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Government Commission on the German Corporate Governance Code

c/o Deutsches Aktieninstitut e.V. • Senckenberganlage 28 • 60325 Frankfurt am Main

by email: regierungskommission@dcgk.de

Comments on the Proposed Amendments to the German Corporate Governance Code (DCGK)

Dear Members of the Government Commission on the German Corporate Governance Code,

We welcome the opportunity to comment on the amendments to the Code proposed by the Government Commission as part of the consultation process launched in August 2026.

We would be pleased to answer any questions the Government Commission may have regarding the comments set out below. We have no objection to the publication of these comments on the DCGK website.

Yours sincerely,

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Preliminary Remarks and Context

IVOX Glass Lewis has been a subsidiary of Glass Lewis since 2015 and, as a proxy advisor, provides institutional investors with analyses of general meetings and corporate governance. In the German-speaking market, we cover around 500 listed companies, for whose general meetings we prepare corresponding recommendations.

Although IVOX Glass Lewis is part of the Glass Lewis group, it publishes independent reports. This is because IVOX Glass Lewis applies exclusively third-party guidelines, primarily the Analysis Guidelines for General Meetings (ALHV) of the BVI Bundesverband Investment und Asset Management e.V., as well as clients' own guidelines held by institutional investors. As a result, IVOX Glass Lewis inevitably takes a different perspective, which can also lead to recommendations that differ from the Glass Lewis Benchmark Policy. For this reason, IVOX Glass Lewis and Glass Lewis submit separate comments on the proposed amendments to the Code.

As a pure user of third-party guidelines, IVOX Glass Lewis does not adopt its own position independent of the underlying guidelines in this consultation either, but rather assesses the proposed amendments on the basis of the ALHV and clients' own guidelines. The trend towards applying clients' own guidelines has continued to grow in recent years. We are therefore familiar with a wide range of guidelines and their development over the years.

The German Corporate Governance Code (DCGK or the Code) serves as a basis and reference point providing fundamental guidance for numerous guidelines, and compliance with the Code continues to form a material part of our analysis.

We are therefore again taking this opportunity this year to comment on the proposed amendments. For the reasons stated above, IVOX Glass Lewis and Glass Lewis are submitting two separate comment letters.

It is expressly noted that this comment letter is not submitted on behalf of, or in the name of, our clients.

General Remarks

Unlike the 2022 consultation, which was marked by a strengthening of sustainability and transparency requirements, the present consultation draft clearly pursues the opposite objective. Numerous recommendations are proposed for deletion on the grounds that they are redundant in light of statutory requirements or no longer serve an independent steering function. This reasoning is not convincing from the perspective of institutional investors.

In its structure and orientation, and in the mandate set out in its own rules of procedure, the Code is not merely a summary of statutory minimum standards but a best-practice standard that goes beyond statutory requirements. If redundancy vis-à-vis statute or other provisions of the Code were consistently applied as a criterion for deletion, large parts of the Code could be dissolved on that basis; this objection concerns not merely individual provisions but the underlying rationale for deletion applied throughout the consultation draft. The repeated reference to existing statutory provisions also fails to recognise that the existence of a statutory requirement does not, by itself, create transparency for the capital market. It is precisely the disclosure obligation under Section 161 of the German Stock Corporation Act (AktG) and the resulting comply-or-explain principle that secure the added value of the Code. Nevertheless, implementation still leaves much to be desired at many companies. If the requirements for which an explanation is required in the event of a departure are reduced, companies are likely to rely even more exclusively on meeting the statutory minimum requirement.

The argument of broad market prevalence, which is cited in several justifications for deleting individual recommendations (among others, for D.2 on the formation of committees), is also unconvincing in our view. If a recommendation has become a widely established and fulfilled market standard, this reflects its success and is an argument for retaining it, not for deleting it. Broad market prevalence shows that a standard has proven itself, not that it is dispensable.

