GLASS LEWIS

September 4, 2026

Regierungskommission, Deutscher Corporate Governance Kodex

Submitted per e-mail: regierungskommission@dcgk.de

Submission on the Consultation Draft for amendments to the German Corporate Governance Code, August 2026

Glass Lewis appreciates the opportunity to comment on the aforementioned Consultation Draft for amendments to the German Corporate Governance Code.

Founded in 2003, Glass Lewis is a leading, independent provider of global governance services that provides proxy research and vote management services to more than 1,300 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Through Glass Lewis' web-based vote management system, Viewpoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record, audit and disclose their proxy votes.

We have used previous editions of the German Kodex to inform the Glass Lewis Benchmark Policy guidelines for Germany, which in turn inform our proxy voting research on companies listed in Germany. The Code has had a material impact in establishing certain best practices in Germany; this is important, as international investors' expectations often exceed the basic requirements set by local law.

The responses provided below are not meant to be exhaustive but are designed to address what Glass Lewis sees as the main issues and concerns raised in the Consultation Draft or provide suggestions regarding other provisions currently present in the Code.

Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully submitted,

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Proposed Amendments

(The numbering of Principles and Recommendations used below reflects the current version of the Code)

Suggestion A.8 - EGM before Takeover Offer

We acknowledge the rationale provided for the proposed deletion of this Principle, particularly in relation to the constraints imposed by the timing of the different requirements. Nonetheless, free-float shareholders of both target and acquiring companies may benefit from having an opportunity to review information and express any concerns with the proposed transaction. Further, the current provision is already in the form of a suggestion, so that no explanation needs to be provided in case of non-compliance.

Absent proposed alternatives to promote meaningful dialogue with shareholders ahead of a takeover, it is suggested to maintain this provision.

Recommendations B.5 and C.2 - Age Limits for Supervisory and Management Board

Glass Lewis' Benchmark Policy guidelines are not prescriptive on the implementation of age limits for board members and would generally support it when proposed by a board. However, ad-hoc deviations from pre-established age limits should be justified; the Benchmark Policy may issue a recommendation against the re-election of the nominating committee chair (or equivalent) in the absence of a compelling rationale for the exception. Therefore, in principle, the proposal to change this provision from a recommendation to a suggestion would remain in line with the above approach.

However, when observed in the context of German practice, this amendment may represent a concern from the perspective of the composition of the supervisory board.

Over the past three years, ad-hoc deviations from pre-established age limits have occurred at large-cap companies with a controlling shareholder, as a consequence of their board's need to either prolong the tenure of a founding family member / major shareholder representative or preserve the proportion of independent directors.

In addition, (re-)election terms in Germany, generally ranging from three to five years, are longer than in many other developed markets; investors generally prefer annual elections to ensure accountability and promote good governance practices.

As such, it is suggested that, in the interest of transparency, this provision be maintained as a Recommendation, and be complemented with an indication that companies must provide a compelling rationale for any extraordinary deviation from their own age limits.

Recommendation C.1 – Sustainability within Profile of Skills and Expertise

As outlined in the Continental Europe Benchmark Policy guidelines, many investors expect companies to disclose sufficient information to allow a meaningful assessment of a board's skills and competencies. Accordingly, the Benchmark Policy analysis of election proposals at blue-chip companies includes an assessment of skills disclosure.

This assessment combines a company's own evaluation and supervisory board members' biographical information. The Benchmark Policy does not prescribe what skills should or should not be present on a board, as company-specific circumstances and disclosure are always taken into account. However, in this process, sustainability has proven to be one of the most difficult areas of knowledge to assess, as there is generally less established consensus on which certifications and experiences should suffice to attribute such expertise to a board member. Furthermore, sustainability is an especially broad concept that needs to be considered alongside a materiality assessment.

As such, it would be beneficial if companies accompanied their *Kompetenzprofil* with details on the criteria utilised to assess "sustainability", highlighting which aspect(s) is/are considered the most material to the business and from what specific background or experiences the attribution of that specific expertise was derived.

It is therefore suggested that the Recommendation is amended to prompt issuers to provide more consistent and comprehensive disclosure about which skills or expertise are considered material and how these are attributed, with particular attention to the areas of expertise that may reasonably require clarification or disambiguation (e.g., sustainability or AI/cybersecurity).

