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Ladies & Gentlemen,

You will, please, find below ECGS comments and remarks on the above referenced consultation on the draft of the new German Corporate Code.

About ECGS:

- Founded in 2001, the Expert Corporate Governance Service (ECGS) is a pan-European network of independent proxy advisors (of which Proxinvest serves as managing partner and DSW as the German partner). ECGS helps institutional investors with global asset portfolios understand the regulatory diversity in Europe by providing corporate governance research and proxy voting advice based on local market expertise. Governance structures and shareholder rights vary widely across European jurisdictions depending on local regulations, corporate governance codes, and cultural practices. ECGS' mission is to provide a consistent proxy voting and corporate governance engagement policy across European markets. It covers c. European 500 stocks (MSCI Europe 440+ and Footsie 300).

- Founded by Pierre-Henri Leroy in 1996, Proxinvest is a Paris-based proxy advisory and corporate governance research consulting firm that provides institutional investors with voting advice at general meetings of publicly traded French companies.

1. New Code structure

The Code has been completely reshuffled in a welcome attempt to streamline it by deleting references to detailed German legislative texts. However, for non-German investors, the previous code presented the advantages of better understanding the legal structure of the German Corporate Governance framework. This is even more true as Germany is a country operating under a two-tier board structure which is not familiar to many other countries (except France). Instead of deleting entirely those legal references, a mitigating solution could be to attach those detailed German legislative texts as an appendix at the end of the draft Code.

Additionally, we are particularly concerned about the proposed deletions of the following Code recommendations:

** 2.2.1 and 3.7: "The General Meeting also adopts resolutions on the content of the Articles of Association, in particular the purpose of the corporation and **essential structural measures such as inter-company agreements and transformations.**" And "In the event of a takeover offer, the Management Board should convene an Extraordinary General Meeting at which shareholders will discuss the takeover offer and, if appropriate, decide on corporate actions."*

Both deletions reduce shareholder rights critically and are therefore highly detrimental to them.

** 2.3.2: "The corporation shall facilitate the exercise of shareholders' rights in person or by proxy."*

Deleting this recommendation may induce companies to no longer provide such services to shareholders. Such services are however indispensable to strengthen shareholder democracy, especially for foreign investors and individual shareholders, as it enables them to vote from a distance.

2. “Apply and explain” complementary approach

ECGS supports the introduction of the “*apply and explain*” complementary approach to the “*comply or explain*” approach. We also consider as being important the need to clarify that this “*apply and explain*” approach holds true only for the principles, and not for each Code recommendation.

3. Composition of the Supervisory Board

We welcome :

- a) the introduction of an age limit (B3.),
- b) the disclosure of the term of office of board members (B4.),
- c) the recommendation to limit the maximum number of other mandates for both Executive and non-Executive board members (B5. and B6.), and
- d) the definition of independence of the supervisory board (B8.), with a list of set criteria that may impact for the first time the independence of board members in Germany.

4. Remuneration of Management Board and Supervisory Board Members

The remuneration section of the draft Code provides for 17 recommendations and one suggestion, which is overweighting the entire Code, although executive pay is an essential topic that shareholders want to improve their control of. So many details might have an unintended consequence of limiting flexibility of the Supervisory Board in negotiating efficiently the Management Board remuneration.

In order to protect shareholder rights, we recommend a trade-off between a more flexible Executive pay framework in exchange of a legally binding vote on such Executive pay.

In order to have a meaningful legally binding vote on Executive pay, ECGS recommends to keep the existing pay disclosure templates that enables comparability.

We thank you for having given us the opportunity to comment on these important issues in this consultation process.

Kind regards,

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