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Conflicts of interest in supervisory boards and the possibilities of limiting them to improve corporate governance in German stock-listed companies

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// STRESZCZENIE

Konflikty interesów w radach nadzorczych i możliwości ich ograniczenia w celu poprawy ładu korporacyjnego w niemieckich spółkach giełdowych

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Mimo, że problematyka nadzoru korporacyjnego od kilku już dekad jest intensywnie eksplorowana przez autorów z wielu krajów świata to nadal można wskazać jej obszary, które nie zostały jeszcze dostatecznie rozpoznane. Jednym z nich pozostają konflikty interesów, którym poświęcona jest niniejsza dysertacja zatytułowana 'Konflikty interesów w radach nadzorczych i możliwości ich ograniczenia w celu poprawy nadzoru korporacyjnego w niemieckich spółkach giełdowych.' Znaczenie i wpływ konfliktów interesów na pracę organów korporacji konstatowano już w czasach Adama Smitha i wczesnej literatury poruszającej problematykę ładu korporacyjnego, jednakże zostały one szczególnie wyeksponowane w teorii agencji opublikowanej przez Williama Mecklinga i Michaela C. Jensena w 1976 roku. Teoria ta koncentruje się na konfliktach interesów, które mogą powstawać pomiędzy pryncypałami (akcjonariuszami) a agentami (menedżerami).

Rada nadzorcza w dwupoziomowym systemie nadzoru korporacyjnego zobligowana jest do sprawowania nadzoru nad zarządzaniem spółką, który obecnie postrzegany jest nie tylko jako funkcja nadzorcza, ale także jako funkcje kontrolna, doradcza i równoważenia interesów. Zakres i waga tych obowiązków świadczą, że istnienie konfliktów interesów może mieć potencjalnie duży, negatywny wpływ na procesy podejmowania decyzji w spółce. Zakłada się, że konflikt interesów występuje, kiedy osobisty lub profesjonalny interes członka organu spółki (rady nadzorczej) może wpływać na obiektywność jego oceny, decyzje lub działanie w sposób szkodliwy na interes spółki.

Niniejsza rozprawa ma na celu zidentyfikowanie i omówienie najistotniejszych (typowych) konfliktów interesów w niemieckich spółkach giełdowych oraz przeanalizowanie istniejących sposobów ich rozwiązywania oferowanych przez obowiązujące regulacje i kodeks nadzoru korporacyjnego mających na celu uniknięcie tych konfliktów lub też odpowiednią na nie reakcję. Ponadto, celem dysertacji jest również sformułowanie dodatkowych (nowych) zaleceń dla niemieckiego ustawodawcy, ukierunkowanych na podniesienie skuteczności rozwiązywania konfliktów interesów występujących w radach nadzorczych spółek giełdowych.

Realizację tych celów warunkowało dogłębne poznanie najważniejszych badań prowadzonych w zakresie ładu korporacyjnego, odpowiednich teorii i systemów ładu korporacyjnego, kodeksów dobrych praktyk i ich znaczenia oraz niemieckich ram prawnych, zwłaszcza tych dotyczących systemu kodeterminacji.

W części empirycznej rozprawy zastosowano dwa etapy analizy, a mianowicie badanie adekwatnych treści raportów opublikowanych przez niemieckie spółki giełdowe należące do indeksu DAX 40, a następnie uzupełniono je jakościowymi wywiadami z ekspertami. Raporty roczne niemieckich spółek notowanych na giełdzie obejmują sprawozdanie rady nadzorczej dotyczące danego roku obrotowego, które powinno zawierać informacje na temat konfliktów interesów istniejących pomiędzy członkami rady nadzorczej, zarówno w aspekcie sfery społeczno-politycznej, jak i rynku kapitałowego. Analiza ta pozwoliła na ich zdiagnozowanie i ocenę częstości występowania oraz sposobów ich ograniczania (eliminowania). W drugim etapie badania przeprowadzono wywiady z doświadczonymi ekspertami, wysokokwalifikowanymi członkami rad nadzorczych, w celu uzyskania wartościowego spojrzenia z perspektywy wewnętrznej.

