CGI Working Paper

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The Governance System of Germany: Background and Discussion of its Code

Frankfurt, August 2026

August 2026

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ABSTRACT

This paper provides an overview of the German corporate governance system for listed companies and an empirical analysis of the acceptance of the German Corporate Governance Code based on the declarations of compliance disclosed by the blue-chip companies constituting the DAX 40 index.

The analysis examines the extent and distribution of deviations from the recommendations of the current 2022 Code and the reasons provided by companies for non-compliance.

The findings indicate a high overall level of acceptance: 18 of the 38 companies analysed declared full compliance, while 28 reported no more than one deviation. The 60 deviations reported are concentrated both among a relatively small number of companies and in a limited number of recommendations, particularly those concerning supervisory board composition and management board remuneration.

Against the background of the ongoing 2026 review of the Code, the paper assesses the amendments proposed by the Government Commission against these empirical observations and discusses selected areas for the further development of the German corporate governance framework. Where relevant, international corporate governance practices provide a comparative perspective on the German approach.

1 The German Corporate Governance System – Background

Germany's corporate governance framework consists of legal and regulatory instruments constituting its "hard law" component, and a corporate governance code, which complements these instruments as "soft law". Within the German framework, the German Corporate Governance Code (the "Code") constitutes the principal soft law instrument, complementing a number of statutory provisions governing various aspects of corporate governance. The most relevant laws include the Stock Corporation Act, the Commercial Code, the Securities Trading Act, the Takeover Act, as well as the Co-Determination and the One-Third Participation Acts, the latter two of which govern the employee representation on supervisory boards. These statutory instruments form the legal backbone of the German corporate governance framework.

Section 161 of the German Stock Corporation Act ("AktG") represents the intersection of these two components, as it requires the management and supervisory boards of a listed company to declare, at least annually, whether the recommendations of the Code have been and continue to be complied with. Where the Code's recommendations have not been or are not being complied with, the reasons for such deviations must be provided ("comply-or-explain"). The declarations of compliance must be made permanently accessible to the public on the company's website. This statutory provision was introduced in 2002 and also reflects current EU corporate governance requirements.[1]

The Code consists of "principles", "recommendations" and "suggestions". Principles reflect essential German legal requirements for responsible governance, while the "Shall Recommendations" and the "Should Suggestions" reflect nationally and internationally recognised standards for good corporate governance. The Code's Shall Recommendations are indicated by the word "shall" and – as mentioned – companies are obliged by the Stock Corporation Act to disclose and explain any deviations from them. By contrast, Suggestions are identified by the use of the word "should" and deviations from them do not require disclosure but their disclosure is suggested.

The Code addresses governance-related issues in seven main parts: (A) Management and supervision, (B) appointments to the management board, (C) composition of the supervisory board, (D) supervisory board procedures, (E) conflicts of interest, (F) transparency and external reporting, and (G) remuneration of the management board and the supervisory board.

The Government Commission for the German Corporate Governance Code (the "Commission") is responsible for formulating the Shall Recommendations and Should Suggestions of the Code in dialogue with relevant stakeholders and for regularly reviewing the Code and considering potential amendments. The Commission consists of senior members of the management and supervisory boards of German listed companies as well as other stakeholders, including institutional and retail investors, academics, and auditors. Its members and the chairperson are appointed by the German Federal Minister of Justice and for Consumer Protection but may not be active political officeholders.

Since its introduction in 2002, the Code has been revised by the Commission a total of 14 times, most recently in 2022 upon which time its recommendations took effect. The 2022 revision aimed in particular to integrate environmental and social sustainability considerations into the management and supervision of listed companies. It involved amendments concerning audit committees, internal control systems, and risk management systems. This most current revision introduced four recommendations that were completely new (Recommendations A.1, A.3, A.5, and D.10) and partially revised three recommendations (Recommendations C.1, D.3, and D.7).[2]

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[1] Article 20(1) of the EU Accounting Directive (Directive 2013/34/EU).
[2] Please refer to the Code website (https://www.dcgk.de/en/code.html) for its official English translation.

1.1 The Two-Tier Board Structure and Co-determination

The two most distinctive features of the German corporate governance model from an international perspective are (i) the mandatory two-tier board structure and (ii) the presence of employee representatives on the supervisory board.

Companies incorporated as an AG or a KGaA are required under German law to have a two-tier board structure consisting of a management board and a supervisory board. Although German companies incorporated as an SE may choose between a one-tier or a two-tier board structure, they predominantly have opted for the two-tier structure.[3]

Broadly speaking, the management board is responsible for the day-to-day management of the company, while the supervisory board supervises the management board and advises it on strategic issues and has to approve major corporate decisions proposed by the management board.

