

PRESS RELEASE

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Resolutions published for changes to the German Corporate Governance Code in 2017

- **Good corporate governance is defined by legal, ethical and self-responsible conduct**
- **Enhancing transparency to provide a solid basis for assessment**
- **Alignment with international best practice in investor communications**
- **Rolf Nonnenmacher to chair the Regierungskommission with effect from 1 March 2017**

On 7 February 2017, the Regierungskommission Deutscher Corporate Governance Kodex decided on amendments to the Code in order to enhance transparency as the basis for stakeholders to assess corporate governance and to comply with international best practices in the German code for listed companies. In addition, the Regierungskommission amended two passages of the Preamble of the Code. With these amendments, the Regierungskommission underlines the importance of not only legal, but also ethical and self-responsible conduct for good corporate governance as well as the particular responsibility of institutional investors as regards exercising their ownership rights. Further changes were included for the sake of Code maintenance.

In its final consultancies, the Regierungskommission evaluated the arguments tendered with approximately 80 statements of national and international Code users, scientists and advisers. Where no objection was raised, these statements were published on the Regierungskommission's website for the first time. The large number of comments and remarks received during the six-week consultation period shows the usability of the consultation process.

"The strong response – both positive and critical – to the proposed Code amendments, which the Regierungskommission has received – within the scope of the consultation process, as well as during numerous events and via other contributions – underlines the vast interest on questions regarding good corporate governance that exists within German listed companies. With the resolutions presented, which also reflect the points raised during the consultation, the Regierungskommission develops its standards as well as an understanding of good corporate governance. The focus is on strengthening self-responsible conduct by corporate bodies and committees complimented by

a sensible level of transparency, allowing stakeholders to better assess how corporate governance is being put into practice. The German Code, which continues to be lean and efficient in international comparison, is designed to continue promoting sensitivity and awareness for good corporate governance within companies, instead of promoting the 'ticking off' of checklists due to small-scale rules", says Manfred Gentz, Chairman of the Regierungskommission Deutscher Corporate Governance Kodex.

The new version of the Code will come into force upon publication in the electronic German Federal Gazette (*elektronischer Bundesanzeiger*) by the German Federal Ministry of Justice and Consumer Protection. All amendments to the Code are published on the website of the Regierungskommission Deutscher Corporate Governance Kodex (www.dcgk.de).

The amendments to the Code, as resolved by the Regierungskommission, include the following:

Good corporate governance is defined by legal, ethical and self-responsible conduct

As indicated during the consultation process, the Regierungskommission has extended and specified the Preamble to the Code, by setting out that the principles of the social market economy – on which good corporate governance is based – not only require correct conduct in a legal sense, but also require ethical and self-responsible behaviour. In this context, the Code specifically refers to the guiding principle of an 'honourable businessperson' ("*Ehrbarer Kaufmann*").

Furthermore, the Regierungskommission resolved to specify in the Preamble (as opposed to section 2.1.3 "Exercising shareholder rights", as originally proposed) that institutional investors are particularly important to companies. The Preamble (which is outside the scope of companies' Declaration of Compliance with the Code) also provides that institutional investors are expected to exercise their rights of ownership actively and responsibly, in accordance with transparent principles which also respect the concept of sustainability. The Regierungskommission has therefore actively contributed to the debate, on a European as well as an international level, according to which institutional investors have particular responsibility in assessing how corporate governance is put into practice.

Regierungskommission strengthens transparency, to provide a sound basis for assessment

The Regierungskommission continues to pursue a sensible level of transparency, in order to provide a sound basis for assessing good corporate governance.

Therefore, companies shall publish the basic features of their Compliance Management System (section 4.1.3), to allow investors – as well as the interested general public – to form their own opinion of a company's compliance efforts. The objective is to strengthen confidence in responsible corporate governance. For the implementation of a best-practice compliance system, employees shall be given the opportunity of anonymously reporting suspected breaches of the law within the company, in a protected manner. Third parties are included in this provision, however on the basis of a suggestion.

Furthermore, the Regierungskommission recommends enhancing transparency regarding the criteria for the composition of the Supervisory Board (section 5.4.1). Specifically, in addition to setting out concrete objectives, the Supervisory Board shall in future prepare a profile of skills and expertise for the entire Supervisory Board. A further new recommendation was added, according to which a candidate's proposal shall be accompanied by a curriculum vitae and an abstract concerning the respective candidate's material activities in addition to the Supervisory Board office; this information shall be published (and updated annually as regards all Supervisory Board members) on the company's website. Moreover, the Supervisory Board shall not only report on the number of independent members representing shareholders which it deems appropriate; in future, it shall also publish the names of these persons. The ownership structure shall henceforth be taken into consideration when determining the number of independent Supervisory Board members (section 5.4.2).

The Regierungskommission already underlined its support, when presenting the proposed amendments to the Code, for the abolition of the statutory requirement to publish comprehensive quarterly reports for all listed companies. However, the Regierungskommission recommends that, in addition to semi-annual reports (and unless required by Exchange Rules), companies should nevertheless inform shareholders about business developments, especially about changes of business prospects as well as of the risk situation that the company is exposed to (sections 7.1.1 and 7.1.2).

