

Germany



GLASS LEWIS

2027 Benchmark Policy Guidelines

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About Glass Lewis

Glass Lewis is the world's choice for governance solutions. We enable institutional investors and publicly listed companies to make informed decisions based on research and data. We cover 30,000+ meetings each year, across approximately 100 global markets. Our team has been providing in-depth analysis of companies since 2003, relying solely on publicly available information to inform its policies, research, and voting recommendations.

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The research team engages extensively with public companies, investors, regulators, and other industry stakeholders to gain relevant context into the realities surrounding companies, sectors, and the market in general. This enables us to provide the most comprehensive and pragmatic insights to our customers.

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Preface: Benchmark Policy 2027

Glass Lewis' single house policy has traditionally anchored the regional benchmark guidelines. Given Glass Lewis' [announced intention](#) to move away from this single house policy, towards multiple perspectives representing varied viewpoints of its clients, policy development has entered a period of transition. As such, the Glass Lewis 2026 Benchmark Policy Guidelines will remain static for 2027.

Glass Lewis, however, remains committed to keeping policies current during this transition phase by ensuring that any relevant changes to regulation or corporate governance practices are reflected in the Benchmark Policy guidelines.

An overview of relevant market-level regulatory and/or best practice changes is provided below. However, it was concluded that policies included in these guidelines do not require revision for 2027.

Regulatory Updates

- The Government Commission on the German Corporate Governance Code launched a public consultation in August 2026 on proposed changes to simplify and streamline the Code, without introducing new requirements. The Commission intends to adopt the revised Code in autumn 2026 considering the feedback received during the consultation.
- Key changes include, among others: a reclassification of the “recommendations” on age limits for management and supervisory board members as “suggestions”; the elimination of a specific reference to sustainability for the purpose of a supervisory board’s skills and expertise profile; the removal of the definitions of accounting and auditing expertise and of the recommendation to ensure the independence of external remuneration consultants. Further, several recommendations relating to the disclosure and determination of certain executive remuneration elements would be removed.
- The Location Promotion Act (“Standortfördergesetz”) was adopted and promulgated in February 2026. The Act includes amendments such as a reduction of the minimum nominal value of shares from €1 to €0.01, adjustments to prospectus requirements under the EU Listing Act, and revision of delisting rules.
- The EU Network and Information Systems Directive 2 (“NIS 2”) was transposed into German law in December 2025. The legislation expands cybersecurity risk management and incident reporting requirements for companies within its scope, while strengthening a management board’s responsibility for overseeing cybersecurity measures and requiring management board members to undertake appropriate training.

Purpose

The purpose of the Benchmark Policy proxy research and advice is to serve as a framework that facilitates shareholder voting in favour of governance structures that will drive performance and promote and maintain long-term shareholder value.

Guidelines Introduction

These guidelines are intended to supplement the *Continental Europe Benchmark Policy Guidelines* by highlighting the key policies that are applied specifically to companies listed in Germany and the relevant regulatory background to which German companies are subject, where they differ from Europe as a whole. These guidelines offer a broad overview of the Benchmark Policy approach to proxy advice, grounded in a mix of market best practices, client input on policy issues, and widespread investor consensus on key topics.

While the approaches to issues addressed in the *Continental Europe Benchmark Policy Guidelines* are not repeated here, these guidelines will clearly indicate when the Benchmark Policy for German companies deviates from the *Continental Europe Benchmark Policy Guidelines*.

Corporate Governance Background

The German Stock Corporations Act (Aktiengesetz) provides the primary legislative framework for German corporate governance. Best practices are centred on the recommendations contained in the German Corporate Governance Code (Kodex) that operates on a comply or explain basis, whereby the management and supervisory boards of all publicly-listed companies are required to make annual statements detailing their adherence to the Kodex.

Corporate governance principles in Germany are generally less prescriptive than in many other European countries, with a strong emphasis on corporate flexibility. The Kodex contains very general provisions, which are much less specific in nature than the recommendations contained in corporate governance codes of most other European markets. The government commission responsible for the Kodex states that the aim of the country's distinct governance code is increased transparency and comprehensibility for stakeholders in order to strengthen their confidence in management and supervision of German listed companies. The Kodex, initially adopted on February 26, 2002, was most recently updated on April 28, 2022.

Recent Regulatory Updates

In December 2023, the German legislator adopted the Future Financing Act (“Zukunftsfinanzierungsgesetz”), updating some key legal provisions aimed at increasing the German capital market's attractiveness such as the reintroduction of multi-class share structures, the permission to issue shares in electronic form effective November 1, 2025, and expanded flexibility for certain capital measures related to share issuances.

In September 2025, the German Federal Cabinet approved the draft Location Promotion Act (“Standortfördergesetz”) which aims to strengthen private investment in Germany. The draft was subsequently submitted to the German Parliament in November 2025. The bill includes amendments such as a reduction of the minimum nominal value of shares from €1 to €0.01, adjustments to prospectus requirements under the EU Listing Act, and revision of delisting rules. In September 2025, the German Federal Cabinet adopted a draft bill for the implementation of the Corporate Sustainability Reporting Directive (“CSRD”) into national law, restarting the legislative process after the earlier 2024 draft had lapsed due to the end of the previous legislative period.

A Supervisory Board that Serves the Interests of Shareholders

Election of Supervisory Board Members

Under German law, companies are governed by a two-tier board system, with the supervisory board presiding over the management board. The supervisory board¹ consists entirely of non-executive directors, while the management board² is composed entirely of executive directors. The management board is responsible for the day-to-day operation of the business,³ whereas the supervisory board is responsible for appointing and monitoring the management board.⁴ Alternatively, German companies may elect to incorporate under European Company (Societas Europaea, or S.E.) law and such companies may be governed by either a single-tier or two-tier board system.⁵

Unless otherwise specified by these guidelines, provisions will apply to companies with a two-tiered board.⁶

Independence

The Benchmark Policy puts supervisory board members into four categories based on an examination of the type of relationship they have with the company:

¹ Article 105(1) of the German Stock Corporations Act (Aktiengesetz, or AktG), a legally-binding document that was first introduced September 6, 1965.

² Article 76 AktG.

³ Article 76(1) AktG and Principle 1 of the German Corporate Governance Code (Kodex).

⁴ Article 111 AktG and Principle 6 of the Kodex.

⁵ Council Regulation (EC) 2157/2001 of 8 October 2001, on the Statute for a European Company.

⁶ Though more German companies make use of the European Company form than in any other country, the one-tier board option has not been widely utilised by German companies incorporated under European Company law.

Independent Supervisory Board Member — An independent supervisory board member has no material⁷ financial, familial⁸ or other current relationships with the company,⁹ its independent auditor, executives, or other board members, except for board service and standard fees paid for that service.

Affiliated Supervisory Board Member — An affiliated supervisory board member has a material financial, familial or other relationship with the company, its independent auditor, or its executives, but is not an employee of the company. This may include supervisory board members whose employers have a material relationship with the company or its subsidiaries or major shareholders. Supervisory board members will typically be considered affiliated if they:

- Have been employed by the company within the past five years;¹⁰
- Have — or have had within the past three years — a material business relationship with the company;
- Own or control 10% or more of the company's share capital or voting rights;¹¹

⁷ Per *Continental Europe Benchmark Policy Guidelines*, "material" means a relationship in which the value exceeds: (i) €50,000, or the equivalent (or 50% of the total compensation paid to a board member, or where no amount is disclosed) for board members who personally receive compensation for a professional or other service they have agreed to perform for the company, outside of their service as board members. This limit would also apply to cases in which a consulting firm that is owned by or appears to be owned by a board member receives fees directly; (ii) €100,000, or where no amount is disclosed, for those board members employed by a professional services firm such as a law firm, investment bank or large consulting firm where the firm is paid for services but the individual is not directly compensated. This limit would also apply to charitable contributions to schools where a board member is a professor, or charities where a board member serves on the board or is an executive, or any other commercial dealings between the company and the director or the director's firm; (iii) 1% of either company's consolidated gross revenue for other business relationships (e.g., where the supervisory board member is an executive officer of a company that provides services or products to or receives services or products from the company); (iv) 10% of shareholders' equity and 5% of total assets for financing transactions; or (v) the total annual fees paid to a supervisory board member for a personal loan not granted on normal market terms, or where no information regarding the terms of a loan have been provided.

⁸ Per *Continental Europe Benchmark Policy Guidelines*, familial relationships include a person's spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces, nephews, in-laws, and anyone (other than domestic employees) who shares such person's home. A director is classified as affiliate if the director has a family member who is employed by the company.

⁹ A company includes any parent or subsidiary in a group with the company or any entity that merged with, was acquired by, or acquired the company.

¹⁰ The five-year look back period is not applied to supervisory board members who have previously served as executives of the company on an interim basis for less than one year. Article 100(2.4) AktG prohibits a member of the management board from serving on the supervisory board within two years of the end of the employment mandate, unless requested by a shareholder owning more than 25% of a company's total voting rights.

¹¹ C.13 of the Kodex recommends that companies disclose the personal and business relationships of supervisory board nominees with shareholders who directly or indirectly hold in excess of 10% of the company's voting rights.