Przeprowadzone badania dowodzą, że niemieckie ramy regulacyjne dostarczają klarownych definicji reakcji na konflikty interesów. Skuteczność tych rozwiązań w praktyce zależy jednak od decyzji poszczególnych osób o ujawnianiu informacji dotyczących konfliktów interesów. Brakuje kultury reagowania na potencjalne konflikty, a obowiązki informacyjne w tym obszarze są częścią zaleceń niemieckiego kodeksu ładu korporacyjnego, a zatem nie są prawnie wiążące. Niemieckie spółki giełdowe powinny skupić się na priorytetowym traktowaniu środków zapobiegawczych. Jeden z kluczowych aspektów dotyczy procedury wyznaczania i późniejszego (ponownego) wyboru członków rady nadzorczej. Obecnie, obowiązujące ramy prawne nie zapewniają jasnych wytycznych dotyczących środków zapobiegawczych, a odpowiedzialność za

ustanowienie skutecznego procesu wyboru i wyznaczenia członków rady nadzorczej spoczywa na każdej radzie nadzorczej, w szczególności na komitecie nominacyjnym utworzonym w jej ramach. Ponadto konieczne jest doprecyzowanie kryteriów niezależności członków rady nadzorczej. Jeśli chodzi okodeterminację, to ważne jest, aby uznać, że konflikt interesów jest nieodłącznym elementem roli pełnionej przez przedstawicieli pracowników. Wyzwanie polega na tym, aby nie ograniczać praw pracowniczych przy jednoczesnym wdrażaniu bardziej elastycznych zasad kodeterminacji (współdecydowania) w spółkach akcyjnych.

Słowa kluczowe: Ład korporacyjny // Rada nadzorcza // Spółki giełdowe // Konflikt interesów // Niezależność // Współdecydowanie

ABSTRACT

Conflicts of interest in supervisory boards and the possibilities of limiting them to improve corporate governance in German stock-listed companies

Brigitte Theresia Steinbauer

Although the issue of corporate governance has been intensively explored by authors from many countries around the world for several decades, there are still areas that have not yet been sufficiently explored. One of them remains conflicts of interest, which is the subject of this dissertation entitled 'Conflicts of interest on supervisory boards and possibilities of limiting them to improve corporate governance in German listed companies.' The importance and impact of conflicts of interest on the work of corporate bodies was already noted in the times of Adam Smith and early literature on corporate governance issues, but they were particularly exposed in the agency theory published by William Meckling and Michael C. Jensen in 1976. This theory focuses on conflicts of interest that may arise between principals (shareholders) and agents (managers).

The supervisory board in the two-level corporate governance system is obliged to supervise the company's management, which is currently perceived not only as a supervisory function, but also as a control, advisory and interest-balancing function. The scope and importance of these obligations indicate that the existence of conflicts of interest may have a potentially large negative impact on the decision-making processes in the company. It is assumed that a conflict of interest occurs when the personal or professional interest of a member of the company's governing body (supervisory board) may influence the objectivity of his or her assessment, decisions, or actions in a manner detrimental to the company's interest.

This dissertation aims to identify and discuss the most important (typical) conflicts of interest in German listed companies and to analyze the existing methods of

resolving them offered by applicable regulations and the corporate governance code in order to avoid these conflicts or respond appropriately to them. Moreover, the aim of the dissertation is to formulate additional (new) recommendations for the German legislator, aimed at increasing the effectiveness of resolving conflicts of interest occurring in supervisory boards of listed companies.

The implementation of these goals was conditioned by in-depth knowledge of the most important research conducted in the field of corporate governance, relevant theories and systems of corporate governance, codes of good practice and their importance, and the German legal framework, especially those regarding the codetermination system.

