



Regierungskommission Deutscher Corporate Governance Kodex
c/o Deutsches Aktieninstitut e.V.
Senckenberganlage 28
60325 Frankfurt am Main
GERMANY

Submitted electronically

Ref: B16.26
Subject: Eumedion's response to the proposed amendments to the German Corporate
Governance Code

The Hague, 15 December 2016

Dear Regierungskommission,

Eumedion welcomes the opportunity to respond to your proposed amendments to the German Corporate Governance Code (hereinafter: the Code). By way of background, Eumedion is the Dutch based corporate governance and sustainability forum for institutional investors. Our 70 Dutch and non-Dutch participants represent more than € 4 trillion assets under management. Participants include a wide range of institutional investors; pension funds, mutual funds, asset managers and insurance companies. Our participants also invest in German listed companies.

The proposed amendments to the Code will hopefully contribute to the development and further improvement of corporate governance practices in Germany. Eumedion aims to contribute to this development and improvement by making some comments regarding the proposed amendments.

1. Chairman of the supervisory board should have some discretion to enter into dialogue with investors

Eumedion strongly supports the recommendation that the chairman of the supervisory board should be prepared (under appropriate conditions) to discuss topics relevant to the supervisory board with investors (section 5.2). The Code clarifies that this concerns items the supervisory board alone is responsible for and has to decide upon on its own. And that regarding questions the management board and the supervisory board can only decide upon together, discussions will be held either by the

management board on its own or by the chairman of the supervisory board together with the management board. We believe that direct communication between the chairman of the supervisory board and investors is important and can contribute to the effectiveness of the supervision by the supervisory board.

Without direct communication between the supervisory board and investors, the supervisory board does not have a sufficiently clear picture of what the relationships with stakeholders and with long-term oriented institutional investors in particular actually are. Signals are not picked up soon enough, particularly when problems already exist. In the absence of a direct relationship with investors of its own, the supervisory board then has little choice but to support its own CEO also in situations where institutional investors have a point. As a consequence, the risk that conflicts will polarise and become practically unsolvable increases.

Furthermore Eumedion concurs that the chairman of the supervisory board should have certain discretion with whom and when he/she would like to conduct a discussion.¹ In our view the Regierungskommission should not be too prescriptive in this respect. The decision whether or not to conduct a discussion will depend on a multitude of factors: for example if the shareholder in question is a long-term shareholder or has expressed the intention to do so, the size of the shareholding, the nature of the concerns or issues, the course of previous meetings between the shareholder and the management board, expectations regarding further developments, etc.

2. Institutional investors should exercise their ownership-rights actively and responsibly

Eumedion strongly supports the concept of stewardship. We believe that the responsible use of shareholder rights strengthens the checks and balances within listed companies, which is key to creating long-term value for the company and all its stakeholders, including shareholders. Eumedion opines that engaged share-ownership by institutional investors should be based on a pre-determined and well-considered stewardship policy. Therefore, Eumedion has published its own best practices on engaged share-ownership in June 2011.² The best practices guide Eumedion participants to a high standard of responsible share-ownership. In our view that is not limited to casting 'informed' votes at shareholder meetings but it also includes – among other things – the close monitoring of investee companies' activities and having constructive dialogues with boards. Against this background we welcome that the Regierungskommission calls on institutional investors to actively and responsibly exercise their ownership-rights within the scope of a consistent and transparent framework of rules respecting also the concept of sustainability (section 2.1.3).

3. Composition of the supervisory board is important for shareholders

Eumedion believes that high quality supervision by supervisory boards requires that the right set of skills is present. A transparent and objective nomination and recruitment process based on specific competencies profiles can be helpful in this respect. Therefore Eumedion welcomes the proposal that supervisory boards in future have to develop competencies profiles (section 5.4.1).

¹ See: press release 'Proposals for Code amendments 2017 published' (<http://www.dcgk.de/en/kommission-33/die-kommission-im-dialog/details/proposed-amendments-to-code-for-2017-published.html>).

