International
Comparative
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Corporate Governance 2021

A practical cross-border insight into corporate governance law

14th Edition

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

Companies may be organised as capital companies or partnerships. Whereas partnerships are characterised by personal liability of their partners, the liability of capital companies is limited to the assets of the company.

This chapter will focus on the two most popular forms of capital companies in Germany, stock corporations (*Aktiengesellschaft* – AG) and companies with limited liability (*Gesellschaft mit beschränkter Haftung* – GmbH). The other legal forms of capital companies – European stock corporations (*Societas Europaea* – SE) and partnerships limited by shares (*Kommanditgesellschaft auf Aktien* – KGaA) – are, to a large extent, comparable to an AG. In particular, this chapter will highlight the requirements for listed companies since they are subject to the most comprehensive corporate governance rules.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

The main sources regulating corporate governance practices are the German Stock Corporation Act (*Aktiengesetz* – AktG), the European and German acts on SEs (in particular the European SE-VO and the German SEAG), the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaft mit beschränkter Haftung* – GmbHG), the German Commercial Code (*Handelsgesetzbuch* – HGB) and, for certain aspects, the Reorganisation of Companies Act (*Umwandlungsgesetz* – UmwG) and co-determination laws (in particular the MitbestG and the DrittelbG).

For listed companies, capital markets law – in particular the European Market Abuse Regulation (MAR), the Securities Trading Act (*Wertpapierhandelsgesetz* – WpHG) and the Securities Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz* – WpÜG) – establish further requirements. The German Corporate Governance Code (DCGK) is an additional non-binding source of corporate governance rules for listed companies following the "comply or explain" principle (*see* question 5.2).

The company's articles of association and the rules of procedure for the management and the supervisory board shape corporate governance within the statutory framework at the level of the individual company.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

Virtual shareholders' meetings: In response to the COVID-19 pandemic, the legislator has passed a temporary COVID-19 law allowing virtual general meetings for AGs, SEs and KGaAs and providing reliefs for GmbHs to pass shareholders' resolutions in writing. In 2021, the COVID-19 law was amended, in particular to strengthen shareholders' rights with respect to their right to ask questions in a virtual general meeting. Although these provisions are only applicable until 31 December 2021, the experiences gained with virtual shareholders' meetings might have a lasting impact on potential legislative reforms and legal practice in the future.

Gender equality: The recently adopted Second Leadership Positions Act (FüPoG II) further develops the statutory provisions fostering equal participation of women in leadership positions – often referred to as the "women's quota". As the most prominent amendment, certain large listed companies will be required to appoint at least one woman to the management board. Also, reporting and justification requirements for target quotas and possible sanctions in case of violations have been tightened.

Financial market integrity: The "Wirecard scandal" has triggered discussions on the effectiveness of control mechanisms to prevent accounting fraud. As a reaction, the German parliament has recently adopted the Financial Market Integrity Strengthening Act (FISG) which sets new corporate governance standards, primarily for listed companies, with regard to audits and financial reporting, e.g. requirements to establish an audit committee endowed with direct information rights, to appoint at least two financial experts as supervisory board members, to rotate the external auditor and to install internal control and risk management systems.

Remuneration policy: Following the implementation of the EU Shareholders' Rights Directive II into German law, certain requirements for listed companies with respect to their remuneration scheme for the management board and the supervisory board have in 2021 become mandatory for the first time (in particular "say on pay").

As a general trend, corporate governance-related issues are increasingly subject to legislative initiatives and harmonisation efforts at EU level.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short-termism and the importance of promoting sustainable value creation over the long-term?

The risks of short-termism are primarily addressed through legal requirements and limitations on management remuneration.

