Remarks

by

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Chairman of the Government Commission
on the German Corporate Governance Code

at

the

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Check against delivery.

Ladies and Gentlemen,
“As the role of the honest businessman as a model for good corporate governance continues to recede, there is an increasing need for new, clear and universally accepted rules.” These were the words I used to introduce the discussion at the first German Corporate Governance Code Conference here in Berlin six years ago - it was in early July 2002.

You may remember: At the time the corporate governance system practiced in Germany was coming in for a lot of criticism. It took too little account of shareholder interests, the two-tier corporate governance system with management board and supervisory board was too complicated, corporate management lacked transparency and supervisory boards were not properly qualified. Although the Anglo-Saxon board system was also coming under fire at the time on account of the WorldCom and Enron scandals, it was still considered superior to our two-tier system. German companies were therefore subject to a discount on their market capitalization because our corporate governance system was regarded as underdeveloped.

Today we see a different picture, Ladies and Gentlemen. Under the headline “Calls in US for split of top jobs gain momentum”, the Financial Times of May 28, 2008 writes: “But the issue remains a persistent concern for some shareholder activists who believe that companies are better served by a chief executive who runs the company but is overseen by a truly independent chairman.”

Now the advantages of separating management and oversight functions, which is typical of the two-tier system, are clearly understood and recognized at international level. The Anglo-Saxon one-board system is increasingly integrating aspects of the two-tier system, especially in Europe. I need only remind you of the function of the “lead independent director” in the one-tier board in the USA. The separation of the chairman and chief executive functions being pushed in many countries, e.g. the UK, also points in the same direction. This is an outstanding tribute to our work.

To return to the quote in my introduction: With the aid of the Code, the German business community has succeeded in adapting the corporate governance practices in place here to the requirements of global competition. I say this quite categorically - despite all the criticism currently being leveled at “managers”, some of which is legitimate. In my view the public outcry has been caused by isolated cases of misconduct. But these individual cases do not detract from the Code’s success. It is the same for the Code as for the highly regarded

German Penal Code. Although the Penal Code is violated every day, nobody is calling for its abolition but rather for its strict application. This is how it is with the Code. Compliance with the Code is the benchmark for good corporate governance in Germany.

Ladies and Gentlemen,
As you know I am standing down from the Government Commission on the German Corporate Governance Code at the end of this month after almost seven years. Before rendering account for one last time, I would like to thank my colleagues on the Commission. It has been a strong and - I believe - successful collaboration. Of course we did not always agree on everything, as some members of the Commission have publicly stated. But on the whole we have conducted a fertile and sometimes heated debate which has produced a coherent set of rules for good corporate governance. In particular I would like to thank Rolf-Ernst Breuer and Marcus Lutter for their valuable input. I would also like to thank Theodor Baums, because the preparatory work carried out by the Government Corporate Governance Commission chaired by him was fundamental to our work.

My successor, Klaus-Peter Müller, Supervisory Board Chairman of Commerzbank AG and President of the Association of German Banks, is a financial expert with international credentials. Together with him, Daniela Weber-Rey, partner in the law firm Clifford Chance and recognized expert in European corporate governance, has been appointed to the Government Commission. I wish the Commission success and fortitude for the future. There's still plenty to do. Developing the framework for corporate governance in Germany and the two-board system in the global economy is after all an ongoing task for the standing commission.

Today I would like to take a look back and a look ahead. I will deal with the key decisions taken by the Commission since 2002, including the results of our plenary meeting at the beginning of June. I would like to focus on the following three aspects: The transparency of business decisions, management compensation and the supervisory board. In addition, I will touch on the professional communication of corporate governance issues and the level of acceptance and reliability of the Code.

In chairing the Code Commission and considering corporate governance questions, I have always been guided by the maxim that tried and trusted aspects of the German corporate governance system should be maintained and made known at international level. I have also

aimed to open out and further develop our system to meet the requirements of the international financial markets. This calls for a high degree of flexibility because "one size fits all" doesn't work. Instead, a wide range of national peculiarities have to be taken into consideration. I believe that with the German Corporate Governance Code the Commission has succeeded in developing a good self-regulation tool for German companies. The high level of acceptance the Code now achieves proves us right.

