

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

(Version as of 27 April 2024)

Expert Commission of the German Public Corporate Governance-Modelcode

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# German Public Corporate Governance-Modelcode

## Members of the Expert Commission of the German Public Corporate Governance-Modelcode as of 27 April 2024

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*Continuation on the following page*

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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, the Sustainable Development Goals (SDGs), equality of living conditions, digital transformation, demographic change, 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 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, Public Corporate Governance can be defined as the legal and factual regulatory framework for control, supervision, and management of organisations of public authorities with independent management. Furthermore, Public Corporate Governance includes the implemented steering, management, and supervision as well as the behaviour of the people working within the regulatory framework. Public Corporate Governance 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. Public Corporate Governance 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 Public Corporate Governance.*

*According to the definition, Public Corporate Governance 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*

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*and justify the deviations (comply-or-explain principle). This enables enterprises to reflect on sector- and enterprise-specific requirements.*

*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, sustainability, and transparency of public sector organisations in the performance of public tasks and to ensure the public interest and appropriate public influence. Public corporate governance should contribute to strengthening trust in the public sector and SOEs in an overarching manner.

The various roles of the public sector as owner, task manager/ guarantor, producer, legislator, regulator and customer are a particular challenge. Conflicts of interest may exist, for example, between the role of 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 integrity and ethically sound, self-responsible behaviour and a continuous engagement with the practiced organisational or corporate culture.

In order to achieve these aims, the requirements and opportunities of Public Corporate Governance Codes in public authorities are being stressed pertinently. They play a special role in the overall conception of public corporate governance. They are intended to summarise and thus make comprehensible the basic characteristics of the public corporate governance system in a compact form and to specifically address regularly occurring governance questions, ambiguities, or legal gaps and thus provide supporting advice. **Annex II** illustrates the objectives and potentials a public authority can realize with the respective Public Corporate Governance Code in an overview.

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 thus explicitly does not follow a 'one size fits all' approach. **In the joint development of Public Corporate Governance Codes on site in the respective public authorities**, regardless of their size and federal level, the G-PCGM is intended to be used **specifically for comparisons and as a basis for discussion**. Following this flexible understanding, the G-PCGM addresses all public authorities.

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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.

The G-PCGM focuses on the sustainable safeguarding of public interests and the alignment of enterprises with the public purpose, 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 criteria of the Council for Sustainable Development appointed by the Federal Government 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 towards this.

In discussions in the public authorities, a Public Corporate Governance Code is to be distinguished from a so-called shareholdings directive. Public Corporate Governance Codes are also addressed particularly to the management and supervisory bodies of enterprises and formulate principles of responsible public corporate governance and value standards. In contrast, a shareholdings directive formulates administrative notes for the public administration and the representatives delegated/ appointed by the public sector and has more the character of an "authority instruction"



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with more detailed and more formal legal regulations. A key difference is the comply-or-explain principle, which can only be fully developed for all groups of addressees (e.g., also management bodies) by means of a Public Corporate Governance Code. **Annex III** provides an overview of a possible holistic concept of public corporate governance in a public authority with a respective Public Corporate Governance Code, which can be supplemented by a shareholdings directive if necessary.

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.

## **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.<sup>1</sup>

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 (comply-or-explain principle). **It is important to emphasize and convey in everyday life 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.**

In the context of the Expert Commission G-PCGM, it is also intended to carry out well-founded analyses on issued Declarations of Compliance with the respective Public Corporate Governance Codes of public authorities and those Declarations of Compliance with particularly convincing justifications of deviations are to be publicly honoured and praised in the spirit of responsible and sustainable corporate governance. Public authorities, enterprises, and all actors involved in public corporate governance are being invited continuously to submit their Declarations of Compliance to the Expert Commission G-PCGM.

As representative examples for others, endnotes are added to some recommendations to further clarify the comply-or-explain principle, stating that, depending on the size of the enterprise and the legal conditions, special consideration should be given to whether compliance is appropriate and possible or whether, in accordance with the comply-or-explain principle, the deviation is explained and comprehensibly justified in the Declaration of Compliance. This can be done in a short form with a high everyday benefit for the respective corporate governance or corporate activity.

**Annex IV** provides a brief overview of the comply-or-explain principle to further promote full understanding and proper application.

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The 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.

The level of detail and the size of the G-PCGM in its present form are necessary and appropriate in order to achieve the objectives formulated in the preamble. On site in the very different public authorities, the G-PCGM is intended to be used in order to achieve the aims of a large number of different target groups with heterogeneous backgrounds of experiences and qualifications in the democratic community and with very different information needs and expectations. This requires a precise foundation. In case of doubt, it is better and easier for the work on site and developments in public corporate governance not to adopt regulations of the G-PCGM in the joint development of a Public Corporate Governance Code of the public authority than not to have important regulations in the G-PCGM brought to attention at all.

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 (municipality, district, state, federal government). 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.

Since the public authority usually has the role of shareholder (or co-shareholder), the G-PCGM uses the term shareholder. This is also intended to encompass the role of the public authority for public-law enterprises such as agencies under public law ("Anstalten des öffentlichen Rechts") and corporations under public law (Körperschaften öffentlichen Rechts), associations, foundations and joint bodies ("Zweckverbände"), where it is a guarantorship, ownership or membership. For example, guarantors can make use of the comply-or-explain principle appropriate to the situation. Furthermore, the term is intended to include all roles of the public sector with the various respective perspectives, such as the role as owner and the role as guarantor, among others. The choice of term is explicitly not linked to any prioritisation of the various roles of the public sector.

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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, all enterprises<sup>2</sup> in a legal form under private law in which the public authority has a direct majority shareholding, enterprises in the legal form of a legal entity under public law which are subject to the supervision of the public authority, and legal entities under private law over which the public authority may exercise control due to its shareholding or for other reasons. If legal provisions<sup>3</sup> conflict with individual regulations of the Public Corporate Governance Code, these must be complied with accordingly.
- 2 If an enterprise in which the public authority holds, directly or indirectly, a majority shareholding, runs a group within the meaning of section 290 HGB, the Public Corporate Governance Code shall apply to the parent enterprise, which shall also apply it to the way in which it runs the group, and, depending on the size ratio between the parent enterprise and the subsidiaries, also to the subsidiaries, provided that the public authority holds a majority shareholding in them.<sup>4</sup>
- 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 enterprise's statutes<sup>5</sup> 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.<sup>6</sup> 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<sup>7</sup>,
- 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 103, 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 48 and complied with them during the reference period, and, if not, information on the objective reasons.

