

German Public Corporate Governance-Modelcode **(G-PCGM)**

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Expert Commission of the German Public Corporate Governance-Modelcode

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German Public Corporate Governance-Modelcode

Founding members of the Expert Commission of the German Public Corporate Governance-Modelcode

Prof. Dr. Klaus-Michael Ahrend (Practice Chairman) , Board Member HEAG Holding AG, Shareholdings Management Darmstadt, among others member of several supervisory boards of state-owned enterprises (SOEs)
Prof. Dr. Ulf Papenfuß (Scientific Chairman) , initiator and coordinator of the consultation procedure / of the development of the Expert Commission G-PCGM as well as scientific support, holder of the Chair of Public Management & Public Policy, Zeppelin University Friedrichshafen
Dr Robert Bachert , Chief Financial Officer Diakonie Baden-Württemberg, key player/author in the development of the Corporate Governance Code of the Diakonie
Rainer Christian Beutel , Board Member Kommunale Gemeinschaftsstelle für Verwaltungsvereinfachung, i.a. former full-time Mayor, member of several supervisory bodies of SOEs
Prof. Dr. Karl-Heinz Binus , President of the Saxon Court of Auditors, German representative in the Presidium of the Association of Regional Audit Institutions in Europe
Dr. Tobias Bringmann , Managing Director Association of Municipal Enterprises Baden-Württemberg
Prof. Dr. Dr. h.c. Barbara Dauner-Lieb , Chair of Civil Law, Trade and Corporate Law, University of Cologne, member of the Board of Directors of the Working Group of German Supervisory Board e.V., member of the Constitutional Court for the State of North Rhine-Westphalia and long-standing member of the Law Review Board of the German Research Foundation (Deutsche Forschungsgemeinschaft)
Prof. Dr. Dörte Diemert , City Treasurer of the City of Cologne, member of several supervisory bodies of SOEs
Michael Ebling , Mayor of Mainz, President of the Association of Municipal Enterprises (Verband kommunaler Unternehmen), chairman of several supervisory bodies of SOEs
Herbert Gehring , Head of the Audit Office of the City of Dresden, Chairman of the Working Group of the Audit Offices of the State Capitals and the Major German cities at the German Cities Day, Board Member at the Institute of Auditors (Institut der Rechnungsprüfer)/ Professional Association for Public Financial Control and Audit
Tanja Gönner , Board Spokeswoman of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, member of several supervisory bodies of SOEs
Prof. Dr. Andreas Lienhard , Chair of State and Administrative Law, University of Bern, among other things, chairing various expert commissions for the analysis of public corporate governance at the Confederation in Switzerland
Thomas Müller-Marqués Berger , Chairman of the Public Sector Group of Accountancy Europe, member of the Technical Committee for State-Owned Enterprises and Public Administrations of the Institute of Chartered Accounts (Institut der Wirtschaftsprüfer), Chairman of the Consultative Advisory Group of the International Public Sector Accounting Standards Board

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Founding members of the Expert Commission of the German Public Corporate Governance-Modelcode (*Continued*)

Rainer Pläßmann , President of the European Centre for Public Enterprise (CEEP), Head of Personnel and Organisation as well as the Office for The Basic Affairs of Municipal Services of Public Services of Stadtwerke Köln, corresponding member of the scientific advisory board of the Federal Association of Public Services (bvöd)
Rudolf X. Ruter , Founder and Head of the Working Group on Sustainable Management of the Schmalenbach Society, member of the advisory board of the German CSR Forum
Roland Schäfer , Mayor Bergkamen, First Vice-President of German Cities and Association of Municipalities and President of the Association of Towns and Municipalities of North Rhine-Westphalia, Chairman of several supervisory bodies of SOEs
Christian Specht , First Mayor Mannheim, among others deputy Chairman of the Finance Committee of the German City Council, member of several supervisory bodies of SOEs (representation Städtetag)
Dr. Christiane Sorgenfrei , Head of the Unit for Shareholdings Management, Guarantees, Banking, Credit and Securities in the Ministry of Finance of the State of Schleswig-Holstein, Member of supervisory and administrative boards of various SOEs, including long-standing chairwoman of the AKN Eisenbahn GmbH
Prof. Dr. Josef Wieland , Chair of Institutional Economics, Zeppelin University of Friedrichshafen, member of the National CSR Forum of the Federal Ministry of Economics and Social Affairs, winner of the Max Weber Prize for Business Ethics
Helene Wildfeuer , Chairwoman of the German Civil Service Association (Deutscher Beamtenbund), Chairwoman of the Federal Women's Representation of the German Civil Service Federation and holder of the Federal Cross of Merit (in exchange with actors from Ver.Di)
Brigitte Zypries , e.g. former Federal Minister for Justice, former Federal Minister for Economic Affairs and Energy

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Coordination and correspondence address:

Chair of Public Management & Public Policy (puma.zu.de)
Zeppelin University
Am Seemooser Horn 20
88045 Friedrichshafen

Phone: +49 (0) 7541 6009 1443

kontakt@pcg-musterkodex.de

The **possibility to download** the G-PCGM as well as further information on the Expert Commission and an overview of literature on the needs and opportunities of a Public Corporate Governance Code can be found on:

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1. Preamble

1.1 Content and objectives

Good governance and responsible management in public administrations and state- and municipal-owned enterprises (SOEs) are of particular importance to the state and society. In the debate on sustainable services of general interest, digital transformation, demographic change, climate protection objectives, the United Nations Sustainable Development Goals (SDGs), the future of the democratic community, and the state and public administration modernisation, a requirement-based design of public corporate governance can often support development efforts. Public corporate governance deals with the regulatory framework and the practiced management of public sector organisations with independent business management, such as SOEs. Public corporate governance (PCG) comprises the topics of shareholdings steering and shareholdings management.

(The following italic text is not part of the official D-PCGM. It deals with definitions of terms and backgrounds to SOEs and public corporate governance.)

SOEs can be defined as enterprises that are under the control of public authorities at all government levels, either by majority ownership by one or more public authorities or otherwise by exercising an equivalent degree of control. Reflecting international diversity, different terms are used; however, the term most often used is SOE. In international discussions, the OECD's widely used definition seems to circumscribe meaning in the most clearly defined manner: "enterprises where the state, regional governments or cities have significant control, through full majority, or significant minority ownership". In line with this definition, municipal-owned enterprises are also considered as SOEs. To capture different government levels, municipally and regionally owned enterprises are included in the definition.

Regarding the specific conditions of SOEs, PCG can be defined as the legal and factual regulatory framework for control, supervision, and management of organisations of public authorities with independent management. Furthermore, PCG includes the implemented steering, management, and supervision as well as the behaviour of the people working within the regulatory framework. PCG relates both to (external) control and supervision of the organisations with independent management by political bodies and the public administration and to the (internal) management in independent organisational entities. PCG deals with the design of all components of the public authority control system and therefore also with the public administration (e.g. shareholdings management unit) and the respective political body (city council, mayor, parliament, and the like). This combination of internal and external perspective is a key characteristic of PCG.

According to the definition, PCG is not limited to a certain legal form. The term 'corporate' merely specifies the focus on public organisations with independent management. Criteria for independent management are an own annual financial statement or a separate appendix in the budget of the public authority. The respective entities may be profitable or loss-making and may operate in a competing or non-competing market environment.

A Public Corporate Governance Code prescribes regulations for the management and supervision of enterprises and contains internationally and nationally recognised standards for good and responsible governance. Enterprises can diverge from the code, but are then obliged to disclose and justify the deviations ('comply or explain' principle). This enables enterprises to reflect on sector- and enterprise-specific requirements.

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In Germany, the corporate governance system is organised based on a two-tier board system. The management board with the executive directors is responsible for the day-to-day management of the enterprise. The supervisory board with the non-executive directors supervises and advises the members of the management board and is involved in decisions of fundamental importance. Because of greater competencies and more operational influence in the German two-tier system, the management board is of special importance. In SOEs, the supervisory board is appointed by the public authority. Its members are politicians, members of the public administration, external business experts, and representatives of trade unions.

The aim of public corporate governance is to improve the effectiveness, efficiency and sustainability of public sector organisations in the performance of public tasks and to ensure the public interest and appropriate public influence. The various roles of the public sector as owner, guarantor, producer, legislator, regulator and customer are a particular challenge. Conflicts of interest may exist, for example, between the role of task manager/guarantor, which is geared towards the fulfilment of tasks, and the role as owner, which may be geared towards profitability objectives. These objectives demand not only legality, but also ethically sound, self-responsible behaviour and a continuous engagement with the practiced organisational or corporate culture.

