cases, is an element of code-based self-regulation that is both recognised and necessary, and must not be hollowed out by EU legislation", said Dr Manfred Gentz, Chairman of the Regierungskommission Deutscher Corporate Governance Kodex at the 14th Conference "German Corporate Governance Code" on 18 June in Berlin, in a speech to around 150 supervisory board members, management board members and governance experts. Referring to current discussions concerning the EU Shareholder Rights Directive, Dr Gentz stressed that voluntary compliance and flexibility – elements which characterise the code for good corporate governance – must be retained. He said that external monitoring authorities and pre-defined characteristics, as well as formalities concerning Declarations of Conformity, must not lead to *de facto* mandatory compliance. According to the EU Commission's recommendations regarding the principle of 'comply or explain', published in April 2014, there are apparent plans to require member states to establish monitoring authorities.

Dr Gentz said: "In Germany, we have various institutions – such as the Berlin Center of Corporate Governance (BCCG) and the Leipzig Graduate School of Management – looking into this issue and expressing criticism. We do not want any further juridification of the 'comply-or-explain' principle. Exercising control should be left to the capital markets, to investors and the general public – including critical journalists and academics."

At this year's conference, entitled "Self-regulation or government requirements – what are the chances for more freedom?", Dr Gentz reiterated that in its work, the Code Commission is oriented upon the ideal of an honourable businessperson. "As a matter of principle, corporate governance is about transparency, reconciliation, and a system of checks and balances. Reconciling

one's own conduct with the virtues of an honourable businessperson may indeed be helpful, since this also encompasses openness, consistency, transparency and suitability", Dr Gentz added.

He called for the issue of how successful a code recommendation really is to be judged on a medium to long-term perspective, rather than on a short-term view. "We should always be aware that the Code, and its recommendations and suggestions, is designed to provide orientation for the behaviour of enterprises and their executives. This is something that needs to be convincing, and sometimes takes time."

Gentz generally advocated maintaining a sense of perspective, both in voluntary and mandatory rules, prompting individuals to reflect upon their actions rather than just ticking boxes without thinking. The Chairman of the Code Commission expressed his view that any statutory framework – which is indispensable for a fair market – should always be subject to review in terms of its necessity, and the degree of detail. "Often, set principles with a clearly-defined purpose are better than detailed regulations."

Note to editors

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 German Corporate Governance Code is intended to make the rules in Germany applicable for company management and supervision transparent to national and international investors, in order to strengthen trust in the management of German companies.

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, Dietmar Hexel, Dr Thomas Kremer, Dr-Ing Michael Mertin, Prof Dr Klaus-Peter Naumann, Dr Stefan Schulte, Prof Christian Strenger, Marc Tüngler, Daniela Weber-Rey, Prof Dr Beatrice Weder di Mauro, Prof Dr Axel von Werder.

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