

A modern meeting room with a wooden table, yellow chairs, and two pendant lights. The room features a dark grey wall with a grid of recessed panels. The table is made of light-colored wood and has a black metal base. There are two white coffee cups, a smartphone, and a laptop on the table. The floor is a light grey concrete.

Guiding principles for the dialogue between investors and German supervisory boards

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Introduction

The planned amendment to the EU Shareholders' Rights Directive aims to see institutional investors pursue a more active role in monitoring listed companies. To adequately carry out this task, a closer dialogue with the supervisory board as the central oversight body is required. The goal is to increase transparency and foster mutual trust.

Direct communication between an investor and the supervisory board can bring benefits to both sides: such a dialogue enables investors to receive first-hand information and gain an impression of whether the composition of the supervisory board is appropriate and whether it carries out its duties effectively. In turn, the supervisory board has the opportunity to explain the two-tier German corporate governance model with employee co-determination to foreign investors and promote the understanding of individual corporate governance approaches.

The current legal framework for a dialogue between an investor and the supervisory board is not precisely defined. However, such a dialogue is not excluded under the German company and capital market laws and is already practised by German companies. In particular, the equal treatment principle of the company law does not preclude a dialogue between supervisory boards and investors. Yet, there must be objective reasons for the selection of investors that are granted or offered meetings.

The eight guiding principles for the dialogue between investors and German supervisory boards shall facilitate a fruitful dialogue between institutional investors and supervisory boards of listed German companies with a supervisory board. The initiative aims at

- a) initiating an informed discussion on the topic of supervisory board communication with investors;
- b) responding to the expectations investors have for communicating with German companies in line with the regulatory framework;
- c) providing information on the evolving practice of a dialogue between investors and supervisory boards without restricting entrepreneurial freedom.

After intensive discussions, the German Government Commission for the Corporate Governance Code intends to propose an amendment of the code for the next consultation process. This would take the form of a general recommendation for the communication between investors and supervisory boards.

Preamble

The following guiding principles for the dialogue between investors and supervisory boards are designed as a practical tool regarding the topics of such a dialogue, the involved parties and its format. At the same time they aim to establish a framework for the communication of listed companies and to contribute to good dialogue practices.

Based on the division of powers between the main bodies pursuant to German company law, the supervisory board's right to have a dialogue with investors pertains solely to topics that fall within its remit. In all other cases, responsibility for communication remains with the management board as the company's legal representative. The guiding principles are therefore not intended to establish a legal duty of the supervisory board to enter into dialogue with investors.

The principles are consistent with the legal framework and the most current version of the German Corporate Governance Code. To adhere to the legal restrictions of the capital market laws (insider information and ad hoc announcements), confidentiality requirements and the equal treatment principle, which are the principles that today form the basis for the communication of investor relations and the management board with investors, can be applied *mutatis mutandis*.

The guiding principles are not to be seen as a rigid set of rules, but rather as a flexible framework that can be adjusted to company-specific circumstances.

Guiding principle 1: Initiative and topics

A dialogue between investors and the supervisory board can* take place. On behalf of the company, the decision whether such a dialogue should take place, rests with the supervisory board. The chair of the supervisory board decides whether to enter a specific dialogue. The dialogue exclusively pertains to topics that are part of the remit of the supervisory board.

Guiding principle 2: Composition and remuneration of the supervisory board

The composition of the supervisory board, its nomination process, as well as its remuneration system can be discussed in the dialogue. Specific proposals for the election to the supervisory board or those concerning individual candidates should not be discussed.

Guiding principle 3: Internal organisation and oversight

A dialogue between investors and the supervisory board can involve the discussion of: the supervisory board's report and the supervisory board-related matters of the corporate governance report, the internal organization of the supervisory board, the design of the control and participation processes, the committee formation as well as the supervisory board's efficiency review and the measures derived from the review. A discussion of the results of the efficiency review regarding individual members of the supervisory board should not take place.