In addition, the supervisory body and the management body of large and medium-sized enterprises shall examine whether they prepare a diversity concept in analogy to section 289 et seq HGB and report on its implementation.

- 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 report on this with regard to each enterprise. The shareholdings management shall 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.<sup>8</sup>

*(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 and governments at federal and state level. It refers to the highest decision-making body of the respective public authority that adopts the Public Corporate Governance Code.)*

### **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.

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

#### **3.1 Shareholders' role**

9 The public authority shall examine the development of a sustainable overall strategy (in municipalities e.g., urban economic strategy) in order to address and additionally activate the overarching potentials for the 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 appropriate intervals to what extent the economic activity complies with the legal conditions and requirements.

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 purpose 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 the objectives it pursues with regard to 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. In these objectives of the public authority related to the respective enterprise, the legally prescribed important public interest shall be illustrated with performance/impact objectives, financial objectives, and concrete sustainability objectives. The objectives of the shareholders 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 shareholder objectives, coordinate it with the supervisory body and, on recommendation of the supervisory body, have it adopted at the shareholders' meeting. Aspects of sustainable development shall be taken into account in the formulation of the strategy. 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, staffing plan and risk assessments and shall have it adopted at the shareholders' meeting upon the recommendation of the supervisory body.

15 As a shareholder, the public authority shall conclude an agreement on objectives with the management body or the individual board members for the enterprise once a year on the basis of the shareholder objectives and the corporate strategy. When concluding the agreement, it shall be examined whether the agreement on objectives shall be concluded

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without or with variable / performance-related remuneration and whether multi-year or one-year periods shall be agreed for the results to be realised.

- 16 Once a year, the public authority shall produce a meaningful overview of the individual policy areas, which enterprises receive how much funding<sup>9</sup> from the public authority and what objectives they are pursuing. The overview shall be attached to the budget as 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 public authority shall set minimum standards for the compliance of enterprises.<sup>10</sup>
- 18 The public authority shall examine to what extent the possibilities of integrated human resources management are systematically used for both the public administration and the enterprises.<sup>11</sup>
- 19 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.
- 20 The politically responsible body or the committee responsible for shareholdings (hereinafter referred to as the shareholdings committee)<sup>12</sup> 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 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 in the shareholdings committee shall be at least as high as the proportion of women in the politically responsible body as a whole.
- 21 The politically responsible body of the public authority as a whole shall deal once a year with a shareholdings report in accordance with regulation number 37 even if this is not required by law.

### **3.2 Shareholders' Meeting**

- 22 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.
- 23 The public authority is represented at the shareholders' meeting by a person by virtue of his/her office or by (an) authorised representative(s), insofar as legal regulations do not conflict with this. Sub-authorisations can be issued in individual cases if required and require justification.
- 24 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 enterprise's 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

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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.

- 25 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.
- 26 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.<sup>13</sup> 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.
- 27 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.

### **3.3 Organisational element shareholdings management**

- 28 The administrative management of the public authority<sup>14</sup> 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.
- 29 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.
- 30 The shareholdings management should coordinate further education and training offers for mandate holders as well as offers for the onboarding of new members for the respective supervisory body. This is done in addition to the possibly existing offers of the respective shareholdings.<sup>15</sup>
- 31 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 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 individual members of the management body, 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.
- 32 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.<sup>16</sup>

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- 33 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. If the shareholdings management is not represented as a member of the supervisory body, the participation of the shareholdings management shall be made possible in another way in order to be able to support the shareholder role of the public sector appropriately.
- 34 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 administrative management (usually mayor, head of the district authority, minister) on matters that are essential for the administrative management to support the fulfilment of the role of shareholder and the preparation of decisions. If the task of shareholdings management has been delegated to an organisational unit, this unit shall be involved. In doing so, the obligation of confidentiality pursuant to sections 394 - 395 AktG, the regulations of the respective federal, state or municipal law and the enterprise's statutes must be adhered to.
- 35 The management body shall coordinate the draft business plan with the administrative management in good time before the adoption of the resolution in the corporate body provided for this purpose in accordance with the enterprise's statutes (business plan discussion). If the task of shareholdings management has been delegated to an organisational unit, this unit shall be involved. The management body shall present in the business plan in a generally understandable form what sponsoring benefits are planned for which organisations.
- 36 The management body shall present the key points of the annual financial statements or consolidated financial statements within the framework of a regular meeting with the shareholdings management, 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.
- 37 The shareholdings management prepares the shareholdings report of the public authority and shall publish it on its website on a permanent basis.<sup>17</sup> 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 also provide an overarching presentation which public purpose is pursued with the respective enterprises, what own objectives the public authority pursues 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.<sup>18</sup>
- 38 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. In an overarching section, it should be reported how many enterprises from the shareholdings portfolio have issued a Declaration of Compliance and which patterns and conspicuous features emerge in the overall view of all issued Declarations of Compliance. In the section on the individual enterprises, it shall be stated whether the Declaration of Compliance with the Public Corporate Governance Code has been issued and whether it is available on the enterprise's website.
- 39 *Insofar as the public authority is legally obliged to prepare consolidated financial statements or prepares them on its own initiative, a reference to the consolidated financial statements shall be included here in the respective Public Corporate Governance Code.*

*(The consolidated financial statements pursue different objectives than a shareholdings*



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*report. The aim of the consolidated financial statements is to present a true and fair view of the actual financial position, financial performance and cash flows of the entire public authority in the sense of a group).*