The present German Public Corporate Governance-Modelcode (G-PCGM) includes principles for responsible control, management and supervision of and in SOEs that are considered relevant in practice and science, as well as references to the respective German legal regulations and requirements.

The G-PCGM offers a well-developed support service for groups of actors who are entrusted with the establishment of a Public Corporate Governance Code or the evaluation of an existing Public Corporate Governance Code in public authorities and SOEs. For the G-PCGM, the term "model" can be understood in the sense of a guideline, template or as a manual and "instrument box". The G-PCGM is not intended as a replacement for the Public Corporate Governance Code of a public authority, which is developed locally by the relevant political body (e.g. city council, state parliament). Rather, it serves as systematically developed support for the development or revision of a Public Corporate Governance Code that is perceived as situational for the respective public authority. The G-PCGM can be used specifically for comparisons and as a basis for discussion in the joint development of regulations locally in the respective public authorities.

The G-PCGM is intended to offer cross-cutting added value and work simplification in everyday life through its well-founded derivation. Objectives as well as holistic and individual advantages are:

- Support in the evaluation of existing Public Corporate Governance Codes and the establishment of new Public Corporate Governance Codes;
- Helpful and useful contributions for an exchange in everyday work for the continuous development of public corporate governance as well as impulses for possible approaches to numerous governance issues for all groups of actors concerned with the topic with the aim of sustainable fulfilment of public tasks;
- Pooling of experience and competences as well as a sound and neutral basis for the discussion and establishment of requirements-based regulations in the Public Corporate Governance Code of a public authority;
- Work facilitation and time savings for different people and groups of people in public authorities and enterprises;
- Contribution to a role-conforming behaviour between shareholders and enterprises in the sense of public task fulfilment with respective degrees of freedom;
- Overall strengthening of the awareness for responsible public corporate governance and the justified importance of the topic in the socio-political discussion;
- Contribution to strengthening citizens' confidence in the public sector and SOEs;
- Contribution to the strengthening of the confidence of shareholders and investors as well as of the employees in SOEs in the public sector.

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In discussions in the public authorities, a Public Corporate Governance Code must be distinguished from a document entitled “Notes for the public administration on shareholdings steering” or a so-called shareholdings directive. It is addressed not only to the public administration, but increasingly also to the corporate bodies and formulates principles of responsible public corporate governance and value standards. On the other hand, notes for the public administration tend to be of an “authority instruction” and are more formal. Appendix II illustrates the objectives and potentials of a Public Corporate Governance Code for the respective public authority in an overview.

The G-PCGM focuses on the sustainable safeguarding of public interests and the alignment of enterprises with the public mandate, the special responsibility of SOEs for their citizens and the interests of all stakeholder groups. The G-PCGM takes into account the legal requirements for the public economy.

The development of the G-PCGM was based on a nationwide consultation procedure with a broad participation of actors from the public sector. An Expert Commission in which the groups of actors involved in public corporate governance, shareholdings steering, and shareholdings management are represented was set up to draft and adopt the G-PCGM. For the Expert Commission, relevant institutional and personal criteria were used as a basis, and formal and content-related independence was ensured in the development and evaluation of the G-PCGM.

During the consultation process and in the preparation of the G-PCGM, in addition to the feedback from the participants in the consultation, numerous existing guidelines and directives of international and supranational organisations, documents adopted by municipal umbrella organisations, the present Public Corporate Governance Codes of German public authorities, the German Sustainability Code and the German Corporate Governance Code for listed companies of the Regierungskommission Deutscher Corporate Governance Kodex are taken into account.

Compared to the German Corporate Governance Code for listed companies, there are numerous special features in public corporate governance. For example, the field of "shareholders" with the political bodies and the organisational element of shareholdings management must be designed completely differently from the field for listed companies and numerous aspects of democratic legitimacy in governance and control processes must be taken into account. In numerous other fields, too, specific regulations appropriate to the situation are required due to the constitutive public purpose and the orientation of enterprises to the public mandate.

The G-PCGM is regularly reviewed against the background of national and international developments by the Expert Commission G-PCGM and adjusted if necessary. To this end, the Expert Commission G-PCGM conducts an integrative, participative and transparent consultation procedure. The interested public is invited to submit written comments on the G-PCGM. The comments will be included by the Expert Commission G-PCGM in further discussions and published on the G-PCGM website, provided the authors of the comments do not object to the disclosure.

The G-PCGM can contribute to the preparation of decisions for the democratically legitimized responsible persons. It offers impulses for possible approaches to numerous technical questions of public corporate governance for all groups of actors involved in this field. In addition, it can help public authorities and enterprises by practising good public corporate governance to present themselves as attractive employers in competition. From an overarching political perspective, the G-PCGM can make relevant contributions to the social debate on trust in public institutions, citizen-friendliness and political culture.

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1.2 Structure

The G-PCGM contains recommendations as well as short references to legal regulations, which are collectively referred to as regulations and are provided with regulation numbers.

Recommendations are identified by the use of the word "shall". A deviation from recommendations in accordance with the specific situation of the enterprise is possible and may be justified in terms of good public corporate governance. If enterprises deviate from the recommendations, the supervisory body and the management body must state this annually in the Declaration of Compliance and provide a comprehensible explanation of the deviation or the solution chosen instead (principle "comply or explain"). It is important to emphasize that a deviation from a recommendation is not to be understood as a "deficiency". The decision not to comply with recommendations may well be justified and an expression of good public corporate governance.

If recommendations are formulated for the shareholder, it shall report in summary form in the shareholders report or a comparable document on the submission of Declarations of Compliance by the enterprises and on the general handling of recommendations for the shareholder.

The other parts of the G-PCGM that are not marked as a recommendation are short references to legal regulations. These are intended to provide the special and heterogeneous target groups with a condensed overview of particularly important legal regulations.

Where necessary, endnotes point out relevant differences in provisions between federal, state and municipal regulations.

If the term "Public Corporate Governance Code" is used in the G-PCGM, it refers to the respective Public Corporate Governance Code of a public authority. This formulation allows the best possible work with the G-PCGM in the respective public authority.

The regulations of the G-PCGM were formulated with a view to the legal form most frequently found in SOEs, the GmbH (private limited company), with optional supervisory bodies. As far as legally possible, they are to be applied appropriately to enterprises in a different legal form and enterprises with mandatory supervisory bodies to the local corporate structures and boards.

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2. Scope and anchoring of the Declaration of Compliance of the Public Corporate Governance Code

2.1 Scope

- 1 The Public Corporate Governance Code applies to the public authority and all enterprises in a legal form under private law in which the public authority has a direct majority shareholding. Depending on the size ratio between parent and subsidiary enterprises, indirect shareholdings are recommended to comply with the Public Corporate Governance Code.¹
- 2 The Public Corporate Governance Code also applies to enterprises in the legal form of a legal entity under public law that are subject to the supervision by the public authority, unless this is contradicted by legal regulations.
- 3 If the public authority does not have a majority shareholding, but holds at least one quarter of the shares in the enterprise, irrespective of the legal form of the enterprise, the authorised representatives of the public authority shall work towards the application of the Public Corporate Governance Code in the corporate bodies.

2.2 Anchoring the Declaration of Compliance in the enterprises' statutes as part of the Corporate Governance Statement

- 4 The unit responsible for shareholdings management (hereinafter referred to as shareholdings management) shall work within the politically responsible body of the public authority to ensure that its authorised representatives in the corporate bodies ensure the anchoring of the Public Corporate Governance Code in the enterprises' statutes or by resolution in the shareholders' meeting.
The anchoring must be done in such a way that the management body and supervisory body must declare annually as part of the Corporate Governance Statement, in analogy to section 289 et seq HGB, that the recommendations of the Public Corporate Governance Code have been and are being complied with or which recommendations have not been or are not being applied and why not. Deviations from the recommendations must be justified in a comprehensible manner. Furthermore, the submission of the Corporate Governance Statement must be anchored in analogy to section 289 et seq HGB in accordance with the form illustrated in the Public Corporate Governance Code.