Transparency

Ladies and Gentlemen,
If one were to describe good corporate governance in one guiding principle, it would be this: Transparency of business decisions. This has been the main task of the German Corporate Governance Code since its introduction in 2002. The Code's rules ensure a high degree of transparency in management - for the shareholders as owners of the company but also for employees, customers and the general public. Here are some examples:

- The increased public debate about the appointment of a former management board chairman to the supervisory board chair has only been possible because we have raised awareness of the advantages and disadvantages. While we do not want such appointments to be made automatically, a former management board chairman must not be automatically disqualified from the post of supervisory board chairman.
- We can only debate management pay, pensions, benefits in kind, stock options and severance payments because they are disclosed individually on an itemized basis.
- The focus of debate has only moved to the qualifications and independence of supervisory board members because the subject has been added to the public agenda via the Code.
- We can only demand and achieve shorter annual general meetings today because we highlighted and thus made transparent the chairman's scope for intervention. Today annual general meetings can be run much more tightly and with increased legal certainty than just a few years ago.

The declaration of conformity that listed companies in Germany are required to issue each year in accordance with § 161 of the German Stock Corporation Act supports the transparency requirement of the German Corporate Governance Code. Companies have to disclose whether they follow the Code's recommendations on a "comply or explain" basis. The declaration is

mandatory, not compliance. If a company does not comply with one of the recommendations, this has to be disclosed. Nearly all countries which have a corporate governance code have comply-or-explain rules. They are a tried and trusted tool for increasing transparency and allowing a fair valuation of a company.

One thing must be clear: The old maxim of good conduct “Never do anything you have good reason not to disclose” continues to apply unconditionally - also and especially for public companies.

Management compensation

Ladies and Gentlemen,
No other topic has been discussed so much by the general public in recent years as management compensation. And once again that’s because it is no longer secret, thanks to the increased transparency brought about by the Code.

Now you might protest that it took a Management Compensation Disclosure Act to truly enforce individual disclosure. That’s true, but only to a limited extent. Before the new law was introduced in Germany almost 80% of DAX companies had already published individual details of their directors’ remuneration or announced that they would do so in their declaration of conformity. However, because the government considered this percentage too low, the law was enacted which is based closely on the Code. Personally I regret that a legislative solution was sought. I think companies should have been allowed more time for persuasion and “conversion”.

Even today, the debate surrounding management compensation still focuses too much on absolute salary levels. That is too one-sided. The compensation debate should not concentrate solely on amounts, but also in particular on performance. High salaries are after all not a problem per se provided the management is working successfully and running the company profitably. High salaries are a problem if they are paid to directors guilty of mistakes, mismanagement or even total failure. Performance is key, or to be more precise an appropriate balance of performance and compensation.

Here, too, the Code set the benchmark in two key areas:

- Firstly, the Code contains a number of criteria for the appropriateness of management compensation, defined in considerably more concrete terms than the wording of the Stock Corporation Act. These criteria are in particular the duties of the management board member, his personal performance, the performance of the management board as a whole, as well as the economic situation, performance and outlook of the enterprise taking into account its peer companies. The Code is also clear in respect of severance payments. In 2007 the Government Commission entered new territory when it resolved suggestions on limiting severance payments to two annual salaries - the so-called severance payment cap. The initial public criticism that this could not be legally implemented has since been unequivocally refuted by legal experts. In this year's plenary meeting, these suggestions were upgraded to recommendations.

- Secondly, the Code expressly strengthens the supervisory board's responsibility for the appropriateness of management compensation. The supervisory board's compensation decisions must be measured against the appropriateness criteria of the Code. At this year's meeting, the Government Commission placed more responsibility on the supervisory board. At the proposal of the committee dealing with management board contracts, the full supervisory board is now required to resolve the management board compensation system including the main contract elements and not just discuss and regularly review the structure of the compensation system - as previously provided by the Code.

  The supervisory board is also called upon to take the severance payment cap into consideration when management board contracts are concluded or renewed. The reluctance so far to implement this recommendation should not be misunderstood as a sign of its failure, as has been claimed. We cannot and will not interfere with ongoing contracts.

  In a further step supervisory boards will have to consider whether it would be commendable to defer payment of at least part of the variable compensation component linked to the long-term performance of the company until the underlying earnings targets have been achieved on a sustained basis. This would counter the criticism of shareholders who rightly complain that at some companies the earnings situation falls into sharp decline as soon as the long-term compensation components have been paid out.

Supervisory Board

Ladies and Gentlemen,
Responsibility for appropriate management compensation is just one aspect of the supervisory board's work in the area of corporate governance. In recent years the duties and importance of the supervisory board have increased significantly, and the demands placed on the board's work and the qualifications of its members have increased at the same pace. If you read through the conference proceedings since 2002, you will quickly discover that the supervisory board is a recurrent theme running through all our discussions. I would therefore like to travel through time with you by reading out a few quotes:

In 2002 Josef Ackermann, Chairman of the Management Board of Deutsche Bank, said: "The supervisory board. A different profile is required. The supervisory board has to become a real sparring partner of the management board. As envisaged in the Code, the members will be explicitly encouraged to take a stronger ex ante approach than in the past. They should be involved in the strategic planning process at an early stage. This calls for closer and more time-consuming and trust-based cooperation between the management board and supervisory board."