- Have served on the supervisory board¹² for more than 12 years;¹³ or
- Have close family ties with any of the company's advisers, board members or employees.

Inside Supervisory Board Member — An inside supervisory board member is a shareholder representative that simultaneously serves as a supervisory board member and as an employee of the company. This category may include a board chair who acts as an employee of the company or is paid as an employee of the company. In Germany, supervisory board members may not legally serve simultaneously as members of the management board, representatives of management and/or officers of the company.¹⁴ As a result, insiders are very rare on German supervisory boards. However, the law allows a member of the supervisory board to serve on the management board for a transitional period, not to exceed one year, under exceptional circumstances.¹⁵

Employee Representatives — Due to German co-determination laws, employees are entitled to have representation on the supervisory board of all public companies with at least 500 employees¹⁶ and may constitute up to half of the seats on a company's supervisory board. The Benchmark Policy analysis regarding the independence of supervisory boards does not take employee representatives into account given that these individuals are neither elected by, nor intended to directly represent, the company's shareholders.

Voting Recommendations on the Basis of Supervisory Board Independence

Many investors believe that a supervisory board will be most effective in protecting shareholders' interests when at least a majority¹⁷ of the shareholder-elected members are independent. Where 50% or more of the

¹² Recommendation C.7 of the Kodex. In certain cases, supervisory board members may be classified as affiliates when they have served fewer than 12 years on the supervisory board if they previously served on the management board and did not have a material break in service between their resignation from the management board and their election to the supervisory board.

¹³ Relevant information regarding supervisory board members' terms of office may not be always provided by microcap German companies. As such, supervisory board members for this reason will only be affiliated when the information is provided. Otherwise, the Benchmark Policy analysis will note that the company has not provided the relevant information. Additionally, while the board members will be classified as affiliates in accordance with this standard, this issue will be evaluated on a case-by-case basis for the Benchmark Policy voting recommendation. When a board or committee does not meet the independence standards set forth in these guidelines solely as a result of a nominee's length of service on the board, the Benchmark Policy may refrain from recommending a vote against the nominee if the board or relevant committee is otherwise sufficiently independent and there is evidence of regular board refreshment.

¹⁴ Article 105(1) AktG.

¹⁵ Article 105(2) AktG. During such a transitional period, individuals may not engage in supervisory board duties.

¹⁶ Companies that regularly have between 500 and 1,999 employees are subject to the German Law on One-Third Participation (Drittelbeteiligungsgesetz, or DrittelbG), Article 4(1) of which requires one-third of the supervisory board to be composed of employee representatives. Companies regularly employing 2,000 or more individuals are subject to the German Co-Determination Act (Mitbestimmungsgesetz or MitbestG), which requires equal representation of employees and shareholders on the supervisory board.

¹⁷ While C.7 of the Kodex recommends that the majority of shareholder representatives shall be independent from the company and the management board, the Kodex provides no specific recommendations on independence from major shareholders for non-controlled companies. For companies with a controlling shareholder, C.9 of the Kodex recommends

supervisory board members are either affiliated or inside members, the Benchmark Policy typically recommends voting against some of the inside and/or affiliated members in order to satisfy the majority threshold. However, this generally does not apply where significant shareholders are represented on a supervisory board in proportion to their equity or voting stake in a company.

The Benchmark Policy does not recommend shareholders vote against any supervisory board members on the basis of lengthy tenure alone. However, votes against certain long-tenured supervisory board members may be recommended when it is determined that a lack of board refreshment may have contributed to poor financial performance, lax risk oversight, misaligned remuneration practices, unresponsiveness to shareholder concerns, diminution of shareholder rights, or other concerns. In conducting this analysis, the Benchmark Policy takes into account average board tenure, evidence of planned or recent board refreshment, and other concerns with the supervisory board's independence or structure.

Voting Recommendations on the Basis of Committee Independence

Many investors expect that the majority of shareholder-elected supervisory board members serving on a company's audit and remuneration committees to be independent from both the company and its significant shareholders. However, given that the audit and remuneration committees of companies subject to codetermination laws often consist of an even number of shareholder representatives, 50% independence on the audit and remuneration committees will be generally accepted as long as the committee chair is an independent shareholder representative.

Further, many investors expect at least 50% of a company's audit committee to be comprised of shareholder-elected supervisory board members.¹⁸ Many investors believe that given the amount and importance of the work of the audit committee, shareholders' interests should be at least equally represented in proportion to employees. The Benchmark Policy will generally recommend voting against any audit committee chair who: (i) is also the supervisory board chair, unless a cogent reason is given;¹⁹ (ii) is not independent of the company;²⁰ or (iii) is a recent former member of the company's management board.²¹

While the formation of a remuneration committee is established market practice in Germany, the Kodex does not contain a specific recommendation in this regard. The Kodex does, however, recommend that if a remuneration committee is established, the chair be independent.²²

that at least two supervisory board members should be independent from this shareholder (or at least one where the supervisory board consists of six or fewer members).

¹⁸ The Benchmark Policy will recommend voting against the board chair when 75% or more of the audit committee is composed of employee representatives. When employee representatives comprise 50% to 75% of the audit committee, the Benchmark Policy analysis will include a concern.

¹⁹ Recommendation D.3 of the Kodex.

²⁰ Recommendation C.10 of the Kodex.

²¹ While the Kodex only recommends that a two-year look-back period be applied to this situation, many investors favour a five-year look-back period.

²² Recommendation C.10 of the Kodex.

With respect to the composition of a company's nominating committee, the Kodex recommends that such a committee be comprised solely of shareholder-elected members.²³ Many investors expect that a majority of these members to be independent of company management and other related parties. However, the Benchmark Policy generally accepts the presence of representatives of significant shareholders on this committee in proportion to their equity or voting stake in the company.

Other Considerations for Individual Board Members

The Benchmark Policy's evaluation of performance, experience and conflict-of-interest issues on the boards of German companies is not materially different from that detailed in the *Continental Europe Benchmark Policy*. The following are clarifications regarding best practice recommendations in Germany.

External Commitments

In accordance with the *Continental Europe Benchmark Policy*, the Benchmark Policy will generally recommend that shareholders oppose the election of a supervisory board member who:

- Serves as an executive officer²⁴ of any public company while serving on more than one additional external public company board;²⁵ or
- Serves as a 'full-time' or executive member of the board²⁶ of any public company while serving on more than two additional external public company boards; or
- Serves as a non-executive director on more than five public company boards in total.²⁷

Non-executive board chair positions at European companies are counted as two board seats given the increased time commitment generally associated with these roles.

Further, as executive directors will presumably devote their attention to the company where they serve as an executive, the Benchmark Policy will generally not recommend that shareholders vote against the election of a potentially overcommitted director at the company where they serve in an executive function. Similarly, the Benchmark Policy will generally not recommend that shareholders vote against the election of a potentially overcommitted director at a company where they hold the board chair position, except where the director:

- Serves as an executive officer of another public company; or
- Holds board chair positions at three or more public companies; or

²³ Recommendation D.4 of the Kodex.

²⁴ This policy applies to directors that serve in the top executive team of a publicly-listed company (i.e., executive committee, management board, etc.).

²⁵ Pursuant to Recommendation C.5 of the Kodex, a supervisory board member who serves as an executive officer or management board member of any public company should not serve on more than two public company boards.

²⁶ This policy applies to directors that serve on a board in a 'full-time' or executive capacity without further defined responsibilities within the executive team (e.g., executive chair that is not a member of the executive committee, or a non-executive chair that serves in the role in a full-time capacity).

²⁷ Recommendation C.4 of the Kodex.

- Is being proposed for initial election as board chair at the company.

Nevertheless, a case-by-case approach is adopted on this issue, as described in the *Continental Europe Benchmark Policy Guidelines*.

Board Structure and Composition

The Benchmark Policy with regard to board-level risk management, oversight and board diversity for German companies is not materially different from that outlined in the *Continental Europe Benchmark Policy*. In deviation from the *Continental Europe Benchmark Policy Guidelines*, these guidelines apply different standards for the election of former management board chairs to the supervisory board and the supervisory board size.

Separation of the Roles of Management and Supervisory Boards

By law, members of the supervisory board cannot simultaneously serve as management board members, authorised representatives of the management board or company, or officers of the company,²⁸ except for a one-year transitional period under extraordinary circumstances.²⁹ Moreover, German law stipulates that former members of the management board may only serve as members of the supervisory board within two years after the end of their appointment if they are appointed by a motion presented by shareholders holding more than 25% of the voting rights in the company.³⁰ Lastly, in accordance with best practice standards in Germany, no more than two former members of a company's management board should serve on the supervisory board.³¹

Despite statements in German law and the Kodex³² cautioning against crossover between the management and supervisory boards, it was common practice until recently for German companies to appoint former management board members or executives to the role of supervisory board chair. Given that the purpose of the supervisory board is to provide oversight of the management board, many investors believe that an independent chair can better oversee executives and sets a pro-shareholder agenda without the management conflicts that a former CEO, executive, or management board member often faces.

