



Berlin Center of
Corporate Governance

Implementation of the Recommendations and Suggestions of the German Corporate Governance Code

An empirical survey
of DAX, MDAX and SDAX companies

EXECUTIVE SUMMARY

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A. Methodology

As in previous years¹ the Berlin Center of Corporate Governance (BCCG) surveyed all companies listed on the Frankfurt Stock Exchange to systematically record the acceptance of the rules of the German Corporate Governance Code (GCGC). Based on the current version of the Code, a questionnaire was developed in which companies were asked to indicate (by means of a check mark) for each individual recommendation and suggestion whether they already comply with the relevant rule, intend to do so this year or do not apply the rule. The Code as amended on June 2, 2005 contains 82 recommendations and 19 suggestions. In total, 200 useable questionnaires were returned. The present summary focuses on the DAX, MDAX and SDAX indices and is based on the answers of 84 companies (28 DAX, 36 MDAX and 20 SDAX companies)².

B. Main results

I. DAX 30

Recommendations

1. None of the 28 DAX companies included rejects all the Code's recommendations.
2. Five companies already follow all 82 recommendations. At the time of last year's survey there were already six companies who accepted all the 72 recommendations then applying. Disregarding the Code's new recommendations for the sake of comparison, there are now nine DAX companies who follow these 72 recommendations.
3. Two further companies indicated that they will implement all the recommendations of the Code in its current version by the end of the year. The number will therefore increase to seven companies, or 25.0% of responding DAX companies.
4. On average, each of the DAX companies questioned follows 78.2 recommendations today (in the future: 79.3). This represents 95.3% (in the future 96.7%) of all recommendations. Last year the corresponding figures were 96.3% (and 97.3%).

¹ See v. WERDER, AXEL/TALAUICAR, TILL/KOLAT, GEORG L. (2003): Code Report 2003: The Acceptance of the Recommendations of the German Corporate Governance Code. In: Der Betrieb, Vol. 56, pp. 1857-1863; v. WERDER, AXEL/TALAUICAR, TILL/KOLAT, GEORG L. (2004): Code Report 2004 – The Acceptance of the Recommendations and Suggestions of the German Corporate Governance Code. In: Der Betrieb, Vol. 57, pp. 1377-1382; v. WERDER, AXEL/TALAUICAR, TILL (2005): Code Report 2005: The Acceptance of the Recommendations of the German Corporate Governance Code. In: Der Betrieb, Vol. 58, pp. 841-846.

² For details of the survey and the other findings see v. WERDER, AXEL/TALAUICAR, TILL (2006): Code Report 2006. In: Der Betrieb, Vol. 59, in preparation.

5. At the time of the survey, there are only ten recommendations which are rejected by more than one in ten of the responding DAX companies and are in this sense "critical". Five of these recommendations are new additions to the Code which were adopted following the most recent review of the Code. According to the survey for the Code Report 2005, six recommendations were classed as critical.
6. Therefore, of the Code's 82 recommendations applying today, 72 are already implemented by at least 90% of the DAX companies included.
7. Widening the horizon, only seven recommendations remain which in the future will be followed by fewer than 90% of the companies included. These seven critical recommendations concern
 - an appropriate deductible for D&O insurance for members of the management board and supervisory board (acceptance in the DAX today and in the future: 78.6%),
 - discussions in full supervisory board meetings on the structure of the compensation system for the management board (acceptance in the DAX today and in the future: 85.7%),
 - individual disclosure of management board compensation (acceptance in the DAX today: 74.1%; in the future: 77.8%),
 - the conduct of elections to the supervisory board on an individual basis (acceptance in the DAX today: 57.1%; in the future: 85.7%),
 - the restriction of the move by the former management board chairman or a management board member to the supervisory board chair or chair of a supervisory board committee (acceptance in the DAX today: 70.4%; in the future: 77.8%),
 - performance-related compensation for supervisory board members (acceptance in the DAX today and in the future: 85.7%) and
 - individual disclosure of compensation or benefits paid by companies to members of the supervisory board for services performed personally (acceptance in the DAX today and in the future: 89.3%).
8. Consequently, the number of recommendations with an acceptance rating of at least 90% will increase in the future to 75.
9. The lowest level of acceptance is for the recommendations that an appropriate deductible be agreed insofar as companies take out D&O insurance for members of the management board and supervisory board, that the compensation paid to management board members be disclosed individually, and that the move by a former management board chairman or management board member to the chair of the supervisory board or the chair of a supervisory board committee should not be the rule. Nevertheless, around three quarters of the DAX companies will meet these Code standards in the future.
10. Major changes are expected before the end of this year in the implementation of the Code's recommendation concerning elections to the supervisory board.

11. The acceptance rating will nevertheless remain below the critical 90% threshold for the two recommendations that elections to the supervisory board be made on an individual basis and that it should not be the rule for the former management board chairman or a management board member to become supervisory board chairman or the chairman of a supervisory board committee.
12. By contrast, by the end of the year more than 90% of the DAX companies will implement the three recommendations that applications for the judicial appointment of a supervisory board member be limited in time up to the next annual general meeting, that proposed candidates for the supervisory board chair be announced to the shareholders, and that special reasons should be presented to the annual general meeting if it is intended to appoint the former management board chairman or a management board member as supervisory board chairman or chairman of a supervisory board committee.