His words were echoed a year later by Paul Atkins, Commissioner of the SEC, who to my delight has joined us again today. Speaking of the functions of a board director in the context of the then new Sarbanes-Oxley-Act, he said: "The role of directors is to monitor and oversee … on behalf of the stockholders. … There will always be a natural tension between directors as business advisors – a vital role – and their role as monitors of management on behalf of the stockholders' ownership interests. The Sarbanes-Oxley Act should indirectly help directors in this regard. The law's effect will be to make board members be more inquisitive."

The new understanding of the role of the supervisory board was also addressed by the then EU Commissioner Frits Bolkestein when he presented the EU action plan on the modernization of company law in 2004: "Bringing the boards of directors into the twenty-first century in terms of competition, remuneration and responsibilities is essential. … Knowledgeable and independent board members who understand their fiduciary responsibilities have an important role in ensuring (that) the markets and shareholders have confidence in the way companies function and boards take decisions."

Bertrand Colomb, Chairman of the European Corporate Governance Forum, also examined the role of supervisory board members in 2005: "… the relationship between shareholders, boards and management must avoid two pitfalls: the classic situation of a strongly entrenched management, without real board control; … but also the other situation where a weak management and a weak board listen every morning to conflicting and changing views of financial markets, in order to please them."

Henning Schulte-Noelle, Supervisory Board chairman of Allianz, looked into the advantages and disadvantages of the one-tier and two-tier corporate governance systems in 2006. When it was converted into a Societas Europaea, Allianz decided to retain a two-board system for the reasons he described: "In making our selection, the main factor was that based on previous experience the separation of the management board and supervisory board had proved its worth. … The decision to streamline the supervisory board was based on a conviction that smaller boards generally work more efficiently and can develop a better debate culture. This has also been my experience on a one-tier board."

Last year the Federal Justice Minister, Brigitte Zypries stated: "The careful reorganization of the corporate governance system, the changes in the relative weighting, the strengthening of the supervisory board vis-à-vis the management board and the increase in its independence seem to have succeeded."

Ladies and Gentlemen,
Whether a management board member always wants a real sparring partner in the supervisory board, whether the inquisitive questions always come back with the right answers, how strong relations are between management and supervisory board or how good discussions are in a small supervisory board - these are all individual aspects which you as active management and supervisory board members are well placed to judge for yourselves. But one thing we can say in reply to Frits Bolkestein is that yes, we have certainly been brought into the 21st century - and that can be said of both Anglo--Saxon boards and German supervisory boards.

One area in which we have not yet entered the 21st century is in the appointment of qualified women to German supervisory boards. According to a recent survey, only 3% of the shareholder representatives on the supervisory boards of DAX companies are women. This is unsatisfactory and in the long term untenable, especially as the pool of qualified independent

candidates for supervisory boards is in any case very limited. While Germany is not a country of female quotas, we all know that this “fringe group” existence of women in oversight boards must be brought to an end quickly. The same applies to increasing the internationality of supervisory boards. Many of you have found for yourselves that foreign colleagues provide valuable input with their knowledge of specific industries, markets and regions and can help broaden supervisory board debate. Supervisory boards will have to pay increasing attention to these criteria when proposing candidates for appointments to the supervisory board in the future.

Ladies and Gentlemen,
When I’m asked who is the “keeper of the Grail” of good corporate governance in companies, based on my previous comments there can only be one answer: It is the supervisory board. The failure of corporate governance is nearly always also a failure of supervisory board members. Often they have failed in their control function or appointed the wrong management board.

This is why the supervisory board, its committees, its collaboration with the management board, the qualifications and independence of its members have always been at the center of the corporate governance debate. The demands placed on its expertise and its time are growing, a high degree of professionalism is required. This is the main reason why supervisory board work is now rewarded with higher and more performance-related compensation. In particular the job of supervisory board chairman can no longer be performed on a part-time basis.

Professional corporate control requires the monitoring of various aspects by the supervisory board. This can no longer be performed by the full supervisory board. For this reason, the Code recommends the formation of specialist supervisory board committees. Alongside the executive committee, the personnel committee, the audit committee and a strategy and investment committee, many companies today also have nomination committees. The audit committee in particular has grown in importance in recent years both nationally and internationally because its job is to strengthen investors’ confidence in the company. Key areas of its work include accounting, risk management, compliance and questions connected with the selection and tasks of auditors. The nomination committee selects candidates for the shareholder representatives in the supervisory board.

