

Summary for the media: 2007 Code Report

Empirical survey by the Berlin Center of Corporate Governance on acceptance of the recommendations and suggestions of the German Corporate Governance Code

Acceptance of the German Corporate Governance Code is continuously increasing. The very high level already achieved in previous years will show a further improvement after the resolutions passed in the 2007 AGM season. This is true in particular of the leading share index of the 30 DAX companies who set the trend in corporate governance in Germany.

Headed by Prof. Dr. Axel von Werder, the Berlin Center of Corporate Governance assesses acceptance on the basis of three main criteria:

- firstly, the average absolute level of compliance with the individual items of the Code is quantified (*for example 78.1 of the 81 recommendations*);
- secondly, the relative level of compliance is quantified on the basis of the changing absolute total number of Code items (*for example, the 78.1 recommendations complied with represent 97.3% of the 81 recommendations*);
- finally, the number of Code items not accepted by at least 90% of all companies is determined (*for example, four recommendations are not followed by at least 90% of the companies*).

Overview at the end of 2007

On average DAX companies comply with 97.3% (2006: 96.7%) or in absolute terms 78.8 (2006: 79.3) of the Code's 81 (2006: 82) recommendations; only four (2006: seven) recommendations are accepted by fewer than 90% of the DAX companies. In the M-DAX the figure is 92.4% on average (2006: 92.3%) or 74.9 in absolute terms (2006: 75.7), and in the S-DAX 86.2% (2006: 88.8%) or 69.8 in absolute terms (2006: 72.9) – slightly lower than the year before. In the M-DAX 17 (2006: 15) and in the S-DAX 30 (2006: 21) recommendations are accepted by fewer than 90% of companies. Acceptance for the Code's suggestions is also increasing in the DAX (in absolute terms) and M-DAX (in absolute and relative terms); acceptance of the suggestions in the S-DAX has decreased slightly.

The findings are based on a survey of the companies conducted by the BCCG.

DAX 30

Of the 30 DAX companies, the 29 (2006: 28) who responded will have implemented 97.3% (2006: 96.7%) of 81 (2006: 82) recommendations by the end of 2007 after the AGM season. This is nominally 78.8 of 81 (2006: 79.3 of 82) recommendations. However, the decisive factor is that in 2007 only four recommendations will be accepted by fewer than 90% of the companies surveyed. In 2006, seven recommendations fell below the 90% compliance rate.

The four recommendations accepted by fewer than 90% of the DAX companies surveyed at the end of 2007 are:

- appropriate deductible for D&O insurance policies for management and supervisory board members (at year-end 2007: 85.7% - 2006: 78.6%);
- discussion by the full supervisory board of the structure of the management board compensation system (86.2% - 2006: 85.7%);
- restriction of the move by a past management board chairman or member to the chair of the supervisory board or a supervisory board committee (79.3% - 2006: 77.8%) and
- performance-related compensation for supervisory board members (89.7% - 2006: 85.7%).

Comments on this are as follows:

90% acceptance level

In 2006 the recommendations falling below the 90% acceptance rate included the four mentioned above as well as the recommendations on conducting elections to the supervisory board on an individual basis (no. 5), and individualized disclosure of compensation paid by the company to members of the supervisory board or advantages extended for services provided individually (no. 6).

Furthermore, the recommendation on individualized disclosure of management board compensation (no. 7) achieved a voluntary acceptance rate of 77.8% in 2006, but following the introduction of the German Act on the Disclosure of Management Compensation (VorstOG), this is now a statutory requirement.

Individualized disclosure

With regard to the three recommendations rewritten in 2006 following the introduction of the VorstOG to define disclosure of management board compensation in more concrete terms, an above-average number of companies have announced that they intend to implement these recommendations before the end of the year. The recommendations relate to incorporating a compensation report into the corporate governance report, disclosures regarding allocations to accrued pension liabilities or pension plans, and disclosures on the fringe benefits provided by the company. By the end of 2007 all three recommendations rewritten following the introduction of the VorstOG will achieve an acceptance level of over 90% in the DAX and will therefore be implemented almost without exception.