The Benchmark Policy does not recommend that shareholders vote against former CEOs, executives or management board members who serve on or chair the supervisory board, unless the supervisory board is not sufficiently independent. However, extra scrutiny to former executives is applied who are proposed as candidates for election to the supervisory board. In line with best practice standards in Germany, the Benchmark Policy may typically result in a recommendation against the election of a current or recent³³ member of the management board to the supervisory board unless one of the following criteria are fulfilled: (i) the company

²⁸ Article 105(1) AktG.

²⁹ Article 105(2) AktG. During such a transitional period, individuals may not engage in supervisory board duties.

³⁰ Article 100(2.4) AktG.

³¹ Recommendation C.11 of the Kodex.

³² Pursuant to recommendation C.10 of the Kodex, the supervisory board chair should be independent from the company and its management board.

³³ In line with the legal provisions, any individual serving on the management board within the past two years is considered as "recent" in the context of this policy.

states that the nominee will not serve as chair; or (ii) the company provides a compelling rationale for why the nominee's service as supervisory board chair will support shareholder value creation, and the board is otherwise sufficiently independent. Further, the Benchmark Policy typically supports separating the roles of chair and CEO whenever that question is directly posed in a proxy (typically in the form of a shareholder proposal).

Size of the Supervisory Board

While there is no consensus on a universally applicable optimum board size, many investors believe that the supervisory boards should be composed of no fewer than five supervisory board members and should not be excessively large.³⁴ Under German law, the maximum supervisory board size is 21 members.³⁵

Board Diversity

In December 2022, the EU Directive on Gender Balance on Corporate Boards³⁶ came into force and was supposed to be transposed by Member States into national law by December 2024. Member States are required to subject publicly-listed companies to the objective that at least 40% of non-executive positions, or 33% of an aggregate of executive and non-executive positions, be held by the underrepresented gender by June 30, 2026. Germany has not yet formally transposed the Directive into national law.³⁷

In line with the *Continental Europe Benchmark Policy Guidelines* and market best practice, the supervisory boards of all main market, CDAX-listed German companies are expected to not be solely composed of directors of the same gender. Further, the Benchmark Policy sets the expectation for the supervisory boards of all DAX and MDAX companies to be composed of at least 30% of gender diverse directors.³⁸ Where a proposed board election does not align with these targets, the Benchmark Policy recommends that shareholders vote against the chair of the nominating committee (or equivalent); when director nomination decisions are taken at full-board level, the Benchmark Policy recommends that shareholders vote against the re-election of the board chair or Lead Independent Director. In the case of a by-election, the outcome of the Benchmark Policy may be that shareholders vote against the election of the new board nominee(s) of the overrepresented gender.

Exceptions to these policies will be made for supervisory boards consisting of four or fewer members where a company provides compelling disclosure as to why it has failed to ensure gender balance on the supervisory board. Further, recent progress made to improve supervisory board diversity while maintaining the required

³⁴ CII Policies on Corporate Governance, 2.11.

³⁵ Article 95 AktG stipulates that supervisory boards consist of between three and 21 supervisory board members, including employee representatives. The law further specifies the maximum number of supervisory board members allowable as follows: (i) a maximum of nine supervisory board members for a company with a nominal share capital of up to €1,500,000, (ii) a maximum of 15 supervisory board members for a company with a nominal share capital of up to €1,500,000, and (iii) a maximum of 21 supervisory board members for a company with a nominal share capital of more than €10,000,000.

³⁶ EU Directive 2022/2381.

³⁷ According to the [Bundestag Press Release](#) from November 2024, the existing German legislative framework on gender representation on supervisory boards and management boards is deemed sufficient to meet the objectives of the Directive.

³⁸ Women, and directors that identify with a gender other than male or female.

balance of board skills and refreshment will also be taken into account, when accompanied by a commitment to address the gender gap in upcoming election cycles.

Supervisory Board Gender Quota

Since January 1, 2016, German publicly-listed companies with 2,000 or more employees have been required to ensure that at least 30% of supervisory board seats are held by directors of each gender.³⁹

In principle, this quota is intended to apply to the composition of the supervisory board as a whole. However, the shareholder representatives and the employee representatives on a company's supervisory board are permitted to lodge an objection to this overall compliance provision in advance of an election, subsequent to a resolution adopted by the majority of either group.⁴⁰ Should this occur, the shareholder representatives and employee representatives will be required to each meet the quota separately. When companies subject to this legislation are proposing elections to the supervisory board, they are required to disclose in the notice of meeting the minimum number of supervisory board seats that must be filled by directors of each gender in order to comply with the legislation as well as whether an objection has been lodged to meet separate quotas for shareholder and employee representatives.⁴¹

Given the consequences of board seats initially remaining empty if companies subject to the 30% quota fail to comply with the legislation, the Benchmark Policy may recommend voting against the nominating committee chair if forthcoming elections appear to contravene the gender quota provisions and no compelling justification is provided.

Management Board Gender Quota

Following a revision of the law, since August 2022, German publicly-listed companies with 2,000 or more employees and with a management board comprising more than three members are required to ensure the representation of at least one male and one female on the management board.⁴² Companies subject to this legislation are not required to immediately comply with the requirement; current ongoing management board mandates can be continued until their scheduled end.⁴³

Management and Supervisory Board Diversity Targets

The supervisory boards of German publicly-listed companies – regardless of size or employee headcount – are required to set target levels for the participation of women in both the supervisory board and management

³⁹ Article 96(2) AktG. Elections or appointments to the supervisory board that are not in compliance with this legislation will be legally invalid and the positions will remain vacant ("Fragen und Antworten zu dem Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst." Bundesministerium für Familie, Senioren, Frauen und Jugend). Empty seats due to non-compliance with the legislation are to be filled through a by-election or through an appointment by way of court order.

⁴⁰ Article 96(2) AktG.

⁴¹ Article 124(2) AktG.

⁴² Article 76(3a) AktG.

⁴³ Article 26I of the Introductory Act to the Stock Corporations Act (Einführungsgesetz zum Aktiengesetz).

board.⁴⁴ While companies are afforded a large degree of flexibility in setting these targets, they are prohibited from setting targets for the proportion of women on each board that are lower than the current composition unless women already account for at least 30% of the members of the respective board. Companies are required to report on the targets set on an annual basis and to disclose whether the targets were met.⁴⁵ Since July 2021, companies opting to set a target level of 0% for female representation for either board are required to provide a rationale for this decision.⁴⁶

The Benchmark Policy analysis of board composition evaluates the sufficiency of a company's disclosure on a case-by-case basis. In the event that the disclosure appears to be particularly lacking, especially in cases where the supervisory board comprises only male members and targets have not been met or are set at 0%, the Benchmark Policy may result in a recommendation against the re-election of the chair of the nominating committee (or equivalent) on this basis.

Board Oversight of Environmental & Social Issues

The Benchmark Policy looks to companies to ensure that boards maintain clear oversight of material risks to their operations, including those that are environmental and social in nature.⁴⁷ Given the importance of the supervisory board's role in overseeing environmental and social risks, this responsibility should be formally designated and codified in the governing documents.

The Benchmark Policy will generally recommend voting against the governance committee chair (or equivalent) of companies listed on the DAX index that fail to provide explicit disclosure concerning the supervisory board's role in overseeing material environmental and social issues.

Supervisory Board Committees

German public companies are required to establish an audit committee and are recommended to establish a nominating committee.⁴⁸ In Germany, planned amendments to the composition of key board committees are often not disclosed until after the supervisory board's initial meeting following the general meeting. The Benchmark Policy will take into consideration instances where the supervisory board has clearly disclosed its intentions with regard to post-AGM committee composition.

⁴⁴ Pursuant to Article 111(5) AktG, companies that are already subject to a binding target for gender representation on either the supervisory board or management board are not required to set additional target values for the respective board.

⁴⁵ Article 111(5) AktG. Furthermore, pursuant to Article 76(4), the management boards of all German publicly listed companies will be required to set target levels for the participation of women in the two tiers of management directly below the management board.

⁴⁶ *Ibid.*

⁴⁷ Principle 6 of the Kodex stipulates that the supervisory board's oversight of the management board includes sustainability issues.

⁴⁸ Principle 14 and recommendation D.4 of the Kodex and Article 107(4) AktG. Companies with supervisory boards consisting of three or fewer directors are not required to form a separate audit committee.

The Benchmark Policy's approach to committee performance at German companies is not materially different from that contained in the *Continental Europe Benchmark Policy*. In deviation from the *Continental Europe Benchmark Policy Guidelines*, exceptions are made in Germany for supervisory boards that do not form remuneration committees.

The Role of a Committee Chair

Given their assigned leadership role and additional powers and responsibilities, a designated committee chair is generally considered to maintain primary responsibility for the actions of their respective committee. As such, many of the committee-specific voting recommendations – as outlined in these guidelines and in further detail in the *Continental Europe Benchmark Policy Guidelines* -- are against the applicable committee chair rather than the entire committee (depending on the seriousness of the issue). In cases where the committee chair is not up for election due to a staggered board, and where substantial or multiple concerns have been identified, the Benchmark Policy will generally recommend voting against a long-serving committee member that is up for election, on a case-by-case basis. In cases where the Benchmark Policy would ordinarily recommend voting against a committee chair, but the chair is not specified, the following general rules are applied, which apply throughout these guidelines:

- If there is no committee chair, the Benchmark Policy will recommend voting against the longest-serving committee member or, if the longest-serving committee member cannot be determined, the longest-serving board member serving on the committee (i.e., in either case, the "senior director"); and
- If there is no committee chair, but multiple senior directors serving on the committee, the Benchmark Policy will recommend voting against both (or all) such senior directors.