In the empirical part of the dissertation, two stages of analysis are used, namely examining the relevant content of reports published by German listed companies belonging to the DAX 40 index, and then supplemented with qualitative interviews with experts. The annual reports of German listed companies include a report of the supervisory board for a given financial year, which should contain information on conflicts of interest existing between members of the supervisory board, both in terms of the socio-political sphere and the capital market. This analysis allowed for their diagnosis, assessment of the frequency of their occurrence, and ways of reducing (eliminating) them. In the second stage of the study, interviews were conducted with experienced experts, highly qualified members of supervisory boards, in order to obtain valuable insight from an internal perspective.

The conducted research proves that the German regulatory framework provides clear definitions of responses to conflicts of interest. However, the effectiveness of these solutions in practice depends on the decisions of individuals to disclose information regarding conflicts of interest. There is a lack of a culture of responding to potential conflicts, and information obligations in this area are part of the recommendations of the German Corporate Governance Code and are therefore not legally binding. German listed companies should focus on prioritizing preventive measures. One of the key aspects concerns the procedure for appointing and subsequent (re)election of members of the supervisory board. Currently, the current legal framework does not provide clear guidance on preventive measures, and the responsibility for establishing an effective process for selecting and appointing supervisory board members rests with each supervisory board, in particular the nomination committee established within it. Moreover, it is necessary to clarify the criteria for the independence of supervisory board members. When it comes to determination, it is important to recognize that conflict of

interest is inherent in the role played by employee representatives. The challenge is not to limit employee rights while simultaneously implementing more flexible rules of codetermination (co-determination) in joint-stock companies.

Keywords: Corporate governance // Supervisory Board // Stock-listed companies // conflict of interest // independence // codetermination

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A doctorate is a long-term project with ups and downs; I was aware of that from the very beginning. Early on, the journey was marked by intense interest. In between, of course, there were also moments of doubt. However, my enthusiasm for the topic, conflicts of interest in German supervisory boards, remained until the end. Many questions that stood at the beginning of my research turned into new answers. Getting answers and gaining knowledge in my PhD research gave me great pleasure.

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LIST OF PUBLICATIONS

Journal Publications

Steinbauer, B. (2023). Increasing gender equality on the board-level through stay-on-board regulations. Maastricht Journal of European and Comparative Law, Volume 30, Issue 3, p. 346 – 356, DOI: https://doi.org/10.1177/1023263X231205830

Key words: Stay-on-board, mandate pause, executive board, diversity, gender equality

Conferences

Steinbauer, B. (2023). Do hard cases make bad law? The effectiveness of German's approach to strengthen financial market integrity. Proceedings of the 3rd Open Science Conference, ISBN: 978-80-907553-2-1, ISSN: 2788-1628, DOI: 10.52950/30SC.Istanbul.2023.5.016

Key words: Corporate governance, reforms, financial markets integrity, Wirecard

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INTRODUCTION

1. Research background and knowledge gap

The significance of conflicts of interest for the work of corporate bodies is a subject that dates back to Adam Smith and early corporate governance literature. Conflicts of interest between the principal and the agent are the central issue in the principal-agent theory framework. In the two-tier corporate governance system to which Germany belongs, the supervisory board is responsible for supervising the company's management, which is now seen not only as a supervisory function, but also as a control, advisory and interest-balancing function.

Conflicts of interest pose a potential risk that supervisory board members act against corporate interests. The supervisory board consists of people with many external obligations and responsibilities that are not necessarily consistent with the company's interests, which leads to situations in which the company's interests are in conflict with the personal interests and intentions of the supervising member.

Eliminating conflicts of interest is essential since the supervisory board holds the responsibility of making important decisions that can significantly impact the company and its stakeholders. Conflicts of interest can undermine objective decision-making. Making decisions that put personal interests ahead of corporate interests would be a critical situation from an economic point of view.

Supervisory board members are legally required to adhere to legal regulations to ensure effective oversight and to maintain shareholder’s trust, including their fiduciary duties towards the company and its shareholders. Given that conflicts of interest on the supervisory board pose a potential risk to the corporate interests of the organization, it is necessary to ensure that the supervisory board has appropriate mechanisms to exert influence in this respect.