Suggestions

13. No DAX company rejects all the Code's suggestions.
14. Three DAX companies already follow all of the Code's 19 suggestions today. A further company intends to do so before the end of the year. Last year no DAX company followed all 19 suggestions.
15. On average, 16.2 of the Code's 19 suggestions and therefore 85.2% (last year: 82.2%) of all the Code's suggestions are followed today.
16. In the future, this figure will rise to 16.5 (86.8%).
17. At the time of the survey there are still eight suggestions which are rejected by more than one in ten of the responding DAX companies. These concern
 - the availability of the proxy during the AGM (acceptance in the DAX today: 85.7%; in the future: 89.3%),
 - the transmission of the AGM on the internet or similar (acceptance in the DAX today: 75.0%; in the future: 85.7%),
 - the convening of an extraordinary general meeting in the event of take-over bids (acceptance in the DAX today: 82.6%; in the future: 87.0%),
 - the comments on the Code's suggestions (acceptance in the DAX today: 67.9%; in the future: 82.1%),
 - the shorter appointment term of management board members appointed for the first time (acceptance in the DAX today and in the future: 88.5%),
 - the non-appointment to the chair of the audit committee of former management board members of the company (acceptance in the DAX today and in the future: 89,3 %),
 - the flexibilization of the appointment terms of supervisory board members (acceptance in the DAX today and in the future: 39.3%), and

- the compensation components for the supervisory board based on long-term company success (acceptance in the DAX today and in the future: 57.1%).
18. Of the Code's 19 suggestions, eleven are therefore implemented by at least 90% of the DAX companies today. Last year only nine suggestions had an acceptance rating of over 90%.
 19. As in the previous year, the number of critical suggestions does not change if the horizon is widened. The only notable increase in the implementation rate is expected for the two suggestions that the AGM be transmitted on the internet and that comments be made on the Code's suggestions in the corporate governance report. However, this will not be enough for the recommendations to lose their critical status.
 20. According to the questionnaires received, eight suggestions will remain in the future which are followed by fewer than 90% of DAX companies.

II. MDAX 50

Recommendations

1. None of the 36 responding MDAX companies rejects all the Code's recommendations.
2. However, unlike in previous years, three MDAX companies now indicate that they already follow all 82 of the Code's recommendations today. By the end of the year this will increase to 5 MDAX companies.
3. On average, 74.0 recommendations are accepted by the MDAX companies surveyed. This corresponds to 90.2% of the Code's 82 recommendations. In the last survey for the Code Report 2005, this figure was 89.1%.
4. By the end of 2006 this number will increase to 75.7 recommendations or 92.3% of all recommendations.
5. Today there are 20 (last year 19) recommendations which are not followed by at least 90% of the MDAX companies surveyed.
6. Of the Code's 82 recommendations, therefore, 62 are already implemented by at least 90% of the responding MDAX companies today.
7. Widening the horizon, the number of recommendations with an acceptance level of at least 90% increases to 67. This is chiefly attributable to increased acceptance of the new recommendations on elections to the supervisory board.
8. Consequently, the number of critical recommendations among MDAX companies will decrease in the future to 15.

9. For around half of the recommendations that will remain critical in the future, the level of acceptance is not expected to increase this year. Eight of the 15 recommendations show increasing acceptance over time, but the rates of increase are not enough for them to lose their critical status.
10. As last year, the individual disclosure of management compensation is the recommendation with the lowest level of acceptance among the MDAX companies. However, the degree of acceptance is increasing continuously over time. In the survey conducted for the Code Report 2004, fewer than one fifth (18.2%) of the responding MDAX companies met this recommendation. Based on the survey carried out for the Code Report 2005, one quarter (25.0%) of the companies included made the recommended disclosures. In this year's survey this figure has increased to 41.7% today and 55.6% in the future. Therefore, by the end of 2006 the majority of the (surveyed) MDAX companies will comply with the recommendation.
11. As in the DAX, significant changes are expected in the MDAX before the end of the year in respect of the implementation of the Code's new recommendations on elections to the supervisory board. Acceptance of the recommendation that elections to the supervisory board be conducted on an individual basis will increase by almost two thirds from currently 54.3% to 88.6% in the future.
12. By comparison, the growth in acceptance will be smaller for the three recommendations that applications for the judicial appointment of a supervisory board member should be limited in time up to the next annual general meeting, that proposed candidates for the supervisory board chair should be announced to the shareholders, and that special reasons should be presented if it is intended to appoint the former management board chairman or a management board member as supervisory board chairman or the chairman of a supervisory board committee. Nevertheless, as a result of this growth, these Code recommendations will be met by more than 90% of the MDAX companies by the end of the year.

