Government Commission
German Corporate Governance Code

Administrative Office

Press Release

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2012 Corporate Governance Report

Supervisory board and management board chairs: "Code fulfilling its purpose"

- Berlin Center of Corporate Governance examining attitudes towards the Corporate Governance Code for the first time
- Mildly positive code acceptance on the part of the persons concerned
- Interviewees in favour of rule-issuing competence being retained by the Government Commission on the German Corporate Governance Code
- Consultation process welcomed
- Frequency of changes, pressure to adopt the rules and risk of court challenges criticized

The German Corporate Governance Code (GCGC) has so far fulfilled its purpose of improving corporate governance. At the same time, it has enhanced German companies' standing in other countries by furnishing the international capital markets with information on the German governance system. This is the view expressed by a clear majority of just under 71% and a good 62%, respectively, of the 211 supervisory board and management board chairs of companies listed on the Frankfurt stock exchange which were surveyed by the Berlin Center of Corporate Governance (BCCG). Ten years after the introduction of the German Corporate Governance Code, the BCCG measured code acceptance, i.e. the corporate sector's attitude to the Code as a self-regulation instrument, for the first time. For the 2012 Corporate Governance Report, it polled all the supervisory board and management board chairs of the 487 companies listed on the Frankfurt stock exchange over a period from October 2011 to February 2012.

"The attitude towards the Code on the part of those affected by the rules is more favourable than had been expected given the criticism voiced in the public domain. With an average reading of +29.8 on a scale from -100 to +100 points, Code acceptance was in moderately positive territory all in all," says Dr. Axel v.Werder, head of the BCCG. The assessment of the DAX30, MDAX and TecDAX companies was above the average. In comparison to the management board chairs surveyed, the supervisory board chairs were slightly more favourably disposed towards the Code with a lead of a few points.

Despite what in some cases is the publicly voiced criticism, a clear majority (63.3%) was in favour of the rule-issuing competence remaining with the Government Commission on the German Corporate Governance Code rather than being made the subject of a legislative process. That said, just under 50% of the interviewees suggested, for example, that the German Federal Ministry of Justice could be empowered to establish the Code Commission in a separate act of parliament in the interests of giving it greater constitutional legitimacy.
A large majority (95.1%) of the supervisory board and management board chairs welcome the consultation process which was introduced by the Government Commission last year for Code amendments and instituted for the first time at the beginning of 2012 with a strong echo.

The strong pressure to comply with the Code felt by the companies is having an adverse effect on acceptance of the Code. 41% of the interviewees effectively see no choice but to implement the Code rules on account of the high expectations voiced by "proxy advisors", the media and equityholders. This contradicts the Government Commission's call to make sensible and well justified use of the flexibility afforded by the Code compared with an act of parliament and to establish a healthy culture of questioning the applicability of the Code. Even so, 25.7% of the participants said that they did not feel any pressure to implement the Code.

A further aspect exerting pressure on the overall assessment of the Code is the risk of court challenges feared by 41.4% of the mandate holders asked, although almost the same number (38.6%) do not see any problems in this regard.

An additional source of criticism for the majority of the supervisory board and management board chairs is the frequency of amendments to the Code. Thus, 51.7% are in favour of less frequent changes. A clear majority (88.1%) would like to see the current system of recommendations and proposals retained.

The frequent discrepancies in the evaluation of the Code by the persons affected by the Code rules are conspicuous. Thus, for example, although nearly all the interviewees (95.5%) would support a reduction in the number of Code rules, not one single recommendation or proposal is viewed as being superfluous by the majority of the interviewees. Only three recommendations and one proposal out of the total of 106 Code rules are considered by a relative majority (all votes excluding neutral responses) to be inappropriate. Among these is the recommendation, which is to be adjusted this year, stating that members of the supervisory board should receive both fixed and performance-tied remuneration.

"Taken as a whole, the results of the study show that there is a very heterogeneous view of the German Corporate Governance Code within the corporate sector. While individual aspects such as the frequency of changes or the perceived pressure to implement the Code attract criticism in individual cases, its content is generally evaluated reasonably positively," says Prof. Dr. Axel v. Werder, head of the BCCG.

"With its confirmation and criticism of the Code and the work being done on it, the study shows that we are precisely in the middle of the road. It is in the nature of any set of rules for some to feel that it is moving too quickly while others consider it to be too little and too slow. The comments on the consultation process implemented last year for Code amendments and the recommendations on the remuneration for supervisory board members which we will be adjusting this year show that we are headed in the right direction both with the work being performed on the Code and its contents," says Klaus-Peter Müller, Chairman of the Government Commission on the German Corporate Governance Code.

The Berlin Center of Corporate Governance has been conducting annual surveys to gauge the acceptance and application of the German Corporate Governance Code and its rules on the part of all the companies listed on the Frankfurt stock exchange under the supervision of Prof. Dr. Axel v. Werder since its inception and, in 2012, in conjunction with Dipl.-Kffr. Jenny Bartz.

Information for editors

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

Commission members: Klaus-Peter Müller (Chairman), Prof. Dr. Dr. Ann-Kristin Achleitner, Prof. Dr. Dres. h.c. Theodor Baums, Dr. Hans-Friedrich Gelhausen, Dr. Dr. h.c. Manfred Gentz, Dietmar Hexel, Ulrich Hocker, Prof. Dr. Henning Kagermann, Max Dietrich Kley, Dr. Stefan Schulte, Christian Strenger, Daniela Weber-Rey, Prof. Dr. Beatrice Weder di Mauro, Prof. Dr. Axel v. Werder.

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Further information on the 2012 Corporate Governance Report:
Publication of the study: v. Werder, Axel/Bartz, Jenny: Corporate Governance Report 2012: Kodexregime und Kodexinhalt im Urteil der Praxis. In: Der Betrieb, 65. Jg., Volume 16, page 869-878.