
The German Corporate Governance System

1. German Corporate Governance: A Combination of Statutory Laws and the Code

The German corporate governance framework is a combination of **legal and regulatory instruments** (the “hard law”) and the **German Corporate Governance Code** (the “Code”, the “soft law”). The **Code** is reviewed annually and was last updated in June 2022. It complements a number of **statutory laws** that address various aspects of corporate governance.¹ The **Code** consists of “**Principles**”, reflecting material legal prerequisites for responsible governance, “**Shall-Recommendations**” and “**Should-Suggestions**”, which involve international and national standards of good corporate governance. Companies are obliged by Section 161 of the Stock Corporation Act to at least annually disclose and explain any deviations from the “Shall-Recommendations”. The “Should-Suggestions” do not require disclosure but their disclosure is suggested. The German Government Commission (“the **Commission**”) is responsible for formulating the recommendations and suggestions of the **Code** in dialogue with relevant stakeholders. The Commission consists of senior representatives of the management and supervisory boards of German listed companies and various non-political stakeholders, including institutional and retail investors, academics, auditors and labour representatives. Its members and the chairperson are appointed by the German Federal Minister of Justice. Following its **initial version of 2002**, the **Code** was revised by the Commission a total of 14 times. The most recent revision in 2022 particularly aimed to ensure that **environmental and social sustainability** are reflected in the management and supervision of listed companies.² The **Code** addresses governance-related issues in seven chapters: (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.

2. Particular Aspects of the German Corporate Governance System

2.1. The Two-Tier Board Structure and Co-Determination

The internationally two most distinctive features of German corporate governance are the **mandatory two-tier board structure** and the presence of employee representatives on the supervisory board (“**co-determination**”). Most of the DAX companies have the legal form of an Aktiengesellschaft (AG), some are incorporated as European stock corporations (Societas Europaea, SE) and few are partnerships limited by shares (Kommanditgesellschaft auf Aktien, KGaA). Companies with a legal form of an AG or a KGaA are required in Germany to have a two-tier board structure consisting of a management board and a supervisory board. Although companies incorporated as an SE can choose between a one-tier or a two-tier board structure, most German SEs have opted for the two-tier option.

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¹ Among others, these laws mainly consist of the Stock Corporation Act (“Aktiengesetz”), the Commercial Code (“Handelsgesetzbuch”), the Securities Trading Act (“Wertpapierhandelsgesetz”), the Takeover Act (“Wertpapiererwerbs- und Übernahmegesetz”), as well as the Co-Determination (“Mitbestimmungsgesetz”) and the One-Third Participation Act (“Drittelbeteiligungsgesetz”), which together set out the rules for employee representation on the supervisory board.

² See also *Demirtas/Strenger/Tröger*, „Sustainability Skills Disclosure For Boards: An Essential Prerequisite For Assessing Sustainability Competence”, ECGI - Law Working Paper No. 796/2024, SAFE Working Paper No. 427: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4942971.

The **management board** is responsible for the day-to-day management of the company. The **supervisory board** supervises and controls the management board and advises on strategic issues. Key tasks of the supervisory board include appointing (and dismissing) management board members as well as approving major company decisions. The supervisory board also determines the remuneration of management board members. The remuneration structure is to be designed towards the promotion of the sustainable, long-term development of the company. Recently however, more voices have been calling for supervisory boards to become more actively involved in the strategy of the companies they supervise. The supervisory board should according to the Commission become a ‘strategic sparring partner’.³

The **supervisory board** of larger companies is complemented by **employee representatives**: In companies with more than 2,000 employees, half of the supervisory board (one third in the case of more than 500 employees) is represented by employees and the unions.

2.2. Board Size, Appointment and Tenure

2.2.1. Size of the Management Board

According to Section 76 of the Stock Corporation Act, the **management board** of companies with a share capital of **more than three million euros** must consist of **at least two persons**, unless the articles of association stipulate that it consists of one person. All companies subject to the Co-Determination laws and the Holding Amendment must have a **labour director** as full member of the management board.