A key role of the supervisory board is the appointment and, where necessary, the dismissal of the members of the management board. The supervisory board also determines the remuneration of management board members, and its members can be held liable for setting inappropriate management board remuneration.[4] The remuneration structure must be designed to promote the sustainable and long-term development of the company. A key feature of the two-tier structure is that the management board and the supervisory board are strictly separate from each other, and they may not have any members in common.[5]

Germany's two-tier board structure contrasts with the mandatory one-tier board system adopted in many other countries, such as Ireland, Spain, Sweden, the UK, and the US. However, an increasing number of countries offer the two-tier board structure as an option.[6]

The supervisory board structure in Germany is complemented by the inclusion of employee representatives. Under the Co-Determination Act, in companies with more than 2,000 employees, half of the supervisory board members represent the employees and trade unions. In companies with 501 to 2,000 employees, one-third of the supervisory board members must be employee and union representatives under the One-Third Participation Act. The other half or two-thirds of the supervisory board consist of shareholder representatives elected by the shareholders in the shareholders' meeting. In the event of a tie, which is relatively rare in practice, the chairperson has the casting vote. As the chairperson is usually a shareholder representative, they typically still have the majority in the supervisory board.

Companies incorporated as SEs are subject to more flexible employee co-determination rules.

[3] In the DAX, only Airbus SE has opted a unitary board structure. All of the remaining 8 SEs whose declarations of compliance are reviewed in this study have chosen a two-tier board structure.
[4] See Sections 87 and 116 of the Stock Corporation Act.
[5] Section 105 (1) of the Stock Corporation Act.
[6] OECD Corporate Governance Factbook 2025: p. 154, Section 4.1 and Table 4.2.

1.2 Size of the Supervisory Board

The co-determination rules contribute to the comparatively large size of supervisory boards in Germany. In companies subject to equal representation of employees and shareholders on the supervisory boards, they must comprise 12, 16, or 20 members, depending on the number of employees. The average supervisory board size of DAX companies is 15.7 This contrasts sharply with the average board size in other countries, including the US (10.7), the UK (10), Japan (11.1), Italy (12.3), Sweden (9), Switzerland (10.3) and the Netherlands (6.5), and is even greater than e.g. France (14).8 However, it should be noted that some countries have broader benchmark indices and include a larger number of smaller companies than the DAX 40.

The comparatively large size of German supervisory boards should be taken into account when considering corporate governance issues such as the functioning of the board, the formation of board committees, and overboarding.

1.3 Supervisory Board Committees

To enhance the effectiveness of supervisory board work in larger companies, the Code recommends the formation of supervisory board committees. The obligation to establish an audit committee was introduced into German law by the Act on the Strengthening of Financial Market Integrity (FISG), adopted in 2021 following the Wirecard fraud scandal. Furthermore, the FISG introduced that at least one member of the Audit Committee must have expertise in accounting and at least one other member must have expertise in auditing.[9]

Internationally, of the 52 jurisdictions reviewed in the OECD's 2025 report[10], 86.5% require the establishment of an audit committee, while the remaining 13.5% recommend it. Regarding other board committees, 23.1% of the jurisdictions reviewed require the formation of a nomination committee, and 61.5%, including Germany, recommend it. The establishment of remuneration committees is required by 30.8% and recommended by 55.8% of jurisdictions. Germany belongs to the relatively small group of jurisdictions (13.5%), which do not require or recommend a remuneration committee.[11]

1.4 Ownership Structure

The level of ownership concentration in Germany is an important factor in German companies' corporate governance practices and in the design of corporate governance standards in comparison to other countries. In Germany, the percentage of companies where the 3 largest shareholders hold more than half of the company's equity capital is 62%. This sharply contrasts with the same percentage in the US (17%), the UK (20%), Sweden (27%), and even Switzerland (41%) and the Netherlands (44%).[12] Therefore, some