## 4. Supervisory body

### 4.1 Basics and tasks

- 40 The supervisory body<sup>19</sup> 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.
- 41 The object of supervising is the legality, 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 supervisory body shall also supervise how environmental and social sustainability is taken into account in the strategic direction of the enterprise and its implementation, that strategic and operational plans include financial and sustainability-related objectives, and that the risk management and internal audit / control system also addresses sustainability-related concerns. This also includes taking into account the requirements of the Corporate Social Responsibility Reporting Directive (CSRD) and the European Sustainability Reporting Standards (ESRS), if the enterprise is affected by them.
- 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.
- 42 If there is a group constellation with direct and indirect shareholdings (group parent and subsidiaries), the supervisory body of the group parent supervises only the management body of the group parent. The management body of the subsidiary is supervised and advised by the supervisory body of the subsidiary. If the subsidiary is also to be supervised and advised by the supervisory body of the group parent, this shall be clearly regulated in the statutes of the respective subsidiary.
- 43 The supervisory body shall adopt its own rules of procedure.
- 44 The supervisory body shall regularly assess the effectiveness of the supervisory body as a whole and its committees in fulfilling their tasks and the implications for future action. 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.
- 45 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 shall ensure that roles and responsibilities are clearly defined within the supervisory body. He/she and other individual members shall not be granted the right to take decisions alone in place of the supervisory body.
- 46 The chairperson of the supervisory body shall maintain regular contact with the management body and discuss with it the strategy, business development, risk position, and risk management as well as the compliance 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.

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## **4.2 Composition**

- 47 The supervisory body shall be composed<sup>20</sup> in such a way that its members as a whole have the knowledge, skills and professional experience<sup>21</sup> 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 shareholder objectives, potential conflicts of interest, the availability and the integrity of the members of the supervisory body and diversity.<sup>22</sup> 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 for successors and new appointments 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.
- 48 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.
- 49 The shareholder shall set an appropriate age limit for the members of the supervisory body.
- 50 At least one external and independent member with proven professional qualifications and/or industry knowledge shall be appointed to the supervisory body.<sup>23</sup>
- 51 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.
- 52 The enterprise shall offer the members of the supervisory body, according to their qualifications and prior knowledge<sup>24</sup>, specifically selected further education and training opportunities, in particular from the sending or appointing public authorities or enterprises. The costs for the participation shall be borne by the enterprise. The report of the supervisory body pursuant to regulation number 151 shall include a report on training activities carried out.
- 53 Members of the supervisory body delegated or elected by the public authority shall resign their mandate if the office on which the election or delegation was based is no longer exercised.

## **4.3 Conflicts of interest**

- 54 The members of the supervisory body are bound by the best 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.
- 55 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

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the meaning of this regulation. The same applies if the task of shareholdings management is performed by a public organizational unit outsourced from the administration.

- 56 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.<sup>25</sup>
- 57 Consultancy and other service contracts and contracts for work of a member of the supervisory body with the enterprise shall not be concluded for the duration of the mandate and the period of 24 months after the end of the mandate. Insofar as they are nevertheless concluded, this shall only be done with the approval of the supervisory body as a whole.
- 58 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.
- 59 Members of the supervisory body shall not be members of governing bodies of or exercise advisory tasks for significant competitors of the enterprise.
- 60 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.
- 61 In its report to the shareholders' meeting in accordance with regulation number 151, the supervisory body shall inform the shareholders' meeting of conflicts of interest that have arisen and their treatment.
- 62 Significant and not merely temporary conflicts of interest within the meaning of section 103 paragraph 4 sentence 1 of the AktG in the person of a member of the supervisory body shall result in termination of the mandate.

#### **4.4 Formation of committees**

- 63 The supervisory body shall form committees of qualified experts, depending on the specific circumstances of the enterprise and the number of its members.<sup>26</sup> The composition of the committees shall correspond to the target figures pursuant to regulation number 48. 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.
- 64 The possibility to delegate decision-making powers to individual committees of the supervisory body shall not be used.
- 65 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 – shall discuss the risk assessment, the audit strategy, and audit planning as well as the audit results with the audit firm. The chairperson of the audit committee shall regularly exchange information with the management body and the audit firm on the progress of the audit, participate in discussions between the management body and the audit firm on critical audit matters, and report on these to the audit committee. The audit committee should verify that the adequacy and effectiveness of the various elements of the risk management and internal audit / control

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system (including compliance management system) in place is being reviewed internally and arrange for external reviews of the internal audit system as well.

The audit committee shall meet regularly with the audit firm even without the management body.

66 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, sustainability reporting and internal risk management and audit / control systems or the audit of the financial statements including sustainability reporting. Where this is not the case, at least one member of the audit committee shall have the relevant knowledge. Prior to their appointment, the members of the audit committee shall submit a self-assessment of their competences in this regard. In the Corporate Governance Statement, the supervisory body shall provide details of the particular knowledge and experience of the audit committee members concerned in the areas mentioned.

67 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**

68 Meetings of the supervisory body shall take place at least once a quarter. An annual meeting schedule shall be drawn up.

69 The report of the supervisory body in accordance with regulation number 151 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.

70 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.<sup>27</sup> 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 administrative management of the public authority or the organisational unit to which the shareholdings management of the public authority has been delegated shall receive all documents to the extent legally possible.

71 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 extent legally possible – 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**

72 The members of the supervisory body may only share information in compliance with the obligation of confidentiality pursuant to sections 394 - 395 AktG.<sup>28</sup>

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- 73 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.
- 74 The members of the supervisory body shall exercise their mandate in person and shall not allow others to carry out their tasks. To the extent permitted by the enterprise's statutes, absent members may participate in the decision-making of the supervisory body by means of a voting proxy.
- 75 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. Insofar as legal regulations conflict with this, (lord) mayors or corresponding officeholders who are obligated by law are exempt from this.  
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.
- 76 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 must – 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**

- 77 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 group.
- 78 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.<sup>29</sup>
- 79 The decision and its justification, in particular regarding the appropriateness of a D&O insurance for the supervisory body, shall be documented.
- 80 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**

- 81 The management body and the supervisory body work trustfully 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.
- 82 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).
- 83 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 enterprise's statutes or to a fundamental change in the financial position, financial performance or cash flows or risk structure of the enterprise.
- 84 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 enterprise's statutes.
- 85 The group of transactions subject to approval must be determined in such a way that the individual responsibility of the management body remains guaranteed.
- 86 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.
- 87 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. If the supervisory body of the parent enterprise is to extend its supervisory function to the group management activities in the subsidiaries, the statutes of the parent company shall stipulate that the voting right of the management body of the parent company in the subsidiaries shall be made dependent on the consent of the supervisory body.
- 88 The management body shall prepare the meetings of the supervisory body and its committees in consultation with the chairperson of the supervisory body and usually attend the meetings. The supervisory body and its committees may also meet without the management body.
- 89 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 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 purpose of the enterprise.