2.2.2. Size of the Supervisory Board

The co-determination rules contribute to the **large supervisory board sizes** in Germany. The minimum number of supervisory board members is **three** in line with Section 95 of the Stock Corporation Act. In companies subject to an equal representation of employees and shareholders in the supervisory boards, the board must have **12, 16, or 20 members**, depending on the number of employees (Section 7, Co-Determination Act). According to Section 95 of the German Stock Corporation Act, the maximum number of supervisory board members is 21. In a study conducted in 2023 by the Corporate Governance Institute of the Frankfurt School of Finance & Management,⁴ the **average supervisory board size was 15.5**. This contrasts sharply with the average board size in other countries, such as Italy (11), Netherlands (7), Spain (11), Sweden (11), Switzerland (11), the UK (10), and the US (11).

2.2.3. Appointment to the Management Board

The appointment and dismissal of management board members is the **sole responsibility of the supervisory board** as even the articles of association cannot transfer this authority to the annual general meeting. In deciding whom to appoint as a member of the management board, the supervisory board is free to exercise its **entrepreneurial discretion** in accordance with Section 93 (1).2 of the Stock Corporation Act. The supervisory board must select **suitable candidates** and ensure **reasonable conditions** in the employment contract. Particularly with regard to **remuneration** structures in accordance with section 87 of the Stock Corporation Act, the board has to fulfill its duties resulting from Section 116 of the Stock Corporation Act.

³ See Practical Impulse of the Commission (February 2025), last accessed 20.4.2025: <https://www.dcgk.de/files/dcgk/usercontent/de/download/2501%20Praxis-Impuls%20-%20Aufsichtsrat%20Strategie.pdf>.

⁴ “The Governance System of Germany: Background and Discussion of its Code”, CGI Working Paper 2023, last access 6.1.25: https://www.frankfurt-school.de/dam/jcr:dfelae1d-57ca-40f5-9c6f-397a2ff5d909/CGI_WP_Governance_SystemOfGermany_20230727.pdf. See also *Redenius-Hövermann/Strenger*, ZIP 2023, 2121 ff.

For the **selection** of management board members, the **Code** contains a number of recommendations (B.1 to B.5) which state that the supervisory board shall take **diversity** into account (B.1). The **first-time** appointment of management board members shall be for a period of **not more than three years** (B.3). Any re-appointment **prior** to one year before the end of an appointment period shall only happen if **special circumstances** apply (B.4). An **age limit** shall be specified for members of the management board and disclosed in the corporate governance statement (B.5). Both management and supervisory boards shall ensure **long-term succession planning** (B.2).

2.2.4. Appointment to the Supervisory Board

The election of supervisory board members is characterized by the **interlocking of the stock corporation and the co-determination laws**.

According to Section 101 (1). 1 of the Stock Corporation Act, the **members of the supervisory board** representing the shareholders are **elected by the annual general meeting** or by the employees in accordance with the special provisions of the **co-determination law** (Section 101 (1) of the Stock Corporation Act). The annual general meeting generally is **not bound by the supervisory board's election proposals** for the shareholder representatives (except for these according to Section 6 and 8 of the Montan-Co-Determination Act, Section 101 (1).1 of the Stock Corporation Act) but **customarily follows them**.

The **Code** states in principle 11 that the composition of the supervisory board has to ensure that its members **collectively** possess the knowledge, skills and professional expertise required to properly perform their duties: C.1 recommends that the supervisory board's skills and expertise profile shall also comprise expertise regarding **sustainability** issues relevant to the enterprise and C.2 suggests that a disclosed **age limit** shall be specified for members of the supervisory board.

2.2.5. Board Tenure

Members of the **management board** can only be appointed for a maximum of **five years** (Section 84 of the Stock Corporation Act). **Reappointments** or **extensions** of the term of office are permitted for a maximum of five years.

According to Section 102 of the Stock Corporation Act, members of the **supervisory board** cannot be appointed for a longer period than the end of the annual general meeting that resolves on the discharge for the **fourth** financial year after the start of the term of office. The financial year in which the term of office begins is not included in this calculation.

2.2.6. Gender Equality and Diversity

According to Principle 9 of the **Code**, the supervisory board has to ensure that the **legally** required **gender participation** on the management board is complied with or defines **targets** for the percentage of women on the management board within the framework of legal requirements. Respectively, the legal gender quota must be considered regarding the composition of the supervisory board (Principle 11 of the **Code**). The **Code** further recommends that when appointing management board members, the supervisory board shall take **diversity** into account (B.1). Similarly, the composition of the supervisory board shall consider diversity (C.1). The same applies for senior executive positions (A.2).