Audit Committee

For an audit committee to function effectively on their behalf, it must include members with sufficient knowledge to diligently carry out their responsibilities. In line with market best practice and investor expectations, companies should clearly outline the skills and experience of the members of the audit committee, and shareholders should be wary of audit committees that include members who lack the requisite expertise.

The Kodex recommends that the audit committee chair should be independent from the company, its management and, if applicable, the controlling shareholder. In addition, the audit committee chair should not also chair the supervisory board and should have "specific knowledge and experience" of accounting principles and the internal control process.⁴⁹ Further, it is required that at least one supervisory board member has expertise in financial accounting, and a separate supervisory board member has expertise in auditing.⁵⁰ The lack of clear disclosure to determine the representation of financial accounting and auditing expertise on the audit committee, or the supervisory board as a whole, through the director biographies and disclosure provided by a company, may result in the Benchmark Policy recommending that shareholders vote against the re-election of the audit committee chair and/or other committee members standing for re-election.

⁴⁹ Recommendations C.10 and D.3 of the Kodex.

⁵⁰ Article 100(5) AktG.

Remuneration Committee

While the formation of a remuneration committee is established market practice in Germany, the Kodex does not specifically recommend the formation of a remuneration committee and clarifies that the responsibility for a company's remuneration practices is of the supervisory board as a whole.⁵¹ As such, when assessing the performance of the supervisory board with regard to remuneration policy oversight, a vote against the supervisory board chair may be merited due to failure to comply with best practice in Germany (please see “Management Board Remuneration” section). If, however, a company forms a remuneration committee that bears more responsibility for remuneration oversight than the supervisory board as a whole, many investors expect that a higher level of accountability for remuneration issues to be attributed to the remuneration committee chair.

Election Procedures

The Benchmark Policy's approach to election procedures at German companies is not materially different from that contained in the *Continental Europe Benchmark Policy*. The following are clarifications regarding best practice recommendations in Germany.

Classified Supervisory Boards and Term Lengths

Under German law, supervisory board members may be elected for a maximum term of five years.⁵² German companies have historically broadly proposed the election of supervisory board members for the maximum term permissible under German law. Further, companies may propose the (re)-election of all supervisory board members at the same time for concurrent terms or on a staggered basis.

Many investors favour the annual election of shareholder representatives on the supervisory board. Shareholder representatives on the supervisory board that are required to regularly stand for re-election may be more accountable to shareholders and responsive to shareholder interests. German companies are increasingly nominating supervisory board members for terms shorter than the legal maximum, with most DAX and MDAX companies now proposing election terms of four years or fewer.

This evolution in local market practice indicates that German companies should provide shareholders a compelling rationale when proposing the election or re-election of supervisory board members for five-year terms. Where a DAX or MDAX company is proposing supervisory board elections for five-year terms without providing compelling rationale for doing so, the Benchmark Policy will generally recommend that shareholders

⁵¹ Recommendation C.10 of the Kodex acknowledges the fact that a number of German supervisory boards have established committees that addresses management board remuneration, and calls for the chair of such committees to be independent of the company and management. However, Principle 23 of the Kodex and Article 87 AktG clarify that the entire supervisory board is responsible for designing a clear and comprehensible management board remuneration system and determining the actual remuneration of each management board member.

⁵² Article 102(1) AktG. The maximum election term for supervisory board members may not exceed the general meeting that decides on the ratification of board acts for the fourth fiscal year following the year in which the appointment is made (in practice, generally the fifth annual meeting following the appointment).

vote against the re-election of the nominating committee chair. Where any other CDAX company is proposing the same without compelling rationale, the Benchmark Policy analysis of the supervisory board elections will include a concern. In addition, the Benchmark Policy may recommend that shareholders vote against the re-election of the nominating committee chair if further concerns have been identified with the composition or performance of the nominating committee.

In line with the *Continental Europe Benchmark Policy Guidelines*, when serious concerns have been identified regarding the actions of the supervisory board and none of its members is up for election, the Benchmark Policy may recommend that shareholders hold the board accountable through a vote against the ratification of supervisory board acts.

Election of Supervisory Board Members as a Slate

German companies are recommended to elect supervisory board members individually.⁵³ Given that most companies comply with this best practice, the Benchmark Policy recommends voting against any election that is clearly proposed as a slate.

Announcement of Supervisory Board Chair Candidate

In cases where the supervisory board chair is due to leave the board at an annual meeting, German companies will generally disclose which of the nominees or incumbent board members is to take over the supervisory board chair position.⁵⁴

However, where a candidate to take over this position has not been disclosed, supervisory board nominees will be analysed under the assumption that each nominee is a potential candidate for the supervisory board chair position. This may, in particular, affect the Benchmark Policy analysis and voting recommendations regarding the nominees that held a recent position on the company's management board or who have a number of additional commitments at other publicly-listed companies. As such, in cases where a former executive of a company is being proposed for election to the supervisory board, shareholders can reasonably expect clear disclosure from the supervisory board regarding this individual's intended role on the board.

Partnership Limited by Shares (Kommanditgesellschaft auf Aktien, or KGaA)

Under German law, a publicly-traded company may be both a limited partnership and a stock corporation. This unique hybrid company structure, the *Kommanditgesellschaft auf Aktien*, or KGaA, is utilised infrequently in comparison with the more common German public stock corporation (Aktiengesellschaft, or AG) structure. In

⁵³ Recommendation C.15 of the Kodex.

⁵⁴ Article 5.4.3 of the 2017 version of the Kodex recommended that "candidates for the Supervisory Board Chair shall be announced to shareholders". However, the 2022 version of the Kodex no longer contains a comparable recommendation.

general, the KGaA company form is considered not conducive to promoting accountability to shareholders or best practices for corporate governance. The structure of a KGaA creates the possibility for management, through the limited partnership, to exercise disproportionate control over a company's governance structure. Specifically, the supervisory board of a KGaA does not have the power to hire or fire management, in contrast with the supervisory board of an AG. The supervisory board's role at a KGaA is to consult with management on issues related to shareholders' interests. Given the substantially reduced supervisory board authority under the KGaA company form, the Benchmark Policy generally does not support proposals to transform a company from an AG, or other comparable legal form, to a KGaA.

Notwithstanding the aforementioned unfavourable features of a KGaA from a shareholder rights' perspective, most shareholders of a KGaA both understand and accept that the structure's legal form of company differs from that of an AG, or any comparable legal form. As such, the Benchmark Policy does not apply the same independence standards to the supervisory board or committees of a KGaA that it applies to companies incorporated in a more typical stock corporation form, such as an AG. Given the varying capital structure possibilities of a KGaA, each KGaA will be evaluated on a case-by-case basis under the Benchmark Policy analysis. However, many investors expect the composition of the supervisory board of a KGaA to reflect the company's shareholder structure. In addition, the supervisory board of a KGaA is not responsible for oversight of the company's financial reporting,⁵⁵ thereby rendering the formation of an audit committee less relevant. As such, the Benchmark Policy analysis will exempt companies incorporated in the form of a KGaA from the requirement that they form an audit committee of the supervisory board if the company has an adequately independent committee responsible for overseeing the audit of the company's financial statements within another governing body of the company. If a KGaA chooses to form an audit committee of the supervisory board, the Benchmark Policy will evaluate its composition based on the responsibilities assigned to the committee.

Supervisory Board Composition and Candidate Disclosure

In accordance with recommendation C.14 of the Kodex, the vast majority of German listed companies publish biographical details about new nominees to the supervisory board prior to the general meeting, including statements on any relationships between a nominee and a major shareholder. This information should be updated annually and be made available on the company's website.

Furthermore, the supervisory board is recommended to prepare a profile of skills and expertise (*Kompetenzprofil*) for the entire supervisory board. Pursuant to the updated Kodex, the profile of skills and expertise should be disclosed in the format of a qualification matrix and include "sustainability" as an area of expertise.⁵⁶

⁵⁵ Article 286(1) AktG.

⁵⁶ Recommendation C.1 of the Kodex.

Given the substantial improvements to the information provided around supervisory board elections in Germany, the Benchmark Policy may recommend that shareholders vote against the re-election of the nominating committee chair in cases where there are supervisory board elections and shareholders have not been provided with meaningful information on the supervisory board's skills and expertise profile and an independence classification of incumbent supervisory board members.⁵⁷

The Benchmark Policy may recommend that shareholders vote against the re-election of the nominating committee chair if disclosure of the backgrounds and relevant qualifications of incumbent and proposed supervisory board members is substantially below best practice. This shall apply in cases where the board fails to maintain current and detailed curriculum vitae of its incumbent and proposed members or fails to disclose personal and business relationships between board candidates and a company's corporate bodies and/or shareholders with a material interest.⁵⁸

The Benchmark Policy analysis of supervisory board election proposals at DAX companies includes an explicit assessment of skills disclosure regarding shareholder representatives and nominees to the supervisory board. The purpose of this assessment is to provide further insight into the board refreshment process and allow for a more in-depth assessment of the composition of the supervisory board. The potential skills gaps identified as a result of this assessment may be utilised to underline specific concerns with board or company performance and to assist case-by-case decisions in the Benchmark Policy evaluation of supervisory board elections.

