



Regierungskommission Deutscher Corporate Governance Kodex
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Dear Sirs,

Proposals to amend the German Corporate Governance Code

GES is a leading service provider of engagement services to institutional investors globally. Representing more than EUR 1 trillion of investments worldwide, GES acts as an owner advocate by assessing and engaging with clients' portfolio companies and constantly reporting and providing related recommendations to investors.

GES is dedicated to adding long-term value for clients by exercising owners' rights globally and, therefore, pays a particular attention to two key areas of responsible ownership – voting and engagement.

We welcome the opportunity to respond to the consultation on amendments to the German Corporate Governance Code. We have some general comments on the Code and the proposed amendments, which we have summarised below:

The Supervisory Board Chairman and Shareholder Engagement

We welcome the clarification about the role of the Chairman in discussions with investors in Paragraph 5.2 – Tasks and Authorities of the Chairman of the Supervisory Board. We believe that the Chairman of the Supervisory Board has an essential role to play in the delivery of a company's corporate governance processes and systems and thus it is important that he or she is available to meet with investors.

It is our view that companies must commit to shareholder outreach and that the Supervisory Board under the Chairman's stewardship has oversight of engagement, including prioritising potential topics for shareholder engagement. A two-way dialogue will help to deepen the Supervisory Board's understanding of shareholders' concerns and equally provides shareholders with insight into the Supervisory Board's processes. It is, therefore, very important for the Chairman of the Supervisory Board to be visible. Attending meetings with shareholders sends an important message that the Chairman is both committed and proactive. His or her presence at such meetings is an indication that board and management will review input in order to identify concerns and/or suggestions and respond as appropriate. It also helps shareholders to understand how the board is exercising its oversight function.

Board Independence

We view the generally low level of independence on German Supervisory Boards as a particular governance challenge in Germany. Given companies' lack of progress in this area, we believe that the Code should stipulate

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that there should be a minimum of two independent directors on the Supervisory Board. Independent directors play an essential role in overall governance of a company. They bring an external and wider perspective and provide an objective voice in the decision-making process. Without an adequate number of independent directors, Supervisory Boards are not able to exercise their oversight function effectively.

In Paragraph 5.4.1, we note that companies will now have to provide shareholders with information about the appropriate number of independent Supervisory Board members and the names of those members in the Corporate Governance Report. While this is welcomed, we believe that there should be a further requirement added to the Code to encourage companies to explain why they consider a Supervisory Board member to be independent, especially in cases where someone's existing relationships or circumstances may appear relevant or could impact his/her independence. In many cases, independence is not a clear cut designation and, therefore, companies should explain why they consider a director to be independent.

Board Directors' Skills

We welcome the additional requirement in Paragraph 5.4.1 for companies to provide a brief CV and details of their activities on the Supervisory Board for all members, which is updated on an annual basis. However, we would suggest that additional wording is added that asks companies to provide each directors' relevant skills and experience and explain what he/she brings to the Supervisory Board.

We believe that Supervisory Boards should fully disclose their view on the qualities required to effectively oversee and guide the company's management. A list of previous roles is not sufficient. Shareholders want to understand why each director is appointed to the Supervisory Board and what skills they add to the mix of competencies. Narrative from the company that explains this will help shareholders to develop a better overall picture of the Board's skill-set and should help to secure the support of shareholders for director nominees.

In addition to this amendment, we believe that the Code should require additional disclosures in this area, which would help to further improve independence, board oversight and effectiveness. We believe that the Code should ask for companies to disclose the following information:

- the process by which Supervisory Board candidates are selected;
- disclosure as to whether professional firms or networks have been engaged to identify candidates;
- the process by which the Supervisory Board conducts annual self-assessments and outcomes of the evaluation process;
- how boards continuously enhance the director recruitment and the selection process
- the board education process; and
- what procedures are put in place to enable active independent oversight.

This is valuable information that helps shareholders to understand the Board's composition, succession planning, nomination processes and evaluation and would provide comfort that the Supervisory Board has effective processes in place to ensure good governance and oversight.

We hope that GES' comments will be helpful in supporting your deliberations. If you have any further queries about our response, please do not hesitate to contact us.

Yours faithfully,



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