(The Corporate Governance Statement is to be understood as a synonym for the term corporate governance report which is used in practice. The German Public Corporate Governance-Modelcode uses the term Corporate Governance Statement in accordance with section 289 et seq HGB. This understanding of the term is also used in the German Corporate Governance Code for listed companies of the Regierungskommission adopted on 9 May 2019, which introduces the Corporate Governance Statement as a central instrument of corporate governance reporting. By using the same terminology in the German Public Corporate Governance-Modelcode and in the German Corporate Governance Code of the Regierungskommission, corporate governance reporting shall become more coherent and clearer.)

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- 5 The supervisory body and the management body report annually on the enterprise's corporate governance in the Corporate Governance Statement in analogy to section 289 et seq HGB.² The Corporate Governance Statement is to be included in the management report, which forms a separate section there. If no management report is published, the declaration shall alternatively be included in the annual financial statements as an annex to the notes. The Corporate Governance Statement is to be made available permanently on the enterprise's website.

Parts of the Corporate Governance Statement are:

- the Declaration of Compliance,
 - a description of the functioning of the management body and supervisory body as well as the composition and functioning of their committees,
 - the duration of membership of the members of the supervisory body in the supervisory body,
 - an indication of whether the set target figures for the proportion of women in the two management levels below the management body have been achieved in accordance with regulation number 98, and if not, details of the objective reasons,
 - the indication whether the enterprise has defined target figures for filling the supervisory body with women and men in accordance with regulation number 43 and complied with them during the reference period, and, if not, information on the objective reasons.
- 6 The shareholdings management shall check whether the Declaration of Compliance has been submitted and published as part of the Corporate Governance Statement pursuant to regulation number 5 and work towards ensuring that the supervisory body and management body prepare and publish the Declaration.
- 7 In adopting the Public Corporate Governance Code, the politically responsible body of the public authority also stipulates that the public authority only acquires a majority shareholding in an enterprise if its commitment to the Public Corporate Governance Code is laid down in the enterprise's statutes. This also applies to indirect majority shareholdings of the public authority if the enterprise that wishes to acquire a new shareholding has already committed itself to applying the Public Corporate Governance Code.³

(The term politically responsible body is used to refer to the respective people's representative bodies at local level, e.g. city councils, and the parliaments at federal and state level. It refers to the highest decision-making body of the respective public authority.)

2.3 Review and adaptation

- 8 The Public Corporate Governance Code shall be regularly reviewed by the shareholdings management and administrative management against the background of developments in the German Public Corporate Governance-Modelcode and, where applicable, national and international developments and adapted as necessary.

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3. Shareholders' role, shareholders' meeting and organisational element shareholdings management

3.1 Shareholders' role

9 The city/public authority shall examine the development of an urban economic strategy/group strategy for the city/public authority in order to address and additionally activate the overarching potentials for the city/public authority.

10 *At this point, the respective Public Corporate Governance Code has to provide for a regulation that sets out the respective legal requirements for economic activity or the requirement for the public sector to establish and own a share in an enterprise.*

(In many cases, the legal bases include formulations such as: The public authority may participate in the establishment of an enterprise in a legal form under private law or own a share in an existing enterprise in such a legal form only if there is an important public interest, the public purpose pursued cannot be achieved better and more economically by other means and appropriate influence in the corporate bodies is ensured).

11 The public authority shall examine at least once in each legislative term to what extent the economic activity complies with the legal conditions and requirements set out in regulation number 10.

12 As a shareholder, the public authority defines the object of the enterprise or the corporate purpose as the first strategic orientation and derived from the superordinate strategic objectives of the public authority with regard to the public mandate of the enterprise in its statutes. The object of the enterprise or the corporate purpose can only be changed with the approval of the shareholders.

13 As a shareholder, the public authority shall derive owner/shareholder objectives for the respective enterprise (so-called objective system for the enterprise) from the overarching objectives of the public authority, the resolutions of the politically responsible body of the public authority and taking into account the relevant stakeholder interests. The owner/shareholder objectives shall illustrate the important public interest required by law with performance/impact objectives and financial objectives, taking into account sustainability objectives. The owner/shareholder objectives are reflected in the object of the enterprise or the corporate purpose.

14 The authorised representatives of the public authority in the corporate bodies shall work towards ensuring that the management body develops the corporate strategy on the basis of the owner/shareholder objectives, coordinate it with the supervisory body and, on recommendation of the supervisory body, have it adopted at the shareholders' meeting. The management body shall regularly discuss the state of strategy implementation with the supervisory body. Medium-term financing and investment plans shall be drawn up on the basis of the corporate strategy. The management body shall draw up a business plan for each financial year, including a performance plan, investment plan, finance plan and staffing plan, and shall have it adopted at the shareholders' meeting upon the recommendation of the supervisory body.

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- 15 When drawing up the public authority's budget, the aim shall be to produce a meaningful overview of the individual policy areas, which enterprises receive how much funding from the public authority and what objectives they are pursuing.
- 16 The budget shall be accompanied by a summary presentation of the public authority's business portfolio. Parts of the presentation shall be:
 - overview of the policy areas in which enterprises are active;
 - list of the grants made by the public authority to the individual enterprises as well as the profit transfers of the individual enterprises to the public authority for the planned year(s) and for the previous year.
- 17 The administrative management, the public administration itself, supervisory bodies and management bodies shall examine to what extent the possibilities of integrated human resources management are systematically used for both the public administration and the enterprises. This includes, for example, joint measures by the public administration and the enterprises in the area of personnel recruitment (e.g. joint job portal, joint marketing) and personnel development (e.g. joint coaching and mentoring programmes, job rotation) as well as integrated work in promoting gender equality.
- 18 The public authority shall organise a meeting at least once a year between the head of human resources in the public authority's administration and the enterprises to discuss the potential of integrated human resources management and where applicable any individual approaches already implemented.
- 19 The committee responsible for shareholdings (hereinafter referred to as the shareholdings committee) in the politically responsible body of the public authority shall be regularly informed by the management body or the shareholdings management in non-public meetings about matters that are material to the owner/shareholder objectives and relevant aspects in the context of the adoption of the annual financial statements or consolidated financial statements and the appropriation of the annual profit. The proportion of women on this committee shall be at least as high as the proportion of women in the politically responsible body as a whole.

(Against this background, it is recommended in practice and in the literature that the parliament or the respective people's representative body form a shareholdings committee with special rights, which regularly receives and discusses reports from SOEs and also from shareholdings management. This committee shall be established in the main statutes in a similar way as the main committee or the audit committee. Likewise, it shall not only be a preparatory committee, but shall also have rights of initiative and other competences in accordance with the relationship and cooperation between the shareholder and the supervisory body – e.g. to discuss regular direct reports from enterprises, shareholdings management and audit firms. Management bodies and audit firms shall have a corresponding obligation to participate.)

- 20 The shareholdings report shall be treated once a year by the politically responsible body of the public authority as a whole.⁴

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3.2 Shareholders' Meeting

- 21 The public authority exercises its rights as a shareholder in the shareholders' meeting and exercises its voting rights there. As a shareholder, the public authority shall examine whether to establish an optional supervisory body. If no supervisory body is established, the shareholders' meeting shall assume its tasks. If a supervisory body is set up, the guiding principle shall be to ensure very clear responsibilities between the shareholders' meeting and the supervisory body.
- 22 The public authority is represented at the shareholders' meeting by a person by virtue of his/her office or by (an) authorised representative(s). Sub-authorisations can be issued if required.
- 23 Certain rights and tasks are assigned to the shareholders' meeting by law, e.g. decisions on major changes to the enterprise and asset disposals, and/or are assigned in the enterprise's statutes. Unless otherwise provided for by law or the statutes, the shareholders' meeting decides in particular on the appointment and dismissal of the members of the management body as well as their remuneration and the appointment and dismissal of the supervisory body. It elects the audit firm. On the recommendation of the supervisory body, it shall decide on the adoption of the annual financial statements or consolidated financial statements, the approval of the management report or group management report and on the appropriation of annual profits, as well as on the discharge of the management body and supervisory body. On the recommendation of the supervisory body, the shareholders' meeting shall adopt the business plan in good time before the beginning of the new financial year.
- 24 A representative of a shareholder who is himself/herself a member of the supervisory body must not participate in the decision of the shareholders' meeting on the discharge of the supervisory body.
- 25 The shareholders' meeting shall be convened at least once a year with a notice period of at least two weeks in text form, stating the place and time of the meeting, the agenda and notification of the proposed resolutions.⁵ The invitation shall be accompanied by discussion documents explaining the subject and purpose of the proposed resolutions. At the same time as it is sent to the shareholders, the shareholdings management of the public authority shall receive all documents. They shall be sent electronically and encrypted via e-mail or by a cloud solution.
- 26 Minutes shall be kept of the meetings of the shareholders' meeting, which shall be signed by the chairperson of the meeting and the keeper of the minutes. These minutes shall include the place and date of the meeting, the participants, the agenda, the course of the meeting and the resolutions. The minutes shall be sent to each shareholder and the shareholdings management very promptly, but no later than eight weeks after the meeting, and shall be submitted to the shareholders' meeting for approval at the next meeting.