⁵⁷ This policy will generally be applied to constituents of the DAX, MDAX, and SDAX indices only. For boards without a nominating committee, the accountability will generally be attributed to the supervisory board chair or the chair of an additional board committee which appears to hold a substantial level of responsibility for the composition of the board.

⁵⁸ Recommendation C.13 of the Kodex recommends the disclosure of personal and business relationships of every candidate with the company, the governing bodies of the corporation and any shareholders with a direct or indirect stake of more than 10% of a company's voting rights.

Transparency and Integrity in Financial Reporting

In Germany, shareholders are presented with the audited financial statements for the past fiscal year and are asked to vote on the appointment of the statutory auditor and the allocation of profits on an annual basis.⁵⁹

While the principal characteristics of these types of proposals encountered in Germany have been outlined below, the Benchmark Policy regarding these issues is not materially different from the *Continental Europe Benchmark Policy Guidelines*.

Accounts and Reports

In Germany, a company's audited consolidated and non-consolidated financial statements and the non-financial statements must be approved by the supervisory board and subsequently presented to the management board within two months of the receipt of the independent auditor's report.⁶⁰ Following approval by the management and supervisory boards, the audited financial and non-financial statements are presented to shareholders at the annual meeting, which must be held within eight months of the close of the fiscal year.⁶¹ However, shareholders will be asked to approve the submitted financial statements under the following three circumstances: (i) when the management and supervisory boards cannot agree on the approval of the financial statements; (ii) when the management and supervisory boards decide, for any reason, that the annual meeting will have the final authority to approve the financial statements;⁶² or (iii) if the company's legal form is a partnership limited by shares (KGaA).⁶³ Allocation of Profits/Dividends

In accordance with German law, companies may choose to allocate their profits to one or more of the following categories, subject to shareholder approval: (i) a dividend paid to shareholders; (ii) revenue reserves; (iii) retained earnings; or (iv) unappropriated net profits.⁶⁴ In any case, not more than half of a company's annual profits may be allocated to revenue reserves without explicit shareholder approval.⁶⁵ Additionally, a German company's articles may contain provisions that allow management to make an advance dividend payment based on annual financial statements, up to half of the company's reported net profits, with the approval of the supervisory board.⁶⁶

⁵⁹ Article 119 AktG.

⁶⁰ Article 171 AktG. Exemptions for non-financial reporting requirements apply to companies which are not part of the regulated market (§289b HGB and §264d HGB).

⁶¹ Article 175(1) AktG.

⁶² Articles 172 and 173(1) AktG.

⁶³ Article 286(1) AktG.

⁶⁴ Article 170(2) AktG.

⁶⁵ Article 58(2) AktG.

⁶⁶ Article 59 AktG.

The Link Between Pay and Performance

Following the implementation of Shareholder Rights Directive II (SRD II) into German law, finalised on December 12, 2019, and the revision of the Kodex, companies are mandated to seek shareholder approval of the remuneration policy at least every four years (or upon implementation of material amendments) and of the remuneration report every year. Both votes are advisory;⁶⁷ however, should the remuneration policy not receive the support of a majority of votes cast, companies are required to review the policy and present it for another shareholder vote at the following annual meeting at the latest.⁶⁸

Votes on Remuneration (Say-on-Pay)

The remuneration policy and report must cover remuneration arrangements for both executive and non-executive directors. While companies may present a single remuneration policy vote to the general meeting, the market practice evolved towards companies providing separate proposals on the remuneration policy for the management board and for the supervisory board. Where a company seeks approval of the policies in a single proposal and substantial concerns have been identified with the proposed remuneration policy for either the management board or the supervisory board, the Benchmark Policy will generally recommend that shareholders vote against the proposal.

In addition, shareholders of German companies are regularly asked to approve changes to supervisory board fee policies and equity remuneration plans for employees. The Benchmark Policy regarding these matters does not differ materially from the *Continental Europe Benchmark Policy*.

The Benchmark Policy regarding the terms of an executive pay system and report for German companies does not differ materially from what is outlined in the *Continental Europe Benchmark Policy*; however, it accounts for a company's compliance with legal requirements and best practice in Germany, as described below.

Management Board Remuneration Policy

The Benchmark Policy analysis and recommendation of remuneration policy proposals for German companies are focused on the structure of the pay package, as detailed in the *Continental Europe Benchmark Policy Guidelines*. Furthermore, when assessing a remuneration structure, its disclosure and any related amendments, the Benchmark Policy recommendation will focus on the overall effect of structural changes, as well as on any improvement or deterioration in disclosure, taking into consideration the general "direction of travel" in the proposed policy.

⁶⁷ Article 120a(1, 4) AktG. Principle 24 of the Kodex. Pursuant to Article 120a(5) of the AktG, small- and medium-size companies as defined by Article 267(1-2) of the German Commercial Code may opt to present the remuneration report to the general meeting as discussion item, rather than voting item.

⁶⁸ Article 120a(3) AktG.

Some of the potentially troubling issues that are considered by the Benchmark Policy and that may factor into a negative vote recommendation when analysing remuneration policies are as follows:

- Variable remuneration components are not based on the achievement of operating and strategic performance targets, which may be financial and non-financial in nature, as well as company-wide or individual, as defined by the supervisory board in the remuneration policy;⁶⁹
- Financial and non-financial performance criteria, the selection process and vesting mechanisms thereof, are not sufficiently disclosed;⁷⁰
- The performance metric set is largely reliant on qualitative and/or non-financial metrics, with no financial underpins or gateways;
- The remuneration policy is not suitably linked to the company's strategic priorities and oriented to long-term performance and sustainability;⁷¹
- According to the targeted pay mix, the relative weight of fixed and short-term remuneration elements significantly exceeds the weight of long-term variable elements and no compelling rationale is provided for such imbalance;⁷²
- The maximum payout opportunity for each management board member is not adequately disclosed;⁷³
- Severance agreements are capped at more than twice the management board member's total annual remuneration or the remaining term of their contract, do not account for additional non-competition payments,⁷⁴ or allow for payments exceeding the aforementioned cap if stipulated under special termination rights linked to a change in control;⁷⁵
- The supervisory board does not retain discretion to reduce, withhold or reclaim management board members' remuneration to account for extraordinary developments;⁷⁶
- The supervisory board retains discretion to allocate extraordinary awards outside the regular incentive plans and outside the deviations allowed by law to safeguard the long-term wellbeing of the company;⁷⁷
- The remuneration policy does not include disclosure detailing the terms of any deferral periods, recovery provisions, vesting restrictions on share-based awards, annual pension contributions, severance agreements and treatment of outstanding long-term awards upon termination;⁷⁸
- Substantial increases in target and/or maximum pay opportunity are attributed solely to benchmarking exercises without further discussion or rationale;⁷⁹

⁶⁹ Recommendations G.1 and G.7 of the Kodex.

⁷⁰ Article 87a(4) AktG.

⁷¹ Article 87a(1) AktG and Recommendation G.6 of the Kodex. Additionally, in July 2018 a group of German Corporate Governance experts published "Guidelines for Sustainable Management Board Remuneration Systems", highlighting the importance of linking executive pay to long-term sustainability.

⁷² Recommendation G.6 of the Kodex.

⁷³ Article 87a(1) AktG and Recommendation G.1 of the Kodex.

⁷⁴ Recommendation G.13 of the Kodex.

⁷⁵ Recommendation G.14 of the Kodex.

⁷⁶ Recommendation G.11 of the Kodex.

⁷⁷ Article 87a(2) AktG.

⁷⁸ Article 87a (5-8) AktG.

⁷⁹ Recommendations G.2 and G.3 of the Kodex.

- The remuneration policy does not include disclosure detailing how the system was amended and how shareholder feedback on the system was taken into account;⁸⁰
- The remuneration policy does not include disclosure detailing how the remuneration of the company's wider workforce was taken into consideration when setting the levels of management board members' pay;⁸¹ and
- Material shareholder dissent on the remuneration system is not sufficiently addressed.

Since members of German management boards are appointed for multi-year terms of up to five years, some companies opt to implement a newly approved remuneration policy only upon the renewal of the executive's contract. In light of this common market practice and the binding nature of ongoing contracts, the Benchmark Policy will not recommend shareholders to vote against a remuneration policy proposal on this basis alone. However, the implementation of a new or amended remuneration policy for all management board members at the same time generally fosters transparency and accountability, avoiding the creation of a complex incentive system with overlapping structures, and thereby facilitating shareholders' understanding of the system being applied in each given year. Furthermore, if the new policy is being proposed in response to structural concerns previously expressed by shareholders, a partial or staggered implementation of it could result in shareholders' concerns being only partially addressed in the immediate future, while some executives continue being granted the same pay elements that had been criticised by shareholders for the remaining duration of the current mandates.