For listed companies, the remuneration structure for the management board has to be designed to enhance long-term and sustainable corporate development. Variable remuneration shall be based on a multi-year assessment. The DCGK further recommends, *inter alia*, claw-back provisions, a waiting period of four years for share-based remuneration, and that long-term incentives outweigh short-term incentives.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

The involvement of shareholders in management measures depends on the legal form of the company. In an AG, SE and KGaA, the management board acts independently within its reasonable discretion. Shareholders cannot instruct the management to pursue a particular course of action (unless subject to a control agreement). Shareholders are entitled to resolve upon management decisions in a general meeting only if the management board so requests. Effectively, shareholders can only indirectly exert influence on management by appointing the members of the supervisory or the non-executive directors of the administrative board in a one-tier SE (*see* question 3.1) who in turn appoint, control and advise the management board.

However, certain decisions are statutorily and by case law reserved for the general meeting, i.e. the shareholders. This relates, *inter alia*, to the appropriation of profits, the appointment of the auditor, the discharge of board members and fundamental decisions such as amendments to the articles of association, mergers, change of legal form, sale of substantially all the company's assets or conclusion of corporate agreements (e.g. control agreements or profit and loss pooling agreements), and, in listed companies, the (non-binding) approval of the remuneration policy and the remuneration report.

In a GmbH, shareholders have much greater influence on management decisions since they may instruct the managing directors to take or refrain from taking certain actions. Managing directors of a GmbH are internally bound by such instructions by the shareholders.

2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

Shareholders owe fiduciary duties towards the company and towards other shareholders (*see* question 2.4). They shall refrain from exerting influence on the company, a board member or an authorised agent to act to the detriment of the company or the other shareholders. This is particularly true with respect to a controlling shareholder, unless the disadvantages are compensated or subject to a control agreement.

Shareholders of listed companies are further subject to certain notification requirements regarding the holding of voting rights or major holdings (*see* questions 2.6 and 2.7). Major holdings of more than 25% or 50% of shares in a non-listed AG by legal entities also need to be notified and disclosed in order to create transparency of corporate group structures. If investor shareholders are represented on a board, they are obliged to disclose potential conflicts of interests or related party transactions.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

An annual general meeting is mandatory in an AG and KGaA within the first eight months of the company's fiscal year, and in an SE within the first six months. An invitation (including the agenda) of listed companies must be issued in the German Federal Gazette (*Bundesanzeiger*) at least 30 days before the day of the shareholders' meeting and has to provide detailed information and to fulfil various formalities. In addition, shareholders whose aggregate shareholdings amount to at least 5% of the company's share capital may request that a general meeting be held. Apart from this, extraordinary general meetings are to be convened if necessary for the welfare and going concern of the company.

The essential right of shareholders with regard to such meetings is the voting right which may also be exercised by proxy. The voting right is accompanied by a right to request information during the general meeting. Shareholders holding at least 5% of the company's share capital or a nominal stake of EUR 500,000 may demand beforehand that certain additional items are put on the agenda.

Deviating rules temporarily apply due to the ongoing COVID-19 pandemic (*see* question 1.3).

In a GmbH, the regulations and formalities regarding shareholders' meetings are less strict. In particular, formalities can be waived by the shareholders or amended in the articles of association.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

All shareholders have fiduciary duties towards the company and towards other shareholders aiming to promote the purpose of the company and not to act to its detriment. The fiduciary duty of controlling shareholders is more intense than that of non-controlling shareholders.

Shareholders can only be liable for acts or omissions of the company under exceptional circumstances. This may particularly be the case if a shareholder abuses its influence on the company or on board members to act to the detriment of the company (*see* question 2.2) or if, primarily in a GmbH, a shareholder causes or deepens bankruptcy of the company under specific circumstances. However, in principle, shareholders may only be liable towards the company and not towards creditors of the company or other third parties.

Since the implementation of the EU Shareholders' Rights Directive II, institutional investors and asset managers are, *inter alia*, required to disclose their engagement policy and voting behaviour.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

In principle, shareholders of an AG may assert claims against the company, but cannot directly enforce breach of duties of members of the management and supervisory body. Board members are rather liable in the internal relationship towards the company. However, the supervisory board is entitled and,

according to case law, obliged to assert liability claims against the management board if the company suffered damage owing to a breach of duties by the management board. Conversely, the management board is responsible to pursue possible damage claims against supervisory board members. The company may waive such damage claims only after three years and with approval by the general meeting, provided that no minority of shareholders (at least 10% of the share capital) raises objections. Shareholders may also request, by a simple majority of votes, the appointment of special auditors in order to audit actions taken and events occurring in the course of the management of the company's affairs.