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3.2 Organisational element shareholdings management

- 27 The administrative management of the public authority⁶ shall ensure the establishment of an effective shareholdings management for all enterprises of the public authority and provide it with adequate human and material resources in terms of quality and quantity.
- 28 The shareholdings management shall comprise the tasks of shareholdings administration, shareholdings controlling and mandate management and support the shareholders in shareholdings steering by preparing and monitoring decisions.
- 29 The target system for steering shareholdings shall include target controlling, which is carried out by the shareholdings management. Within target controlling, the achievement of the owner/shareholder objectives, including the implementation of the strategic corporate concept and the annual business plan, as well as the achievement of the targets agreed with the management bodies, shall be regularly monitored on the basis of ratios and indicators in an intra-year reporting system in the form of quarterly reports. The shareholdings management regularly reports to the administrative management and the shareholdings committee on the results of the target controlling.
- 30 The meeting documents for the supervisory body shall be reviewed by the shareholdings management as part of the mandate management. The shareholdings management shall prepare statements on the meeting documents with recommendations regarding questions to be asked and/or specific resolutions.⁷
- 31 To the extent legally possible and in accordance with the provisions of the enterprise's statutes, a representative of the shareholdings management shall attend the meetings of the supervisory body as a member or as a guest. The shareholdings management shall aim to ensure that the right to guest attendance is exercised with an equal gender representation. The participation of the shareholdings management shall support the shareholder role of the public sector appropriately.
- 32 In the absence of participation of the shareholdings management in the meetings of the supervisory body, the members seconded to the supervisory body at the initiative of the public authority shall inform the shareholdings management on matters that are essential for the shareholdings management to support the fulfilment of the role of shareholder and the preparation of decisions. In doing so, the obligation of confidentiality pursuant to sections 394 - 395 AktG must be adhered to.
- 33 The management body shall coordinate the draft business plan with the shareholdings management and the administrative management in good time before the decision is taken at the shareholders' meeting (business plan discussion). The management body shall present in the business plan in a generally understandable form what sponsoring benefits are planned for which organisations.
- 34 The management body shall submit the annual financial statements or consolidated financial statements to the shareholdings management in good time before they are dealt with by the supervisory body, so that specialities, accounting issues, in particular the exercise of options, and effects on the budget of the public authority can be discussed in advance and agreements can be better implemented. The preliminary discussion shall take place at least four weeks before the meeting of the supervisory body that discusses the annual financial statements or consolidated financial statements. The management body shall submit a draft of the audit report to the shareholdings management as soon as possible, but at least seven days before the meeting.

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- 35 The shareholdings management prepares the shareholdings report of the public authority and shall publish it on its website on a permanent basis.⁸ It is intended to provide politicians and the general public with the opportunity to obtain a systematic overview of the enterprises of the public authority and thus of the use and impact of public funds. The shareholdings report shall provide an annual summary report on the submission of the Declarations of Compliance by the enterprises as well as on the general handling of recommendations for the shareholder. The shareholdings report shall also provide an overarching presentation of the public authority's own objectives in the context of the United Nations' sustainability goals (SDGs) and the German Federal Government's sustainability strategy, and which sustainability aspects are particularly relevant in the specific context of the public authority.

4. Supervisory body

4.1 Basics and tasks

- 36 The supervisory body regularly supervises and advises the management body on the management of the enterprise. It must be involved in decisions of fundamental importance to the enterprise.
- 37 The object of supervising is the regularity, appropriateness and economy of decisions taken by the management body. This includes, in particular, whether the enterprise has acted within the scope of its statutory tasks and complied with the relevant provisions and whether the business is being conducted economically with the diligence of a prudent and conscientious member of the management body. The requirements of section 53 HGrG as well as the extended audit and the questionnaire of IDW PS 720 must also be complied with. The subject of the deliberations of the management body by the supervisory body shall be, in particular, the future projects and plans of the management body. To this end, the supervisory body shall be informed about the intended business policy and other general questions of corporate planning – in particular financial, investment and personnel planning – and shall receive reports from the management body.
- 38 The supervisory body shall adopt its own rules of procedure.
- 39 The supervisory body shall regularly assess the effectiveness of the supervisory body as a whole and its committees in fulfilling their tasks. In the Corporate Governance Statement in accordance with regulation number 5, the supervisory body shall report whether and how a self-assessment has been carried out.
- 40 The chairperson of the supervisory body coordinates the work of the supervisory body, chairs its meetings and represents the interest of the supervisory body externally. He/she and other individual members shall not be granted the right to take decisions alone in place of the supervisory body.
- 41 The chairperson of the supervisory body shall maintain regular contact with the management body and discuss with it the strategy, business development and risk management of the enterprise. The chairperson of the supervisory body has to be informed without delay by the management body of important events that are of material importance for the assessment of the situation and development and for the management of the enterprise. He/she shall then inform the supervisory body and, if necessary, convene an extraordinary meeting of the supervisory body.

4.2 Composition

- 42 The supervisory body shall be composed in such a way that its members as a whole have the knowledge, skills and professional experience necessary for the proper performance of their tasks. If this is not the case, the members shall acquire the necessary knowledge. The composition shall take into account the enterprise-specific importance and situation from the perspective of the public authority, the owner/shareholder objectives, potential conflicts of interest, the availability of the members of the supervisory body and diversity.⁹ Depending on the object and size of the enterprise, the shareholder shall specify concrete targets for the composition of the supervisory body and, in consultation with the supervisory body, develop a competence profile with regard to the members delegated by the shareholder. Proposals of the supervisory body to the shareholders' meeting shall take these objectives into account and at the same time aim at filling the competence profile for the whole body.
- 43 The shareholder shall set target figures for the proportion of women on the supervisory body for the members delegated by the shareholder in analogy to section 111 AktG. The supervisory body shall be composed of at least 30 percent women and at least 30 percent men, in analogy to section 96 AktG. Furthermore, equal gender representation shall be promoted.
- 44 The shareholder shall set an appropriate age limit for the members of the supervisory body.
- 45 At least one external and independent member with proven professional qualifications and/or industry knowledge shall be appointed to the supervisory body.
- 46 Former members of the management body shall not become members of the supervisory body until two years after the end of their membership in the management body.
- 47 Each member of the supervisory body shall, according to his/her qualifications and previous knowledge, take advantage of specific training opportunities offered by the public authority, enterprises and other institutions such as unions. The member of the supervisory body shall not incur any costs from participation.
The report of the supervisory body pursuant to regulation number 143 shall include a report on training activities carried out.
- 48 Members of the supervisory body delegated by the public authority shall resign their mandate if the office on which the election or delegation was based is no longer exercised.

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4.3 Conflicts of interest

- 49 The members of the supervisory body are bound by the interests of the enterprise. When making decisions, they may neither pursue personal interests nor take advantage of business opportunities to which the enterprise is entitled.
- 50 The supervisory body shall not include members who have a personal or business relationship with the enterprise, its governing bodies, a controlling shareholder or an enterprise affiliated with the latter, which may give rise to a material and not merely temporary conflict of interest. Insofar as such a relationship exists and the person concerned is nevertheless a member of the supervisory body, this shall be justified in the Corporate Governance Statement referred to in regulation number 5. For employees of the public authority, the shareholder role of their employer does not constitute a conflict of interest within the meaning of this regulation.
- 51 Transactions between the enterprise and members of the supervisory body as well as persons closely related to them or enterprises closely related to them personally shall be avoided. If they are nevertheless concluded, they shall comply with standards customary in the industry and only be concluded with the approval of the supervisory body as a whole.¹⁰
- 52 Consultancy and other service contracts and contracts for work of a member of the supervisory body with the enterprise shall not be concluded. Insofar as they are nevertheless concluded, this shall only be done with the approval of the supervisory body as a whole.
- 53 Loans from the enterprise to members of the supervisory body and to their relatives shall not be granted. If they are nevertheless granted, this shall only be granted on normal market terms and with the approval of the supervisory body as a whole.
- 54 Members of the supervisory body shall not be members of governing bodies of or exercise advisory tasks for significant competitors of the enterprise.
- 55 Each member of the supervisory body shall disclose to the supervisory body without delay any conflicts of interest, in particular those that may arise as a result of providing advice to or being members of governing bodies of clients, suppliers, creditors or other business partners. Each member of the supervisory body shall subsequently, in the light of possible changes, make a declaration of conflicts of interest at least once a year.
- 56 In its report to the shareholders' meeting in accordance with regulation number 143, the supervisory body shall inform the shareholders' meeting of conflicts of interest that have arisen and their treatment.
- 57 Significant and not merely temporary conflicts of interest in the person of a member of the supervisory body shall result in termination of the mandate.