International best practice concerning investor dialogue

The Regierungskommission discussed, in great detail, the issue as to whether the Chairman of the Supervisory Board should be required (and permitted) to

engage in dialogue with investors, in line with international best practice as well as common practice already established in many cases in Germany. Having duly considered all arguments made, the Regierungskommission now suggests that the Chairman of the Supervisory Board be prepared (under appropriate conditions) to discuss topics relevant to the Supervisory Board with investors (section 5.2). These are issues within the sole responsibility of the Supervisory Board, and which it must decide upon on its own. In accordance with this suggestion, the Chairman of the Supervisory Board will have certain discretion with whom and when he/she would like to conduct a discussion.

Chairman of the Audit Committee to remain independent

Having duly considered the arguments made during the consultation process, the Regierungskommission continues to value as best practice that the Chairman of the Audit Committee is independent, and has not been a member of the company's Management Board within the past two years. As before, the Chairman of the Supervisory Board shall not additionally chair the Audit Committee (section 5.3.2). Within the scope of the German Audit Reform Act (*Abschlussprüfungsreformgesetz – "AReG"*) and the Reform of the EU Statutory Audit Market, legislators had waived the requirement of having any independent Supervisory Board members on the Audit Committee at all.

Clarifications in the Code

As in the past, the Regierungskommission has used the amendments to the Code to implement clarifications which result from practical experience with recommendations already applied.

For instance, a clarification was added to the recommendations in section 4.2.3, setting out that variable remuneration components shall generally be based on a multi-year assessment, which shall be materially related to the future.

The Regierungskommission also made the new suggestion that in case that a member of the Management Board leaves the company, the multi-year, variable remuneration components should only be paid out after the end of the respective assessment period.

The Regierungskommission also implemented a number of non-material Code amendments reconciling legal changes, or which serve for a better legibility of the Code.

Rolf Nonnenmacher to chair the Regierungskommission Deutscher Corporate Governance Kodex with effect from 1 March 2017

Following the recommendation of the Government Commission on the German Corporate Governance Code, the German Federal Minister of Justice and Consumer Protection, Mr Heiko Maas, has appointed Rolf Nonnenmacher, member of the Supervisory Board and Chairman of the Audit Committee of

Continental AG, Covestro AG, and ProSiebenSat1 Media SE, and former Chairman of the Managing Board of KPMG AG, as Chairman of the Regierungskommission with effect from 1 March 2017. Mr Nonnenmacher was a member of the previously existing Government Commission "Corporate Governance - Management - Supervision - Company Law Reform" chaired by Prof. Dr Theodor Baums in 2000 and 2001, that laid the groundwork for today's Code.

As announced on the occasion of Rolf Nonnenmacher's appointment to the Regierungskommission in June 2016, he will succeed Manfred Gentz, who assumed the Chair of the Government Commission in September 2013. In the summer of last year, Manfred Gentz asked Minister Maas to relieve him from his office as Chairman as per 28 February 2017, thus permitting him to leave the Commission after eleven years of membership.

The Regierungskommission's work was placed on a firm foundation under Manfred Gentz's stewardship. Transparency of the Commission's work was enhanced in order to improve acceptance of the Code. During recent years, the Regierungskommission also oversaw the handover to a new generation of members, and strengthened cooperation with European neighbouring organisations, as well as with stakeholders of the Code. Manfred Gentz always pursued the guiding principle of strengthening the responsible and independent conduct of both Management Board and Supervisory Board: the purpose of the Code is to provide guidance and the necessary framework. Gentz was always opposed to trends whereby the Code would be 'juridified', and against regulation becoming too detailed, discouraging people to reflect on their own actions, and only abiding by rules.

"I am delighted that with Rolf Nonnenmacher, a renowned expert will assume chairmanship of the Regierungskommission. Thanks to his sound knowledge of corporate practice and his substantial commitment, Rolf Nonnenmacher has already made a significant contribution to the discussions of the amendments to the Code presented today. After eleven years on the Commission, and four years as its Chairman, it is time to pass the torch," said Manfred Gentz, Chairman of the Regierungskommission Deutscher Corporate Governance Kodex.

Note to editors:

Regierungskommission Deutscher Corporate Governance Kodex

The Regierungskommission convened by the German Federal Minister of Justice in September 2001 approved the German Corporate Governance Code on 26 February 2002, which gained legal recognition by virtue of the Declaration of Conformity in accordance with Section 161 German Stock Corporation Act.

The purpose of the German Corporate Governance Code is to enhance transparency – firstly regarding the German regime for company management, and secondly regarding monitoring for domestic and international investors – in order to strengthen confidence in German corporate management.

The members of the Commission are as follows: Dr Dr h.c. Manfred Gentz (Chairman), Prof. Dr Dres h.c. Theodor Baums, Dr Joachim Faber, Mr Michael Guggemoos, Dr Margarete Haase, Dr Thomas Kremer, Claudia Kruse, Dr-Ing Michael Mertin, Prof. Dr Klaus-Peter Naumann, Prof. Dr Rolf Nonnenmacher, Prof. Dr Wulf von Schimmelfmann, Dr Stefan Schulte, Marc Tüngler, Daniela Weber-Rey, Jens Wilhelm.

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