Recommendation D.1 – Publication of Rules of Procedure

There appears to be no clear benefit in removing this Recommendation from the perspective of transparency towards free-float shareholders.

The information contained in the rules of procedure is often not readily available in other public documents; therefore, this source can be utilised when clarifications are needed. For example, Glass Lewis may consult this document when analysing board and committee independence (e.g., information on board and committee quorum; role of the supervisory board or committee chair) or diversity (e.g., tenure or age limits), or to check what safeguards are in place in case of conflicts of interest or oversight concerns.

Recommendation D.2 – Forming Committees

There appears to be no clear benefit in removing this recommendation, particularly for shareholders of mid-cap companies (which may be considered excluded from the scope of Principle 14) and for committees other than the audit committee (which is regulated by article 107(4) of the German Stock Corporation Act).

With regard to the second sentence of this Recommendation, the Commission explains that the current text overlaps with a corresponding requirement in the German Commercial Code. However, the legal requirement is phrased in broader terms (*"a description […] of the composition and operating*

procedures of [the board's] committees", Sec. 289f HGB) compared to the current Kodex Recommendation, which more explicitly asks for the disclosure of committee members and chairs. The deletion of this more specific Recommendation could, over time, result in a deterioration in transparency.

Recommendation D.3 – Audit Committee Expertise

There appears to be no clear benefit in removing the Code's definition of accounting and auditing expertise, as this can serve to maintain and improve consistency across companies.

The second sentence of Recommendation D.3 refers to "*sustainability reporting*" in relation to the definitions of accounting and auditing expertise, which are described in the preceding sentence. This acceptation does not appear redundant with the draft CSRD Implementation Act, which relates more to the *tasks* of the audit committee, rather than its *qualifications*.

Further, clients expect Glass Lewis to display, in the board table, which committee member is classified as the financial expert; however, this attribution may have to be subjective when no clear disclosure is provided by the company. In this regard, we also refer to our previous comment on the disclosure of skills and expertise, as a matrix (or generally a profile, in any other form) would indicate which directors have financial expertise, but may not elaborate on the rationale behind its attribution. Similarly, biographical information is not always precise or sufficiently comprehensive on this matter.

Please refer to comment above regarding Recommendation D.2 on disclosure of committee members.

Recommendation D.7 - Disclosing Type of Supervisory Board Meetings

Glass Lewis' Benchmark Policy is generally aligned with the considerations outlined by the Commission in the rationale for this amendment.

It is, however, worth noting that Glass Lewis may take into account the format of supervisory board or committee meetings, if disclosed, when analysing board performance if other concerns are present, for example in case of poor meeting attendance by an individual director or oversight issues. As such, removing this disclosure could result in a less nuanced assessment of borderline situations.

Furthermore, disclosure on board and committee attendance is often scattered in different parts of Corporate Governance reports, and/or provided in aggregate numbers.

Therefore, on balance, it would be beneficial to maintain this Recommendation and strengthen it with additional suggestions about the format of attendance disclosure (e.g. tabular format collecting attendance information broken down by board and committee meeting and meeting format) and the disclosure of a rationale for poor attendance.

Recommendation F.2 – Document Publication Deadlines

Section 114(1) of the German Securities Act requires companies to publish their financial report within four months of the end of the fiscal year. Therefore, the deletion of this Code Recommendation could result in later publication dates for issuers outside the scope of a DAX listing.

Given the condensed nature of the proxy season, where the vast majority of annual general meetings are concentrated in April and May, early publication dates allow investors more time to review the information needed to cast a meaningful vote.

Recommendation G.2 – Determination of Management Board Remuneration Levels

The removal of the second half of the sentence from the current text of the Recommendation appears reasonable, given the full overlap with article 87(1) of the Stock Corporation Act.

Nonetheless, the proposed version of the Recommendation shifts the focus solely to external and internal benchmarking, whereas investors typically expect additional factors (e.g., absolute and relative performance, individual beneficial ownership, scope of responsibilities, location of the executive, and other company-specific or individual elements) to be considered when setting executive pay levels. This is particularly true when the board is proposing an increase in target and/or maximum remuneration.