Numerous proposals for deletion evidently proceed from an addressee group consisting of DAX and MDAX companies, for which the practice in question is said to be already established. This perspective, however, falls short. In particular, smaller companies not listed in the major indices, lacking their own governance standards, rely particularly heavily on the Code for guidance. For this group of addressees, several of the recommendations proposed for deletion continue to have a significant steering effect.

Finally, in its previous, more detailed form, the Code is also a valuable control instrument for issuers themselves. It allows them to check whether the questions that are central to investors are adequately covered and presented transparently. From this perspective, the Code should rather be cautiously expanded than streamlined across the board.

Reducing the Code to the statutory minimum does not benefit issuers. As a proxy advisor, we are familiar with institutional investors' guidelines in detail, and their requirements already go, in some cases significantly, beyond the Code's requirements in key respects today. It would therefore be more appropriate to sharpen the Code rather than weaken it further. The deletion or downgrading of recommendations may also create the false impression that a topic has lost importance. The resulting fallacy for issuers is that, while they may find it formally easier to comply with the Code, investors' expectations, fed by their own, often stricter, guidelines, remain unchanged or continue to rise. It is precisely at this point that the Code loses its actual function as a point of orientation from which issuers can gauge where they stand with the capital market. Critical voting behaviour by investors therefore does not hit companies less often but, in the worst case, more unexpectedly and more frequently. Compliance with the Code measured against a lower standard brings issuers no benefit; on the contrary, weakening the Code does issuers a disservice.

Overarching Themes

Succession Planning and Independence of the Supervisory Board

In our comments on the 2022 consultation, we already criticised the fact that the removal of the standard tenure limit from item 5.4.1 of the 2017 version of the Code eliminated an important instrument for safeguarding the independence and capacity for renewal of the Supervisory Board. The disclosure obligation regarding the length of Supervisory Board membership introduced as a substitute (now C.3) may provide a basis for transparency, but it is no substitute for an effective instrument to limit the length of tenure. In the meantime, criticism of long Supervisory Board tenure as a factor affecting independence has, if anything, intensified in institutional investors' guidelines. Re-election after 15 years of tenure is now viewed critically even more frequently, and the threshold applied by various guidelines when assessing independence has for years stood at 10 years, rather than the 12 years still used in the Code itself as an independence indicator (cf. C.7).

The present consultation draft addresses the remaining structural element concerning succession planning and proposes downgrading the requirement to set an age limit for members of the Management Board and Supervisory Board (B.5/C.2) from a recommendation to a mere suggestion. This would also create an additional inconsistency with the BVI's ALHV. In practice, an age limit serves less to address age as such than to promote predictability, as it signals regular renewal, timely succession planning and the avoidance of entrenchment within the body concerned. The Government Commission's assessment that age limits are not the only instrument for promoting the renewal of supervisory bodies is correct; however, the conclusion drawn from this, namely to downgrade the provision to a mere suggestion, is not convincing. The previous recommendation ensured transparency regarding a company's succession and renewal policy, precisely because any departure had to be explained. With the downgrade, this obligation to explain is eliminated without replacement, without an equivalent disclosure obligation arising elsewhere. It remains unclear why a company should no longer be required to disclose whether it has an age limit at all, particularly since it is left to companies and Supervisory Boards themselves to decide where to set that limit. In practice, a range of 70 to 75 years has become established. There are material differences as to whether these are rigid, absolute limits or limits that only need not be reached at the time of election. This freedom also entails responsibility, and it has not been challenged by investors in the past.

A further, more fundamental concern relates to the design of the independence criteria themselves (C.7 et seq.). These do not currently meet the standards set out in the guidelines of investors, in particular German investors. The final assessment essentially remains a matter of self-assessment by the individual Supervisory Board member or the body as a whole. While C.7 sets out sample indicators that may weigh against independence, and C.8 requires an explanation where a member is nonetheless classified as independent despite the presence of such an indicator, this construction leaves the Supervisory Board with a margin of discretion that can, in practice, be exercised almost arbitrarily and cannot be checked from the outside. A person assessing his or her own independence will naturally be less inclined to conclude that he or she is not independent. As a result, it would remain possible for a Supervisory Board of, say, ten members to be classified as almost entirely ‘independent’ despite multiple indicators being met, provided the member concerned and the body consider this to be plausibly justified. A self-assessment that is structurally designed to judge one's own case cannot ensure the traceability that outside investors require.