The Code also recommends that the shareholder representatives should hold regular preliminary meetings - as the employee representatives have done for some time. Today these meetings have become a fixed component of supervisory board practice and are held by most companies with great success. They have long proved a productive forum for an intensive exchange of information, the discussion of critical issues and objective opinion-forming. Incidentally, this instrument is another example of how the two board systems are converging; in this case we have moved further towards the Anglo-Saxon system.

Allow me to say a few words about the qualifications and independence of supervisory board members. In the 1990s there was a paradigm shift in the financing of industrial companies in Germany: Away from borrowed capital, creditor protection and house banks in favor of equity capital, shareholder protection and capital market diversity. As the cross-ownership structures between banks and industrial companies disappeared and Deutschland AG was dissolved, the legitimacy of electing bank representatives per se to the supervisory boards of industrial companies was also lost. Of course financial and business experts are still welcome on supervisory boards today, but not in some kind of “ex officio” function. Their only credential is their expertise which is needed in a company.

Against this background the question of the independence of supervisory board members is also gaining importance. A supervisory board needs an appropriate number of independent members to exercise its control function professionally. Increased independence is required of the chairman of the “Prüfungsausschuss”/audit committee, who also has to be qualified to a particularly high standard. And, as the OECD has already indicated, independence primarily means independence from the management board. The Code recommends a number of organizational measures to safeguard the independence of the supervisory board. I have already spoken about the task of the nomination committee. In this way, management boards can no longer select their own supervisory board - as was often the case in the past.

Ladies and Gentlemen,

Allow me to deal with a further contentious issue in this connection: There are often calls for measures to prevent a management board chairman from being appointed supervisory board chairman. The Code clearly states that such an appointment should not be the rule and should not happen automatically. However, it must be possible at all times. Particularly in complex major DAX companies - for example banks - it is often expedient to appoint former management board members or management board chairmen as supervisory board

chairman. However, the candidates must be aware of their change of role. A former management board chairman must not be tempted to continue to manage the enterprise from the supervisory board chair.

It is true that not every management board chairman makes a good supervisory board chairman. But it is also true that external candidates also fail. There have been plenty of examples of both in business practice. It is the supervisory board’s responsibility to select the best qualified candidate.

Excursion: Management board

Ladies and Gentlemen,
My comments on management board compensation and on the supervisory board could give the impression that the Code Commission has only concerned itself with the management board in this context. Obviously that is not true: The Government Commission has also dealt intensively with the work of the management board. One of the main aims was to adapt the principle of the management board’s collective responsibility and unanimity prescribed by German stock corporation law to modern corporate governance requirements. The Code recommends that management board by-laws should govern the allocation of duties among individual management board members, matters reserved for the management board as a whole, and the required majority for management board resolutions. With this recommendation, added in 2007, the Code promotes a further aspect of transparency. The management board’s responsibility for ensuring appropriate risk management and risk controlling and for compliance in the company is also expressly emphasized in the Code.

Professional communications

Ladies and Gentlemen,
The German Corporate Governance Code requires companies to provide more information and communicate this information more professionally, as this is the only way to create transparency. The corporate governance report issued jointly by the management board and supervisory board in the annual report provides a clear overview of a company’s corporate governance practices. Compliance with this recommendation has been high from the outset.

The corporate governance report also contains an independent compensation report, which incidentally is one of the most frequently read sections of an annual report.

There is also a second dimension to the Code's communicational task: The translation and explanation function. From the start we have repeatedly stressed that the one-board system and the two-tier German system are two fundamentally different corporate governance systems. And for this reason, the mechanical and unreflective transfer of individual terms from one system to another must be avoided.

A CEO is not the same as a management board chairman, a chairman is not the same as a supervisory board chairman and a board committee is not the same as a supervisory board committee. A comparison of the audit committee with the German "Prüfungsausschuss" illustrates this best:

- In the one-board system, the audit committee has full responsibility for issues relating to accounting and compliance.
- By contrast, the "Prüfungsausschuss" in the two-tier system is an organizational unit of the supervisory board and as such has above all a control function.

Acceptance and reliability of the Code

Ladies and Gentlemen,
I am sure that you are all aware of the findings of the latest study of the acceptance of the Code, which is conducted each year by the Berlin Center of Corporate Governance headed by Prof. Dr. Axel v. Werder. You can obtain a summary of the study from the information stand in the foyer.