Previous research on conflicts of interest has mainly focused on specific cases of conflicts of interest among supervisory board members. There is a lack of research regarding the broader implications of corporate governance adaptation that limit conflicts of interest and improve corporate governance at the same time, along with suggestions on how to address the shortcomings. This dissertation is an attempt to reduce the research gap in this area.

This thesis identifies and discusses typical conflicts of interest that arise in the supervisory boards of German listed companies, examines these conflicts of interest, assesses their significance, and proposes potential solutions to the problem of conflicts of interest.

This thesis also aims to examine the effectiveness of indices and scorecards as tools for predicting the likelihood of conflicts of interest. The quality of corporate governance is directly related to conflicts of interest of members of the supervisory board.

When conflicts of interest arise on the board, compliance with corporate governance standards becomes crucial to ensuring that the company's best interests take precedence. An effective corporate governance system provides mechanisms to identify, address, and mitigate conflicts of interest, thereby safeguarding the integrity and ethical conduct of supervisory board members, ensuring the advancement of the company's interests, and maintaining stakeholder confidence in the company's corporate governance practices.

2. Aim of the study, research questions, and hypotheses

The main aim of this dissertation is - after identifying and discussing conflicts of interest in German listed companies - to present suggestions to reduce the risk of conflicts of interest by offering preventive and reactive solutions.

Methods of assessing corporate governance through indices and scorecards, the relevant theoretical concepts in corporate governance theory, especially the agency theory, and the differences in corporate governance systems and the legal frameworks are addressed in the context of conflicts of interest on supervisory boards by contextualizing these factors and assessing their impact on conflicts of interest.

A review and analysis of German and foreign literature clarify the meaning of this theoretical concept and its practical implications.

The analysis also took into account the impact of criteria, such as the independence of supervisory board members, the composition of supervisory boards, and co-determination.

From the objectives of this dissertation, the following main research questions can be derived:

RQ1: What are the main factors contributing to conflicts of interest on the supervisory boards of German listed companies, and what mechanisms are used to disclose these conflicts?

RQ2: What appropriate actions and procedures should be taken when a conflict of interest involving a supervisory board member occurs, and how can these actions be implemented to maintain the integrity of the board's decision-making processes and protect the company's interests?

RQ3: What specific changes and modifications to the German co-determination system are required to prevent and resolve conflicts of interest in the supervisory boards of German listed companies without questioning codetermination per se?

RQ4: What specific changes and modifications to the legal framework governing stock companies in Germany are required to prevent and resolve conflicts of interest in their supervisory boards and thus strengthen corporate governance?

The following hypotheses are generated:

H1: The main source of conflicts of interest in the supervisory boards of German listed companies are the personal interests of supervisory board members resulting from their additional employment or close connections with third parties, and not the German codetermination system.

H2: The role of the chairperson of the supervisory board is crucial in the process of identifying and managing conflicts of interest in German listed companies.

H3: Implementing a structured nomination process that identifies potential candidates for the supervisory board, taking into account their expected qualifications and the likelihood of the absence of conflicts of interest, is an effective preventive measure.

H4: German corporate governance can be improved by modernizing the codetermination system.

3. Structure of the dissertation

This dissertation consists of a theoretical and empirical part and has the following structure:

Chapter 1 contains a theoretical introduction to the essence, genesis and development of corporate governance. It describes the origins, historical development, and evolution of the definition of corporate governance, and highlights the importance of corporate governance. The thesis presents an overview of the main corporate governance theories, particularly the agency theory, and their relevance for diagnosing and resolving conflicts of interest. It provides a comprehensive description of the regulatory framework, including relevant international and national regulations, corporate governance codes, and principles of transnational institutions, as well as guidelines from proxy advisors. The aforementioned regulations, principles, and guidelines are described in terms of dealing with conflicts of interest. Chapter 1 concludes with a discussion of the use of international indices and scorecards to assess the quality of corporate governance and their use to solve conflicts of interest.