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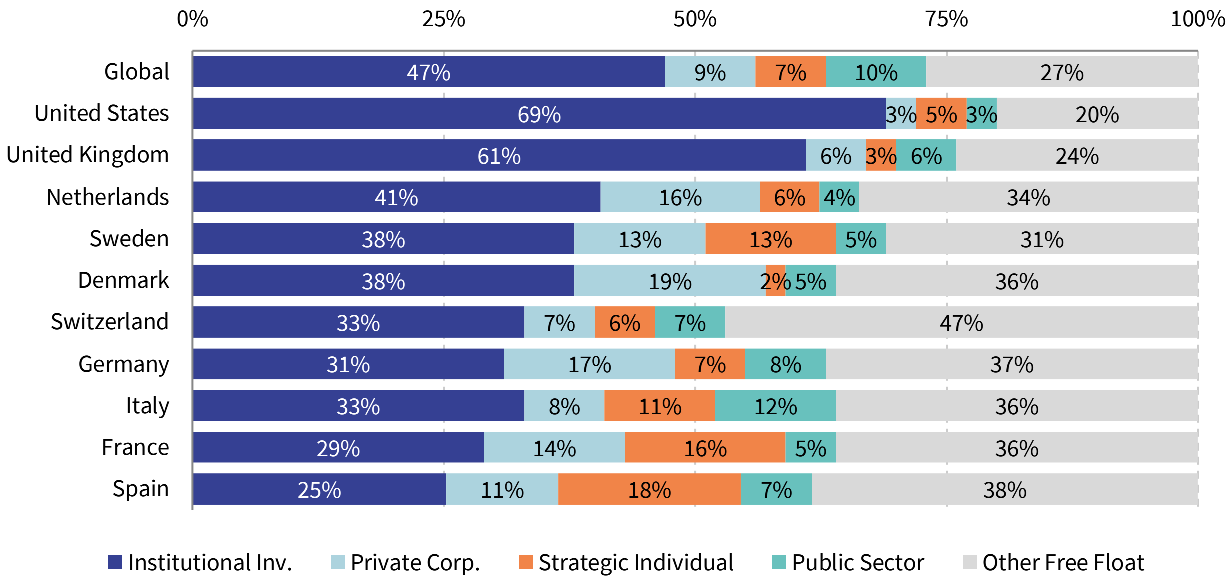
[7] Spencer Stuart (2026), *2026 Germany Spencer Stuart Board Index*, available at: https://www.spencerstuart.com/-/media/2026/06/germanbi/2026-germany-spencer-stuart-board-index-final.pdf, last accessed 16 August 2026.
[8] All data from the 2025 Spencer Stuart Board Index for the respective country. Availability and the stock index analysed: United States (S&P 500): https://www.spencerstuart.com/-/media/2025/10/ssbi2025/2025-us-board-index.pdf; United Kingdom (FTSE 150): https://www.spencerstuart.com/-/media/2025/12/uk2025/bi-uk-2025.pdf; Japan (TOPIX 100): https://www.spencerstuart.com/-/media/2026/01/2025-japan-board-index/ssbi_japan_board_index_2025_en.pdf; Italy (FTSE-MIB): https://www.spencerstuart.com/-/media/2025/10/itbi2025/italybi-2025-7.pdf; Sweden (25 largest companies at the OMX Stockholm): https://www.spencerstuart.com/-/media/2025/12/nordic2025/nordic-bi-2025a.pdf (Note: employee representatives are not included here); Switzerland (SMI): https://www.spencerstuart.com/-/media/2025/12/switzerland2025/bi-switzerland-2025.pdf; Netherlands (50 largest companies at the Dutch Euronext): https://www.spencerstuart.com/-/media/2026/03/2025-netherlands-highlights/2025-netherlands-spencer-stuart-board-index-highlights.pdf; France (CAC 40): https://www.spencerstuart.com/-/media/2025/12/france2025/frbi-2025.pdf. All last accessed 16 August 2026.
[9] See Sections 100(5) and 107(4) of the Stock Corporation Act.
[10] OECD Corporate Governance Factbook 2025: Section 4.2, Figure 4.5 and Table 4.10.
[11] The Code refers to a committee responsible for management board remuneration in its Recommendation C.10 concerning the independence of its chair, but does not explicitly recommend the establishment of a remuneration committee.
[12] OECD Corporate Governance Factbook 2025: Table 1.2.

best practices of countries with a more dispersed ownership structure may not be directly relevant to the case of Germany.

The distribution of the company ownership across different investor categories also affects the country's corporate governance framework. At the global level, institutional investors hold 47% of the world market capitalization, private corporations hold 9%, the public sector holds 10%, and strategic individuals hold 7% (Figure 1). With a lower ownership share of institutional investors and a corresponding higher share of private corporations and strategic individuals, Germany shows notable differences from the UK, the US, and the global aggregate figures.

Figure 1

Ownership by investor category (%)



Source: OECD Corporate Governance Factbook, Table 1.2

2 Acceptance of the 2022 German Corporate Governance Code by the Large DAX Companies

The acceptance level of the Code is assessed based on the declarations of compliance with the Code that listed corporations are required to issue[13]. Our study focuses on the German blue-chip companies constituting the DAX 40 index[14], representing around 80% of the market capitalisation of listed corporations in Germany[15]. The analysis examines their declarations for the year 2025. It relies exclusively on the statements made in these declarations and makes no judgments about their accuracy.[16]

[13] Section 161 of the Stock Corporation Act

[14] Our study is based on companies constituting the DAX at the time of writing (August 2026), namely: adidas AG, Airbus SE, Allianz SE, BASF SE, Bayer AG, Beiersdorf AG, BMW AG, Brenntag SE, Commerzbank AG, Continental AG, Daimler Truck Holding AG, Deutsche Bank AG, Deutsche Börse AG, Deutsche Post AG (trading as DHL Group), Deutsche Telekom AG, E.ON SE, Fresenius Medical Care AG, Fresenius SE & Co. KGaA, GEA Group AG, Hannover Rück SE, Heidelberg Materials AG, Henkel AG & Co. KGaA, HOCHTIEF AG, Infineon Technologies AG, Mercedes-Benz Group AG, Merck KGaA, MTU Aero Engines AG, Münchener Rückversicherungs-Gesellschaft AG, Qiagen N.V., Rheinmetall AG, RWE AG, SAP SE, Scout24 SE, Siemens AG, Siemens Energy AG, Siemens Healthineers AG, Symrise AG, Volkswagen AG, Vonovia SE, and Zalando SE.

[15] See Deutsche Börse (2026), "DAX – Benchmark and Barometer for the German Stock Market", available at: https://www.deutsche-boerse.com/dbg-en/media/news-stories/explainers/spotlight/DAX-Benchmark-and-Barometer-for-the-German-Stock-Market-139948?, last accessed 24 August 2026.