In accordance with Section 96 of the Stock Corporation Act, in listed companies at least **30 percent** of the whole **supervisory board** shall be made up of women and at least 30 percent of men. The supervisory board of listed companies has to set targets for the proportion of women on the supervisory board and the management board. If the supervisory board sets a target of zero for the supervisory board or the management board, it must justify this decision comprehensibly. At the same time, **deadlines** must be set for achieving the targets. The deadlines cannot be longer than **five years** in each case.

2.3. Liability of the Management and Supervisory Boards

Members of the **management board** who violate their duties are jointly and severally **liable** to compensate the company for any resulting damages pursuant to Section 93 of the Stock Corporation Act. The members of the management board must exercise the diligence of a prudent and conscientious manager in the management of the company. There is no breach of duty if the management board members when making a business decision could reasonably assume that they were acting in the interest of the company on the basis of appropriate information and absent of conflicts of interest (**business judgment rule**). Via Section 116 (117) of the Stock Corporation Act, the same obligations apply to the **supervisory board**. Particularly, they are liable for compensation if they grant inappropriate remuneration to the management board (Section 87 of the Stock Corporation Act). Liability may also apply if the supervisory board's breach of duty consists of failing to assert claims for compensation against the management board.

2.4. Overboarding, Dual Mandates and Board Independence

With respect to **overboarding**, Principle 12 of the **Code** states that **supervisory board** members must have **sufficient time available** to discharge their duties. It therefore suggests in C.4 that a supervisory board member who is not a member of a management board of a listed company shall not have more than **five** supervisory board mandates at non-group listed companies or comparable functions, with an appointment as **chair** of the supervisory board being **counted double**. Suggestion C.5 states that members of the **management board** of a listed company shall not have, in aggregate, more than **two** supervisory board mandates in non-group listed companies or comparable functions, and shall not accept the chairmanship of a supervisory board in a non-group listed company.

Dual management board mandates of listed companies: while generally permissible under stock corporation law and not specifically addressed in the **Code**, they nevertheless impair the principles of good corporate governance due to possible conflicts of interest and time constraints.

Management board members must be **independent** from the supervisory board (Section 76 of the Stock Corporation Act). The supervisory board may **only** revoke the appointment of a member of the management board for **important reasons**. Such reasons are in particular: gross breach of duty, inability to manage the company properly or withdrawal of confidence by the annual general meeting.

Independence of supervisory board members: Recommendation **C.11** of the **Code** states that no more than two former members of the management board shall be members of the supervisory board, while **C.12** states that they shall not be members of governing bodies of, or exercise advisory functions at significant competitors of the enterprise and shall not hold any personal relationships with a significant competitor. According to **C.6**, the supervisory board shall have what it considers an **appropriate number of independent members** from the group of shareholder representatives while taking into account the shareholder structure. A supervisory board member is considered independent if he/she is independent from the company and its management board, and independent from any controlling shareholder. **C.7** specifies that more than half of the shareholder representatives shall be independent from the company and the management board. Supervisory board members are considered independent from the company and its management board if they have no personal or business relationship with the company or its management board that may cause a substantial – and not merely temporary – conflict of interest. If the company has a controlling shareholder, and the supervisory board comprises more than six members, **C.9** states that at least two shareholder representatives shall be independent from the controlling shareholder. Finally, **C.10** recommends that the chair of the supervisory board, the chair of the audit committee, as well as the chair of the committee that determines management board remuneration, shall be

independent from the company and the management board. The chair of the audit committee shall also be independent from the controlling shareholder.

Besides the Code, the DVFA financial analyst association has recently updated its guidelines.⁵ With their new guidelines, a large number of supervisory board members would not qualify for independence status.⁶

2.5. Supervisory Board Committees

To support the effectiveness of the board's work particularly for larger companies, the **Code** recommends the establishment of **supervisory board committees**. The **obligation** to establish an **audit committee** was included in the German FISG-law in 2021 following the Wirecard fraud scandal. The law now requires that **at least one member** of the Audit Committee has expertise in **accounting** and at least one other member has expertise in **auditing**.