In light of these considerations and investor expectations, companies that opt for a staggered implementation of their new remuneration policy are expected to disclose: (i) which amendments were implemented and for which management board members;⁸² (ii) which amendments were not implemented and why; and (iii) the timeline of implementation of pending amendments for the relevant management board members. Additionally, should the new policy represent a direct response to investors' dissent, best practice indicates that companies should explicitly take this issue into account in their disclosures, for example by detailing the feedback received by top free-float shareholders on this matter or providing a cogent rationale for the supervisory board's decision.

Severance Policy

While neither the German law nor the Kodex provide a specific definition of the elements comprised in the severance cap of two times the "total annual remuneration", shareholders can reasonably expect companies to disclose if and what fixed and variable pay elements can be included in the determination of such amount.

Some companies allow for full vesting of outstanding long-term awards after an executive's termination. In line with international best practice, the size of long-term awards granted prior to termination and not yet vested should be reduced proportionately to the time served until termination. Post-vesting or post-termination holding periods imposed on the remaining portion of a grant may serve to ensure the executive's interests remain aligned with those of the company's shareholders for a time following their termination.

⁸⁰ Article 87a(11) AktG.

⁸¹ Article 87a(9) AktG and Recommendation G.4 of the Kodex.

⁸² Article 162(1)1 AktG.

Further, as outlined in the *Continental Europe Benchmark Policy Guidelines*, severance payments should generally be limited to two years fixed salary and not be paid in the event of inadequate performance or voluntary departure. While the local best practice standards and recommendations are taken into account by the Benchmark Policy's analysis of severance payments and provisions, substantial deviations from the above cap should generally be justified by companies via supporting disclosure.

Finally, shareholders can reasonably expect companies to differentiate their severance policies based on the possible circumstances of a management board member's departure (i.e., resignation with or without good cause, termination by mutual agreement, termination with or without good cause) and to provide clear disclosure of the particular severance provisions in each of these scenarios.

Management Board Remuneration Report

The Benchmark Policy analysis and recommendation of remuneration report proposals for German companies are focused on the implementation of the remuneration structure during the preceding fiscal year and on the disclosure thereof, as detailed in the *Continental Europe Benchmark Policy Guidelines*. According to German law, a remuneration report must be clear and understandable, and include the remuneration granted and paid during the past fiscal year to each current and former member of the supervisory board and management board of the company and its subsidiaries.⁸³

Some of the issues considered in the Benchmark Policy analysis of remuneration reports that may contribute to a negative recommendation are as follows:

- The remuneration report does not contain clear disclosure detailing how target, maximum and actual remuneration amounts for each management board member were determined;⁸⁴
- The remuneration report does not contain disclosure detailing the relative weight of each component of the pay package⁸⁵ and how each component supports the company's strategy and long-term development;⁸⁶
- The relationship between granted and vested remuneration, the underlying levels of target performance achievement and the final size of vested awards are not comprehensible;⁸⁷
- Performance goals were lowered during the performance period;⁸⁸
- The supervisory board approves excessive and/or egregious termination payments, i.e., severance payments exceeding two years of total annual remuneration or large severance payments which fall within the aforementioned limit but are accompanied by full vesting of outstanding long-term awards and/or other compounding concerns (e.g., material reservations regarding a company's executive

⁸³ Articles 87a(1) and 162(1) AktG, Article 285(9) HGB, and Principle 24 of the Kodex. Prior to the revision of the AktG, companies were permitted to seek shareholder approval to omit individual disclosure of management board members' remuneration; this is no longer permissible.

⁸⁴ Article 162(1) AktG and Recommendation G.1 of the Kodex.

⁸⁵ Articles 87a(1) and 162(1) AktG and Recommendation G.1 of the Kodex.

⁸⁶ Article 162(1) AktG and Principle 24 of the Kodex.

⁸⁷ Recommendations G.1 and G.9 of the Kodex.

⁸⁸ Recommendation G.8 of the Kodex.

succession planning, resignation or other termination cause attributable to the departing executive, full vesting of outstanding replacement or sign-on awards⁸⁹granted upon appointment or retention awards). The Benchmark Policy assessment of the size and circumstances of termination payments will consider the rationale and disclosure provided by companies;

- The remuneration report does not include a five-year comparison of annual remuneration for the highest paid management board member, company performance and average full-time equivalent employee pay;⁹⁰
- The remuneration report does not include disclosure detailing any deviations from the management board remuneration policy resolved on by the supervisory board during the preceding fiscal year, including an explanation of why said deviations were deemed necessary.⁹¹

With regard to the five-year comparison between CEO pay and average employee pay (i.e., CEO pay ratio), German companies have adopted a variety of disclosure formats, including the practice of solely disclosing the year-on-year percentage increases in pay for the CEO and employees. However, best practice in Europe and globally indicates a preference towards the disclosure of the actual ratio or of the respective monetary values.

Lastly, in accordance with local and European best practice, companies should explicitly address any feedback received from shareholders in their remuneration report in case a say-on-pay proposal at the previous annual meeting received significant opposition. In line with the *Continental Europe Benchmark Policy Guidelines*, the Benchmark Policy for German companies will generally consider an against vote greater than 20% of votes cast by unaffiliated shareholders to be significant, while taking into account the ownership structure and any mitigating circumstances around the specific vote when making this determination.

Disclosure of Earned/Paid Remuneration

The former version of the Kodex, predating SRD II, provided two templates for the disclosure of individual management board members' annual granted and allocated remuneration, broken down by element and minimum, target and maximum value of awards granted in the relevant fiscal year. This recommendation was removed from the new version of the Kodex; at the same time, the revised Stock Corporations Act does not include alternative disclosure requirements in this regard. Absent an alternative format recommendation, continuing to disclose management board remuneration using the Kodex model tables generally facilitates comprehension. Regardless of the template chosen by each company, in line with emerging best market practice, companies are expected to accompany each table with an explanation of the values included in it, in particular with regard to the relevant performance period for variable short-term and long-term awards (i.e., whether the reported short- and long-term incentive figures reflect the value of granted, vested or paid out awards, and/or to which performance year(s) these relate).

⁸⁹ 'Sign-on awards' differ from 'replacement awards' as they relate to extraordinary remuneration granted to an individual upon their appointment that does not correspond (in size and vesting terms) to remuneration forfeited upon departure from the individual's previous role.

⁹⁰ Article 162(1)2 AktG.

⁹¹ Article 162(1.5) AktG.

With regard to *allocated* remuneration, since variable pay entitlements for a fiscal year are often finalised after the end of the reporting period, companies may opt to disclose awards *paid out*⁹² -- rather than *earned* (or *vested*) -- in the reporting year. Nonetheless, the disclosure of amounts *earned* aligns better with international standards and fosters comparability with a company's international industry peers, while also allowing for a more meaningful assessment of the link between pay and performance in the year under review.

Disclosure of both awards *earned* and *paid*, on a voluntary basis, has now evolved as local best practice. As such, should a board decide to omit disclosure of awards *earned* (in favour of awards *paid out*) during the year under review, the company would be expected to explicitly address this issue and provide a compelling explanation of why such disclosure was omitted, as well as information on the estimated target achievement level of vested awards and a commitment to disclose the exact realised value of the awards in the following year's report. Absent such disclosure, the Benchmark Policy may recommend that shareholders vote against the approval of the remuneration report.

Supervisory Board Remuneration

As with the management board remuneration policy, German companies are required to seek shareholder approval of the remuneration policy for the supervisory board at least every four years or whenever material amendments are made. In addition, companies are required to seek annual shareholder approval of the remuneration report, comprising information on supervisory board remuneration.⁹³ Both votes are of an advisory nature. Prior to the transposition of SRD II, German companies were required to either seek annual approval of the fees to be paid to supervisory board members, or to include the remuneration policy for supervisory board members in their articles of association and seek shareholder approval for any changes. Most German companies continue to include the remuneration policy for supervisory board members in their articles of association. Given the new legal requirement for shareholder approval of the supervisory board remuneration policy, the Benchmark Policy will generally recommend supporting proposals to remove the supervisory board remuneration policy from a company's articles of association.

The Kodex recommends that supervisory board members should receive fixed remuneration only, but that if performance-related remuneration is granted, it shall be geared to the long-term development of the company.⁹⁴ The European Commission also cautions that significant additional remuneration, particularly in the form of participation in a share option or any other performance-related pay scheme, is capable of compromising the independence of non-executive directors.⁹⁵

Further, as outlined in the *Continental Europe Benchmark Policy Guidelines*, the supervisory board should provide a compelling rationale for any substantial increases to the fees of non-executive directors, particularly when the current or proposed fees exceed those paid to market peers.

⁹² "Paid out" awards, as disclosed by German companies, generally relate to awards vested in the fiscal year preceding the fiscal year under review.

⁹³ Article 113 AktG. Exceptions apply to companies not part of the regulated market.

⁹⁴ Recommendation G.18 of the Kodex.

⁹⁵ European Commission Recommendation 2005/162/EC.