[16] A study that takes a different approach is the DVFA Scorecard for Corporate Governance, which evaluates and rates DAX, MDAX, and SDAX companies' corporate governance performance based on expert judgment and across

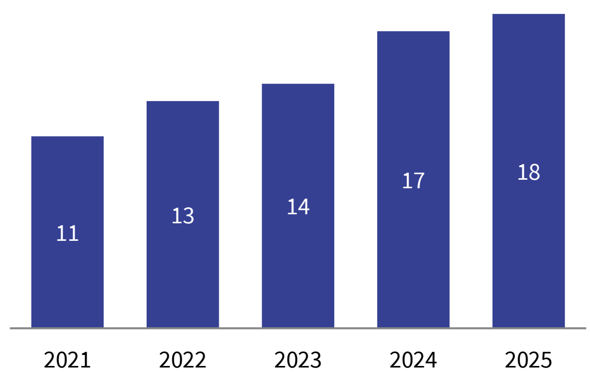
The sample consists of 38 companies, since Airbus SE and Qiagen N.V. are not incorporated in Germany and hence are not legally required to disclose this information. 27 (71%) of the 38 DAX companies examined in this study have the legal form of an Aktiengesellschaft (AG), while 8 companies (21%) are incorporated as European stock corporations (Societas Europaea, SE), and only 3 companies (8%) are partnerships limited by shares (Kommanditgesellschaft auf Aktien, KGaA).

The 2022 Code has a total of 62 recommendations over seven main parts. Each company has to report any deviations from these 62 recommendations and explain the reasons therefor. In this study, all recommendations with which a given company did not comply since its last declaration are recorded as cases of non-compliance. A temporary deviation from a recommendation is also recorded as a case of non-compliance, but if non-compliance has been cured it is separately noted.

2.1 Full Compliance with the Code

In 2025, 18 out of the 38 companies in the sample (47%) declared full compliance with all Code recommendations. This represents a significant increase compared to 2021, the year prior to the Code's latest amendment, when out of 37 declaring companies only 11 (30%) were fully compliant.

Figure 2
Number of DAX 40 Companies



2.2 Distribution of Deviations across the "Shall Recommendations"

The remaining 20 DAX companies that did not declare full compliance reported a total of 60 non-adherences to the Code's recommendations in their 2025 declarations. Figure 3 illustrates the distribution of these deviations across the 62 recommendations.

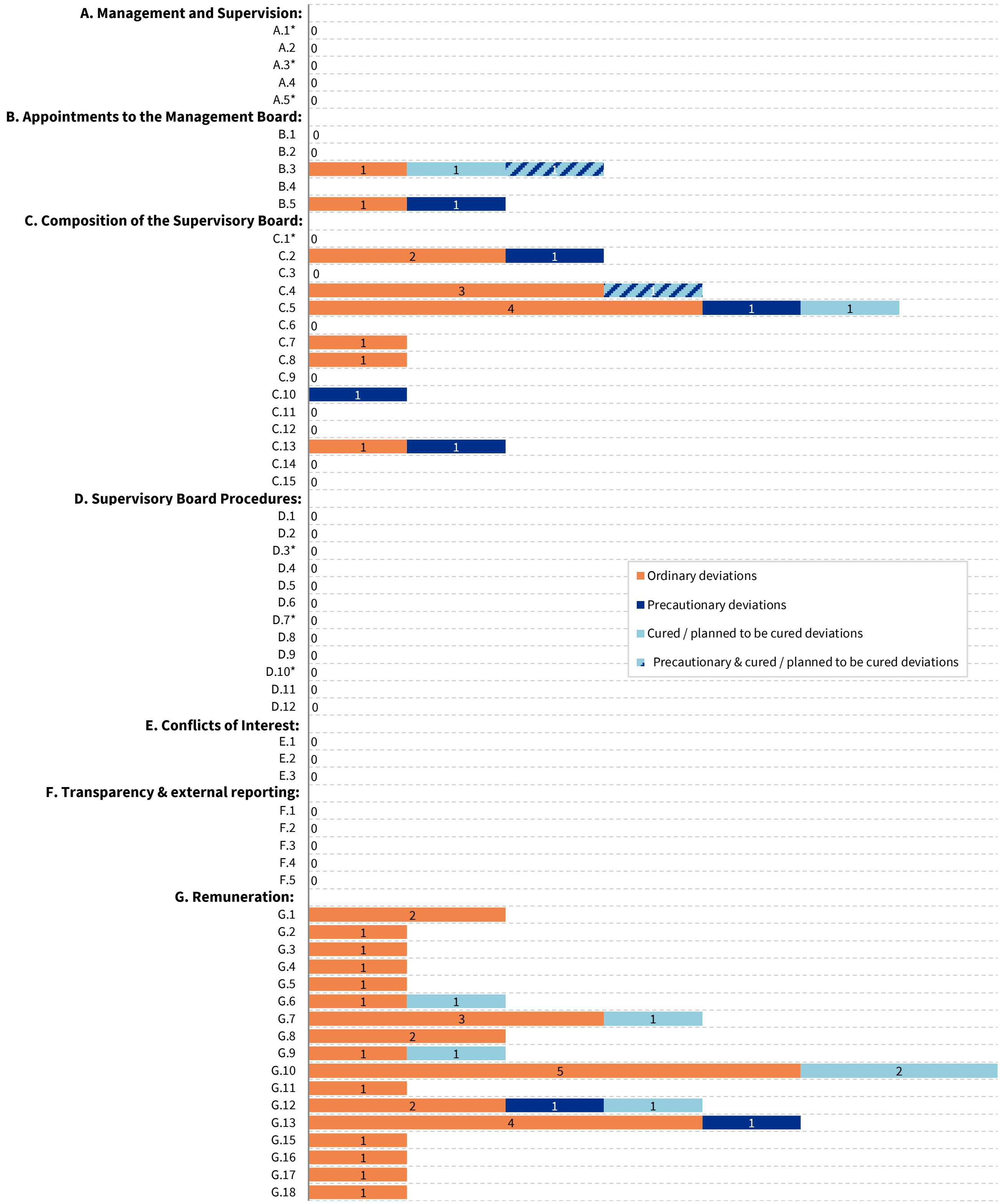
Predominantly, companies did not comply with the Code concerning the "Composition of the Supervisory Board" (section C; 18 deviations) and the "Remuneration of the Management Board" (section G; 37 deviations). Together, both sections account for 92% of deviations. The only other section with deviations is "Appointments to the Management Board" (section B, 5 deviations).