² http://www.eumedion.nl/en/public/knowledgenetwork/best-practices/best_practices-engaged-share-ownership.pdf.

The Regierungskommission clarifies that the structure of ownership is one of the elements that should be taken into account when discussing the composition of the supervisory board. This implies that the Regierungskommission is supportive of the representation of major shareholders in supervisory boards. Eumedion is not opposed to such representation since it can provide a positive impulse to the quality of the internal supervision, but believes that the majority of the members of the supervisory board should be independent. Eumedion recommends to clarify this in the Code.

Furthermore the Regierungskommission proposes that the corporate governance report should contain information on the appropriate number of independent supervisory board members representing shareholders – as assessed by the supervisory board – and the names of these members (section 5.4.1). We agree with that. This information enables shareholders to form an opinion on the quality of the internal supervision.

4. Shareholders should be able to review the proposal for the appointment of a new supervisory board member

Meaningful shareholder involvement in the appointment process of supervisory board members is one of the fundamental elements of an effective corporate governance system. Shareholders can use their voting rights to express their views regarding a proposal for the appointment of a new supervisory board member. As already stated above, Eumedion believes that institutional investors should cast 'informed' votes. Investors should therefore critically review a proposal for appointment and decide whether a candidate fits the profile and the situation in which the company is operating. A prerequisite for that is that investors obtain relevant information, e.g. information on the quality of the candidate, on other functions that the candidate holds and motivates why the person in question fits the supervisory board profile. Eumedion therefore welcomes that in future the proposal for the appointment of a supervisory board member shall be accompanied by a brief curriculum vitae and an abstract about the candidate's essential activities (section 5.4.1).

5. Shareholders should be informed in an appropriate manner about developments

The Regierungskommission welcomes the fact that the legislator and the Frankfurt Stock Exchange have abolished the obligation for listed companies to submit extensive quarterly reports.³ Eumedion believes that quarterly reports often contain information that is of value to shareholders when making investment decisions. In our view listed companies should be in the position to decide whether they want to publish a quarterly report on a voluntary basis. Eumedion acknowledges that there are also other ways to inform shareholders. Eumedion is therefore in agreement with the proposal that shareholders should be informed about developments, especially about substantial changes of business prospects and of the risk-situation, in case a company is not obliged to publish quarterly information (section 7.1.1).

³ Also in the Netherlands listed companies are no longer obliged to publish quarterly reports (Netherlands Bulletin of Acts and Decrees 2016, 31 and Netherlands Bulletin of Acts and Decrees 2016, 41).

6. Shareholders should be able to form an opinion on the compliance management system

For shareholders, it is important to gain a reasonable degree of insight into the design and operation of the compliance management systems. In this respect Eumedion welcomes the proposal that German companies will be obliged to provide information on the basic features of those systems in their annual corporate governance reports (section 4.1.3). Furthermore, Eumedion supports the proposal that employees and third parties should be able to anonymously report misconduct within the company. We believe that this might help companies to recognise and manage potential issues at an early stage.

7. Closing remarks

The Regierungskommission proposes to adjust the foreword of the Code and add a reference to conformity to ethical principles of the social market economy. Eumedion supports this addition since it emphasises the responsibility of companies for ethically responsible conduct.

Furthermore, the Regierungskommission will – despite new statutory regulations – continue to value it as best practice when the chairman of the audit committee is a) independent and has not been a member of the company's management board within the past two years and b) is not the chairman of the supervisory board at the same time (section 5.3.2). Eumedion supports these recommendations. Besides this Eumedion welcomes the emphasis on the leading role that the audit committee plays in the external auditor appointment and assessment process (section 5.3.2).

We hope that our comments and suggestions are of any assistance. If you would like to discuss our views in further detail, please do not hesitate to contact us. Our contact person is Diana van Kleef (diana.vankleef@eumedion.nl, tel. 070 2040 302).

Yours sincerely,

Rients Abma
Executive Director

Eumedion
Zuid Hollandlaan 7
2596 AL THE HAGUE
THE NETHERLANDS