The **chairman** of the audit committee shall be independent and have appropriate expertise in at least one of the two areas. The corporate governance statement shall name the relevant members of the audit committee and provide details of their expertise in the areas mentioned. The **chair of the supervisory board shall not chair the audit committee**.

2.6. Ownership Structure

The level of ownership concentration in Germany is an important factor in German corporate governance practice and the design of corporate governance standards. In contrast to other countries, the percentage of German companies where the three largest shareholders hold more than half of the company's equity capital is 59%. This is sharply higher than the same percentage in the US (15%), the UK (19%), Sweden (26%), and the Netherlands (38%).⁷

2.7. The Annual General Meeting

The annual general meeting is the **third body** of the stock corporation alongside the management board and the supervisory board. It is a **meeting of shareholders** that is duly convened according to Sections 121 ff. and held in compliance with Sections 129 f. of the Stock Corporation Act. The meeting **passes resolutions** that are **expressly stipulated by law** and by the **articles of association**. The **shareholders exercise their rights** in the affairs of the company at the annual general meeting, unless otherwise stipulated by law. Given the often lengthy duration of large company meetings, the **Code** suggests that the Chair should aspire that the general meeting be completed within **four to six hours** (A.7).

2.7.1. Ordinary and Extraordinary Annual General Meetings

Ordinary annual general meetings are generally those that present the annual **financial statements** and at which **regular resolutions** are adopted, i.e. appropriation of profits, discharge of the management and supervisory boards and the election of the auditor. **Extraordinary** annual general meetings are all other annual general meetings. The **convening provisions** (Sections 121 ff. of the Stock Corporation Act) and the **provisions on the passing of resolutions** (Sections 133 ff. of the Stock Corporation Act) apply equally to both types of general meetings.

2.7.2. Convening the Annual General Meeting

According to Section 121 of the Stock Corporation Act, the annual general meeting **must** be convened in the **cases specified by law** or the **articles of association** and if the **interest of the company** requires so. It must be convened at least **30 days** before the date of the meeting. It is

⁵ Compare <https://dvfa.de/2024/dvfa-aktualisiert-positionspapier-zur-unabhaengigkeit-von-aufsichtsratsmitgliedern-boersennotierter-unternehmen/>, last accessed 20.4.2025.

⁶ Study conducted by *Wolff, Michael* (University of Göttingen), 2025.

⁷ Table 1.1, OECD Corporate Governance Factbook 2023.

convened by the **management board**, that decides on it by **simple majority**. The convening notice must inter alia include the time and place of the annual general meeting and the **agenda**. In the case of **listed companies**, it must also state: (i) the **requirements for attending the meeting and exercising voting rights** and, if applicable, the record date pursuant to Section 123 (4).2 of the Stock Corporation Act; (ii) the **procedure for voting by proxy**.

For **virtual** annual general meetings, the convening notice must also state how shareholders and their proxies can join the meeting electronically. The convening notice must also state that the physical presence of shareholders and their proxies at the annual general meeting is excluded.

To protect **minorities**, the annual general meeting **must be convened** if shareholders holding together **5% of the share capital** request such a meeting in writing, stating the purpose and reasons. Shareholders who together hold **5% of the share capital** or a nominal amount of **EUR 500,000** can request that **items be placed on the agenda** and published.

2.7.3. Virtual Annual General Meetings and Online Participation

The **articles of association** may provide for or authorize the management board to provide for the meeting to be held without the physical presence of shareholders or their proxies at the venue of the annual general meeting (**virtual annual general meeting**). Section 118a of the Stock Corporation Act lists the different requirements that must be met in this case.

Different from a virtual annual general meeting is the possibility of **online participation** according to Section 118 (1).2 of the Stock Corporation Act that enables **hybrid annual general meetings**.