Against this background, we suggest:

- retaining the age limit for members of the Management Board and Supervisory Board (B.5/C.2) as a recommendation,

- reconsidering the reintroduction of a standard tenure limit for Supervisory Board members – combined with a disclosure obligation in the event of a departure – for example within the framework of C.3,
- requiring explicit, company-specific and transparent reporting on succession planning for both the Management Board and the Supervisory Board, and
- designing the independence criteria in C.7 more strongly as objective exclusion criteria that cannot be overridden by self-assessment, or at least narrowing significantly, and making externally verifiable, the conditions under which a departure from a fulfilled indicator is nonetheless permitted.

Relationship Between Recommendations and Suggestions

The second issue we already raised in 2022 also remains unresolved in our view and, as a result of the proposed amendments, has become even more significant. No obligation to disclose departures applies to suggestions. Because this means no traceability is possible, suggestions have little practical effect for outside observers and, in practice, lead to generic statements devoid of real informational value (e.g. 'the company largely follows the DCGK's suggestions') or to no position being taken on them at all.

The present consultation draft itself provides an illustrative example of this. The previous suggestion A.8 regarding the convening of an extraordinary general meeting in the event of a takeover offer is, in the Government Commission's own assessment, largely ineffective precisely because of its nature as a suggestion. This finding confirms, rather than refutes, our fundamental criticism of the category of 'suggestion': for the purposes of voting guidelines, suggestions remain devoid of informational value for as long as no position on them needs to be taken at all.

At the same time, the present draft exacerbates this problem by downgrading a provision previously structured as a recommendation subject to the comply-or-explain obligation to a mere suggestion (B.5/C.2 on the age limit). This eliminates not only the substantive requirement for the point concerned but also the last remaining disclosure obligation – the topic effectively disappears from the declaration of conformity.

We therefore again suggest introducing a disclosure obligation regarding companies' approach to suggestions. This need not take the form of a substantive obligation to provide reasons, as applies to recommendations; it would already be sufficient if companies were required to state whether, and to what extent, they follow a given suggestion. This would support the overall progress represented by the Code and create added informational value for users of guidelines and investors, without abandoning the deliberate qualitative distinction between recommendations and suggestions.

Comments on Individual Provisions

Beyond the key themes set out above, we would like to comment on the following individual points in the consultation draft:

A.4 (Whistleblower Protection)

The deletion of A.4 is justified on the grounds that the provision is already covered by statute under the Whistleblower Protection Act (Hinweisgeberschutzgesetz). In our view, this justification is not convincing, as the deletion without replacement signals that protected whistleblowing channels, and transparency regarding them, have lost importance. We suggest not deleting A.4 but converting it into a recommendation.

A.8 (Extraordinary General Meeting in the Event of a Takeover Offer)

This provision was, as a suggestion, largely ineffective in practice, and the observation that target companies are not necessarily the right addressee is accurate. Conversely, such a general meeting – particularly in a virtual format, which lends itself well to this purpose – could provide comprehensive information to the shareholders of the target company. We suggest retaining the provision while also converting it from a suggestion into a recommendation, so that it can have a genuine effect.

C.1 (Sustainability Expertise in the Skills Profile)

The justification that the expectation of sustainability expertise on the Supervisory Board already follows indirectly from Principles A.1 and A.3 is not convincing, since these principles are addressed to the Management Board, whereas C.1 sets out explicit requirements for the composition of the Supervisory Board. There is also a signalling effect to the deletion, which conveys the impression that sustainability has become less important, even though a market-wide standard such as the Code can support the European sustainability agenda and strengthen both investors and issuers in their respective positions. The previous provision also has the advantage that it allows the relevant subject-matter experts and persons responsible within the body to be clearly identified. We suggest retaining the explicit reference to sustainability expertise and additionally expanding the skills profile to include expertise in artificial intelligence.

