

Media Summary: Code Report 2008

Empirical study 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 remains high. The very high level of previous years remains virtually unchanged, with an average compliance level in the DAX of 95% of all 80 recommendations by the end of 2008. However, it should be pointed out that the companies surveyed in 2008 are not identical to those surveyed in 2007 because the composition of the indices changed. Furthermore, the number of recommendations in the Code decreased from 81 to 80, while the number of suggestions increased from 20 to 23.

The Berlin Center of Corporate Governance headed by Prof. Dr. Axel v. Werder assesses acceptance of the Code's recommendations and suggestions mainly on the basis of three criteria:

- Firstly the average absolute level of compliance with the individual Code items is calculated (for example 76.5 of 80 recommendations in the DAX at the end of 2008).
- Secondly the relative level of compliance is calculated on the basis of the changing absolute total number of Code items (for example 76.5 of 80 recommendations equates to 95.6%).
- Thirdly the number of Code items not observed by at least 90% of all companies is calculated (for example 5 of 80 recommendations are followed by fewer than 90% of DAX companies at the end of 2008).

Overview as at the end of 2008

On average, the DAX companies follow 95.6% (end of 2007: 97.3%) or in absolute terms 76.5 (78.8) of the Code's 80 (81) recommendations. Only 5 (4) recommendations remain below the 90% acceptance level in the DAX.

The M-DAX companies follow on average 92.4% (92.4%) or in absolute terms 73.9 (74.9) of 80 (81) recommendations; 17 (17) recommendations fall short of the 90% acceptance level. In the S-DAX on average 86.7% (86.2%) or in absolute terms 69.3 (69.8) of the 80 (81) recommendations are followed. 24 (30) recommendations are below the 90% compliance level.

With regard to the Code's suggestions, three new suggestions were added in the Code amendment in 2007. As a result, acceptance levels for the 23 (20) suggestions show a decline but remain high at year-end at 78.9% (DAX), 71.4% (M-DAX) and 62.4% (S-DAX).

Details of the DAX results

In the DAX segment, 28 (29) of 30 companies responded to the acceptance survey and they comply with altogether 95.6% (97.3%) of the recommendations. The five recommendations followed by fewer than 90% of the DAX companies included at the end of 2008 concern:

- communication of the convening of the annual general meeting including the convening documents by electronic means (85.7%).
- an appropriate deductible for D&O insurance for members of the management board and supervisory board (77.8%).
- discussions in the full supervisory board on the structure of the compensation system for the management board (85.2%).
- the restriction on the move by a former management board chairman or management board member to the supervisory board chair or chair of a supervisory board committee (75.0%).
- performance-related compensation for supervisory board members (82.1%).

Only the recommendation that a move by a management board member to prominent positions on the supervisory board should not be the rule is not followed by a quarter of the DAX companies. However, the acceptance level for the recommendation that special reasons must apply for the planned appointment of former management board members to prominent supervisory board positions can be expected to reach 95.8% by the end of the 2008 annual general meeting season.

The board-move recommendation and the recommendations on an appropriate D&O-deductible, the discussion of the compensation system structure by the full supervisory board, and performance-related compensation for supervisory board members also fell short of the 90% threshold in the previous year. Added to these in 2008 is the recommendation on communicating the convening of the annual general meeting. On the other hand, the recommendation on the rules of procedure for the management board which was reworded in the previous year is accepted by 100% of the DAX companies, and the recommendation on the introduction of a nomination committee in the supervisory board by 96.3%.

Of the 23 suggestions now in place, 18.1 or 78.9% will be complied with by the end of 2008, compared with 17.1 or 85.5% of 20 suggestions in 2007. At year-end 13 of the Code's 23 suggestions will be accepted by fewer than 90% of the companies. In the previous year, 8 out of 20 were below this threshold.

Details of the M-DAX results

In the M-DAX the levels of acceptance are virtually unchanged. At year-end 92.4% (92.4%) or in absolute terms 73.9 (74.9) of the 80 (81) recommendations will be followed. At the end of the year 66.7% of the M-DAX companies included will comply with the newly introduced recommendation on setting up a nomination committee. The recommendation on rules of procedure for the management board is accepted by 100% of the M-DAX companies. The lowest level of acceptance in the M-DAX is recorded for the recommendation on an appropriate deductible for D&O insurance for the management board and supervisory board. This is followed by only 63.3% of the M-DAX companies included in the survey. With regard to the suggestions, 16.4 or 71.4% of the Code's 23 suggestions are followed. In the previous year the figure was 15.4 or 77.0% of 20 suggestions. 14 of the 23 suggestions are accepted by fewer than 90% of the companies, compared with 12 out of 20 suggestions the year before.

Details of the S-DAX results

In the S-DAX, too, the level of acceptance is practically unchanged: 86.7% (86.2%) or 69.3 (69.8) of the 80 (81) recommendations are complied with. 24 (30) recommendations fall short of the 90% acceptance level. Only 33.3% of S-DAX companies follow the recommendation on an appropriate deductible for D&O insurance for management board and supervisory board members. By year-end 50% of the companies will accept the recommendations on the comparison of stock options and similar instruments against relevant high-quality benchmarks and the formation of a supervisory board nomination committee. The reworded recommendation on the rules of procedure for the management board is implemented by all S-DAX companies without exception. With regard to the Code's suggestions, 14.4 or 62.4% of the 23 suggestions will be accepted by year-end. In the previous year the figure was 12.2 or 61.2% of 20 suggestions.