2.7.4. Rights of the Annual General Meeting

According to Section 119 of the Stock Corporation Act, the **annual general meeting passes resolutions** in the **cases expressly stipulated by law** and the **articles of association**, namely (i) the **appointment of members of the supervisory board** (unless they are to be delegated to the supervisory board or elected as employee representatives to the supervisory board); (ii) the appropriation of the **balance sheet profit**; (iii) the **remuneration system** and the remuneration **report** for members of the management board and the supervisory board of the listed company; (iv) the **discharge** of the members of the management board and the supervisory board; (v) the appointment of the **auditor**; (vi) any amendments to the articles of association; (vii) measures to raise or reduce equity **capital**; (viii) the appointment of auditors to audit transactions relating to the formation or management of the company and (ix) the **dissolution** of the company. The annual general meeting may only decide on **management issues** if the **management board requests** so.

2.7.5. Shareholder Rights at the Annual General Meeting

The **shareholder rights** consist of: the right to **attend**, the right to **speak**, the right to **information**, the right to **propose resolutions**, the right to inspect the list of registered shareholders, the right to **vote**, the right to **object** to resolutions and different **minority rights**, including the request for individual discharge for both boards (Section 120 (1).2 of the Stock Corporation Act).

2.7.6. Different Type of Shares, Voting Rights and Voting Practices

Section 12 of the Stock Corporation Act states that also shares with **multiple voting rights** and **preference shares** as **shares without voting rights** may be issued. The articles of association may provide for registered shares with multiple voting rights that **may not exceed ten times the voting rights** pursuant to Section 134 (1).1 of the Stock Corporation Act. A resolution to endow or issue shares with multiple voting rights requires the approval of all shareholders concerned.

Section 135 of the Stock Corporation Act regulates the **exercise of voting rights by intermediaries** and persons acting in a professional capacity.

The **resolutions** of the annual general meeting require a **simple majority of the votes cast**, unless a larger majority or other requirements are stipulated by **law** or the **articles of association**. The annual general meeting passes resolutions with a majority of **three quarters of the votes cast** in the following cases: (i) early dismissal of supervisory board members (Section 103 (1).2 of the Stock Corporation Act); (ii) approval, at the request of the management board, of management measures that require the approval of the supervisory board but have not received it (Section 111 (4).3 of the Stock Corporation Act); (iii) additionally required special resolutions of the preference shareholders.

If resolutions contain **particularly far-reaching consequences** for the company or the shareholders, they require a majority of at least **three quarters** of the **share capital represented** for the resolution to be passed. In such cases, the **capital majority** must exist in addition **to the majority of votes**. Both larger majorities of votes and capital majorities can also be stipulated in the **articles of association**.

2.7.7. Institutional Investors and Proxy Advisors

According to Section 134c of the Stock Corporation Act in line with the Shareholder Rights Directive as amended by Directive (EU) 2017/828, **institutional investors** must disclose the extent to which the main elements of their **investment strategy** match the profile and duration of their liabilities and how they contribute to the medium to long-term performance of their assets. The goal is to ensure that the medium to long-term interests of institutional investors are considered in the implementation of the investment strategy to benefit the final beneficiaries and investors. Section 134d (2) of the Stock Corporation Act imposes further disclosure obligations on institutional investors who use an **asset manager** and follow a **comply-or-explain-principle**.

Following Section 134d of the Stock Corporation Act, **proxy advisors** must **declare annually** that they have complied and are complying with the provisions of a more detailed **code of conduct** or which provisions of the code of conduct they have not complied with and are not complying with and which measures they have taken instead. If proxy advisors do not comply with a code of conduct, they must explain why. Additionally, Section 134d (4) of the Stock Corporation Act requires the proxy advisor to disclose **any conflicts of interest** - but only to its own clients, so that a disclosure obligation pursuant to Section 134d (3) of the Stock Corporation Act is excluded.

2.7.8. Discharge, Management Compensation and Say on Pay

The **discharge** of the management and supervisory boards is an important **signal** with respect to shareholder approval of the management of the company. According to Section 120 of the Stock Corporation Act, the annual general meeting must decide on the discharge of the members of the **management board** and on the discharge of the members of the **supervisory board each year** no later than the **first eight months** of the financial year. It does **not** include a **waiver** of potential compensation claims against the management board or supervisory board. The discharge of **individual** members is to be voted on separately if the annual general meeting so resolves or if a **minority** whose shares together amount to **10%** of the share capital or a proportionate amount of **EUR one million** so requests. The discussion on the discharge shall be combined with the discussion on the appropriation of the balance sheet profit.