* The nomenclature used here does not correspond with the German Corporate Governance Code.

Guiding principle 4: Management appointment and removal, management remuneration

The requirement profile for management board members and the division of duties therein can be discussed in the dialogue. Specific proposals or those concerning individual candidates should not be the subject of the dialogue. In addition, the remuneration system of the management board, contemplated changes, possible suggestions for improvement as well as the interpretation and if applicable the exercise of discretionary powers of the supervisory board pertaining to remuneration-related matters may be discussed with investors.

Guiding principle 5: Strategy development and implementation

The development and implementation of the corporate strategy is the responsibility of the management board. In the context of a dialogue with investors, the supervisory board can explain its participating role within the strategy process and its assessment of the implementation.

Guiding principle 6: Auditor

The criteria and the opinion making for selection process of the auditor as well as the extent and quality of the cooperation between the auditor and the supervisory board can be discussed in the dialogue.

Guiding principle 7: Dialogue participants

The supervisory board's chair represents the supervisory board in the communication with investors. He/she may call on other supervisory board members (for instance a chair of a committee), the chair of the management board or other management board members to participate in the dialogue. The supervisory board's chair informs the entire supervisory board members about the dialogue.

Guiding principle 8: Form of the dialogue

The supervisory board discusses with the management board the basic principles of the content and format of the dialogue with investors.

About the Initiative

The common objective was to develop practice-oriented guiding principles which are consistent with the current regulatory framework in Germany. In addition to the working group, representatives from companies, investors and academics, the initiative received advisory support from a stakeholder group that included representatives from the regulatory authorities as well as from select organizations and associations.

Members of the Working Group

Prof. Dr. Alexander Bassen (University of Hamburg), **Dr. Jürgen Hambrecht** (BASF, Daimler, Fuchs Petrolub), **Dr. Hans-Christoph Hirt** (Hermes Investment Management), **Prof. Dr. Dr. Dr. h.c. mult. Klaus J. Hopt** (Director (Emeritus) of the Max Planck Institute for Comparative and International Private Law Hamburg), **Prof. Dr. Ulrich Lehner** (E.ON, Henkel, Deutsche Telekom, Porsche Automobil Holding, ThyssenKrupp), **Dr. Stephan Lowis** (RWE), **Ingo R. Mainert** (Allianz Global Investors), **Daniela Mattheus** (EY), **Prof. Christian Strenger** (Deutsche Asset Management Investment, HHL Leipzig Center for Corporate Governance).

Members of the Stakeholder Advisory Group

Dr. Paul Achleitner (Deutsche Bank, Bayer, Daimler), **Kay Bommer** (Deutscher Investor Relations Verband), **Dr. Christine Bortenlänger** (Deutsches Aktieninstitut), **Dr. Werner Brandt** (RWE, Deutsche Lufthansa, OSRAM Licht, ProSiebenSat. 1 Media), **Dr. Joachim Faber** (Deutsche Börse), **Ralf Frank** (Deutsche Vereinigung für Finanzanalyse und Asset Management), **Henning Gebhardt** (Deutsche Asset Management Investment), **Dr. Dr. h.c. Manfred Gentz** (Government Commission on the German Corporate Governance Code), **Claudia Kruse** (APG Asset Management), **Thomas Richter** (German Investment Funds Association BVI), **Dr. Manfred Schneider** (formerly RWE, Linde), **Prof. Dr. Ulrich Seibert** (Heinrich Heine University Düsseldorf), **Ingo Speich** (Union Investment), **Norbert Steiner** (K+S), **Marc Tüngler** (Deutsche Schutzvereinigung für Wertpapierbesitz), **Werner Wenning** (Bayer, Henkel, Siemens).

Contact details for the Initiative

Daniela Mattheus

Partner - Head of Corporate Governance Board Services GSA
Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft
Friedrichstraße 140
10117 Berlin
Office: + 49 30 25471 19736
www.governancematters.de
E-Mail: daniela.mattheus@de.ey.com