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- 90 The supervisory body and the management body inform the shareholders management during the financial year by means of quarterly reports of the enterprise. The quarterly reports shall also address risks.
- 91 The quarterly reports shall be submitted to the shareholders management within 14 working days of the end of the quarter.
- 92 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.
- 93 Reports from the management body to the supervisory body shall be reported in text form.
- 94 The management body and the supervisory body shall prepare an annual remuneration report in analogy to section 162 AktG and disclose it in the notes to the annual financial statements and on the enterprise website.



## **6. Management body**

### **6.1 Basics and tasks**

- 95 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.
- 96 The management body defines clear and measurable target figures for the realisation 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 shareholder objectives. In doing so, the management body shall ensure that the United Nations Sustainable Development Goals (SDGs) as well as, in the sense of double materiality, relevant objectives of the German Sustainability Strategy ("Deutsche Nachhaltigkeitsstrategie") and other strategies of the Federal Government, the respective State and the public authority in which the enterprise is located that are relevant to the business model are taken into account in the company's business activities. The management body shall report on this every two years in the supervisory body.<sup>30</sup>
- 97 The management body shall develop a mission statement for the enterprise together with the executives and the employees. Integrity and compliance issues should be reflected in the mission statement.
- 98 The management body may consist of one or more persons. Insofar as several persons have been appointed, the management body shall have a spokesperson.
- 99 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.
- 100 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.
- 101 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.<sup>31</sup>
- 102 Together with the managers, the management body shall ensure an equality-promoting, tolerant and non-discriminatory culture in the enterprise with equal development opportunities irrespective of ethnic origin, gender, religion or belief, disability, age or sexual identity. In particular, it should:
- ensure gender balance at all management levels below the management body, especially achieving the internal targets set voluntarily or due to legal obligations for the proportion of women and men at the respective management levels, and
  - equal participation of people with disabilities in the enterprise,
  - as well as ensure that people with a migration background are equally included in selection and appointment procedures for all jobs and training positions to be filled in the enterprise.
- 103 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

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shall orient itself based on the proportion of women and men among the employees, the proportion of women in the enterprise's comparison group, and the proportion of women in the enterprise's industry.

- 104 The management body shall aim to promote gender balance and diversity when filling senior management positions in the enterprise.
- 105 The management body shall promote voluntary activities of employees.

### **6.2 Appointment and employment**

- 106 The shareholders' meeting appoints and dismisses the members of the management body and decides on the employment contracts.

*(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).)*

- 107 Members of the management body shall be recruited by means of a transparent selection procedure with the aim of selecting suitable persons who have the qualifications required to properly perform the duties as a member of the management body. The selection decision shall be documented in a comprehensible manner together with the relevant considerations. The shareholders' meeting shall consider, for large and medium-sized enterprises, whether it is appropriate to engage internal or external expertise to recruit/place personnel.
- 108 The tendering and decision-making process shall be carried out by a selection committee. In addition to the shareholder, this should also be composed of members of the supervisory body. The shareholders management should be involved. The further steps should be carried out in accordance with the main statutes/rules of procedure of the public authority or the responsible political body.
- 109 Together with the management body, the supervisory body shall ensure long-term succession planning for the management body and the senior management positions as well as a systematic personnel development.
- 110 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. In the case of management bodies with more than two members, at least one member shall be a woman.<sup>32</sup>
- 111 The initial appointment of members of the management body shall be for a maximum of three years.<sup>33</sup>
- 112 A repeated appointment or extension of the term of office shall be accompanied by a new resolution of the shareholders' meeting. The extension shall take place for a maximum duration of 5 years. 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.

### **6.3 Conflicts of interest**

- 113 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, which shall be clearly regulated in the enterprise's statutes.

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- 114 Members of the management body and employees may not, in connection with their activities, demand or accept payments or other unjustified advantages from third parties for themselves or for other persons or grant unjustified advantages to third parties.
- 115 Members of the management body may not assume the chairmanship of a supervisory body outside the group and 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. Nevertheless, the supervisory body must be informed about these ancillary activities every two years.
- 116 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, in the light of possible changes, make a declaration as to whether conflicts of interest exist at least once a year.
- 117 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.<sup>34</sup>
- 118 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.
- 119 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.

### **6.4 Remuneration**

- 120 *The public authority shall choose one of the following two regulatory options for its respective Public Corporate Governance Code or clearly formulate in their respective Public Corporate Governance Code which responsibilities are envisaged for which group of enterprises.*
- 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.
- 121 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. Insofar as the remuneration shall contain variable components, these shall also

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be measured by an appropriate number of key figures relating to the public purpose of the enterprise's activities and to some extent on the degree of implementation of the enterprises' adopted sustainability objectives.

- 122 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 achievement of sustainability objectives and future prospects of the enterprise taking into account its comparative group. The remuneration in the comparative group shall be documented and disclosed.<sup>35</sup> The assessment shall also take into account the composition of the remuneration including contributions to the pension scheme and other pension supplements. 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.
- 123 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 comparative group.
- 124 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 achievement of sustainability objectives, 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.
- 125 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.
- 126 The supervisory body shall examine whether it uses internal or external expertise to assess the appropriateness of remuneration.<sup>36</sup> In doing so, it shall ensure their independence from the management body or the enterprise.
- 127 Payments made to a member of the management body on premature termination of the activity 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.
- 128 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**

- 129 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.<sup>37</sup>

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- 130 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.
- 131 The decision and its justification, in particular on the appropriateness of a D&O insurance shall be documented.
- 132 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**

- 133 The management body shall ensure appropriate risk management<sup>38</sup> and risk controlling, including an effective internal audit/control system within the enterprise. The risk management and internal audit / control system shall focus on financial and sustainability matters. The management report shall describe the main features of the risk management and internal audit / control system.
- 134 The management body shall report to the supervisory body on the effectiveness of the risk management system on a regular basis, but at least after the end of each financial year in connection with the annual financial statements.
- 135 Depending on the size of the enterprise, the internal audit shall be perceived as an independent unit.
- 136 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.
- 137 The management body can issue audit mandates to the internal audit function or the person entrusted with the task.<sup>39</sup> 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 management body in a timely manner. The supervisory body and the shareholders' meeting shall receive at least the key points of the report for information.
- 138 The internal audit function shall review whether forensic audit procedures are required. The head of the internal audit function shall report on the work of the internal audit function to the supervisory body or one of its committees at least once a year.

