

**Government Commission
German Corporate Governance Code**

Administrative Office

Press release

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**Statement on EU Corporate Governance Green Book
Yes to review of rules for effectiveness at European level, but no
additional bureaucracy**

In its statement on the EU Corporate Governance Green Book the Code Commission welcomes the fact that the discussion process initiated by the EU Commission is to investigate and to evaluate the effectiveness of the current corporate governance for European companies. The German Corporate Governance Code already meets most of the criteria discussed in the Green Book. Therefore, and against this background, the subsidiarity principle has to be taken into account in relation to the issue of corporate governance. Above all, it should be ensured that Europe does not increase the complexities of the issue any further and that no additional bureaucracy is created.

In terms of possible rules on the composition of the Supervisory Board, the Government Commission indicates that the objective must still be to maintain the flexibility and self-determination of companies and to avoid excessive bureaucratic burdens. In this connection the Commission stresses its opposition to any quota rules given the positive experience of recent years with the German flexible code recommendation that more women should be appointed to Supervisory Boards and Management Boards. The statement thus literally specifies that a one-size-fits-all solution in the form of a generally binding quota of women does not meet the requirements either of the complexity of the question or the needs of the individual companies. Therefore, companies should set targets themselves,

publish these and leave it up to stakeholders to evaluate the setting and achieving of targets.

The approach taken in the Green Book of particularly stressing the responsibilities of the Supervisory Board in relation to risk management also meets fundamentally with the approval of the Code Commission. The German Corporate Governance Code already reflects this conviction in its recommendations. The deliberations in the Green Book concerning charging the Supervisory Board with the responsibility of defining risk policy are not however supported, since determining the risk profile and the associated risk management are fundamentally the sole competencies of the Management Board under the German system. However, in the view of the Code Commission, the Supervisory Board certainly bears the responsibility for approving the risk profile and the company's risk appetite as well as for monitoring adherence to objectives connected with the risk profile. It is important that the Supervisory Board is not charged with any tasks which are clearly the responsibility of the Management Board. This should also be made clear by the EU Commission.

Mainly because of the high level of regulation, there is no support for the proposition put forward by the EU Commission that the quality of the explanations provided by the companies in relation to divergences from recommendations in the code, and, therefore, the quality of information contained in the declarations of conformity would have to be monitored by the authorities. Such monitoring would, from the Commission's point of view, only lead to major bureaucratic effort without achieving the objective of meaningful declarations of conformity. Such an authority would be a violation of the fundamental principle of Comply or Explain.

In relation to the discussed proposal to impose only limited corporate governance obligations on small and medium-sized companies based on the size of the company and its capabilities, the Corporate Governance Commission maintains that, in so far as EU corporate governance measures are based on the recommendations of national corporate governance codes, distinguishing between large companies and SMEs does not make sense. Especially if, as is the case with German corporate governance, the corresponding codes permit companies to diverge from individual recommendations of the relevant code and are only obliged to disclose this divergence and give reasons for it in the declaration of conformity.

Finally, the Code Commission advises against taking corporate governance measures at the EU level for unlisted companies.

As explained in the statement, the Government Commission supports the approach taken in the Green Book of dealing separately with the important topics of corporate governance and corporate social responsibility and possibly adopting different regimes.

Comments for editors

Government Commission German Corporate Governance Code

The Government Commission on the German Corporate Governance Code, set up by the Federal Minister of Justice in September 2001, approved the German Corporate Governance Code on 26 February 2002, which has acquired a statutory basis via the Declaration of Compliance pursuant to Article 161 of the German Stock Corporation Act (AktG).

The German Corporate Governance Code represents the major legal regulations on the management and monitoring of German listed companies (corporate governance) and also contains internationally and nationally recognised standards of good and responsible corporate governance.

The aim of the German Corporate Governance Code is to make Germany's corporate governance rules transparent for both national and international investors, thus strengthening confidence in the management of German corporations.

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