The 7 recommendations that were introduced or revised as part of the 2022 Code are marked with an asterisk in Figure 3. There are no deviations reported related to these recommendations. The absence of reported deviations may indicate that revisions of the Code can be implemented swiftly by companies, which would be an encouraging signal for future amendments. At the same time, it may raise the question of whether the revised recommendations were sufficiently ambitious or merely formalised practices already well established among DAX companies.

numerous criteria with respect to legal requirements, Code recommendations as well as international standards. The DVFA Scorecard makes use of publicly available company information found in sources such as annual reports, sustainability reports, and company websites. See https://dvfa.de/themen/scorecard/ for more information.

Figure 3

Number of DAX Companies Declaring Non-Compliance with the Given "Shall Recommendation"



* Recommendations marked with an asterisk are those that were added or revised with the 2022 version of the code.

2.3 “Shall Recommendations” with the Highest Rate of Non-compliance

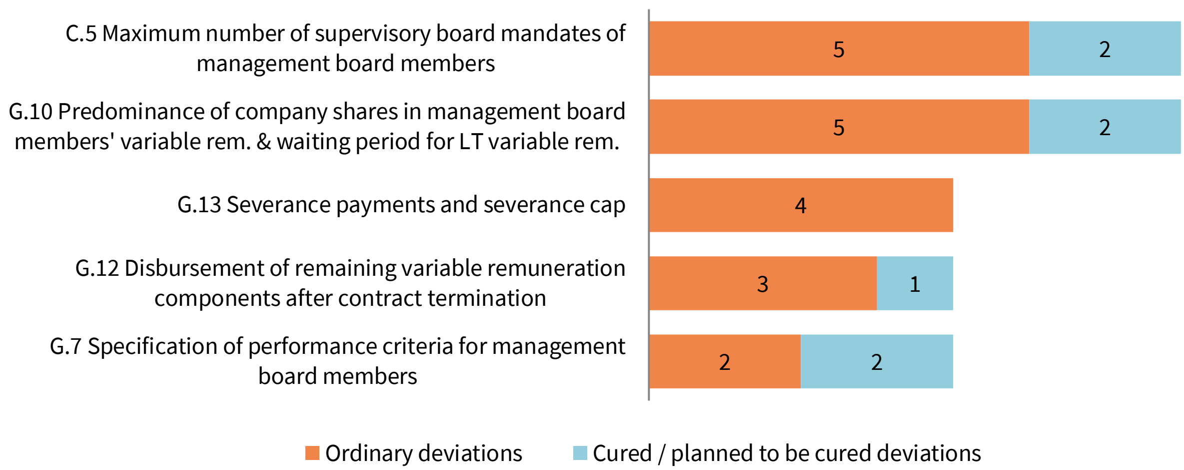
Figure 4 presents the recommendations where more than 10% of DAX companies (i.e., at least 4 companies) report non-compliance. It contains the number of deviations, including the number declared as cured or planned to be cured within a reasonable time frame (typically within a year), and provides a brief description of each recommendation.

Together, these 6 recommendations account for 52% of all deviations reported.

The two recommendations with by far the highest number of deviations, Recommendations C.5 and G.10, are examined in greater detail in Sections 2.3.1 and 2.3.2.

Figure 4

Recommendations with the highest rate of non-compliance



2.3.1 “Shall Recommendations” C.4 and C.5: Overboarding

Together with Recommendation G.10, Recommendation C.5 is the recommendation with which the largest number of companies (7; 18% of the 38 sample companies) declare non-compliance. However, two of these companies disclose that the deviation is expected to be cured within the next year. The recommendation limits the number of supervisory board mandates of management board members. According to the recommendation, management board members shall not have, in total, more than two supervisory board mandates in non-group listed companies or comparable functions and shall not accept a supervisory board chairmanship of a non-group listed company.

Closely related to this and often simultaneously declared is recommendation C.4. It limits the number of other mandates that a supervisory board member who is not a management board member of a listed company can hold. Specifically, such a supervisory board member shall not accept more than 5 supervisory board mandates at non-group listed companies or comparable functions. An appointment as chair of the supervisory board is counted twice. 3 companies declared non-compliance with this recommendation.