In Chapter 2, the focus is on the development of German corporate governance. The importance of corporate governance systems in terms of the impact of corporate structures on the occurrence of conflicts of interest, as well as the development of the legal framework for listed companies and corporate governance codes in Germany, are characterized. Then, the interpretation of conflicts of interest in the German regulatory framework is examined. The unique system of German codetermination is presented, focusing on its contribution to generating conflicts of interest.

Chapter 3 examines the corporate bodies of a German stock corporation and their specific function in discovering and resolving conflicts of interest This chapter begins with a characterization of the general meeting of shareholders and the supervisory board and presentation of information regarding the features of the executive board of a German joint-stock company. The third chapter ends with a description of the German codetermination system as a factor contributing to conflicts of interest.

In Chapter 4, based on the theoretical foundations discussed, an analysis of conflicts of interest and independence of supervisory board members of German listed

companies was conducted. The relationship between conflicts of interest and the independence of supervisory board members is important for conceptualizing the analysis of the most important conflicts of interest.

Chapter 5 empirically examines conflicts of interest in the supervisory boards of German listed companies included in the DAX40 index by employing the following methodological steps:

The author investigates the conflicts of interest disclosed by German DAX 40 companies in the fiscal years 2020, 2021, 2022, and 2023 (in case of a deviating fiscal year). The focus is on the practical implications and solutions reported by these companies. Insights on the topic are further analyzed after conducting interviews with supervisory board members and company experts. Observations regarding this issue are subject to further analysis after conducting interviews with members of the supervisory board and company experts.

Chapter 6 provides suggestions for solving the problem of conflicts of interest. These suggestions are based on the findings of the empirical analysis and the expert interviews as well as the author's own thoughts and experiences.

The concluding remarks summarize research on conflicts of interest and proposals for resolving them in supervisory boards of German listed companies.

The dissertation used books and scientific articles in the fields of corporate governance, law, and economics, written in both the German and English languages, as well as Internet resources with publicly available information regarding the work of supervisory boards, mainly from German organizations and listed companies. The scope of the research goes beyond German academic literature and includes sources and materials from various European Union countries as well as the United States. It is worth mentioning that the considerations and research contained in the dissertation were completed in January 2004.

For standardization purposes and better readability, all numerical values expressed in percentages were rounded to the nearest whole number following academic conventions.

The research methodology used in this dissertation includes content analysis of reports of German companies from the DAX 40 index and qualitative expert interviews.

In addition, critical analysis of literature and economic analysis methods are used, in particular comparative analysis, and basic statistical methods.

CHAPTER 1
THE CHARACTERISTICS OF CORPORATE GOVERNANCE

1.1 The essence, origins, and development of corporate governance

Corporate governance is ‘a frontier subject’ (Tricker, 2019, p. 3), practiced and described by ancient philosophers, and has been a topic of theoretical investigation since the 20th century. The history of corporate governance, from its beginnings to the present, is covered in this Chapter as is an overview of the current state of scientific corporate governance research, the various academic definitions of corporate governance, and a summary of the concept of corporate governance. Additionally, the Chapter concludes with a summary of the importance of corporate governance.

1.1.1 The origins and development of corporate governance: from ancient philosophers to modern regulatory reforms

‘History matters’ (Gilson, 2018). It is crucial to view corporate governance from a historical perspective, to evaluate how historical institutions influenced corporate governance as well as how decisions in the past influenced today’s corporate governance (Turner, 2024). The development of corporate governance has had a historical evolution with ‘no definitive historical treatment [], given the vastness of the subject’ (Cheffins, 2012). The etymological origin of the term ‘governance’ comes from the Greek word ‘κυβερνειν’ (kybernein), which means ‘to govern’ or ‘to steer’, and the Latin word ‘gubernare’ which has a similar meaning: ‘Gubernare’ can be translated as ‘to direct’ or ‘to govern’ (Schweikert & Jantz, 2012) and the translation ‘to steer’ usually applies to the steering of a ship, which implies that corporate governance involves the function of direction rather than control (Solomon & Solomon, 2004, p. 1).