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4.4 Formation of committees

- 58 The supervisory body shall form committees of qualified experts, depending on the specific circumstances of the enterprise and the number of its members. The composition of the committees shall correspond to the target figures pursuant to regulation number 43. The respective committee members and the committee chairperson shall be named in the Corporate Governance Statement pursuant to regulation number 5. The respective committee members and the committee chairperson shall regularly report to the supervisory body on the work of the committees.
- 59 The possibility to delegate decision-making powers to individual committees of the supervisory body shall not be used.
- 60 The supervisory body shall set up an audit committee which – insofar as no other committee or the supervisory body as a whole is entrusted with this task – deals in particular with the audit of the financial reporting, the monitoring of the financial reporting process, the effectiveness of the internal control system, the risk management system and the internal audit system as well as the audit of the financial statements, in particular the selection and independence of the audit firm and the additional services provided by the audit firm, and compliance.
- 61 The chairperson of the supervisory body shall not chair the audit committee. He/she shall be independent and shall not be a former member of the management body of the enterprise. The chairperson of the audit committee shall have special knowledge and experience in the application of accounting principles and internal control procedures and be familiar with auditing. Where this is not the case, at least one member of the audit committee shall have the relevant knowledge.
- 62 The chairperson of the supervisory body shall also be chairperson of the committee dealing with the contracts with the members of the management body.

4.5 Meetings

- 63 Meetings of the supervisory body shall take place at least once a quarter. An annual meeting schedule shall be drawn up.
- 64 The report of the supervisory body in accordance with regulation number 143 shall indicate the number of meetings of the supervisory body and its committees in which each member participated. Participation shall also be deemed to have taken place via video or telephone conferences.
- 65 Meetings of the supervisory body and its committees shall be convened by the chairperson with at least two weeks' notice in writing, stating the place and time of the meeting, the agenda and notification of proposed decisions.¹¹ The invitation shall be accompanied by discussion documents explaining the subject and purpose of the proposed resolutions. At the same time as it is sent to the members of the supervisory body, the shareholdings management of the public authority shall receive all documents.

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66 The meetings of the supervisory body and its committees shall be transcribed in minutes to be signed by the chairperson of the supervisory body and the keeper of the minutes. The minutes shall include the place and date of the meeting, the participants, the agenda, the course of the meeting and, in the case of the supervisory body, its decisions and, in the case of committees, its recommendations to the supervisory body. The minutes shall be sent to each member of the supervisory body or each committee member as well as to the shareholdings management very promptly, but no later than eight weeks after the meeting, and submitted to the supervisory body for approval at the next meeting.

4.6 Execution of the supervisory body mandate

67 The members of the supervisory body may only share information in compliance with the obligation of confidentiality pursuant to sections 394 - 395 AktG.

68 The members of the supervisory body shall ensure that third parties involved by them in support, in particular employees and consultants, comply with the obligation of confidentiality in the same way.

69 The members of the supervisory body shall exercise their mandate in person and shall not allow others to carry out their tasks. Absent members may participate in the decision-making of the supervisory body by proxy.

70 Each member of the supervisory body shall ensure that he/she has sufficient time to carry out his/her tasks.

A member of the supervisory body who is not a member of the management body of an enterprise shall not hold more than a total of five supervisory body mandates or equivalent functions in total, where a supervisory body chairpersonship counts twice. This restriction does not apply if the enterprises belong to the same group.

A member of the supervisory body who is a member of the management body of an enterprise shall not hold more than two supervisory body mandates or similar functions in total and shall not hold the chairpersonship of a supervisory body in an enterprise. This restriction does not apply if the enterprises belong to the same group.

71 Members of the supervisory body must safeguard the interests of the enterprise in accordance with the legal regulations. The members of the supervisory body delegated by the public authority shall – unless this is contrary to the best interests of the enterprise – take due account of the interests of the public authority when exercising their mandate. In doing so, they shall comply with the resolutions of the politically responsible body.

4.7 Expense allowance, remuneration and liability

72 If the activity as member of the supervisory body shall be remunerated, the shareholders' meeting shall determine the respective total remuneration of the individual members of the supervisory body. The remuneration (basic remuneration, attendance fee and expense allowance) of the members of the supervisory body shall take into account the economic importance and situation of the enterprise and the time required. The chairperson and deputy chairperson of the supervisory body as well as the chairperson of one of its committees shall be taken into account separately. The remuneration of the members of the supervisory body shall be reviewed regularly for its appropriateness, taking into account the comparative environment.

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- 73 The shareholders' meeting shall examine and decide whether a directors' and officers' liability insurance (D&O insurance for short) shall be taken out for the supervisory body. If a D&O insurance is taken out for the supervisory body, a deductible of at least 10 percent of the damage, but only up to a maximum of 25 percent of the member's annual remuneration, shall be agreed. If no or only a small amount of remuneration is paid for the activity as a member of the supervisory body, a lower deductible may be agreed or waived.
- 74 The decision and its justification, in particular regarding the appropriateness of a D&O insurance for the supervisory body, shall be documented.
- 75 A D&O insurance for the supervisory body shall be concluded only with the approval of the shareholders' meeting.

5. Interaction of supervisory body and management body

- 76 The management body and the supervisory body work closely together for the benefit of the enterprise. Good public corporate governance requires an open discussion between the management body and the supervisory body, as well as in the management body and in the supervisory body.
- 77 The management body and the supervisory body shall comply with the rules of good corporate governance. If they culpably violate the diligence of a prudent and conscientious member of the management body or the supervisory body, they shall be liable to the enterprise for damages. In the case of business decisions, there is no breach of duty if the member of the management body or supervisory body could reasonably believe, on the basis of appropriate information, that he or she was acting in the best interests of the enterprise (Business Judgement Rule).
- 78 For transactions of fundamental importance, the enterprise's statutes stipulate that approval is required from the supervisory body. These include decisions or measures which may lead to a significant change in business activities within the scope of the statutes or to a fundamental change in the financial position, financial performance or cash flows or risk structure of the enterprise.
- 79 This is without prejudice to the competence of the supervisory body to determine, within its competence, additional conditions of approval to those laid down in the statutes of the enterprise.
- 80 The group of transactions subject to approval must be determined in such a way that the individual responsibility of the management body remains guaranteed.
- 81 At regular intervals, the supervisory body shall review the value limits for the types of transactions and legal acts subject to approval regarding their appropriateness and practicability. If necessary, an adjustment shall be worked towards.
- 82 The supervisory body of a parent enterprise shall verify at least once a year whether the management body effectively exercises the shareholdings rights in subsidiaries. This includes the requirement for subsidiaries to obtain the approval of the supervisory body of the parent enterprise for transactions which in the parent enterprise are subject to the approval of its supervisory body.
- 83 The management body shall prepare the meetings of the supervisory body and its committees in consultation with the chairperson of the supervisory body and, if necessary, attend the meetings. The supervisory body and its committees may also meet without the management body.

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- 85 The management body is responsible for providing the supervisory body with sufficient information. However, the supervisory body shall, for its part, ensure that it is adequately informed and shall work towards a timely and proper reporting. The management body shall implement a reporting system and inform the supervisory body and the shareholdings management regularly, promptly and comprehensively about all issues relevant to the enterprise, in particular about strategy, planning, development of business, risk situation, risk management and integrity and compliance management. It responds to deviations in the course of business from the plans and objectives, stating the reasons. The reporting shall also include non-financial performance indicators relating to the public mandate of the enterprise.
- 86 The supervisory body and the management body inform the shareholdings management during the financial year by means of quarterly reports of the enterprise.
- 87 The quarterly reports shall be submitted to the shareholdings management within 14 working days of the end of the quarter.
- 88 In the case of enterprises that are not listed as stock corporations, the content and frequency of the reporting obligations shall also be based on section 90 AktG.
- 89 Reports from the management body to the supervisory body shall be reported in text form.
- 90 The management body and the supervisory body shall prepare an annual remuneration report in analogy to section 162 AktG-E and disclose it in the notes to the annual financial statements.