#### **7.2 Integrity and compliance management**

- 139 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, internal corporate guidelines, as well as regulations resulting from identified risks and the measures derived from them (principle of legality control) and also for working towards their effective adherence by the group enterprises (compliance). The enterprise shall strive to ensure that suppliers avoid legal violations in the supply chain.
- 140 Depending on the size and the risk exposure of the enterprise, the management body shall consider the establishment of a separate unit responsible for compliance tasks, as well as the existence of a compliance policy.<sup>40</sup> To the extent that an integrity and compliance management system, which shall also include measures to ensure integrity and values management, has subsequently been established, the management body shall declare in the Corporate Governance Statement pursuant to regulation number 5 that such a system has been established and is operated as well as disclose its main features. The competent unit for compliance management shall report to the supervisory body or to one of its committees at least once a year. To the extent that no separate body is entrusted with compliance tasks, the function shall be performed elsewhere and the management body shall report thereon to the supervisory body.

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- 141 The management body must 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 (ombudsperson / anti-corruption officer). Information about the whistleblowing system and how to contact it shall be published on the enterprise's website. When dealing with the reports, the legal transparency requirements are to be observed. 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. The ombudsperson or the anti-corruption officer shall inform the supervisory body at least once a year about any indications of violations of the law.

### **8. Accounting and annual financial statements**

- 142 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. The supervisory body shall form its own opinion as to whether the assessments of the audit firm in the auditor's report are to be followed.
- 143 The unit responsible for exercising shareholders' rights must ensure that it is enshrined in the enterprise's statutes that annual financial statements and management reports or consolidated financial statements and group management reports are prepared and audited in accordance with the regulations of Book Three of the Commercial Code (HGB) for large corporations, irrespective of the size of the enterprise, unless more extensive statutory provisions apply or other statutory provisions or considerations of expediency conflict therewith.
- 144 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.
- 145 The enterprise shall clearly state its public purpose in the annual financial statements or consolidated financial statements. The public purpose should also be stated and taken into account in the opportunities and risks report. In analogy to section 289 (3) HGB, the enterprise shall make disclosures on the most significant non-financial performance indicators that are relevant to the public purpose and the business activities of the enterprise. In addition, significant non-financial key figures relating to the company's material objectives should be stated. Large corporations within the meaning of section 267 (3) HGB and public-interest entities whose securities are admitted to trading on a regulated market in the European Union with a majority shareholding of the public authority have to report in accordance with the statutory provisions on sustainability reporting (including CSRD). Small and medium-sized non-public interest entities (i.e. entities whose securities are not admitted to trading on a regulated market in the European Union) shall issue a sustainability report and apply the German Sustainability Code<sup>41</sup> including the human rights reporting obligation or a comparable framework for non-financial reporting, in particular with regard to the requirements of the National Action Plan for Business and Human Rights ("Nationaler Aktionsplan Wirtschaft und Menschenrechte"), with a reporting obligation also on aspects of human rights and include the significant disclosures of the sustainability report in the management report.
- 146 The enterprise shall disclose a list of third-party enterprises 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.
- 147 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.
- 148 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,



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members of the politically responsible body and the public administration of the public authority.

- 149 For each member of the management body, the total remuneration for each individual, broken down into non-performance-related, variable and components with long-term incentive effect, pension expenses and fringe benefits shall be presented in the remuneration report as present value pursuant to regulation number 93 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.<sup>42</sup>
- 150 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 93, broken down into individual components and/or benefits granted for services rendered personally, in particular advisory and agency services.<sup>43</sup> 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.
- 151 The supervisory body shall, in analogy to section 171 AktG in conjunction with section 52 GmbHG, report on the cooperation between the supervisory body and the audit firm, the audit of the integrity and compliance management system, the result of the audit and the activities of the supervisory body in the report of the supervisory body to the shareholder.

## **9. Statutory audit and public financial control**

### **9.1 Auditing**

- 152 The shareholders' meeting elects the audit firm.<sup>44</sup> The supervisory body assigns the audit firm the statutory audit mandate and concludes the fee agreement. The supervisory body shall consider whether the audit mandate shall be complemented with regard to the sustainability report, the risk and compliance management system and, if necessary, with forensic audit procedures. The public authority, as a shareholder, makes use of its rights in accordance with section 53 HGrG and extends the statutory audit mandate in coordination with the audit firm accordingly.
- 153 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. The submission of such a declaration does not release the supervisory body from its personal control duty.
- 154 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.
- 155 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.
- 156 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.
- 157 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.
- 158 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.
- 159 The supervisory body shall be in exchange with the audit firm and 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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- 160 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.
- 161 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.
- 162 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.
- 163 If a management letter is prepared by the audit firm, the management body shall submit it to the shareholdings management prior to the meeting of the supervisory body that decides on the annual financial statements. In the engagement of the audit firm it must be agreed that the auditing firm agrees to the forwarding of the management letter to the shareholdings management.
- 164 The audit firm shall audit the remuneration report in accordance with regulation number 93 to determine whether the employment contracts of the members of the management body are complied with.

### **9.2 Public financial control**

- 165 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.
- 166 Ensuring that the audit authority responsible for the public authority fulfil their tasks is also the guiding principle of the corporate bodies.
- 167 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 authority responsible for the public authority shall be anchored in the statutes of the enterprise.
- 168 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.
- 169 The unit responsible for the exercise of the shareholders' rights must ensure that the audit rights of the audit authority responsible for the public authority in accordance with section 54 HGrG are generally included in the enterprise's statutes and, if applicable, other regulations of the enterprise.
- 170 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.
- 171 The audit authority responsible for 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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- 172 The audit authority responsible for the public authority shall check whether the documents and information referred to in regulation number 173 are accessible on the enterprise's website.