Early works of philosophers and writers describe and discuss corporate governance principles with fictitious characters and stories. Geoffrey Chaucer, an English philosopher, talks about ‘gouernance’ or ‘governaunce’ in ‘The Canterbury Tales’ written in the 13th century. He used the word in the context of being ‘wise and responsible, which is appropriate’ (Cadbury, 2002). William Shakespeare (1564-1616) describes in his play ‘The Merchant of

Venice', published in 1600, that the main character, Antonio, a Venetian merchant, realizes that he is dependent on others who are handling his business (Tricker, 2019, p. 4).

Adam Smith (1723-1790), a Scottish moral philosopher, writes in his book 'An Inquiry into the Nature and Causes of the Wealth of Nations' (Smith, 2010), published in 1776, about the question 'why some countries are rich and others are poor' (Irwin, 2014). Smith analyzed various kinds of businesses involved in international commerce, describing how they got started, how they operate, and the effect they have on the economy. As chartered firms involved in international trade, Smith cited the Hamburgh Company, the Russia Company, the Eastland Company, the Turkey Company, and the African Company. All these companies were bound by statutes and acts that were essential for their operations outside of the United Kingdom (Bazantova, 2015). Smith recognized that 'the directors of such companies, however, being the managers rather of other people's money than of their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private co-partnery frequently watch over their own.' (Smith, 2010, p. xxxiii). Smith is therefore seen as the 'founding father figure of modern social/political economy as well as economics' (Elliott, 2000). In my opinion, Smith's theories on economics and the role of business in society had an indirect impact on the understanding of corporate governance, although without explicitly addressing the concept of 'corporate governance'. His primary concerns regarding the role and obligations of corporations, market mechanisms, and wealth generation prompted discussions on the purpose of corporations and their responsibilities in present-day business environments. These discussions are closely tied to modern corporate governance.

Corporate governance also evolved from theoretical approaches. Adolf A. Berle and Gardiner C. Means are pioneers in modern economic theory. They explain the position of large corporations as well as their behavior in 'The Modern Corporation and Private Property' and discuss the divergence of interests between principal and agent, and observe that an uncontrolled manager is led by goals that are not in the interest of the shareholders (Berle & Means, 1933, p. 119). In their discussion of the separation of ownership and control in modern corporations, they didn't use the term 'conflict of interest' explicitly and even had no focus on 'conflict of interest', but their analysis delved into the potential conflicts that arise due to this separation of ownership and control. Referring to the conflicts that may arise when managers prioritize their own interests at the expense of shareholders led to subsequent discussions in later scholarship on the 'agency problem' (Berle & Means, 1933, p. 119). At the time of Berle and Means, the phrase 'corporate governance' was still not used.

Jensen and Meckling (1976) are credited with establishing modern scientific corporate governance in the 1980s (Dragomir, 2008). In their model of the firm, an owner-manager who decides to issue equity suffers from agency costs. ‘Agency costs’ is a main theme of their agency theory framework (as described in more detail in Chapter 1.2.1); agency costs are the costs associated with the principal-agent relationship within a company. If there is a misalignment, agency costs will rise. Potential shareholders with realistic expectations know that once the owner-manager is no longer the sole owner of the company, the owner-manager will engage in more on-the-job consumption of various kinds because the costs of such consumption will now be shared with the new owners. As a result, they reduce their bid for the company’s stock, putting the costs of on-the-job consumption on the owner-manager (Dragomir, 2008). Jensen and Meckling argued that understanding and minimizing agency costs are critical for effective corporate governance mechanisms (Jensen & Meckling, 1976).

At the time of industrialization, the first companies were incorporated, and the question of governance and control arose in the context of businesses. Different countries followed different approaches regarding governance and control, although ‘corporate governance’ was not introduced at the time of industrialization. It can be observed that the development of corporate governance ‘depends entirely on historic situations, on cultural traditions, and on the situations in each country’ (Farrar, 1999).