In a GmbH, the shareholders' meeting is entitled to pursue damage claims against its managing directors or decide upon discharge, leading to an exclusion of liability.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

Shareholders of listed companies have to notify the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungaufsicht* – BaFin) and the issuer if their direct and/or indirect holdings of voting rights reach, exceed or fall below certain thresholds (3%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75%) and if their positions in financial instruments relating to shares reach or cross the aforementioned thresholds (except for the 3% threshold). In particular, voting rights held by subsidiaries or in acting-in-concert scenarios are attributed. The notification is to be published by the issuer. A violation of these notification requirements may be prosecuted as an administrative offence resulting in substantial fines (up to EUR 2 million for individuals and up to EUR 10 million or 5% of the yearly total turnover for legal entities) and its public disclosure ("naming and shaming"). As regards non-listed AGs, major holdings by entities of more than 25% and 50% have to be notified *vis-à-vis* the company and disclosed by the company.

Furthermore, subject to anti-money laundering law, all corporate entities are required to register their beneficial owners, i.e. individuals who directly or indirectly hold more than 25% of the shares and/or voting rights or otherwise control the company, in the transparency register (*Transparenzregister*).

Specific restrictions may apply in certain regulated industries (e.g. banking, financial services and insurance) or due to German and European merger control. Besides, the German foreign trade law imposes restrictions in connection with acquisitions of German corporations in certain industry sectors by non-EU investors in order to protect the public order and security.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

Any shareholder of a German listed company whose shareholding reaches or exceeds the thresholds of 10%, 15%, 20%, 25%, 30%, 50% or 75% of the voting rights is obliged to notify the company of the goals (like strategic objectives, trading profits, material change in the company's capital structure) pursued by purchasing the voting rights and the source of the funds used to purchase the voting rights. The company is required to publish the information received. However, companies may opt out of this notification requirement pursuant to their articles of association.

Since implementation of the EU Shareholders' Rights Directive II, certain institutional investors and asset managers are, *inter alia*, required to disclose their engagement policy and voting behaviour on their websites for at least three years.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Shareholder activism, which formerly resulted in a blockade of fundamental resolutions of the general meeting, was limited through changes to the legal framework in the first decade of this century but continues to play a role in Germany. Activist shareholders are increasingly including smaller and lesser-known companies in their activities. Especially small- and mid-cap companies are not yet well prepared for such interactions.

Activist shareholders today usually acquire minority stakes and will then approach the management with certain demands. In case such demands are not met, they might escalate the situation, e.g. by launching public campaigns. They may also exercise their rights to increase pressure on the management, e.g. through critical questions or requests for special audits in the general meeting. There is no regulation effectively preventing this kind of shareholder activism.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The predominant board structure of an AG and SE follows the two-tier board system with a separation of duties between the management board (*Vorstand*) managing and representing the company, and a supervisory board (*Aufsichtsrat*) controlling and advising the management board. A one-tier board system with one board consisting of both executive and non-executive members is only allowed within an SE, which is then called an administrative board (*Verwaltungsrat*).

The management board manages the company under its own responsibility and own reasonable discretion. It is not subject to any instructions from the supervisory board or the shareholders; however, it is subject to the prior approval of the supervisory board for certain business transactions and measures, either foreseen in the company's articles of association or by the supervisory board itself, e.g. in the rules of procedure for the management board. The approval requirements typically relate to transactions and measures of material significance (often tied to certain thresholds).

A GmbH has managing directors (*Geschäftsführer*) but no statutorily required supervising body (except in case of co-determination; *see* question 4.2). Even though the managing directors are responsible for managing and representing the company and may decide autonomously, the shareholders' meeting (*Gesellschafterversammlung*) remains the supreme decision-making body and may instruct the managing directors (*see* question 2.1).