### 10. Transparency for proximity to the citizens and trust in public institutions

- 173 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 and the sustainability report pursuant to regulation number 150,
  - a list of the enterprise's third-party enterprises in accordance with regulation number 146,
  - the remuneration report in accordance with regulation number 93,
  - the rules of procedure of the supervisory body in accordance with regulation number **Fehler! Verweisquelle konnte nicht gefunden werden.**,
  - the rules of procedure of the management body as set out in regulation number 98,
  - the names, professional activity and, if applicable, political mandate as well as functions (*e.g., shareholder representative, employee representative*) and responsibilities as chairperson or members of committees of the supervisory body,
  - a complete and comprehensible presentation of the professional career of the members of the management body, and
  - information about the whistle blower system and how to contact it.
- 174 The Corporate Governance Statement in accordance with regulation number 5 which also contains the Declaration of Compliance, among other things, 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 12 December 2019 (BGBl. I p. 2446))
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 12 August 2020 (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))
PCGC .....	Public Corporate Governance Code
SDGs .....	United Nations Sustainable Development Goals

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### **Annex II: Objectives and Potentials of Public Corporate Governance Codes**

- Contribution to a role-conforming behaviour between shareholders and enterprises in the sense of public task fulfilment with respective degrees of freedom,
- Improvement of the preparation of decisions for the democratically legitimized responsible persons,
- Impulses for possible approaches to numerous technical questions of public corporate governance for all groups of actors involved in this field
- Public Corporate Governance Code ideal to agree on “rules of the game“ and to address individual instruments and measures,
- 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,
- 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,
- Help for public authorities and enterprises to present themselves as attractive employers in competition by practising good public corporate governance,
- Overall strengthening of the awareness for responsible public corporate governance and the justified importance of the topic in the socio-political discussion,
- Contribution to the strengthening of the confidence of shareholders and investors as well as of the employees in SOEs in the public sector.
- Contribution to strengthening citizens' confidence in the public sector and SOEs, of proximity to citizens, and political culture

(For an overview of the objectives and potentials of the G-PCGM, see preamble.)

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### **Annex III: Overview of a Possible Holistic Concept of Public Corporate Governance**

- Every public authority needs a clear and consistent concept of public corporate governance.
- For this, first of all an umbrella document "Principles of good public corporate and shareholdings governance" is needed.
  - In the first place, this contains a Public Corporate Governance Code.
  - This can be followed by a shareholdings directive.
  - After this, it is advisable to include as annexes, among other things, templates for various contracts, statutes, rules of procedure for supervisory / management bodies, quarterly reports, and instruments, as well as appointment guidelines, fact sheets, declarations on conflicts of interest, etc.
  - A shareholdings directive is explicitly not a substitute for a Public Corporate Governance Code. A Public Corporate Governance Code is also aimed in particular at the management and supervisory bodies of enterprises and formulates principles of responsible public corporate governance as well as value benchmarks.
  - In contrast, a shareholdings directive formulates administrative instructions for the public administration and the representatives delegated / appointed by the public sector and has more the character of an "instruction by the authorities" with even more detailed and formal legal regulations.
  - Another key difference is the comply-or-explain principle, which can only be integrated appropriately and for all stakeholder groups (e.g., also management bodies) by a Public Corporate Governance Code.
- As e.g., the German Association of Cities ("Deutscher Städtetag") also emphasises: "The Code can be supplemented by shareholdings directives" (Deutscher Städtetag, 2017, *Strategien und Handlungsempfehlungen für die Steuerung städtischer Beteiligungen*, p. 14).



### **Annex IV: Brief Overview of the Comply-or-Explain Principle**

- The comply-or-explain principle is a nationally and internationally recognized mechanism of reflection and action that offers many potentials and is used in the public and private sectors in various subject areas and policy fields. It is therefore appropriate and goal-oriented to anchor this principle in Public Corporate Governance Codes.
- Due to the comply-or-explain principle and the situational freedom of choice and flexibility it provides, it is very well possible, both in the G-PCGM and in the respective Public Corporate Governance Codes in public authorities, to formulate recommendations even for very different enterprises, which may differ, for example, with regard to the following factors: size, legal form, facultative / statutory supervisory body, etc.
- The comply-or-explain principle expressly provides for the possibility of deviating from recommendations as the situation requires.
- A deviation from a recommendation is not to be understood as a “deficiency”; in justified cases, it is an expression of good public corporate governance. Deviations must only be disclosed and justified in a Declaration of Compliance.
- Comply-or-explain and Declarations of Compliance are explicitly not unnecessary bureaucracy. For responsible corporate governance, the principles formulated in the Public Corporate Governance Code must be reflected upon, discussed, and decided upon in the respective areas of responsibility on a day-to-day basis anyway. Drawing up a Declaration of Compliance is one step in a process that is necessary in any case and which, as is also frequently practiced in other areas via reporting instruments, is intended to make reflection even more conscious and precise. When properly prepared, a Declaration of Compliance provides useful information for everyday use and a valuable basis for goal-oriented dialogue between the parties involved. Exemplary Declaration of Compliance with precise brief explanations show how this can be done in a meaningful, streamlined form.
- A Public Corporate Governance Code explicitly does not intend to increase regulatory control, but rather to maintain the scope for decision-making appropriate to the situation.
- A full understanding of the comply-or-explain principle and a "lived deviation culture" in justified cases as well as proper interpretation and use of Declarations of Compliance is of salient importance in practice.
- In the context of the Expert Commission G-PCGM, it is also intended to carry out well-founded analyses on issued Declarations of Compliance with the respective Public Corporate Governance Codes of public authorities and those Declarations of Compliance with particularly convincing justifications of deviations are to be publicly honoured and praised in the spirit of responsible corporate governance. Public authorities, enterprises, and all actors involved in public corporate governance are being invited continuously to submit Declarations of Compliance to the Expert Commission G-PCGM (kontakt@pcg-musterkodex.de).