It is suggested that the Recommendation continue highlighting that other factors must be considered.

Recommendation G.3 – External Benchmarking

The removal of the last sentence of the current text of the Recommendation appears as a deterioration of the quality of this requirement, as an excessive focus on benchmarking in isolation could result in an upward spiral in executive pay regardless of performance and other factors.[1]

We acknowledge that no good alternative to external benchmark is currently available as a basis to set remuneration levels and that investors are generally understanding of increases in pay resulting from benchmarking reviews. However, to support these proposals, investors generally expect stringent disclosure on the changes implemented to the selected peer group(s) and the rationale behind them, in addition to other unrelated reasons that may justify the increased opportunity. Moreover, investors would consider what elements of the pay package are affected by the raise, e.g. fixed only vs. variable only, short-term vs. long-term. Automatic and regular increases that are solely the result of benchmarking reviews and focused on base salary may be met with scepticism.

Lastly, European companies are often expected to weigh the competition for talent against U.S.-based issuers with considerations of social fairness; companies that fail to do so may incur reputational risks and lose the trust of some local investors.

[1] E.g., "Compensation Benchmarking, Leapfrogs, and the Surge in Executive Pay", T. A. DiPrete, G. H. Eirich, M. Pittinsky, 2010; "Are all CEOs above average? An empirical analysis of compensation peer groups and pay design", J. Bizjak, M. Lemmon, T. Nguyen, 2011.

As such, it is suggested that the last sentence of Recommendation G.3 be maintained.

Recommendation G.5 – External Remuneration Expert

There appears to be no clear benefit in removing this Recommendation, which would serve as an additional safeguard for shareholders. At the same time, it does not appear that maintaining this provision would create confusion or an unnecessary disclosure burden for issuers; should a conflict of interest exist, investors would expect to see this clearly addressed in public documents.

Recommendation G.7 – Determination of Performance Metrics

Timeline (First Sentence)

We recognise the practical constraints to setting performance targets relating to the timing of a company's internal budgeting and reporting. However, the text of this Recommendation could be clarified to better distinguish between performance metrics and the attached performance targets.

While it appears reasonable to set the end of the first quarter as a deadline to determine the numerical performance targets attached to each metric, a board would often be able to define performance metrics (i.e., criteria) with a greater advance, other than in case of a strategic review or other one-off event. In fact, in the first years following the transposition of SRD II, many German companies have been establishing performance metrics in their forward-looking remuneration policies.

It is suggested to amend the first sentence of the revised Recommendation to clarify the distinction between these terms and avoid encouraging issuers to delay the definition of performance *metrics.*

Strategic Goals (Second Half of First Sentence)

The indication that performance metrics should be "*mainly […] strategic*" (in addition to operating) appears more prescriptive than the other Code Recommendations regarding executive pay.

Glass Lewis' Benchmark Policy assesses the appropriateness of a performance metric set based on its overall link to a company's key strategic priorities, in line with prevalent investor expectations. Therefore, each selected metric is expected to be strategically relevant to the Company in that moment in time.

Absent a clear definition by the Code of "*strategic goals*", companies may use this provision to justify the implementation of qualitative criteria, which may be poorly disclosed and generally harder to assess for investors.

Weightings (Second Sentence)

The current text could be interpreted as referring to the supervisory board's determination of relative weightings for performance metrics. This is useful information for investors, as metric sets and pay outcomes are also assessed on the basis of the weighting attributed to each metric or category thereof (e.g. financial vs. non-financial, absolute vs. relative, etc.).

Recommendation G.9 – Extraordinary Developments; Determination of Pay Outcomes

Extraordinary Developments (New Text; Current G.11)

Maintaining the first sentence of the proposed new text appears unnecessary, as article 87a(2) of the Stock Corporation Act clearly states supervisory boards may deviate from the terms of a remuneration policy in extraordinary circumstances. In this sense, keeping a provision that overlaps with existing law appears in contrast with the stated spirit of this Kodex revision.

The second sentence of the proposed text remains welcome, as investors generally hold a positive view of recovery provisions.