3.2 How are members of the management body appointed and removed?

Following the two-tier board system, the members of the management board of an AG or an SE are appointed by the supervisory board. The maximum term of appointment in an AG is five years and in an SE six years. Re-appointments or extensions of the term of office are permissible. However, first-time appointments in listed companies shall not exceed

a period of three years pursuant to a recommendation by the DCGK. During the term, members of the management board can only be removed from office by the supervisory board for good cause, namely for gross breach of duty, inability to properly manage the company's affairs or a vote of no-confidence by the shareholders at a general meeting. Differences in opinion with respect to the business strategy, for instance, do not qualify as good cause. In practice, removal scenarios are rare. Typically, members of the management board rather resign from office on an amicable basis.

Members of the supervisory board of an AG or SE are elected by the shareholders at a general meeting by a simple majority of votes and can be removed with a 75% majority, unless the articles of association provide otherwise.

The managing directors of a GmbH are appointed and removed by the shareholders at a shareholders' meeting with a simple majority vote. The term of office may be indefinite.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

The main legislative and other sources impacting on compensation and remuneration of board members are the AktG, the HGB and the DCGK, each reflecting the new requirements under the EU Shareholders' Rights Directive II.

The remuneration of the management board members of an AG and a two-tier system SE is resolved upon by the supervisory board. In doing so, the supervisory board is bound by certain statutory objectives and restrictions. The overall compensation of the individual member of the management board has to be appropriate in relation to their tasks and performance as well as to the economic situation of the company and may not exceed the customary remuneration without specific reason. Further, the remuneration in listed companies has to be aimed at sustainable and long-term-oriented development of the company. The DCGK provides further recommendations, e.g. on the components of variable remuneration (short-term and long-term incentives) and severance caps in the event of premature termination of office.

In listed companies, the supervisory board has to determine the remuneration principles in a remuneration system, which is subject to approval by the general meeting upon its introduction and any material changes hereto, however, at least every four years. In addition, the supervisory board must prepare an annual remuneration report that is also subject to a resolution by the general meeting. However, the resolution on the approval of both the remuneration policy and report are non-binding.

The remuneration of the supervisory board members may be determined in the company's articles of association or granted by the general meeting. In listed companies, the remuneration of the supervisory board is also subject to a non-binding vote by the general meeting and has to be disclosed in the annual remuneration report.

In a GmbH, the remuneration of managing directors is the responsibility of the shareholders' meeting without any specific legal requirements. In a KGaA, the general partners generally receive no remuneration for their activities, but are entitled to a fee for incurring the liability of the KGaA *vis-à-vis* third parties.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Members of the management body and of the supervisory body are free to buy, hold or sell securities in the corporate entity they are managing/supervising. To create long-term incentives, shares and stock options are a key element of the variable remuneration of the management board members. However, there are certain restrictions and disclosure requirements pursuant to the European Market Abuse Regulation (MAR). Like every other potential insider, board members are subject to the prohibition of insider trading. In addition, board members are subject to a trading ban during a closed period of 30 calendar days before the announcement of a financial report. Furthermore, transactions by board members or closely associated persons exceeding the amount of EUR 20,000 within a calendar year have to be promptly notified *vis-à-vis* the issuer and BaFin and publicly disclosed (managers' transactions notification). Also, board members are prohibited from exercising their voting rights in certain cases, e.g. discharge of the respective board member.

3.5 What is the process for meetings of members of the management body?

There are no statutory provisions governing the process for meetings for the management board or managing directors. Even though it is not mandatory, the process for meetings and the decision-making process is usually stipulated in the articles of association and/or rules of procedure of the management board. In practice, it is common that members of the management board are allocated certain responsibilities as part of their department (*Ressort*), which means that decisions within each department are made by the responsible single member, unless such decision is of material nature.