### **Annex V: Proposal for Introducing/Evaluating of PCGCs in Small Public Authorities**

The following overview intends to underline that the G-PCGM can also be used and adapted to the situation even in small public authorities with little resource input:

- The responsible actors of the public authority (e.g., from politics or the administration) raise awareness of the issue of PCGC in the municipal council. The representation of women and diversity in supervisory bodies or environmental and climate protection / sustainability goals are examples of topics that are currently the subject of much discussion, for each of which the G-PCGM contains specific regulations and which can thus concretely underline the relevance and necessity of a PCGC.
- The shareholdings management or a corresponding office or person in cooperation with all corresponding groups of actors is commissioned with the development.
- The body in charge of developing a PCGC coordinates an exchange process on the expectations regarding content (e.g., in the form of workshops or individual discussions). The main actors are involved with their ideas and agreement is reached on the roles and "rules of the game" as well as on the instruments / measures addressed in the PCGC.
- The body in charge of developing a PCGC or, if necessary and appropriate, external support, prepares a first draft in cooperation with all relevant groups of actors:
  - o If the public authority does not have a PCGC, the G-PCGM in Word format is used as the source document in the amendment mode and the provisions of the G-PCGM that are considered unnecessary are deleted or the provisions of the G-PCGM are adapted. Changes made are briefly justified with comments. Synopses of PCGCs available throughout Germany, which are costly to compile, no longer have to be created.
  - o If a PCGC already exists in the public authority and if it is to continue to be the starting point and no new structural conception is to be undertaken, it must first be decided whether the PCGC should be based on the content structure of the G-PCGM. A synopsis is then drawn up, with the current regulations from the PCGC in the first column, the regulations from the G-PCGM in the second column and the new regulations in the third column. Decisions are briefly justified with comments.
- The first draft is presented to the main actors and they are invited to submit their comments. The comments are evaluated, any changes are incorporated, and a draft decision is prepared for the responsible political body.
- The responsible political body discusses the submitted draft decision on the PCGC in a meeting. If the political body decides to make changes to the draft, these are incorporated into the PCGC and presented again to the political body as a draft decision, which then decides on it.
- The PCGC is published on the website of the public authority and its anchoring in the enterprises is ensured.



## Endnotes

The following endnotes serve to provide additional explanations of individual aspects and terms as the G-PCGM addresses a large number of different target groups with very different backgrounds of experiences and information needs. The endnotes are not intended to be adopted in the respective Public Corporate Governance Code of a public authority).

<sup>1</sup> Unlike some public corporate governance codes of public authorities, the G-PCGM does not include suggestions as these do not provide for the illustrated comply-or-explain principle. According to the basic conception for public corporate governance codes prevailing in Germany, this central mechanism of reflection and action is brought to fruition only through recommendations. As illustrated, recommendations also provide for a high degree of flexibility and freedom of choice appropriate to the situation, which is why suggestions can be dispensed on the basis of the requirements and objectives of public corporate governance codes.

<sup>2</sup> State- and municipal-owned enterprises (SOEs) can be defined as enterprises that are under the control of public authorities at all government levels, either by majority ownership of one or more public authorities or otherwise by exercising an equivalent degree of control. Shareholding is understood to be any capital, membership and similar holding by a public authority which establishes a permanent relationship with the enterprise. A minimum share is not a prerequisite for this. Listed companies are subject to the German Corporate Governance Code. In addition, listed public enterprises shall also deal with the regulations of the Public Corporate Governance Code of the respective public authority in order to reflect on corporate management.

<sup>3</sup> If legal provisions conflict with individual recommendations of the respective Public Corporate Governance Code of a public authority, the Declaration of Compliance shall justify the deviation in terms of the comply-or-explain principle with a brief reference to the law in order to reflect on and communicate the realised corporate governance.

<sup>4</sup> Further specifications for application in group structures and for indirect shareholdings can be found, for example, in the Federal PCGK under regulation number 2.4

<sup>5</sup> The G-PCGM uses the term 'enterprise's statutes' as the umbrella term for the written basic rules of an enterprise (articles of association, statutes, law of incorporation, etc.).

<sup>6</sup> 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.

<sup>7</sup> The submission of a Declaration of Compliance is binding for all enterprises as the G-PCGM illustrates. For the other components of the Corporate Governance Statement, depending on the size of the enterprise and the legal framework conditions, special consideration should be given to whether compliance is appropriate and possible or whether, in accordance with the comply-or-explain principle, the deviation is explained and comprehensibly justified in the Declaration of Compliance. This can be done in a short form with a high everyday benefit for the corporate governance or corporate activity.

<sup>8</sup> There may be federal, state and municipal regulations on this aspect, which must be complied with accordingly.

<sup>9</sup> Funding here refers to grants and transfers.

<sup>10</sup> Examples of corresponding implementation are provided by the Free and Hanseatic City of Hamburg, the city of Frankfurt am Main, or the city of Darmstadt with their respective compliance framework guidelines

<sup>11</sup> Integrated human resources management in the public authority group should include, for example, joint measures by the public administration and the enterprises in the area of personnel recruitment (e.g. joint job portal, coordination of employer branding and marketing measures, and exchange of experiences in the respective organisations within the public authority group) and personnel development (e.g. joint coaching and mentoring programmes, job rotation, talent management, training and development within the group) as well as integrated work in promoting gender equality. A key element, for example, is to ensure a regular institutional exchange of experience between human resources managers from public administration and public enterprises, for example at the level of human resources management or at the management/ labour relations director/ mayor level. In this circle, experiences, knowledge, and options for action, for example, on personnel recruitment and development in the public authority group can be shared. For example, as part of an integrated personnel recruitment strategy, targeted efforts can be made to attract different target groups by individual public enterprises with particular strengths in this area as part of the public authority group to address specific target groups for recruitment.

<sup>12</sup> 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

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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. Provided that the tasks are precisely stated, the function of an independent shareholdings committee can also be performed by another committee such as the finance committee.

<sup>13</sup> 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.

<sup>14</sup> The term administrative management refers to the person who heads an administrative organisation, e.g. ministers, county councillors, (senior) mayors.

<sup>15</sup> For the required competencies of members of the supervisory body, see endnote 17.