The development in the United Kingdom and the United States is described in more detail in this Chapter, because ‘corporate governance as a concept and as a branch of academic study in its own right got its start in the United States and the United Kingdom’ (Hopt, 2015). As company crises served as accelerators for corporate governance development, the most important and influential crises and their impact on corporate governance were also described.

The United Kingdom became one of the most important nations in the development of corporate governance. The ‘modern process of corporate governance reform can be said to have started in the UK’ (Keasey, Thompson, & Wright, 2005, p. 5). The East India Company received a royal charter from English Queen Elizabeth I in 1600. The East India Company consisted of stockholders, one governor, and 24 board of directors members and was mentioned to be one of the first examples of a board with a management oversight structure (Robins, 2012, p. 29). In 1670, a royal charter followed for the Hudson Bay Company, and in 1711, the South Sea Company was incorporated (Tricker, 2019, p. 5). All these early companies were established by the crown or the state; at that time, businesses were only possible without the framework of an incorporation, leading to full liability for the business

owner. The South Sea Company's problems prompted the enactment of the first legislation. The South Sea Company was a public and private partnership in the United Kingdom with the goal of reducing national debt and fostering trade in the United States with a trading monopoly for South America and an allowance for slavery. It was not making as much profit as promised and engaged in speculative transactions (Temin & Voth, 2004), but as King George was leading the company, there was trust in it, and the share price initially rose. In 1720, the 'bubble' exploded, and the shareholders lost a lot of money (Harris, 1994b). The Bubble Act was enacted by the British Parliament in 1720 as a response to the stock market crash and the financial crisis. The Bubble Act hindered the formation of joint-stock companies and the issuing of shares without a royal charter or a specific act of Parliament (Vogel, 2012, pp. 49-50). The Bubble Act is no longer in place; it was repealed in 1825, but it is historically significant because of the early regulations of joint-stock corporations in the 18th century (Harris, 1994b). The English legal framework thus 'became a model for legislation in other European nations' (Harris, 1994a).

Legislation allowing the incorporation of companies came up with the evolution of business law in the 19th century in the United Kingdom. In 1844, the British Parliament approved the Joint Stock Corporations Act, which permitted citizens to incorporate private companies without a Royal Charter or an Act of Parliament. Before that time, many companies were founded but not incorporated (Armour, Hansmann, Kraakman, & Pargendler, 2017), consequently, they had no own legal identity. The Limited Liability Act was enacted by the British Parliament in 1855, and its primary purpose was to protect corporate directors from taking complete responsibility for the legal or financial misconduct of their organization (Turner, 2017).

In a study published by Tricker (1982, pp. 27-40), an analysis of board structures in the United Kingdom was conducted with the result that, according to Tricker, the concept of director independence was not understood in the United Kingdom at that time. That result marks the beginning of a series of reports dealing with corporate governance. The London Stock Exchange and the Financial Reporting Council (FRC), the United Kingdom's regulators of accounting standards, set up the Committee on the Financial Aspects of Corporate Governance in 1991 (Cheffins, 2012). Sir Adrian Cadbury was the chairman of that committee (Cadbury, 1992). The UK Cadbury Report from 1992 ('Cadbury Report') was the first corporate governance code that focused on the financial aspects of corporate governance and established a code of best practice with recommendations addressed to the board of directors, the non-executive directors, and the executive directors. In the Cadbury Report, the