The German legislator has decided for a consultative **Say on Pay** and against a so-called Decide on Pay. In principle, the concrete remuneration of the management board remains a **matter for the supervisory board**. In accordance with Section 120a (1) of the Stock Corporation Act, a **consultative resolution** is passed on the remuneration **system**. Only the **recurring implementation of the vote** is now **mandatory**: specifically, the annual general meeting of the

listed stock corporation approves the remuneration system proposed by the supervisory board within the meaning of Section 87a of the Stock Corporation Act whenever there is a material **change to the remuneration system**, but **at least every four years**. In addition, in accordance with Section 120a (4).1 of the Stock Corporation Act, it has to approve annually **the remuneration report** for the previous financial year.

Pursuant to Section 87a (2).1 of the Stock Corporation Act, the supervisory board must determine the remuneration of the management board in accordance with the remuneration system submitted by itself (**self-commitment of the supervisory board**). The supervisory board is also responsible for ensuring compliance with the **material remuneration criteria** of Section 87 of the Stock Corporation Act. The **annual general meeting** can also **reduce the maximum remuneration** of the management board determined by the supervisory board pursuant to Section 87 (4) of the Stock Corporation Act.

2.7.9. Special Audit and Assertion of Claims for Compensation

In accordance with Section 142 of the Stock Corporation Act, the annual general meeting can appoint **special auditors** by a **simple majority** of votes to audit transactions relating to the formation or the management of the company, in particular measures to raise and reduce capital. If the annual general meeting **rejects the request** for the appointment of special auditors, a **court** must appoint special auditors at the request of shareholders (who together hold **1% of the share capital** or a nominal amount of **EUR 100,000**) if there are facts that justify the suspicion that the transaction involved dishonesty or gross violations of the law or the articles of association. According to Section 147 of the Stock Corporation Act, the company's claims for compensation arising from the management by members of the management board and supervisory board or from Section 117 of the Stock Corporation Act **must be asserted** if the annual general meeting resolves to do so by a **simple majority** of votes. The claim for compensation must be asserted within **six months** of the date of the annual general meeting.

2.8. Sustainability

According to Sections 289b and 315b of the German Commercial Code (HGB), capital market-oriented companies with more than 500 employees are obliged to publish a **non-financial statement**. This statement must contain information of their business model as well as on topics such as environmental, social and employee matters, respect for human rights and combating corruption and bribery. It can be prepared using an appropriate framework, but an external audit is not mandatory. It is the sole responsibility of the supervisory board to review the content of the non-financial statement.

On November 10, 2022, the Corporate Sustainability Reporting Directive (**CSRD**) was adopted by the European Parliament and came into force on January 5, 2023 but has **not yet been transposed into national law in Germany by April 2025**. The CSRD fundamentally changes sustainability reporting as the so far required non-financial statement has to be developed into a **sustainability report**. The main changes include: the expanded group of companies subject to reporting requirements, the integration of the sustainability report into the management report, the mandatory audit and the introduction of uniform EU-wide reporting standards. In February 2025, the European Union has published a series of proposals known as the '**Omnibus-Package**' with the goal to reduce sustainability reporting obligations for companies and especially SMEs to increase their competitiveness.⁸

The **Code** addresses sustainability in various principles and recommendations via Principle 22 that clarifies shareholders and third parties are kept informed by the consolidated financial statements and the group management report (including CSR reporting), as well as by interim financial information. Recommendation C.1 states that the **supervisory board's skills and**

⁸ Compare KPMG Audit Committee Institute e.V., last accessed 20.4.2025: <https://audit-committee-institute.de/media/aci-folder-2025-Omnibus-Gesetz.pdf>.

expertise profile shall comprise **expertise regarding sustainability issues** relevant to the company. Accordingly, Principle 6 states that supervision and advice by the supervisory board particularly includes sustainability issues. The **Code** also recommends that the **internal control system** and the **risk management system** shall also cover sustainability-related objectives, unless required by law anyway. This shall include **processes and systems** for collecting and processing **sustainability-related data** (A.3).