6. Management body

6.1 Basics and tasks

- 91 The management body manages the enterprise on its own responsibility. It is obliged to conduct the enterprise's business in accordance with the enterprise's statutes and the resolutions of the shareholders' meeting and the supervisory body.
- 92 The management body defines clear and measurable target figures for the realization of the object of the enterprise or the purpose of the enterprise for all hierarchical levels and divisions of the enterprise on the basis of the owner/shareholder objectives. In doing so, the management body shall ensure that the sustainability goals of the United Nations (SDGs) are taken into account in the enterprise's business activities and report on this every two years in the supervisory body.
- 93 The management body shall develop a mission statement for the enterprise together with the executives and the employees.
- 94 The management body may consist of one or more persons. Insofar as several persons have been appointed, the management body shall have a spokesperson.
- 95 Rules of procedure shall regulate the allocation of responsibilities and cooperation in the management body, in particular representation and decision-making. The rules of procedure shall be subject to the approval of the supervisory body as a whole.
- 96 The management body shall ensure that the dual control principle is adhered to in all major decisions within the enterprise. The shareholders and the supervisory body shall decide how this principle is upheld in the interaction between the management body, authorised signatories, etc.
- 97 The shareholder of a GmbH can instruct the management body by resolution (cf. section 37 (1) GmbHG). Instructions shall only be given in justified exceptional cases, since the entrepreneurial freedom provided for in the statutes and the division of roles between supervisory body and management body are also intended to serve the better and more economical fulfilment of the objectives pursued with the enterprise.¹²
- 98 The management body shall set target figures for the proportion of women in the two management levels below the management body that go beyond the current status quo. It shall be based on the proportion of women and men among the employees.
- 99 The management body shall aim to promote gender balance and diversity when filling senior management positions in the enterprise. Another important aspect of good public corporate governance is to work towards a corporate culture that promotes gender equality, with equal development opportunities for all genders.

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100 The management body shall provide the draft agenda for meetings of the supervisory body, prepared under the responsibility of the chairperson of the supervisory body, to the shareholders management at least three weeks before the date of the meeting. The management body shall send to the shareholders management, in good time and at least 14 days before the meeting and at the same time as it is sent to the members of the supervisory body, all invitations to meetings of the supervisory body and its committees, including agendas and supporting documents, as well as handouts and minutes of the previous meeting.

6.2 Appointment and employment

101 *The public authority shall choose one of the following two regulatory options for its respective Public Corporate Governance Code.*

a) The shareholders' meeting appoints and dismisses the members of the management body and decides on the employment contracts. The shareholders' meeting shall examine whether to call internal or external expertise for personnel recruitment/placement.

(In the case of co-determined enterprises, this falls within the competence of the supervisory body (section 31 MitbestG in conjunction with sections 84 et seq AktG).)

b) The shareholders' meeting appoints and dismisses the members of the management body. The supervisory body decides on the employment contracts. The shareholders' meeting shall examine whether to call internal or external expertise for personnel recruitment/placement.

102 Together with the management body, the supervisory body shall ensure long-term succession planning for the management body as well as the senior management positions.

103 In the composition of the management body, the shareholders' meeting and the supervisory body shall aim at a balanced representation of women and men and at promoting diversity.

104 *The public authority shall choose one of the following two regulatory options for its respective Public Corporate Governance Code.*

a) The initial appointment of members of the management body shall be for a maximum of three years.

b) The initial appointment of members of the management body shall be for a maximum of five years.

105 A repeated appointment or extension of the term of office shall be accompanied by a new resolution of the shareholders' meeting. A reappointment before the end of one year prior to the end of the term of office with simultaneous cancellation of the current appointment shall only be made if special circumstances exist and which must be explained.

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6.3 Conflicts of interest

- 106 The members of the management body are committed to the interests of the enterprise. In making their decisions, they may neither pursue personal interests nor take advantage of business opportunities to which the enterprise is entitled. The members of the management body are subject to a comprehensive non-competition clause during their activities.
- 107 Members of the management body and employees may not, in connection with their activities, demand or accept from third parties payments or other unjustified advantages for themselves or for other persons or grant unjustified advantages to third parties.
- 108 Members of the management body shall only take on ancillary activities, in particular mandates on supervisory bodies outside the group, with the approval of the supervisory body as a whole. This requirement for approval does not apply to ancillary activities which are carried out voluntarily, are not connected with the professional activities of the management body and do not threaten to conflict with the interests of the enterprise.
- 109 Each member of the management body shall disclose conflicts of interest without delay to the chairperson of the supervisory body and the spokesperson of the management body and inform the other members of the management body thereof. Each member of the management body shall subsequently, in the light of possible changes, make a declaration as to whether conflicts of interest exist at least once a year.
- 110 Transactions between the enterprise and members of the management body as well as persons closely related to them or enterprises closely related to them personally shall be avoided. If they are nevertheless concluded, they shall comply with standards customary in the industry and only be concluded with the approval of the supervisory body as a whole.¹³
- 111 Material transactions with members of the management body and persons closely related to them or enterprises closely related to them personally shall require the approval of the supervisory body as a body as a whole, unless the enterprise is not already responsible for the transaction when it is concluded.
- 112 Loans of the enterprise shall not be granted to members of the management body or their relatives, unless the granting of loans is part of the object of the enterprise. If they are nevertheless granted, this shall only be done with the approval of the supervisory body as a whole. Exceptional cases shall be reported in the Corporate Governance Statement pursuant to regulation number 5.

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6.4 Remuneration

- 113 *The public authority shall choose one of the following two regulatory options for its respective Public Corporate Governance Code.*
- a) The shareholders' meeting shall determine the respective total remuneration of the individual members of the management body. The supervisory body or its committee, which advises on the remuneration system of the enterprise, shall submit its proposals to the shareholders' meeting. The shareholders' meeting shall adopt and regularly review the remuneration system for the management body.
- (b) The supervisory body shall determine the respective total remuneration of the individual members of the management body. Where a committee of the supervisory body discusses the remuneration system of the enterprise, it shall submit its proposals to the supervisory body. The supervisory body as a whole shall decide and regularly review the remuneration system for the management body.
- 114 It shall be examined for the specific corporate and decision-making context whether the remuneration of a member of the management body shall contain variable as well as fixed components.
- 115 Criteria for the appropriateness of the remuneration in particular shall be the tasks of the respective member of the management body, the economic situation, the sustainable success and future prospects of the enterprise taking into account its peer group. Criteria for the appropriateness of variable remuneration components, where these are included, shall be the personal performance of the respective member of the management body and the performance of the management body as a whole.
- 116 The criterion for the appropriateness of the remuneration shall also be the customary nature of the remuneration, taking into account the remuneration structure that otherwise applies in the enterprise. In doing so, the supervisory body shall consider the relationship between the remuneration of the management body and the remuneration of the senior management and the workforce as a whole, including over time, whereby the supervisory body determines how the senior management and the relevant workforce are to be defined for the purposes of comparison. The remuneration structure shall also be considered in the peer group.
- 117 Where a decision has been made in favour of variable remuneration components, these shall contain one-off and/or annually recurring components, which are linked in particular to the sustainable success of the enterprise, as well as components with a long-term incentive effect and risk character. Both positive and negative developments shall be taken into account in the design of the variable remuneration components.
- 118 In particular, all components of remuneration must not entice to take inappropriate risks. For extraordinary, unforeseen developments, the supervisory body shall agree on a possibility of limitation of the remuneration (cap). A subsequent change of the target figures or the comparison parameters shall be excluded.
- 119 The supervisory body shall examine whether it uses internal or external expertise to assess the appropriateness of remuneration. In doing so, it shall ensure their independence from the management body or the enterprise.

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- 120 When concluding employment contracts with members of the management body, it shall be agreed that payments made to a member of the management body on premature termination of this activity without serious cause – except in the case of termination by mutual consent – including fringe benefits, shall not exceed the value of two years' remuneration (severance payment cap) and shall not remunerate more than the remaining term of the employment contract. The calculation shall be based on the total remuneration for the past financial year and, if applicable, the expected total remuneration for the current financial year. If the employment contract is terminated for an important reason for which the member of the management body is responsible, no payments shall be made to the member of the management body – including pension benefits, if applicable.
- 121 In the event of the new appointment or reappointment of, and changes to the employment contracts of members of the management body, the body responsible for the appointment or employment shall ensure that a contractual declaration of approval is obtained from these members for the disclosure of their remuneration.