Determination of Pay Outcomes (Current Text)

We acknowledge the Commission's rationale regarding the first sentence of the current Recommendation and agree that this provision appears unnecessary. However, the second sentence appears valuable to investors, as the German Stock Corporation Act does not include such specific language on the disclosure of target achievement levels. Article 87a(4)b of the AktG states that a remuneration system (or policy) should include all financial and non-financial performance criteria used to determine variable pay and a description of the methods used to determine the achievement of said criteria. As such, the Code is currently more precise in requesting *"comprehensible"* information on target achievement levels, "*both [in terms of] rationale and amount*".

Furthermore, the rationale provided by the Commission states that *ex-post* disclosure of targets should be considered sufficient. While we acknowledge that the *ex-ante* disclosure of performance targets is not prevailing practice in Germany, this is nonetheless a piece of disclosure that some companies provide and is considered a best practice across the main European markets, while being an established common practice in the UK.

Recommendation G.10 – Equity-Based Remuneration

In principle, Glass Lewis is in favour of granting more flexibility to supervisory boards in deciding which portion of management board member's variable remuneration should be allocated and/or invested in company shares. Remuneration committees are generally in the best position to determine this, based on company-specific factors (e.g., ownership structure, personal stakes of individual executives, liquidity and stage of growth, etc.).

However, we invite the Commission to be mindful that German companies tend to use instruments like virtual shares (rather than actual shares) significantly more than peers in the other main European markets. Aside from Belgium and Norway, where many companies grant cash awards, the predominant long-term award type in all other main European markets is performance shares, while in Germany phantom shares are the most used instrument.

Recommendations G.15 and G.16 – Remuneration for Group and Non-Group Mandates

The rationale for the removal of these two provisions does not appear compelling. While the consideration of remuneration at group or non-group entities is currently customary for supervisory boards, market practice may change over time, absent a specific requirement or recommendation.

The Recommendations may be rendered more meaningful by suggesting that companies disclose how external roles were taken into account by the board when setting remuneration levels.

Additional Suggestions

Recommendation G.13 – Severance Cap

We suggest the Commission may take this opportunity to clarify the definition of the recommended cap on severance payments, i.e. *"twice the annual remuneration"*, to indicate what compensation elements should or should not be included in this calculation.

As background, we highlight that this Recommendation, as currently formulated, results in some of the largest termination packages in Europe, due to companies' inclusion of two years of at-target long-term incentive awards in the severance amount (in addition to base salary, at-target short-term incentives and, at times, benefits). An EU Commission Recommendation from 2009 indicated that severance payments should be capped at two years of *fixed* remuneration and not be paid in case of poor performance or resignation.

In addition to the above-mentioned, German companies generally allow outstanding long-term awards to vest *in full* (at the original vesting date, usually subject to actual performance achievement, pursuant to Recommendation G.12) after termination, while best practice in other European markets (including the UK) is to make outstanding awards vest only *on a pro-rated basis*, for the time effectively served until termination.

Lastly, in line with international common practice and the aforementioned EU Recommendation, investors generally expect boards not to allocate any severance in case of termination with cause or resignation. However, in Germany, departing executives usually receive a full severance even when their termination is disclosed as a resignation.

Management Board Remuneration – Granted vs. Vested Terminology

Following the removal of the template tables for the disclosure of management board remuneration from the prior version of the Code, due to the transposition of SRD II, German companies have not been consistent in the language and timeline used to disclose executive pay.

Part of the issue relates to when companies deem it appropriate to disclose the value of vested long-term awards, which varies based on the interpretation of the law. Here, we highlight that investors generally expect to see the value of awards vested in the annual report covering the fiscal year in which

they vested (please see pp. 27-28 of our 2026 Benchmark Policy Guidelines – Germany for further commentary).

Beyond this, the Commission could take the opportunity of this Code revision to offer a common reference for the language to be utilised by issuers in the disclosure of vested pay. In line with prevailing global practice, Glass Lewis defines the relevant terms as follows:

- Granted: Awards promised at the start of the vesting period; target amount is defined, and can then be increased or decreased at vesting based on target achievement.
- Vested: At the end of the vesting period, target achievement is defined and the "final" (pending further shareholding requirements) value of the award is calculated or at least estimated. Same as "earned".

For instance, this could be clarified in the current Recommendations G.9 or G.10 (proposed G.7).