Both Recommendations, C.4 and C.5, are meant to ensure that board members have sufficient time to perform their duties. A review of the reasons given for deviating from these recommendations shows that most deviations reported can be categorized as non-compliance as a matter of principle. In other words, the deviating company does not name any specific board member who is not in compliance with the recommendation but rather discloses that the company is not and will not be complying with the recommendation because setting an upper limit to outside mandates is not considered reasonable.

For the remaining 4 deviations, a specific board member is named as non-compliant with either C.4 or C.5, and the typical explanation for non-compliance is to state that the management board and the supervisory board are convinced that the board member has sufficient time available to perform his/her duties.

Such an explanation is often insufficient to address shareholders' concerns. Principle V.E.3 of the G20/OECD Principles of Corporate Governance addresses the issue of overboarding and states that specific limits on the number of board positions "may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders". Disclosures about other board and committee memberships, chair responsibilities, attendance records for individual board members, and any other work undertaken on behalf of the board and the associated remuneration are highlighted by the G20/OECD Principles as means of strengthening board members' legitimacy and accountability (OECD, 2026). The OECD Principles thus place greater emphasis on transparency and shareholder assessment than on rigid numerical limits.

Similar limitations on overboarding exist in other countries. For example, the French Afep-Medef Code provides that a non-executive director should not hold more than four other directorships in listed corporations, including foreign corporations, outside of the group. For executive officers, the corresponding limit is two.[17]

The UK follows a different approach. The current UK Corporate Governance Code of 2024 states that full-time executive directors should not take on more than one non-executive directorship in a FTSE 100 company or another significant appointment, while no corresponding numerical limit applies to non-executive directors.[18] The comparison illustrates the continuing divergence between prescriptive numerical limits and more flexible approaches relying on disclosure and an assessment of directors' actual time commitments.

It is also important to note that, although Recommendations C.4 and C.5 of the German Corporate Governance Code impose limits on overboarding, the case of overboarding where the same person serves simultaneously on the management boards of two companies is not addressed by these recommendations. Accordingly, it does not constitute a case of non-compliance with the Code, although it creates significant "conflicts of interest" concerns. Such arrangements are relatively unusual but there are precedents: Porsche AG and Volkswagen AG (both DAX companies back then) had a joint CEO from September 2022 to December 2025. It is noteworthy that these two companies recorded the highest number of non-compliance cases with the Code's recommendations at that time.[19]

2.3.2 "Shall Recommendation" G.10: Design of variable remuneration of management board members

With 7 companies reporting deviations, Recommendation G.10 is the other recommendation with the equally highest rate of non-compliance with 2 companies planning to cure the deviation in 2026. Recommendation G.10 recommends, first, that variable remuneration amounts of management board members shall be invested predominantly in company shares by the respective board member, or are granted as share-based remuneration. Second, it recommends that long-term variable remuneration components are accessible to management board members only after four years. All 7 companies report non-compliance with only part of the recommendation: 2 companies with its first part and 5 companies with its second part.

The use of share-based remuneration and long-term incentive (LTI) mechanisms is also commonly addressed in other countries' corporate governance frameworks. Long-term incentive mechanisms, such as

[17] See Section 20 of the 2022 Afep/Medef Corporate Governance Code of Listed Corporations.
[18] See Provision 15 of 2024 UK Corporate Governance Code.
[19] See Section 2.5 of the previous 2023 CGI-Working Paper "The Governance System of Germany: Background and Discussion of its Code"

equity incentives and stock options, are required or recommended in 67% of the 52 jurisdictions surveyed by the OECD[20],and may span from two to three years.

A review of the explanations provided for the deviations that are not planned to be cured shows that companies typically argue that their remuneration system, although not in conformity with G.10, nevertheless provides sufficient incentives for the sustainable development and long-term success of the company.

Section 120a of the German Stock Corporation Act requires companies to submit their remuneration systems to an advisory shareholder vote at every substantial change and, in any case, at least every four years. In case of a negative shareholder vote, the system has to be put to shareholder vote in the following year. Generally, any unconvincing reasoning for deviating from the remuneration-related recommendations of the Code is likely to be subjected to additional discussion at upcoming general shareholder meetings.

2.4 Precautionary Declarations

Given the significance investors may attach to declarations of non-compliance, companies may face a particular dilemma where it is uncertain whether a specific practice falls within the scope of a Code recommendation. In such cases, some companies choose to disclose non-compliance for 'precautionary purposes', even though an actual deviation may be uncertain or may arise only if certain circumstances materialize. Such precautionary declarations thus appear to reflect a cautious approach to compliance disclosure rather than an acknowledgement of definite non-compliance.

In 2025, 9 out of 60 non-compliance cases (15%) were disclosed for precautionary purposes (see these deviations in Figure 3). Most often the lack of specificity of certain Code recommendations and the uncertainty as to whether a particular situation falls within its scope are explicitly cited as reasons for making the precautionary disclosures. For instance, Recommendation B.4 provides that management board members may be re-appointed more than one year before the end of their current appointment "only if special circumstances apply". This necessarily leaves considerable room for interpretation. One company considered its early re-appointment of its CEO to be justified by such "special circumstances", but nevertheless declared a deviation from Recommendation B.4 for precautionary purposes.