Acceptance of the new standards relating to the supervisory board

In 2005 a relatively extensive revision of the Code was carried out which alone was responsible for increasing the number of recommendations from 72 to 82. Of the ten new Code recommendations introduced at that time, nine alone related to aspects of the supervisory board which for the most part had already been implemented last year.

With the acceptance rate for conducting elections to the supervisory board on an individual basis having passed the 90% mark between 2006 and 2007, only one of the recommendations introduced in 2005 now continues to fall below the threshold: Although acceptance for the recommendation that the move by a past management board chairman or member to the chair of the supervisory board or a supervisory board committee should "not be the rule" is increasing (79.3% as opposed to 77.8% the year before), it still remains below 90%.

Acceptance of the suggestions

In addition to the 81 recommendations, the current Code contains 20 suggestions. These provide companies with additional guidance on good corporate governance which they should or could follow. At the end of 2007, 17.1 (85.5%) of all 20 suggestions were followed by DAX companies, compared with 16.5 (86.8%) of the 19 suggestions in 2006. 12 of the 20 suggestions remain below the 90% acceptance rate.

M-DAX

In the midcap segment comprising the 50 M-DAX companies, the acceptance figures changed as follows: On average the 28 (2006: 36) companies who responded will have implemented 92.4% of the 81 (2006: 92.3% of 82) recommendations by the end of 2007. This is nominally 74.9 of 81 (2006: 75.7 of 82) recommendations. 17 (2006: 15) recommendations fall below the 90% acceptance threshold. This means that a slightly higher average acceptance level is

observed among the M-DAX companies, though the figures relating to the 90% threshold deteriorated slightly.

In the M-DAX, 17 (2006: 15) recommendations fell below the 90% acceptance level. These include the recommendations already mentioned for the DAX segment relating to D&O insurance, the restriction of the move by a management board chairman or member to the chair of the supervisory board or supervisory board committee, and performance-related compensation for supervisory board members.

Furthermore, there is still some need among M-DAX companies to catch up with the implementation of the Code recommendations introduced in 2005, despite a significant increase in the degree of implementation in the reporting period. Around a quarter of the M-DAX companies indicate that they intend to implement for the first time in 2007 the two recommendations on conducting elections to the supervisory board on an individual basis and on announcing proposed candidates for the supervisory board chair. After this the compliance rates will increase from 70.4% to 96.3% (for individual elections) and from 65.4% to 88.5% (for candidate proposals). In the context of management board compensation, the recommendation that a compensation report be included as part of the corporate governance report will exceed the 90% acceptance threshold to reach 92.9%. The recommendations remaining below this acceptance level in the M-DAX relate to the disclosures on allocations to accrued pension liabilities and on the fringe benefits provided by the company to management board members.

The M-DAX companies comply with 15.4 or 77% of the 20 suggestions (2006: 13.7 or 72.1% of 19 suggestions). 12 of the 20 suggestions remain below the 90% acceptance level.

S-DAX

The companies in the S-DAX now comply with 86.2% of 81 (2006: 88.8% of 82) recommendations. This is 69.8 of 81 (2006: 72.9 of 82) recommendations. 30 (2006: 21) recommendations remain below the 90% acceptance threshold. In the S-DAX further recommendations fall below the 90% acceptance level: These relate among other things to the treatment of stock options and the recommendations on the compensation report. Nevertheless, in the S-DAX, too, acceptance for the recommendations currently still below the 90% threshold increased.

Ultimately, the S-DAX companies will comply with 12.2 (61.2%) of the 20 suggestions by the end of 2007. In 2006 the figures were 12.5 or 65.5% of the 19 suggestions. However, this year 16 of the 20 suggestions fail to reach the 90% acceptance rate.