By contrast, the process for meetings of the supervisory board (in particular convening the supervisory board, participation in meetings and adopting of resolutions) is regulated by law and formalised to a greater extent.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Board members of the management board of an AG, an SE and a KGaA and managing directors of a GmbH are to apply the care of a prudent and diligent business person, in particular in accordance with the applicable laws and the articles of association (duty of legality). Similarly, the supervisory board has to follow this principle in supervising the management board of an AG or SE. Board members also owe fiduciary duties to the company. The management board or managing directors are further obliged to establish and maintain an effective compliance management system. Breach of duties may result in personal liability towards the company but in general not towards the shareholder. According to case law, the supervisory board is, in principle, obliged to pursue claims against management board members (*see* question 2.5).

No breach of duty shall be given in those instances in which the member of the management or supervisory board, in taking an entrepreneurial decision, could reasonably assume that he/she was acting on the basis of adequate information and in the best interests of the company (business judgment rule).

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

It falls within the responsibility of the management board or the managing directors to ensure that all provisions of law and internal policies are complied with by the company. The importance and complexity of compliance requirements have vastly increased in the course of the last decade. In particular, companies with international business face complex legal requirements in various countries and areas of law, e.g. with respect to tax, anti-money laundering, anti-corruption, sanctions, antitrust, capital markets or, as a more recent development, data privacy. Under German law, the individual members of the management and/or supervisory board or the managing directors may be held personally liable for failures with respect to the company's compliance management.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Directors' and officers' (D&O) liability insurance is permitted and is common practice for management and supervisory board members in listed companies as well as non-listed companies. Premiums are typically paid by the company. However, members of the management board of an AG/SE are statutorily obliged to bear a deductible of at least 10% of the damage up to at least one-and-a-half times their fixed annual salary.

Indemnifications by a stock corporation are in general not permitted since the company is only allowed to waive or settle on liability claims against board members three years following their accrual and only subject to a general meeting's approval without an objection of a shareholder minority jointly representing 10% of the registered share capital.

In a GmbH, as German law follows the stakeholder model, according to which managing directors must act in the best interest of the company (and not the shareholder or the majority of shareholders), indemnification agreements are subject to the constraints of fiduciary duties. In addition, indemnification by a GmbH is not allowed if and to the extent that the managing directors have breached capital protection rules.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

In an AG, the management board develops and implements the company strategy as part of its original task and duty to manage the affairs of the company. The management board may set and change the strategy in its own responsibility as far as the strategy is in line with the business purpose set out in the company's articles of association. Following the two-tier board system, the management board is required to report to the supervisory board at least once a year on the business policy and other fundamental matters of corporate planning (in particular, financial planning, investment planning, and human resources planning). The DCGK further requires the management board to coordinate the strategy with the supervisory board. In addition, it is to be determined in the by-laws or by the supervisory board that certain types of business transactions may only be implemented with the supervisory board's consent.

Similarly, the managing directors of a GmbH may set and change the company strategy; however, they are bound by instructions by the shareholders.

4 Other Stakeholders

4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

The management board of an AG and the managing directors of a GmbH owe their legal duties to the company and must, therefore, primarily act in the company's best interest. However, in making decisions, management has – in line with the principles of the social market economy – to take into account the interests of shareholders as well as the interests of employees and other groups related to the company (i.e. stakeholders) to ensure the continued existence of the company and its sustainable value creation. Unlike the Anglo-Saxon shareholder model, the company's best interest is neither limited to the interests of shareholders nor do the interests of shareholders prevail. Instead, management would need to evaluate and weigh the respective interests of shareholders and stakeholders.

There are no mandated disclosures or required actions in this regard apart from the non-financial reporting requirements (*see* questions 4.4 and 5.3).

4.2 What, if any, is the role of employees in corporate governance?

Employees play a considerable role through their representation in the supervisory board in case of co-determination. If an AG, a KGaA or a GmbH exceeds the threshold of generally 500 employees within German territories, one-third of the company's supervisory board members must be employee representatives; if it exceeds 2,000 employees within German territories, half of the supervisory board members must be employee representatives (i.e. parity co-determination). German co-determination rules do not apply to SEs.

Besides, employees can exert influence through works councils which may be elected in companies with more than five employees. The works council is endowed with various monitoring, consultation, information and negotiation rights and is mainly representing employees' interests related to the workplace (e.g. working conditions and social issues).