The Benchmark Policy regarding the terms of supervisory board remuneration proposals at German companies does not differ materially from the *Continental Europe Benchmark Policy*. While shareholders are best served when supervisory board members receive fixed remuneration only, in line with the recommendations of the Kodex,⁹⁶ limited performance based awards may be acceptable, so long as such awards are based on clearly-defined, multi-year performance criteria and geared toward the long-term sustainable development of the company.

⁹⁶ Recommendation G.18 of the Kodex.

Governance Structure and the Shareholder Franchise

In Germany, shareholders are asked to approve proposals regarding a company's governance structure, as well as the ratification of management and supervisory board acts and amendments to the articles of association. While the principal characteristics of these types of proposals encountered in Germany have been outlined below, the Benchmark Policy regarding these issues is not materially different from the *Continental Europe Benchmark Policy Guidelines*.

Ratification of Supervisory & Management Board Acts

For up to eight months after the end of a fiscal year, German companies may request that shareholders discharge the members of the supervisory board and/or management board from any and all of their actions during the past fiscal year. Shareholders holding at least 10% of a company's share capital, or shares with an aggregate nominal value of at least €1 million, may request that individual members of the supervisory or management boards be discharged separately.⁹⁷

In Germany, ratifying the acts of the management and supervisory boards is primarily a vote of confidence and does not release its members from liability for their actions; directors may still be held liable for any tortious or negligent act committed in the performance of their duties. In accordance with best practice in Germany, the ratification of management and supervisory board acts should be presented as a separate voting item for each individual board member in cases where there are known shareholder concerns regarding a board or individual's performance during the past fiscal year. In cases where the Benchmark Policy would recommend that shareholders vote against the ratification of an individual board member, but shareholders are only provided with the opportunity to ratify the board as a whole, the Benchmark Policy will generally recommend that shareholders oppose ratification for the entire board.

There are cases where ongoing investigations or proceedings may cast significant doubt on the performance of the management or supervisory board in the past fiscal year. When the potential outcome of such investigations or proceedings is unclear at the time of convocation of the general meeting, there is a reasonable expectation that companies propose that a decision on ratification be postponed until a future general meeting. If companies do not postpone the ratification vote in such situations, the Benchmark Policy will generally recommend that shareholders abstain from voting on such ratification proposals; in cases where abstentions are neither counted as valid votes cast nor displayed in the minutes of general meetings, the Benchmark Policy will generally recommend that shareholders vote against ratification proposals under the aforementioned circumstances.

⁹⁷ Article 120(1) AktG.

Absent compelling evidence that the management and supervisory board have failed to satisfactorily perform its duty to shareholders in the past fiscal year, the Benchmark Policy generally recommends that shareholders approve ratification proposals.⁹⁸

Ownership Reporting Requirements

German law requires that any shareholder whose percentage ownership of outstanding shares or voting rights in a company rises above or falls below the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, or 75% disclose their shareholdings within four trading days of the acquisition or sale.⁹⁹ The management board is then required to disclose this information to shareholders.

In addition, shareholders who cross the 10% ownership threshold are required to disclose the following information within 20 trading days of the acquisition:¹⁰⁰ (i) whether the acquisition was motivated by a trading profit goal or a strategic investment decision; (ii) whether the shareholder intends to acquire further voting rights in the next 12 months; (iii) whether the shareholder intends to influence the composition of the company's board or management; and (iv) the shareholder's intentions with regard to the company's capital structure, financing and dividend policy. In addition, the shareholder must reveal the source of their financing for the acquisition, especially whether the acquisition was financed through debt or equity. Lastly, the shareholder must update the company if any of the four aforementioned intentions change, for as long as the shareholder maintains ownership of at least 10% of the voting rights. The company, in turn, is required to make all of the aforementioned information public.

Exemptions from Ownership Reporting Requirements

In accordance with German law, companies may request an exemption¹⁰¹ from the increased reporting requirements mentioned above for shareholders who cross the 10% ownership threshold. In general, exempting certain companies from market-wide disclosure requirements may disadvantage shareholders of those companies that seek such exemptions. Seeking an exemption from required reporting standards may create the opportunity for management and/or major shareholders to act in their own interests to the exclusion of the interests of minority shareholders. Accordingly, the Benchmark Policy will generally recommend shareholders not to support proposals seeking an exemption from reporting requirements, unless management provides a specific and justifiable reason and the exemption will not harm minority shareholders' interests.

⁹⁸ Recommendations on the ratification of management and supervisory board acts are taken on a case-by-case basis. The general conditions for recommendation against such proposals are detailed in the *Continental Europe Benchmark Policy Guidelines*.

⁹⁹ Article 33(1) of the German Securities Trading Act (Gesetz über den Wertpapierhandel or WpHG).

¹⁰⁰ Article 43(1) WpHG.

¹⁰¹ Article 43(3) WpHG allows companies to seek an exemption through an amendment to the articles of association approved by shareholders.

Restrictions on Share Registration

Under certain conditions, German companies may impose registration restrictions on shareholders who own shares through an intermediary. Companies may seek shareholder approval to amend the articles of association in order to implement one of the following restrictions:¹⁰² (i) an absolute cap on the number of shares that may be entered into the share register under the name of a deposit institution that is not the direct beneficial owner of the shares; (ii) an absolute cap on voting rights assigned to shares registered in the name of a deposit institution; (iii) a duty to disclose specified identifying information for beneficial owners that exceed a certain threshold; or (iv) a suspension of voting rights for shareholders who do not comply with a company's disclosure requirements. Shareholders should have the right to vote in direct proportion to their holdings. While shareholders should fully disclose their holdings in accordance with the law, the Benchmark Policy does not support proposals restricting shareholders' voting rights beyond what is required by law. As such, the Benchmark Policy will recommend shareholders not to support proposals that seek to restrict their voting rights in any way.

Supermajority Vote Requirements

German law requires the support of a supermajority of votes cast on certain voting decisions at shareholder meetings in order for the motion to be passed; however, the Benchmark Policy will generally recommend voting against any proposal that extends this supermajority requirement to decisions not stipulated by law, except where the relevant provision is designed to protect minority shareholders. German companies can generally establish a lower threshold in their articles of association than is required by law to approve certain voting items. In cases where a company seeks to abolish supermajority voting requirements, this will be evaluated on a case-by-case basis. In many instances, amendments to voting requirements may have a deleterious effect on shareholders rights where a company has a large or controlling shareholder. Therefore, the Benchmark Policy analysis will take into account additional factors including: shareholder structure; quorum requirements; impending transactions – involving the company or a major shareholder – and any internal conflicts within the company.

Disclosure of General Meeting Vote Results

Access to detailed vote results from general meetings is important for shareholders in conducting their stewardship duties. Specifically, the disclosure of vote results assists shareholders in gaining a better understanding of the outcome of general meetings, establishing engagement priorities, and tracking companies' responses to material (minority) shareholder dissent on any of the agenda items. The non-disclosure of vote results can serve to disenfranchise minority shareholders particularly at companies with a multi-class share structure or a controlling shareholder.

¹⁰² Article 67 AktG.

In Germany, the disclosure of vote results from a shareholder meeting represents an established best practice. Accordingly, a concern will be noted in the analysis of the composition of boards of directors at companies that do not disclose vote results from their previous annual meeting. For DAX and MDAX companies that did not disclose vote results from their previous annual meeting, the Benchmark Policy will generally recommend that shareholders vote against the re-election of the chair of the governance committee or equivalent (i.e., board chair or Lead Independent Director).

Virtual Shareholder Meetings

German public companies have traditionally held in-person shareholder meetings. During the COVID-19 pandemic, Germany established temporary provisions, which allowed companies to hold a virtual AGM until August 2022. In July 2022, the German Stock Corporations Act has been amended to include revised long-term regulations for virtual meetings.

In order to be able to hold virtual-only or hybrid meetings, German companies are required to seek shareholder approval to amend their articles of association and include a provision on virtual meetings, which will either allow the Company to generally hold virtual meetings or the management board to decide on the meeting format. The authorisation will be valid for a maximum of five years, after which the authorisation would need to be renewed.¹⁰³

In particular, companies holding a virtual general meeting have to comply with the following provisions:

- Shareholders must be able to follow the meeting via audio and video transmission;¹⁰⁴
- Shareholders must be able to exercise their voting rights by means of electronic communication (electronic participation or electronic postal voting) and by granting a power of attorney;¹⁰⁵
- Shareholders must be able to submit counter motions, election proposals, or other substantive motions by means of video communication;¹⁰⁶
- A company may decide to limit shareholders' ability to submit questions to the period preceding the meeting instead of allowing questions exclusively during the meeting. In that case, the management board may stipulate that questions have to be submitted no later than three days prior to the meeting; the submitted questions will need to be answered and published no later than one day prior to the meeting.¹⁰⁷ Shareholders must be granted the right to ask follow-up questions to previously submitted questions during the meeting.¹⁰⁸
- Shareholders must be able to submit comments on the items of the agenda by means of electronic communication no later than five days prior to the meeting. The submitted comments must be made available to all other shareholders no later than four days prior to the general meeting.¹⁰⁹

¹⁰³ Article 118a(1 and 5) AktG.