D.1 (Publication of the Supervisory Board's Rules of Procedure)

The removal of the publication requirement represents a material deterioration in transparency and is also inconsistent with the BVI's ALHV, which even require publication of the Management Board's rules of procedure. The Supervisory Board's rules of procedure create transparency on several matters that are otherwise difficult to ascertain in a comparable way. These documents typically set out, among other things, existing consent requirements of the Supervisory Board, the committee structure, delegated tasks, the flow of information, existing reporting obligations, and standard tenure limits and age limits. This is particularly relevant for smaller, non-index-listed companies, which, lacking their own governance standards, rely especially heavily on the Code, where the removal is likely to cause a noticeable decline in transparency and, as a result, more critical market reaction. We suggest retaining the publication requirement.

D.2 old (Formation of Appropriately Qualified Committees)

Deleting the recommendation on the grounds that the formation of committees is already established practice at larger companies reverses the actual logic of a best-practice recommendation. If a recommendation has become a market standard, this reflects its success and is an argument for retaining it, not for deleting it. In practice, remuneration and nomination committees are still frequently absent at smaller, non-index-listed companies in particular, and existing committee structures often remain rudimentary. The recommendation therefore continues to have a steering effect for this group of addressees as well. Nor is the justification given for the three-member Supervisory Board convincing, since the previous wording was already sufficiently flexible to address precisely this issue. We also view the deletion of the requirement to name committee members critically. Although this may be legally redundant in light of Section 289f of the German Commercial Code (HGB), it nonetheless underscores transparency, and it is not apparent why this emphasis in the Code should be problematic.

D.2 new / D.3 (Expertise and Transparency on the Audit Committee)

The reference to the skills matrix to be prepared under C.1 as an adequate substitute for naming Audit Committee members and their expertise is not fully convincing, as transparency regarding the qualifications of individual committee members remains capable of improvement despite existing provisions. While Section 100(5) AktG requires the expertise itself, a comprehensible explanation of why a particular person is considered an expert goes beyond this and should not merely be retained but rather strengthened. This is precisely a point at which the Code should fulfil its role as a source of guidance and reference and go beyond the statutory minimum.

D.6 (Reporting on Meeting Attendance)

Reporting on meeting attendance has improved noticeably in recent years and shows that the Code is effective here in reinforcing investors' expectations. It is not apparent why an individualised, tabular presentation would fail to capture all relevant information; the additional effort involved should be manageable, particularly since tabular presentations are, based on experience, more transparent than narrative text, which in practice is often inconsistent and provides little informative value. We suggest not only retaining reporting on individual attendance by member, attendance rates and committee attendance, but also expressly emphasising the tabular format. In this context, we also refer to the sample tables annexed to the BVI's ALHV.

F.2 (Publication Deadlines for Financial Reports)

The deletion of F.2 with reference to the rules of STOXX and Deutsche Börse, respectively, does not sufficiently take into account that these rules apply only to index-listed companies. For investors in companies outside the relevant indices, the deletion creates a loss of transparency that is not offset either by the stock exchange rules or by the considerably more generous statutory deadline under

Section 114(1) of the German Securities Trading Act (WpHG). For these companies in particular, the Code provides guidance that goes beyond both the index requirements and the statutory minimum deadlines. Timely reporting also promotes the overall informational efficiency of the capital market and reduces information asymmetries between market participants. We suggest retaining F.2.