Accordingly, the reported number of 60 deviations may somewhat overstate the actual level of substantive non-compliance with the Code. Precautionary declarations appear to be highly case specific. This is also reflected in the fact that no recommendation accounts for more than one precautionary declaration (Figure 3).

However, to ensure a common understanding and consistency of disclosures across companies, a review of these precautionary declarations by the Commission with a view to providing clearer guidance may be helpful.

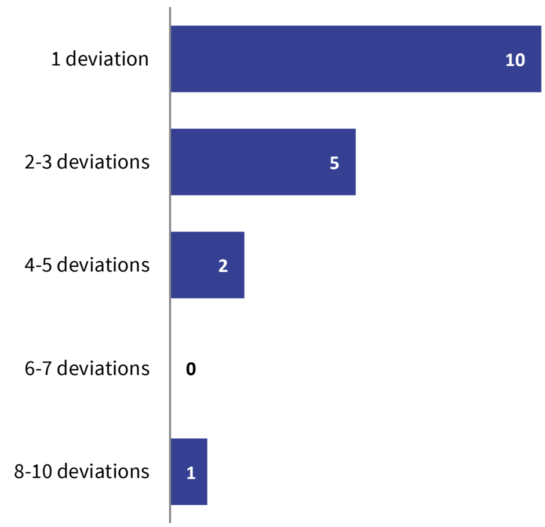
[20] OECD Corporate Governance Factbook 2025: Section 4.5, p. 167, Figure 4.17 and Table 4.18.

2.5 Companies with respect to the Number of Declared Non-compliance Cases

In 2025, 18 of the 38 DAX companies in the sample declared full compliance with the Code. Figure 6 illustrates the distribution of the deviations reported by the remaining 20 companies. 10 companies reported non-compliance with only one Recommendation. Thus, 28 of the 38 companies (74%) reported no more than one deviation from the Code.

Volkswagen AG stands out with the highest number of deviations (9), followed by Heidelberg Materials AG and Siemens Energy AG with 4 deviations each. 5 companies reported two or three deviations. Overall, the reported instances of non-compliance remain concentrated among a relatively small number of companies. Compared with previous studies on the acceptance of the Code, it should be noted that Porsche AG and Porsche SE, both of which had reported comparatively high numbers of deviations, are no longer constituents of the DAX and hence no longer included in the sample.

Figure 6
Number of companies by number of declared deviations



2.6 “Should-Suggestions” of the Code

In addition to its 62 recommendations, the German Corporate Governance Code contains 6 “Should”-Suggestions from which companies may depart without disclosure. They are identified in the Code by the word “should” and are listed in Table 1. Suggestions may also be viewed as a testing ground for provisions that are on top of the list to become recommendations in future revisions of the Code.

As companies do not have to disclose their compliance status or reasons for non-compliance with the suggestions, it is not possible to assess their level of acceptance. Only Fresenius SE & Co. KGaA and Henkel AG & Co. KGaA made disclosures in 2025 about the Code’s suggestions, both declaring full compliance. The limited disclosure consequently leaves little empirical basis for assessing the practical relevance and acceptance of the Code’s suggestions. Greater transparency regarding adherence to the suggestions would not only provide a more comprehensive picture of corporate governance practices, but could also inform the Commission’s assessment of their suitability for future elevation to recommendations.

Table 1
List of “Should-Suggestions”

A.4	Employees shall be given the opportunity to report, in a protected manner, suspected breaches of the law within the enterprise; third parties should also be given this opportunity.
A.6	The Supervisory Board Chair should be available – within reasonable limits – to discuss Supervisory Board-related issues with investors.
A.7	The Chair should take into account that the General Meeting be completed within four to six hours.
A.8	In the event of a takeover offer, the Management Board should convene an Extraordinary General Meeting at which shareholders will discuss the takeover offer and may decide on corporate actions.
G.14	Change of control clauses that commit to benefits in the case of early termination of a Management Board member’s contract due to a change of control should not be agreed upon.
G.18	Supervisory Board remuneration should be fixed remuneration. If members of the Supervisory Board are granted performance-related remuneration, it shall be geared to the long-term development of the company.

Note: Only the sentences with a "should" clause are suggestions.

3 Material Governance Issues relevant for its current 2026 revision

The above observations on the level of acceptance of the current 2022 Code by DAX companies can provide guidance in the ongoing review of the Code by identifying controversial recommendations and suggestions and assessing their practical relevance. In principle, the Code should shape corporate practice rather than adjust to it. However, high rates of non-compliance and the reasons given for such deviations may indicate that a recommendation may not adequately reflect practical circumstances. Conversely, a high level of compliance does not necessarily demonstrate the effectiveness or ambition of a recommendation, as it may also indicate that the provision merely reflects practices already widely established among DAX companies.