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> In the context of reporting in the shareholdings report, the current development of a Reporting Framework for Sustainable Municipalities (“Berichtsrahmen Nachhaltige Kommune” (BNK)) by the German Council for Sustainable Development should also be discussed.

<sup>19</sup> With regard to the regulations concerning the supervisory body, a differentiation must be made between the facultative and the statutory supervisory body. Depending on the size of the enterprise and the legal framework conditions, special consideration should be given to whether compliance is appropriate and possible or whether, in accordance with the comply-or-explain principle, the deviation is explained and comprehensibly justified in the Declaration of Compliance. This can be done in a short form with a high everyday benefit for the corporate governance or corporate activity.

<sup>20</sup> When appointing members to the supervisory body, federal, state and municipal constitutional regulations must be observed; for example, at the municipal level, the free mandate of city and municipal councillors must not be impaired. In addition, the applicable federal and state equality laws must be observed.

<sup>21</sup> These should include: Accounting, industry experience, controlling, digitalisation/artificial intelligence (including reflection on future business models), sustainability, rights and duties of members of the supervisory body, strategic human resources expertise, etc.

<sup>22</sup> 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.

<sup>23</sup> Regarding the appointment of external members to the supervisory board, there may be relevant differences between federal, state, and municipal regulations, which must be observed accordingly. Depending on the situation, it may be appropriate from an overarching public corporate governance perspective to appoint more than one external member. Against this background, depending on the size of the enterprise and the legal framework conditions, special consideration should be given to whether compliance is appropriate and possible or whether, in accordance with the comply-or-explain principle, the deviation is explained and comprehensibly justified in the Declaration of Compliance. This can be done in a short form with a high everyday benefit for the corporate governance or corporate activity.

<sup>24</sup> For the required competencies of members of the supervisory body, see endnote 18.

<sup>25</sup> For the definition of *transaction* and *related parties*, see section 111a (1) sentence 2 AktG 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).

<sup>26</sup> This recommendation is a representative example for making use of the comply-or-explain principle with justification and appropriate to the situation. Examples of this are investment, construction, or project committees that deal with extraordinarily finance-intensive topics.

<sup>27</sup> 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.

<sup>28</sup> The enterprise's statutes shall include regulations on the addressee of the reporting obligation and on the content of the relaxed duty of confidentiality of members of the supervisory body who have been delegated by the public authority. The addressee of the reporting obligation shall only be the legal representative of the public authority, the politically competent body in closed session and/or the head of the shareholdings management, but not groups or individual members of the politically competent body. The enterprise's statutes shall also contain regulations on the content of the appropriate reporting obligation. According to these, the members of the supervisory body delegated by the public authority may only pass on information which is necessary for the budgetary assessment of the economic activity. This does not include the contents of discussions, voting results or even the voting behaviour, opinions or other personal statements of the individual members of the supervisory body.

<sup>29</sup> The D&O insurances of the shareholdings of the respective public authority shall be bundled. To assess whether a D&O insurance shall be taken out for the supervisory body, a risk inventory and risk assessment (including measures to reduce risk) can be carried out in advance.

<sup>30</sup> To identify the relevant sustainability topics for the enterprise, the management shall conduct a materiality analysis.

<sup>31</sup> 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.

<sup>32</sup> Unlike the Second Leadership Positions Act ("Zweites Führungspositionen-Gesetz", FÜPoG II), this is a recommendation where use could be made of the comply-or-explain principle as appropriate to the situation and with justification. The legal provisions read as follows: in executive boards of listed companies and companies with equal co-determination, which "consist of more than three persons", "at least one woman and at least one man must be a member of the executive board". In companies with a majority shareholding of the Federal Government with "more than two managing director[s], at least one managing director must be a woman and at least one managing director must be a man".

<sup>33</sup> Some Public Corporate Governance Codes provide for the possibility of an initial appointment of members of the management body for a maximum of five years. The public authority should choose the most appropriate option for its particular public corporate governance code.

<sup>34</sup> For the definition of *transaction* and *related parties*, see section 111a (1) sentence 2 AktG 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).

<sup>35</sup> Disclosure of the peer group is also recommended by the Government Commission on German Corporate Governance in recommendation G.3 of the German Corporate Governance Code (GCGC).

<sup>36</sup> For stock corporations, also compare the obligations under the Act on the Appropriateness of Management Board Remuneration (VorstAG).

<sup>37</sup> To assess whether a D&O insurance should be taken out for the management body, a risk inventory and risk assessment (including risk reduction measures) can be carried out in advance.

<sup>38</sup> Risk management is the structured handling of risks in an enterprise. Risks are possible future developments or events that can lead to a negative (risk in the narrower sense) or positive (opportunity) deviation from objectives. Risks include financial risks, among others also for the budget of the public authority, socio-political risks, which play an important role in the context of the enterprise's activities, as well as ecological and social sustainability risks. For enterprises with 1.000 or more employees in particular, this also includes the risks arising from a failure to comply with due diligence obligations in accordance with the Supply Chain Due Diligence Act.

<sup>39</sup> This recommendation is a representative example for making use of the comply-or-explain principle with justification and appropriate to the situation.

<sup>40</sup> This recommendation is a representative example for making use of the comply-or-explain principle with justification and appropriate to the situation.

<sup>41</sup> The German Council for Sustainable Development appointed by the Federal Government and the Expert Commission G-PCGM have different responsibilities, groups of addressees, and objectives. The German Council for Sustainable Development issues a reporting standard specifically for sustainability reporting of organizations, the German Sustainability Code (DNK). The G-PCGM, on the other hand, contains regulations on all areas of public corporate governance; regulations on sustainability and sustainability reporting are also included in the G-PCGM, but derived from its objectives not to the same extent as in the DNK. The DNK and its guidance can provide suitable assistance, particularly for small and medium-sized enterprises, for the preparation of appropriate sustainability reports.

<sup>42</sup> 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

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laws, which must be complied with accordingly. The disclosure of remuneration shall also be made in analogy for non-tariff employees in the two management levels below the management body, if any. The management body shall ensure that these employees have a contractual declaration of approval to the disclosure of their remuneration.

<sup>43</sup> 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.

<sup>43</sup> For the selection of the audit firm, an exchange with the audit authorities of the public authority shall take place according to the situation.

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