6.5 Liability

- 122 If the enterprise takes out directors' and officers' liability insurance (D&O insurance) for the management body, this shall only be done with the approval of the shareholders' meeting.
- 123 If a D&O insurance is taken out for the management body, a deductible of at least 10 percent of the damage up to a maximum of one and a half times the fixed annual remuneration of the member of the management body shall be provided for.
- 124 The decision and its justification, in particular on the appropriateness of a D&O insurance shall be documented.
- 125 The insurance contract shall stipulate that in the event of a loss, the benefits to compensate for the loss incurred by the enterprise will be paid directly to the enterprise.

7. Risk management, internal audit, integrity and compliance management

7.1 Risk management and internal audit

- 126 The management body shall ensure appropriate risk management and risk controlling, including an effective internal audit/control system within the enterprise.
- 127 Depending on the size of the enterprise, the internal audit shall be perceived as an independent unit.
- 128 The responsibility for internal audit lies with the management body. The internal audit may be directly subordinate to the management body, or, in the case of an existing group structure, it may be carried out by the parent enterprise or a sister enterprise or externally. The choice of the organisational anchoring of the internal audit function shall be made considering the size of the enterprise and the nature of the audit subject matter.
- 129 The management body and supervisory body may issue audit mandates to the internal audit function. Proposals from the internal audit function shall also be included. The audit mandates shall be issued in writing. The audit results of the internal audit function shall be reported to the respective issuer in a timely manner. The shareholders' meeting shall be informed of the report.
- 130 The supervisory body, in consultation with the head of the internal audit function, shall examine whether it is appropriate for the head of the internal audit function to report directly to the supervisory body.

7.2 Integrity and compliance management

- 131 The management body is responsible for ensuring compliance with legal provisions, public law regulations, in particular in connection with the tasks assigned and their financing, and internal corporate guidelines, and also for working towards their effective adherence by the group enterprises (compliance).
- 132 Depending on the size of the enterprise, the management body shall consider the establishment of a separate unit responsible for compliance tasks. If an integrity and compliance management system has been established, its main features shall be disclosed in the Corporate Governance Statement pursuant to regulation number 5.
- 133 The management body shall give employees and third parties the opportunity to anonymously provide information about violations of the law in a protected manner. The organisational structure of the whistleblowing unit can be internal to the enterprise, in the case of an existing group structure at the parent enterprise or a sister enterprise or at an external unit. The choice of the organisational anchoring of the whistleblowing unit shall be made after weighing up the size of the enterprise and its risk propensity.

8. Accounting and annual financial statements

- 134 The annual financial statements and the management report or the consolidated financial statements and the group management report shall be prepared by the management body and audited by the supervisory body and the audit firm.
- 135 The unit responsible for exercising shareholders' rights must ensure that it is enshrined in the statutes that annual financial statements and management reports or consolidated financial statements and group management reports are prepared in accordance with the regulations of Book Three of the Commercial Code (HGB) for large corporations, irrespective of the size of the enterprise, and are audited in accordance with these regulations.
- 136 The annual financial statements and consolidated financial statements shall be prepared, audited and sent to the shareholders management within three months of the end of the financial year, so that after completion of all preparatory work, they can be adopted by the shareholders' meeting within eight months of the end of the financial year. The annual financial statements or consolidated financial statements shall be published immediately after adoption by the shareholders' meeting.
- 137 In the annual financial statements or consolidated financial statements, the enterprise shall, in analogy to section 289 (3) No. 5 HGB, make disclosures on the most significant non-financial performance indicators that are relevant to the public mandate and the business activities of the enterprise. Depending on the size and object of the enterprise, it shall also make a non-financial statement within the meaning of section 289c HGB on employee, social and environmental matters, respect of human rights and the fight against corruption. In this context, aspects of sustainability (contributions to sustainability, climate protection, socially and ecologically responsible procurement, environmental and resource protection) shall also be reported in accordance with the criteria of the German Sustainability Code.
- 138 The enterprise shall disclose a list of third-party enterprises¹⁴ in which it has a shareholding that is not of minor importance to the enterprise in the notes to the annual or consolidated financial statements.
- 139 In the annual financial statements or consolidated financial statements, the enterprise shall present in a generally understandable form which sponsoring benefits have flowed to which organisations.
- 140 In the notes to the annual financial statements or consolidated financial statements, relationships with shareholders that qualify as related parties within the meaning of the applicable financial reporting regulations shall be explained. This includes, for example, members of the politically responsible body and the public administration of the public authority.
- 141 For each member of the management body, the total remuneration for each individual, broken down into non-performance-related, performance-related and components with long-term incentive effect, pension expenses and fringe benefits shall be presented in the remuneration report pursuant to regulation number 90 in a generally understandable form by name. This also applies to benefits that have been promised to a member of the management body in the event of termination of his/her activities or that have been granted during the financial year.¹⁵ The disclosure of remuneration shall also be made in analogy for non-tariff employees in the two management levels below the management body. The management body shall ensure that these employees have a contractual declaration of approval to the disclosure of their remuneration.

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- 142 For each member of the supervisory body, the remuneration paid for services rendered in the financial year shall be published in a generally understandable form in the remuneration report in accordance with regulation number 90, broken down into individual components and/or benefits granted for services rendered personally, in particular advisory and agency services.¹⁶ At the time of appointment, the unit responsible for the appointment shall ensure that the members of the supervisory body have given their contractual declaration of approval to the disclosure of their remuneration.
- 143 The supervisory body shall, in analogy to section 171 AktG in conjunction with section 52 GmbHG, report on the result of the audit and the activities of the supervisory body in the report of the supervisory body to the shareholder.
- 144 Depending on the size and specific situation of the enterprise, the management body and the supervisory body shall examine whether a Declaration of Compliance with the German Sustainability Code is also issued.

9. Statutory audit and public financial control

9.1 Auditing

- 145 The shareholders' meeting elects the audit firm. The supervisory body assigns the audit firm the statutory audit mandate and concludes the fee agreement. As a rule, the public authority, as a shareholder, makes use of its rights in accordance with section 53 HGrG and the statutory audit mandate must be extended accordingly.
- 146 Before submitting a proposal for election, the supervisory body shall obtain a declaration from the proposed audit firm as to whether and, if so, which business, financial, personal or other relationships exist between the audit firm, its bodies and audit managers on the one hand and the enterprise and its members of respective bodies on the other hand that could give rise to doubts about its independence. The declaration shall also cover the extent to which other services were provided for the enterprise, in particular in the consulting sector, in the previous financial year or are contractually agreed for the following year.
- 147 The supervisory body shall agree with the audit firm that the chairperson of the supervisory body or the audit committee will be informed without delay of any possible grounds for disqualification or partiality arising during the audit, unless such grounds can be eliminated immediately.
- 148 An audit firm which audits the annual financial statements of an enterprise shall not be engaged at the same time with consulting mandates for the same enterprise. In exceptional and duly justified cases, the supervisory body may allow exceptions. Exceptions shall be reported in the Corporate Governance Statement pursuant to regulation number 5.
- 149 If there is a justified exception to the separation of statutory audit and advisory services, the total fee of the audit firm, shall be broken down into statutory audit services, tax advisory services and other advisory services, and shall be disclosed in the notes to the annual financial statements or consolidated financial statements.
- 150 After the audit of five consecutive annual financial statements of an enterprise, the audit mandate shall be re-tendered. The previous audit firm shall only be able to participate again in the award in specially justified cases. If the previous audit firm is awarded the audit mandate, the audit managers shall be replaced.
- 151 When awarding the audit mandate, the supervisory body or the audit committee shall make use of the possibility to define its own audit priorities for the statutory audit. The focal points of the statutory audit shall be discussed between the shareholdings management, the chairperson of the respective supervisory body or audit committee and the management bodies of the enterprise. The results of this discussion shall be recommended by the supervisory body to the audit firm for consideration.
- 152 The supervisory body shall agree with the audit firm that the audit firm shall report without delay to the audit committee on all findings and occurrences material to the tasks of the supervisory body that come to its attention during the conduct of the statutory audit.