In August 2026, the Commission published its proposed amendments to the Code and opened them for consultation. The proposal contains substantive adjustments to 16 recommendations and 1 suggestion, meaning that approximately 25% of the Code’s provisions would be substantively affected. In addition, five recommendations are intended to be consolidated into two. These and other structural changes to the Code are not included in the following analysis. The 17 adjustments involve eliminating 6 recommendations and 1 suggestion entirely, downgrading 2 recommendations to suggestions and specifying 3 and narrowing the scope of 5 recommendations.

Out of the 6 Recommendations with the highest rates of non-compliance (see Figure 4), the Commission’s proposals affect 2 recommendations, namely Recommendations G.7 and G.10. However, both proposed amendments involve only minor changes. More importantly, they do not address the DAX companies’ principal reasons for deviating.

Although the 7 recommendations that were added or revised in the 2022 version were almost immediately complied with and recorded not a single deviation in 2025, the Commission now proposes to further specify or narrow the scope of 4 of them, in some aspects bringing them closer to their pre-2022 form. This is noteworthy, as the compliance data provide no indication that these provisions have created significant implementation difficulties for DAX companies.

Overall, the proposed revision exhibits an inverse pattern: several recommendations that generated no reported deviations are to be narrowed, while most recommendations associated with comparatively high levels of non-compliance remain substantively unchanged. This apparent discrepancy should, however, be interpreted with caution: high compliance may indicate successful implementation, but may equally suggest that a recommendation merely codifies practices already established in the market. In general, the findings suggest that the current revision is not primarily driven by observed patterns of compliance among DAX companies, but by other regulatory and policy considerations.

Beyond the empirical observations made in this study and the already published Commission's draft in the ongoing Code review, the following material corporate governance issues warrant consideration in future reviews of the Code:

3.1 Supervisory Board Chair's Engagement with Investors

Suggestion A.6 of the Code states: "The Supervisory Board Chair should be available – within reasonable limits – to discuss Supervisory Board-related issues with investors." This suggestion was included in the Code for the first time in its 2017 revision and has since remained a suggestion only, although a dialogue between supervisory board chairpersons and investors is today common practice particularly for large companies. This suggestion should therefore become a recommendation requiring companies to explain any deviation.

3.2 Independence of Supervisory Board Members

According to Recommendation C.6, independent supervisory board members are independent from the company and its management board, as well as from any controlling shareholder(s).

Although the Code adopts a strict definition of independence here, the recommendation does not prescribe a minimum number or percentage of independent supervisory board members. In addition, the Code considers independence only with respect to the shareholder representatives on the supervisory board, with Recommendation C.6 stating that: "The Supervisory Board shall include what it considers to be an appropriate number of independent members from the group of shareholder representatives, thereby taking into account the shareholder structure."

This approach leaves substantial discretion in determining the appropriate number of independent supervisory board members, particularly in companies with concentrated ownership. This is comparatively uncommon internationally. The OECD interprets the German approach as recommending at least one independent supervisory board member. Even on this basis, among 25 jurisdictions reviewed with (optional) two-tier board structures, only Croatia, Luxembourg, and the Slovak Republic have similarly low or no minimum independence requirements. Some countries, including France, the Netherlands, Switzerland, and Denmark, recommend that at least 50% of board members be independent, while others set an even higher threshold by recommending (e.g., the UK, Ireland and Sweden) or requiring (e.g., the US and Portugal) a majority of the board members to be independent.[21] Germany therefore remains an outlier in the degree of discretion afforded to supervisory boards in determining themselves an appropriate level of independence.

[21] It should be noted that in France and the US, companies with higher ownership concentration are subject to less strict independence requirements than those stated here: Specifically, the corporate governance code in France states that in controlled companies, independent directors should account for at least a third of board members. In the US, companies of which more than half of the voting power (for the election of directors) is held by an individual, a group, or another company are exempt from the majority independent board requirement (OECD, 2025).

3.3 Cases Requiring Extraordinary General Meetings

Suggestion A.8 of the current Code states: “In the event of a takeover offer, the Management Board should convene an Extraordinary General Meeting at which shareholders will discuss the takeover offer and may decide on corporate actions”.

In its proposal for the Code’s latest revision, the Commission proposed removing this suggestion without replacement.[22] However, Suggestion A.8 serves an important communicative and legitimising function, given the potentially significant implications of takeover offers for a company’s future strategic direction, shareholder structure and corporate governance. While German takeover law already provides for extensive disclosure requirements, an Extraordinary General Meeting facilitates a direct exchange between the company’s governing bodies and its shareholders in such an exceptional situation. The availability of virtual general meetings also reduces the practical cost and timing issues associated with convening such a meeting.

Overall, Suggestion A.8 therefore provides distinct governance benefits in such exceptional situations beyond statutory disclosure requirements. It should therefore not only be retained, but elevated to a recommendation.

3.4 Verification of the Accuracy of the Declaration of Compliance

The present Recommendation D.9 only provides for an agreement between the supervisory board or its audit committee and the auditor that the auditor shall inform the audit committee without delay of any facts identified during the audit that indicate that the declaration of compliance with the Code is incorrect. This could be strengthened by requiring a mandatory verification of the accuracy of the declaration of compliance, rather than limiting the auditor’s involvement to reporting any inconsistencies identified in the course of the audit.

[22] See the amended version of the Code for consultation, available at: https://www.dcgk.de/en/consultations/current-consultations.html.