Acceptance of the German Corporate Governance Code remains encouragingly high, in particular among the DAX companies. Part of the reason for the high levels of acceptance is that from the outset we in the Commission had one guiding principle: To change only as much as necessary and as little as possible. We do not see it as our job to constantly change the Code just because we are a standing commission. Rather, we observe and analyze before we decide. The important thing is to distinguish between long-term and short-term trends.

To date we have made extensive substantive changes every 2-3 years. This makes the Code creditable and reliable. After all, no company wants to have to analyze another new version of the Code every year and readjust its corporate governance practices accordingly.

I would like to cite one example of our efforts not to succumb to passing trends: In connection with cases of excessive severance payments, there were calls to shorten the term of management board contracts from five years to, say, three years. This would have limited the amount of potential severance payments without introducing a severance payment cap. However, we came to the conclusion that the five-year term of office is the greater good - for reasons of planning and reliability alone, but also in the interest of a long-term corporate strategy. Only first-time appointments should generally be made for a shorter term. Instead of shortening management board contracts, we introduced suggestions on the severance payment cap in 2007. At the start of this month we took this a logical stage further and upgraded the suggestions to recommendations. This means that non-compliance with this rule now has to be disclosed in the annual declaration of conformity. This is transparency that will bear fruit in the long term and change patterns of behavior.

A further example - though different in nature - relates to the issues of sustainability and corporate social responsibility. The relevance of these issues grows with the challenges of the global market. Both small and medium-size companies and globally active organizations are taking their social responsibility increasingly seriously. However, it is a fact - and this is no new phenomenon - that only companies that operate profitably on a sustained basis and are successful on the market can commit to activities outside their core business areas. Seen in this way, sustainability and social responsibility are integral parts of a company’s interests for which the management board and supervisory board are responsible under the Code. The Government Commission is paying close attention to the public debate on this matter; as yet we have not considered it necessary to make any express provision for it in the Code.

Of course the Code is often criticized: For some it goes too far, for others not far enough. The Government Commission takes justified criticism seriously and addresses it in its work. However, much of the criticism is based on ill-considered comparisons with Anglo-Saxon corporate governance practices. Rules which were developed for the one-board system predominant in the Anglo-Saxon region and have proved their worth there cannot generally be transferred directly to the German system because the differences between the two systems are too great. Another complaint is that questions relating to codetermination or directors’

liability are not addressed by the Code. This criticism is unjustified. The German government did not place the review of codetermination in the Code Commission's remit but assigned it to a different commission. The Code is meant to operate solely on the basis of statutory law. And directors' liability clearly comes under mandatory statutory law. The German Stock Corporation Act sets out the liability conditions in detail and there is no room for best practices.

However, against the background of the critical verdicts on the one hand and the broad acceptance of the Code on the other, one thing is certain: With the Code we have steered a good middle course to take corporate governance in Germany forwards.

Conclusion: Code as a guide to good corporate governance practices

Ladies and Gentlemen,
I am drawing to the close of my remarks: Both companies and investors need a kind of guide to practicing and assessing good corporate governance. For those - mainly outside Germany - who are familiar only with the one-board system, the Germanic-style two-tier system initially seems complicated and incomprehensible. We have succeeded in dispelling this preconception.

Today we can say that the German two-tier corporate governance system enjoys a level of acceptance at national and international level we would not have dared dream of in 2001. Our attempt to adapt the traditional principles of good corporate governance - the principles of the honest businessman - to the requirements of global competition has been successful. The Code is being implemented and carefully further developed. Of course cases of companies merely paying lip service cannot be ruled out completely. But overall we have observed over the course of time a clear trend towards implementing the rules of the Code. Corporate governance in Germany need no longer shy away from international comparison. But we must not forget that the Code is no cure-all and too much must not be expected of its impact. Codes are an internationally established means of further developing corporate governance. They supplement the statutory provisions and counteract over-regulation. But they have their limits - they can neither amend nor replace mandatory statutory provisions.

In view of the increasing concerns about the loss of confidence in directors in wide sections of the population, I would like to add that ethics cannot be prescribed, either by law or by code. There will always be misconduct and violations of the rules in business, but individual cases must not lead to a global condemnation of the entire management profession. Whether in medium-size companies or major corporations, apart from the few “black sheep” the vast majority of directors are very good. And German industry needs these as much as it needs good employees.

Nevertheless the Code provides a useful guide to responsible corporate governance. By enhancing transparency it increases sensitivity and awareness of the problems of corporate governance. It also strengthens the supervisory boards and calls on them to take action against “black sheep” and stamp out irregularities or prevent their occurrence. The Code thus plays an important role in restoring the public’s faith in directors and companies.