¹⁰⁴ Article 118a(1-1) AktG.

¹⁰⁵ Article 118a(1-2) AktG.

¹⁰⁶ Article 118a(1-3) AktG.

¹⁰⁷ Article 118a(1-4) AktG in conjunction with Article 131(1a and 1c) AktG.

¹⁰⁸ Article 131(1d) AktG.

¹⁰⁹ Article 130a(2-3) AktG.

- Shareholders must be granted the right to speak at the general meeting by way of video communication.¹¹⁰

The approach to assessing German companies' proposed authorisations to hold virtual meetings does not differ materially from that outlined in the *Continental Europe Benchmark Policy Guidelines*. Given the protections afforded to shareholders under German law, the Benchmark Policy generally recommends that shareholders approve such authorities except in egregious cases.

However, given the potentially broad scope and lengthy term of authorisations, as well as concerns raised by some shareholders on virtual meetings, shareholders would benefit from additional disclosure clarifying the board's intended usage of virtual meetings over the term of the authority, as well as any additional safeguards that have been included. The analysis of such authorisations includes, inter alia: an overview of the format in which the company has held its shareholder meetings since 2022; any disclosed commitment to hold one or more in-person or hybrid shareholder meetings during the authorisation period; and whether the management board's decision on meeting format is subject to supervisory board approval.

Given the concerns raised by some shareholders on virtual meetings, shareholders can reasonably expect companies to disclose the reasons for which the board has elected to hold the meeting in virtual format, particularly in cases where the board has legitimate concerns with convening an in-person meeting and/or has received relevant advice from local authorities. Additionally, given the ability for companies to set some limitations on shareholders' ability to submit questions before or during the general meeting under German law, the Benchmark Policy expects companies to disclose the envisaged terms of shareholders' participation in virtual meetings and any restriction thereto when seeking shareholder approval of the relevant article amendments, including a clear indication of when (or until when) shareholders will be able to submit questions and, if time limits are imposed, a rationale for such limits.

As outlined in the *Continental Europe Benchmark Policy Guidelines*, companies should actively engage with their shareholders on the topic of shareholder meeting format. In egregious cases where a board has failed to address legitimate, publicly disclosed shareholder concerns regarding the manner in which the company is holding its shareholder meetings, the Benchmark Policy may recommend that shareholders vote against the re-election of accountable directors, or other matters up for a shareholder vote, as appropriate. In addition, in line with best practice and the expectations set by the Benchmark Policy on board responsiveness, supervisory boards should address any significant shareholder dissent¹¹¹ expressed at the previous general meeting against article amendments seeking to allow virtual meetings.¹¹²

Lastly, while management board members are required by law to attend all shareholder meetings in-person, companies may ask for shareholder approval to amend the articles of association in order to allow supervisory

¹¹⁰ Article 130a(5) AktG.

¹¹¹ A dissent level exceeding 20% of the votes cast by unaffiliated shareholders is generally considered significant; please refer to the "Board Responsiveness" section of the *Continental Europe Benchmark Policy Guidelines* for further details.

¹¹² Article 179(2) AktG sets the majority requirement for amendments to the articles of association to pass at 75% majority of the share capital represented at the annual general meeting. However, companies may stipulate a different threshold (e.g., simple majority or majority of two thirds) in their articles of association.

board members to attend meetings virtually.¹¹³ In line with the *Continental Europe Benchmark Policy Guidelines*, the Benchmark Policy will generally recommend that shareholders oppose such amendments unless the virtual participation of supervisory board members is explicitly limited to virtual shareholder meetings or exceptional circumstances.

¹¹³ Article 118(3) AktG.

Capital Management

In Germany, shareholders are regularly asked to approve capital proposals, namely increases in authorised and conditional capital, the issuance of convertible debt instruments and the authority to repurchase shares. Such authorities generally extend for five years. The Benchmark Policy's approach to these matters does not differ materially from that contained in the *Continental Europe Benchmark Policy*.

Authorised Capital

German companies generally ask shareholders to approve an unallocated pool of authorised but unissued shares, which may be issued with or without preemptive rights.¹¹⁴ Shares issued pursuant to these authorities may be used for a broad range of corporate purposes, including raising funds for expansion plans, refinancing existing loans, or carrying out mergers and acquisitions. By law, a company's authorised capital may not exceed 50% of a company's issued share capital and is valid for a maximum period of five years.¹¹⁵ Best practice in Germany, although not specifically stated in any codified recommendations, provides that preemptive rights should be preserved for share issues from authorised capital in excess of 20% of issued share capital at the date of approval. As such, and in line with the *Continental Europe Benchmark Policy Guidelines*, the Benchmark Policy will generally recommend that shareholders vote against any authorised capital proposal which does not preserve preemptive rights above 20% of current issued share capital. Further, all general authorities to issue shares are expected to have an explicit common cap on maximum potential issuances with and without preemptive rights in line with best practice in Europe. The Benchmark Policy will recommend voting against any proposal that does not explicitly extend a 20% cap on share issues without preemptive rights to authorised and conditional capital authorities previously existing and/or proposed at the meeting, other than those reserved for unique purposes such as equity incentive plans.

Conditional Capital

German companies may ask shareholders to approve "conditional" or "contingent" capital. These capital increases may only be used under certain specifications, such as the issuance of shares to fulfil a company's obligations to holders of convertible debt instruments or stock options.¹¹⁶ By law, a company's conditional capital may not exceed 60% of a company's issued share capital and is valid for a maximum period of five years.¹¹⁷ As such, these proposals will be evaluated in conjunction with the proposed authority that allows the company to utilise it. Furthermore, the same scrutiny to the preservation of preemptive rights as explained above under "Authorised Capital" will be applied to these authorities.

¹¹⁴ Article 203(2) AktG.

¹¹⁵ Article 202 AktG. Article 186(3) AktG further limits issuances of shares for cash consideration without preemptive rights to 20% of a company's total share capital.

¹¹⁶ Article 192(2) AktG.

¹¹⁷ Article 192(3) AktG. The law further limits issuances of convertible debt instruments for cash consideration without preemptive rights to 20% of a company's total share capital.

Authority to Repurchase Shares

If German companies intend to buy back shares, they are subject to the following conditions: (i) the volume of shares to be repurchased must not exceed 10% of the nominal share capital and only funds that could have otherwise been paid out to shareholders in the form of dividends can be disbursed for repurchase transactions;¹¹⁸ (ii) the company must not repurchase its shares for the purpose of trading,¹¹⁹ and (iii) the authority to repurchase shares cannot be granted for a period of time exceeding five years.¹²⁰ In addition, banks and financial institutions may seek approval at a general meeting of shareholders to repurchase shares for the purpose of securities trading, within a limit of 5% of the company's share capital. When seeking such an approval, the highest and lowest price must be stated.¹²¹

Given these legal provisions, the Benchmark Policy generally recommends voting in favour of a proposed authority to repurchase and/or trade in shares in Germany.

¹¹⁸ Article 71(1.8) AktG.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ Article 71(1.7) AktG.

Shareholder Initiatives

In Germany, there are two types of shareholder initiatives that may be included on the agenda of a general shareholders' meeting: shareholder countermotions and shareholder proposals. Shareholder countermotions are much more common than shareholder proposals, as they can be put forward by any shareholder who submits the motion in accordance with the applicable legal requirements.¹²² Counter motions must correspond to a voting proposal on the agenda for the general meeting and generally urge shareholders to vote against the proposal put forth by management. However, counter motions may also propose separate voting decisions, including the amendment of a proposal put forth by management. These proposals generally request changes to a company's dividend policy, capital authorities, or supervisory board composition. They may also request that a special audit into management or supervisory board activities be carried out.

Shareholder counter motions may or may not be proposed as separate voting items at the general meeting. In general, voting recommendations for all shareholder counter motions that are clearly designated as separate voting items will be provided.¹²³ Given the broad range of topics that may be addressed by counter motions, each counter motion will be analysed on a case-by-case basis. In general, however, the Benchmark Policy will not be supportive of counter motions that seek to manage a company's day-to-day business, which many investors believe is better managed by the management and supervisory boards.

In Germany, shareholders owning at least 5% of a company's share capital, or a nominal value of €500,000 in a company's shares, may request that a separate proposal be included on the agenda of a general meeting of shareholders.¹²⁴ Such requests must be submitted at least 30 days prior to the meeting date. Though shareholder proposals are rare in Germany, when submitted, they generally propose the appointment of a special auditor to investigate management or supervisory board actions, the removal of supervisory board members or the election of dissident supervisory board members.

The Benchmark Policy for German companies regarding these matters does not differ materially from the *Continental Europe Benchmark Policy*.

¹²² Article 126 AktG.

¹²³ Counter motions that will be voted on separately at the meeting are generally designated by a letter on the proxy form. Where such a letter is assigned, voting recommendations will be provided. Given that the statutory filing deadline for shareholder counter motions is 14 days before the meeting, providing voting recommendations for all shareholder counter motions in advance of the vote cutoff may not always be possible.

¹²⁴ Article 122(2) AktG.

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