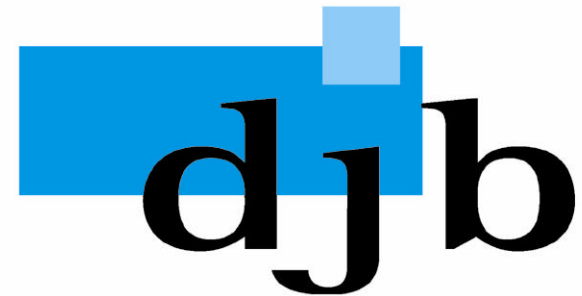


Deutscher
Juristinnenbund



Corporate Governance – A German Perspective

Dr. Ina Anne Frost, LL.M. (NYU)
German Women Lawyers Association
6th Congress of EWLA
Budapest in May 2006

Corporate Governance Discussion in Germany

- Traditional sources
 - Stock Corporation Act
 - Commercial Code
 - Rules on employee representation
- Term “Corporate Governance“ since 10 years

German Corporate Governance Code - Background

- Change of share ownership structure
 - Development of international capital markets
 - Corporate scandals
 - International and European Corporate Governance movement
- Desire to make German rules transparent to international business community

German Corporate Governance Code - Models

- OECD Principles of 1999
- British Combined Code of 1998
- Codes of other European States
- Race for German Corporate Governance Code
 - Frankfurter Grundsatzkommission, 2000
 - Berliner Initiativkreis, 2000

German Corporate Governance Code - Regulation Process

- New form of rule-making in Germany
 - Preparatory works by Government Commission headed by T. Baums, 2000
 - Code drafted by Standing Government Commission headed by G. Cromme, 2001
 - Link to statutory regime is conformity declaration under German Stock Corporation Act
- Adoption of German Code: February 26, 2002
- www.corporate-governance-code.de

German Corporate Governance Code

- Comply or explain principle

- Sec. 161 of German Stock Corporation Act:
 - “The management and supervisory board of exchange-listed companies shall declare once a year that the recommendations of the ‘Government Commission’ have been and are being complied with or which of the Code’s recommendations are not being applied.”
- Legal nature of Corporate Governance Code in dispute

German Corporate Governance Code - System

- Repetition of existing statutory rules
→ Declaratory
- Recommendations: “shall“
→ Conformity declaration pursuant to German Stock Corporation Act
- Suggestions: “should“ or “can“
→ Deviation possible / comply or explain principle not applicable

German Corporate Governance Rules - Cornerstones

German Corporate Governance Code had to fit important principles of existing legal regime, e.g.:

- Mandatory two-tier board system
 - Management board (*Vorstand*)
 - Supervisory board (*Aufsichtsrat*)
- Mandatory labour co-determination at supervisory board level

German Corporate Governance Rules

- Code Structure

- Shareholders and general meeting
- Cooperation between management board and supervisory board
- Management board
- Supervisory board
- Transparency
- Reporting and audit of the annual financial statements

German Corporate Governance Code - Compliance Rate

- High compliance rates in praxis
- Annual survey by Berlin Centre of Corporate Governance
- Critical recommendations:
 - Individualised publication of executive remuneration
 - Age limit for supervisory board members
 - Deductible for D&O insurance

Corporate Governance - Women's Perspectives

- Statistics
- No gender-specific rules in German Corporate Governance Code
- No female member in German Government Commission (13 members)
- One female member in European Corporate Governance Forum (15 members)
- Three female members in European Advisory Group on Corporate Governance (20 members)

European Corporate Governance Forum

- Antonio Borges (PT), Goldman Sachs International
- Igor Adam Chalupec (PL), CEO of PKN Orlen
- Bertrand Collomb (FR), Association des Entreprises Privées.
- Gerhard Cromme (DE), ThyssenKrupp
- David Devlin (IE), Partner PwC
- Emílio Gabaglio (IT), European Trade Union Confederation
- Jose Maria Garrido Garcia (ES), Spanish SEC
- Peter Montagnon (UK), Association of British Insurers
- Colette Neuville (FR), Association des actionnaires minoritaires
- Roland Oetker (DE), Association of private investors
- Alastair Ross Goobey (UK), Hermes Focus Asset Management
- Rolf Skog (SE), University of Stockholm
- Andreas Trink (EE), Estonian SEC
- Jaap Winter (NL), University of Amsterdam
- Eddy Wymeersch (BE), Belgian SEC

European Advisory Group

- Gintautas BARTKUS (LT), Professional Law Partnership
- Theodor BAUMS (DE), Professor, University of Frankfurt
- Francesco CHIAPPETTA (IT), Telecom Italia
- Thomas COURTNEY (IE), Bank of Ireland Group
- Jean-Pierre HELLEBUYCK (FR), AXA Investment Managers
- Erich KANDLER (AT), Deloitte Group
- Mrs Vanessa KNAPP (UK), Freshfields Bruckhaus Deringer
- Vratislav KULHÁNEK (CZ), Skoda Auto
- Jukka MÄHÖNEN (FI), Professor, University of Turku
- Stilpon NESTOR (EL), Nestor Advisors
- Jesper Bo NIELSEN (DK), Financial Services Employees' Union
- Josef OKOLSKI (PL), Professor, University of Warsaw
- Leonardo PEKLAR (SI), Telekom Slovenije
- Colin PERRY (UK), Chairman of three SMEs
- Enrique PIÑEL LÓPEZ (ES), Banca March, Corporación Financiera Alba
- Geert RAAIJMAKERS (NL), Professor, University of Maastricht
- Mrs Joëlle SIMON (FR), French Business Confederation
- Mario STELLA-RICHTER (IT), Studio Legale Stella Richter
- Mrs Daniela WEBER-REY (DE), Clifford Chance
- Patrick ZURSTRASSEN (BE), Finor Luxembourg

Women's Perspectives

- Position of the djb (to be discussed)

- Mandatory human resources report
- List of qualified female supervisory board members
- Quota of 50% for members of German Government Commission
- Quota of 50% for supervisory boards