G.1 / G.2 (Remuneration System)

The consolidation of the previous recommendations must not result in any loss of substantive information. Even today, specific disclosure of individual remuneration components leaves questions open beyond the DAX and MDAX – and at times even within them – despite the corresponding statutory requirements. The target total remuneration, the peer group comparison, and the internal comparison with senior management and the workforce remain central to the appropriateness review under Section 87(1) AktG and should be given corresponding prominence in the consolidated recommendation G.2.

G.4 new / G.7 (Timing and Design of Performance Criteria)

The practical constraints arising from the timing of a company's internal budgeting and reporting processes are only partly convincing. In this context, the wording of the recommendation should draw a sharper distinction between performance metrics and the quantitative performance targets linked to them. While setting the end of the first quarter as the deadline for determining the specific target values assigned to individual metrics may be unavoidable in exceptional cases, the metrics themselves can typically be determined considerably earlier, unless a strategic review or a comparable one-off event is under way.

Of particular importance in our view is also retaining the previous provision on the relationship between individual and collective targets. Numerous investor guidelines require clear disclosure of the extent to which each of the two components is decisive, which is currently only inadequately addressed in reporting practice. Collective targets have the potential to mask individual underperformance, while overly individualised targets can impair cooperation within the Management Board – both aspects should remain visible in the Code.

G.5 old (Independence of External Remuneration Consultants)

The proposed deletion sends a contradictory signal. It is not apparent why the explicit emphasis on the independence of external remuneration consultants should constitute an obstacle for companies, particularly as this was not the case under the previous version of the Code either. A loss of transparency is to be expected, however, if this aspect is in future left entirely to the Supervisory Board's own discretion. We suggest retaining G.5.

G.6 (Traceability of Target Achievement)

The provision stating that the achievement of targets should be traceable both in principle and in amount must not be lost as a result of the shortening. Without this reference, a significant loss of transparency is to be expected, even though the Supervisory Board's underlying authority to determine the level of remuneration is enshrined in statute.

G.7 new / G.10 (Share-Based Remuneration)

In our view, replacing 'predominantly' with 'substantial' results in a loss of transparency, as the new term is more indeterminate than the status quo and open to individual interpretation. This creates no added value and is more likely to cause confusion than clarity. It would be more effective to additionally include specific share ownership guidelines as a recommendation in the Code, in order to make the Management Board's share ownership measurable and comparable.

G.13 / G.14 (Severance Cap and Change of Control)

The cap set out in G.13 on payments made upon the premature termination of a Management Board member's appointment, limited to the value of two years' remuneration (the severance cap), requires clarification. The term 'annual remuneration' is not further defined in the Code and leaves open whether it covers only fixed remuneration or also short-term and long-term variable remuneration components. Remuneration practice presents an inconsistent picture in this respect: depending on the interpretation applied, the actual value of the severance cap varies considerably, which impairs comparability between companies and the informative value of the metric for investors. We suggest clarifying explicitly in G.13 which remuneration components the cap applies to, and at the same time stating that the two years' remuneration constitutes a ceiling rather than a benchmark or, still less, a minimum.

G.14, concerning payments made in connection with a change of control, should also be sharpened. This provision is currently structured only as a suggestion and is therefore not subject to any disclosure obligation. We suggest upgrading G.14 to a recommendation and clarifying that no benefits should be promised in connection with a change of control that go beyond the regular severance payment under G.13.

G.15 (Offsetting of Remuneration from Intra-Group Supervisory Board Mandates)

The fact that offsetting remuneration from intra-group Supervisory Board mandates has become common practice does not argue against retaining the recommendation but rather in favour of it. Where a practice is already followed, clarifying it in the Code creates no additional burden, but its deletion would result in a loss of transparency, coupled with the risk that practice could shift in the other direction in future. We suggest retaining G.15.

G.16 (Offsetting of Remuneration from Non-Group Supervisory Board Mandates)

G.16 should also not be deleted. Rather than deleting it, reporting should be more detailed on whether, and to what extent, the Supervisory Board offsets remuneration from non-group Supervisory Board mandates, so as to give investors a clear picture of a Management Board member's actual overall remuneration.