Suggestions

13. As in previous years, none of the responding MDAX companies rejects all the Code's suggestions.
14. Unlike last year, however, one MDAX company indicated that it follows all 19 suggestions.
15. On average, at the time of the survey 13.4 or 70.5% of the Code's suggestions are implemented. Last year this figure was 67.6%.
16. In the future the MDAX companies will apply 13.7 (72.1%) of the suggestions on average.

17. There are 12 suggestions which are and will continue to be followed by fewer than 90% of the MDAX companies surveyed. Last year 13 of the 19 suggestions were critical.
18. This means that at the time of the survey seven of the Code's recommendations are accepted by more than 90% of the responding companies.
19. As in the previous year, the degree of acceptance for the Code's suggestions is not expected to increase significantly. Based on the responses, acceptance of 13 of the suggestions is not expected to change this year.
20. A more significant increase in acceptance is only envisaged for the (critical) suggestion that an extraordinary general meeting be convened in the event of takeover bids. However, the increase will not be enough for acceptance to reach the critical 90% threshold.

III. SDAX 50

Recommendations

1. As with the two previous indices and as last year, none of the 20 SDAX companies which it was possible to include in the survey rejects all the Code's recommendations.
2. At the time of the survey, however, it remains the case that no company already follows all the Code's recommendations.
3. According to disclosures in the questionnaires returned, none of the SDAX companies surveyed intends to implement all the recommendations in the future.
4. On average, each SDAX company follows 71.0 (86.6%) of the 82 recommendations today. Last year the figure was 60.8 (84.4%).
5. By the end of the year the companies intend to apply two further recommendations on average. The share of recommendations followed will then rise to 88.8%.
6. The survey identified 28 (last year: 27) recommendations which are not followed by at least 90% of the SDAX companies surveyed at the time of the survey.
7. Of the Code's 82 recommendations, 54 are therefore currently implemented by at least 90% of the companies surveyed.
8. The questionnaires received showed that by the end of the year seven further recommendations will lose their critical status as they will then be observed by more than 90% of the SDAX companies.

9. At the time of the survey and in the future, there are three recommendations which are rejected by the majority of the SDAX companies surveyed. These recommendations concern
- the agreement of an appropriate deductible insofar as the company takes out D&O insurance for members of the management board and supervisory board (acceptance in the SDAX today and in the future: 40.0%),
 - individual disclosure of management compensation (approval in the SDAX today: 42.1%; in the future: 47.4%), and
 - structured and individual reporting of supervisory board compensation in the corporate governance report (approval in the SDAX today: 35.0%; in the future: 45.0%).
10. As with the two previous indices, acceptance of the Code's new recommendations on elections to the supervisory board is also expected to increase significantly in the SDAX.
11. As a result of this increase, by the end of the year the only recommendation that will be followed by slightly fewer than 90% of the SDAX companies surveyed will be the recommendation that special reasons be presented if it is intended to appoint the former management board chairman or a management board member as supervisory board chairman or chairman of a supervisory board committee.

Suggestions

12. As last year, none of the responding SDAX companies rejects all the Code's suggestions.
13. However, none of the SDAX companies participating in the survey complies with or intends to comply with all 19 of the Code's suggestions.
14. On average, around 12.1 suggestions are implemented today. This corresponds to a share of 63.4% (last year: 66.3%) of the suggestions.
15. In the future 12.5 (65.5%) of the 19 suggestions will be followed.
16. At the time of the survey there are 16 (last year: 17) suggestions which are rejected by more than one in ten of the responding companies.
17. This means that three suggestions are followed by more than 90% of the SDAX companies surveyed. These are the suggestions that the supervisory board should meet without the management board if necessary, that the variable elements of management compensation should include components linked to business performance, and that the company's publications should also be issued in English.
18. According to the questionnaires received, the number of critical suggestions will decrease by two by the end of the year.

19. This means that in the future more than 90% of the SDAX companies will convene an extraordinary general meeting in the event of takeover bids and will refrain from appointing a former member of the company's management board as chairman of the audit committee.
20. Of the Code's 19 suggestions, therefore, five will be accepted by over 90% of the responding companies in the course of the year.

C. Conclusions

This survey conducted for the Code Report 2006 shows that the German Corporate Governance Code as a whole continues to enjoy high acceptance. As expected, acceptance varies between recommendations and suggestions. As in previous years, it is also clear that acceptance tends to increase with the size of the company. Thus the comparatively small number of recommendations identified by the survey which will not be followed by the majority of companies now or in the future related to the SDAX segment only.

Before the end of the year a relatively pronounced increase is expected in the implementation of the Code's new recommendations concerning elections to the supervisory board. While at the time of the survey the majority of these new recommendations were classed as critical in all the indices surveyed, by the end of the year no more than two of these recommendations will be implemented by fewer than 90% of companies. Worthy of particular mention in this context is the finding that only in the DAX do around a quarter of companies not intend, now or in the future, to accept the recommendation that it should not be the rule for the former management board chairman or a management board member to become supervisory board chairman or the chairman of a supervisory board committee. In the MDAX and SDAX, on the other hand, over 90% of the companies will meet this recommendation.