The DCGK recommends giving employees the opportunity to report legal violations within the company in a protected manner, e.g. through an anonymous whistleblowing system. However, apart from this recommendation and certain specific regulations in the financial sector, there is no legal framework governing the requirements and protections with respect to whistleblowing. In particular, the implementation of the EU Whistleblowing Directive (EU) 2019/1937 into German law is currently still subject to political and legal discussion.

4.3 What, if any, is the role of other stakeholders in corporate governance?

Following the stakeholder model (*see* question 4.1), the interests of stakeholders are to be considered when making management decisions. Stakeholders other than employees, e.g. debt holders, customers and suppliers, generally play no active role in corporate governance, apart from contractual obligations like approval rights and financial or operational covenants. Stakeholders may also exert indirect influence with regard to their environmental, social and governance-related expectations which are, at least in part, subject to non-financial reporting requirements (*see* questions 4.4 and 5.3).

4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility and similar ESG-related matters?

Apart from certain reporting and transparency requirements (*see* question 5.3), there is little clear legislation in connection with ESG-related matters. Following the stakeholder model, certain ESG criteria might have to be factored into management decisions. Also, the remuneration of members of the management board in listed companies has to align with a sustainable and long-term development of the company. However, there is no consensus as regards the interpretation and the scope of these principles. Nevertheless, the management and supervisory board should already take ESG criteria into account, as they are becoming more and more important.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency and what is the role of audits and auditors in these matters?

Generally speaking, the management board or the managing directors is/are responsible within the company for disclosure and transparency. While the responsibility may be assigned to individual board members or managing directors (e.g. the CEO or the CFO) or delegated to specific committees or departments (e.g. Investor Relations, Compliance), the overall responsibility (including the establishment of a functioning reporting system to ensure sufficient information exchange within the company) remains with the management board or the managing directors.

The annual financial statements and the management report are subject to an audit by an external auditor, who has to be independent and is appointed by the general meeting or the shareholders' meeting. While the auditor is required to assess whether the annual accounts have been prepared in compliance with all applicable rules and reflect "a true and fair view" of the company, the corporate governance and remuneration reports are only subject to a formal audit. In stock corporations, the annual financial statements and the management report have to be submitted to and reviewed by the supervisory board as well.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

Listed companies are required to issue a corporate governance report either as an integral part of the management report or on the company website. This report has to address the corporate governance practices within the company, e.g. cooperation between the management board and the supervisory board, establishment of committees, the determination and fulfilment of gender quotas for leadership positions or the company's diversity concept. Furthermore, listed companies have to publicly declare, on a yearly basis, whether they comply with the DCGK or, if applicable, why they deviate from certain recommendations set out by the DCGK ("comply or explain"). This declaration is part of the corporate governance report and has to be published on the company website. Since implementation of the EU Shareholders' Rights Directive II, the remuneration system for the management board and the supervisory board as well as the annual remuneration report have to be published on the company website for at least 10 years.

Besides annual disclosure requirements, certain corporate governance-related information has to be disclosed on an *ad hoc* basis, e.g. relevant related party transactions of listed companies.

Certain non-listed, but employee co-determined companies have to disclose information on their gender diversity targets as part of their management reports.

5.3 What are the expectations in this jurisdiction regarding ESG- and sustainability-related reporting and transparency?

Under the HGB, companies that meet certain criteria concerning their size are obliged to issue a declaration on non-financial aspects that expands their management report. This non-financial reporting requirement includes information on the company's concepts regarding environmental, employee-related and social issues, human rights as well as action against corruption and bribery and their implementation.

As part of the EU Action Plan for Financing Sustainable Growth, the new EU Disclosure Regulation (EU) 2019/2088 is applicable in Germany as of 10 March 2021. The regulation only applies to financial market participants and financial advisors. It establishes extensive transparency obligations in the integration of sustainability risks, the consideration of adverse sustainability impacts in their processes (e.g. investing and advising) and the provision of sustainability-related information with respect to financial products.

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