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- 153 As part of the statutory audit of the financial statements, it shall also be examined whether the Declaration of Compliance has been submitted and published as part of the Corporate Governance Statement pursuant to regulation number 5.
- 154 The supervisory body shall agree that the audit firm informs the audit committee or makes an appropriate note in the audit report if, during the performance of the statutory audit, it becomes aware of facts which show that the Declaration of Compliance issued by the management body and the supervisory body is incorrect.
- 155 The audit firm shall participate in the deliberations of the supervisory body or its committees on the annual financial statements and report on the main results of the audit.
- 156 If a management letter is prepared by the audit firm, it shall be submitted to the shareholdings management prior to the meeting of the supervisory body that decides on the annual financial statements.
- 157 As part of the regularity audit, the audit firm shall also prepare a report on the remuneration of the members of the management body with regard to compliance with the employment contracts (remuneration report).

9.2 Public financial control

- 158 Courts of auditors or audit offices and municipal audit authorities audit whether the public authority and its representatives have properly fulfilled their obligations as shareholder.
- 159 Ensuring that the audit authorities of the public authority fulfil their tasks is also the guiding principle of the corporate bodies.
- 160 If the public authority owns – possibly together with other public authorities – the majority of the shares of an enterprise in a legal form under private law, the audit rights of the audit authorities of the public authority shall be anchored in the statutes of the enterprise.
- 161 In the case of enterprises in a legal form under private law, of which the public authority owns the majority of the shares or at least one quarter of the shares and together with other public authorities is entitled to the majority of the shares, an audit of the regularity of the management body in accordance with section 53 HGrG must generally be carried out in addition to the statutory audit under commercial law.
- 162 The unit responsible for the exercise of the shareholders' rights must ensure that the audit rights of the audit authorities of the public authority in accordance with section 54 HGrG are generally included in the statutes and, if applicable, other regulations of the enterprise.
- 163 In the case of enterprises in the legal form of a legal entity under public law, the special regulations under budgetary law must be complied with.
- 164 The audit authorities of the public authority shall also check whether the submission and publication of the Declaration of Compliance has taken place within the framework of the Corporate Governance Statement pursuant to regulation number 5.

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- 165 The audit authorities of the public authority shall check whether the documents and information referred to in regulation number 166 are accessible on the enterprise's website.

10. Transparency on the enterprise's homepage as a measure for proximity to the citizens and trust in public institutions

- 166 The following information of the enterprise shall also be accessible via its website:
- the statutes of the enterprise,
 - the respective annual financial statements or consolidated financial statements including notes,
 - the management report or the group management report (including the Corporate Governance Statement pursuant to regulation number 5, which also includes the Declaration of Compliance),
 - *if no management report is published*, the Corporate Governance Statement pursuant to regulation number 5,
 - a list of the enterprise's third-party enterprises in accordance with regulation number 138,
 - the remuneration report in accordance with regulation number 90,
 - the rules of procedure of the supervisory body in accordance with regulation number 38,
 - the rules of procedure of the management body as set out in regulation number 95,
 - the names and functions (*e.g. shareholder representative, employee representative*) of the members of the supervisory body and
 - a complete and comprehensible presentation of the professional career of the members of the management body
- 167 The Corporate Governance Statement in accordance with regulation number 5 shall be made permanently available to the public on the enterprise's website.

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Annex I: List of abbreviations and legal register

AktG	Act on The German Stock Corporation (version of 17 July 2017 (BGBl. I p. 2446))
AktG-E	Draft law implementing the Second Shareholders' Rights Directive (ARUG II) (BT-Drs. 19/9739 (2019))
G-PCGM.....	German Public Corporate Governance-Modelcode
GmbHG.....	Act relating to limited liability companies (version of 17 July 2017 (BGBl. I p. 2446))
HGB.....	Commercial Code (version of 8 July 2019 (BGBl. I p. 1002))
HGrG	Budget Principles Act (version of 14 May 1898) August 2017 (BGBl. I p. 3122))
IAS.....	International Accounting Standards
IASB	International Accounting Standards Board
IDW PS.....	Auditing standards of the Institute of Public Auditors in Germany
IFRS	International Financial Reporting Standards
MitbestG	Co-determination Act (version of 24 May 1898) April 2015 (BGBl. I S. 642))
SDGs	United Nations Sustainable Development Goals

Annex II: Objectives and potentials of a public corporate governance code

- Role-consistent behaviour among the actors involved,
- Adherence to predefined decision-making processes by the actors involved,
- Requirement-oriented mandate support,
- Clear standards and regulations for the steering of shareholdings and corporate governance/supervision,
- Clear definition of the role of the respective public authority as shareholder,
- Requirement-oriented exchange of information and requirement-oriented cooperation between SOEs and public administration,
- Good and responsible governance in SOEs,
- Cooperation between the supervisory body and the management body in accordance with requirements,
- Quality, efficiency and professionalism in public shareholdings management,
- Sustainable safeguarding of the public interest and an orientation of SOEs towards the public mandate,
- Achievement of objectives (effectiveness) and economy (efficiency) in the fulfilment of public tasks,
- Trust in politics, public administration and SOEs

Endnotes

- ¹ State- and municipal owned enterprises (short: SOEs) are defined as enterprises which are directly or indirectly significantly influenced by the public sector (at least 50% shareholding) with economic or legal independence. Shareholding is understood to be any capital, membership and similar holding by a public authority which is intended to establish a permanent relationship with the enterprise. A minimum share is not a prerequisite for this. The German Corporate Governance Code applies to listed enterprises. In addition, these enterprises shall also deal with the regulations of the Public Corporate Governance Code of the respective public authority.
- ² The division of responsibilities between the management body and the supervisory body for submission of the Corporate Governance Statement can be ensured by the fact that the two bodies jointly issue the Corporate Governance Statement and are each responsible for the reporting parts concerning them.
- ³ There may be federal, state and municipal regulations on this aspect, which must be complied with accordingly.
- ⁴ With regard to the design of the shareholdings report, there may be relevant differences between federal, state and municipal regulations, which must be complied with accordingly.
- ⁵ Regarding the deadlines for the dispatch of documents, there may be relevant differences between federal, state and municipal law regulations, which must be complied with accordingly.
- ⁶ The term administrative management refers to the person who heads an administrative organisation, e.g. ministers, county councillors, (senior) mayors.
- ⁷ With regard to the deadlines for the dispatch of documents and the addressees of statements by the shareholdings management, there may be relevant differences between federal, state and municipal regulations, which must be complied with accordingly.
- ⁸ Regarding the preparation and publication of a shareholdings report, there may be relevant differences between federal, state and municipal regulations, which must be complied with accordingly.
- ⁹ There are differences between the federal/state level and the local level with regard to the appointment of members of the supervisory body by the shareholder. At the federal/state level, the separation between the executive and legislative branches is frequently referred to, among other things, and political mandate holders are often not designated as members of the supervisory bodies. At the municipal level, the state framework is different and members of municipal and local councils, for example, are often delegated to the supervisory bodies.
- ¹⁰ For the definition of *transaction* and *related parties*, see section 111a (1) sentence 2 AktG-E and IAS 24.9. The International Accounting Standards (IAS) are international accounting standards. Since 2001, they have been replaced by the International Financial Reporting Standards (IFRS) published by the International Accounting Standards Board (IASB).
- ¹¹ With regard to the shareholders' authority to issue instructions to the management body, there may be relevant differences between federal, state and municipal regulations, which must be complied with accordingly.
- ¹² Regarding the shareholders' authority to issue instructions to the management body, there may be relevant differences between federal, state and municipal law regulations, which must be complied with accordingly.
- ¹³ For the definition of *transaction* and *related parties*, see section 111a (1) sentence 2 AktG-E and IAS 24.9. The International Accounting Standards (IAS) are international accounting standards. Since 2001, they have been replaced by the International Financial Reporting Standards (IFRS) published by the International Accounting Standards Board (IASB).
- ¹⁴ Third-party enterprises are enterprises over which the public authority does not exercise a controlling influence and which are therefore not consolidated.
- ¹⁵ Regarding the requirements for the disclosure of executive remuneration, there may be relevant differences between federal, state and municipal regulations, e.g. within the framework of transparency laws, which must be complied with accordingly.
- ¹⁶ Regarding the requirements for the disclosure of the remuneration of members of the supervisory body, there may be relevant differences between federal, state and municipal regulations, e.g. within the framework of transparency laws, which must be complied with accordingly.