‘**Say on Climate**’-votes have only rarely been part of the agenda of AGMs and then are non-binding.⁹

2.9. Takeover Bid Rules

Under the provisions of Section 4(1) of the Securities Acquisition and Takeover Act the Federal Financial Supervisory Authority (**BaFin**) has the responsibility of overseeing **takeover offers**. As part of its mandate, the BaFin has to **prevent any irregularities** that could hinder the proper conduct of the process or pose significant risks to the securities market. With respect to distinguishing between "simple" offers to acquire securities and takeover bids, the legislator has chosen a formalized approach. Section 29 of the Securities Acquisition and Takeover Act outlines that a takeover bid directed at acquiring control of the target company is achieved when the bidder, or an entity attributed to the bidder under Section 30, holds **at least 30% of the voting rights** in the target company.

Once a bidder reaches or exceeds the 30% threshold of voting rights, he is required to make a **mandatory offer** to purchase the shares of all other shareholders of the target company (Section 35 of the Securities Acquisition and Takeover Act). Exemptions to this rule are rare and may only be granted under exceptional circumstances. The law sets out **mandatory provisions** regarding the consideration for both takeover and mandatory offers. According to Section 31(1) of the Act, the bidder is obliged to provide an **appropriate offer** to the shareholders of the target company.

The **Code** suggests in a “Should-Suggestion” that in the event of a takeover offer, the **management board** should convene an **extraordinary general meeting** at which shareholders discuss the takeover offer and may decide on corporate actions (A.8).

3. Deviations from the Recommendations of the Code and German Corporate Governance Quality in Practice

Deviations from the recommendations of the **Code** have to be declared at least annually according to Section 161 of the Stock Corporation Act (the **comply-or-explain-approach**). A study evaluating the deviations from the **recommendations of the Code** between 2020 and 2024 conducted by *Bannier* and *Flach*¹⁰ (Gießen University) reveals **consistent adherence** to the Code among **DAX-40**¹¹ and **MDAX**¹² companies, while conformity rates among **SDAX**¹³ companies **declined** noticeably during the same timeframe. Across all companies, higher

⁹ Compare Deutsches Aktieninstitut (DAI), 6.3.2025, last accessed 20.4.2025: <https://www.dai.de/detail/hv-magazin-klima-transitionsplaene-in-der-hauptversammlung-das-nein-beim-say-on-climate>; also *Heldt, Cordula*, “Das “Nein” beim Say on Climate”, HV-Magazin 01/2025, 30f.

¹⁰ *Bannier/Flach*, „A Tale of Two Stories - Auswertung der Entsprechenserklärungen 2024 zum Deutschen Corporate Governance Kodex“ from 23.5.2025, Justus-Liebig-Universität Gießen. For the acceptance of the 2022 Code see also see *Redenius-Hövermann/Strenger*, ZIP 2023, 2121 ff.; “The Governance System of Germany: Background and Discussion of its Code”, CGI Working Paper: https://www.frankfurt-school.de/dam/jcr:dfelae1d-57ca-40f5-9c6f-397a2ff5d909/CGI_WP_GovernanceSystemOfGermany_20230727.pdf.

¹¹ Index of the top 40 companies.

¹² Index of the following group of companies.

¹³ Index of small-cap companies.

conformity with the recommendations on **sustainable corporate management** is evident in 2024.¹⁴

Findings from the 151 analyzed companies show that a total of **37 companies** (17 of them from the DAX-40, 15 from the MDAX and 5 from the SDAX) **comply with all of the Code's recommendations** in the **2024** financial year. The **largest number of deviations** relate to the chapters **G. Remuneration** of the management board and supervisory board (**269** overall declared deviations in 2024, equaling **over 50%** of all declared deviations) and **C. Composition of the Supervisory Board** (101 overall declared deviations in 2024, equaling 19.5% of all declared deviations).¹⁵

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¹⁴ *Bannier/Flach*, „A Tale of Two Stories - Auswertung der Entsprechenserklärungen 2024 zum Deutschen Corporate Governance Kodex“ from 23.5.2025, Justus-Liebig-Universität Gießen.

¹⁵ *Bannier/Flach*, „A Tale of Two Stories - Auswertung der Entsprechenserklärungen 2024 zum Deutschen Corporate Governance Kodex“ from 23.5.2025, Justus-Liebig-Universität Gießen.