term ‘corporate governance’ was described as ‘the system by which companies are directed and controlled’. Recommendations are also related to reporting and controls: Cadbury (1992) recommended to install non-executive directors, to bring an independent judgment, whereas independence is seen as being ‘independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgment’ (Cadbury, 1992); and to establish committees, like the audit committee, the remuneration committee, and the nomination committee. According to the Cadbury Report (section 3.7 of the Code of Best Practice), the committee recommended that stock-listed companies in the United Kingdom either report that they comply with the code or give reasons for non-compliance in a statement of compliance. ‘Comply-or-explain’ is a voluntary approach and Cadbury was convinced that the companies would be encouraged to comply ‘in spirit rather than in letter’ (Cadbury, 1992) and that this approach would help to develop a good corporate governance culture. Cadbury made this statement specifically for the United Kingdom, but it is universally applicable to other countries as well (Cheffins & Reddy, 2022; MacNeil & Esser, 2022). Cadbury explained the core components of a good corporate governance system: ‘The country’s economy depends on the drive and efficiency of its companies. Thus, the effectiveness with which their boards discharge their responsibilities determines Britain’s competitive position. They must be free to drive their companies forward but exercise that freedom within a framework of effective accountability. This is the essence of any system of good corporate governance.’ (Cadbury, 1992). In his summary of the Cadbury Report, Hampel referred to it as a ‘landmark in thinking on corporate governance’ (Hampel, 1997). According to Tricker (2019b, p. 12), the Cadbury Report ‘was significant in influencing thinking around the world’, as other countries decided to report on corporate governance. The Cadbury Report is centered on three key areas: firstly, it provides a comprehensive definition of corporate governance; secondly, it proposes that corporate governance rules from corporate governance codes should be voluntarily adopted; and thirdly, it introduces the comply-or-explain principle (Cadbury, 1992). The author believes that these principles played a crucial role in stimulating further discussions about the concept of corporate governance and the formulation of non-statutory codes. Consequently, the author concurs with Tricker’s description.

Corporate governance has received considerable attention because of the Cadbury Report, and the developments in the United Kingdom prompted other nations to investigate the requirement of adopting an adapted version of these regulations for their corporations (Berghe, 2002, p. 1). The United Kingdom ‘acted as an exporter of legal concepts and

innovations' (Cheffins & Berwin, 2000). The Cadbury Report was not only of importance for developments outside of the United Kingdom, but it was also the start of a series of other reports that were published and that led to the Combined Code in 1998 and the UK Corporate Governance Code in 2010.

The Confederation of British Industry (CBI), a business lobbying organization, set up a study with Sir Richard Greenbury as chairman in 1995 (Harvey, Maclean, & Price, 2020). The CBI asked the group to identify good practices in determining directors' remuneration and to prepare a UK corporate governance report, in reacting to criticism and concerns that arose regarding the increase of board compensation in privatized public companies in which job layoffs and an increase of service prices took place (O'Connell & Ward, 2020). The final report of the group, the Greenbury Report (Greenbury, 1995) was published on July 17, 1995 (Pillay, 2013). The main recommendations in the Greenbury Report are, amongst others, that a remuneration committee should consist of independent non-executive directors, that the annual report should contain information on the remuneration of the directors, that directors' contracts should be limited to a one-year term to avoid high severance payments, and that a share option plan should contain long-term performance goals (Greenbury, 1995).

The Hampel Report (Hampel, 1997) followed in 1998 in the United Kingdom (Solomon & Solomon, 2004, p. 2). In 1995, the Committee on Corporate Governance was formed, initiated by Sir Sydney Lipworth, the chairman of the Financial Reporting Council (FRC) (Hampel, 1997). Sir Ronald Hampel chaired the committee, the other members were directors of major public companies and their professional advisors. The report dealt with corporate governance, principles of corporate governance, the role of directors, directors' remuneration, the role of shareholders, and accountability and audit. In the summary of the Hampel Report, 56 conclusions and recommendations were given, in one of them (number 3), the intention to produce a set of principles and a code of good corporate governance practice, which will embrace Cadbury and Greenbury and the Hampel Report, was expressed (Hampel, 1997).

The Cadbury Report, the Greenbury Report, and the Hampel Report finally led in 1998 to the UK Combined Code, which was a consolidation of the three reports (Conway, 2003). The UK Combined Code was incorporated into the listing rules of the London Stock Exchange and was revised in 2003 and 2006 (Rayton & Cheng, 2004).

The UK Turnbull Report (Turnbull Committee, 1999) was written by the Turnbull Committee in 1999, chaired by Nigel Turnbull, and contained guidelines for auditing financial statements. In 2005, the Turnbull Report was revised. It was issued by the Institute of

Chartered Accountants in England and Wales, whose members were the target recipients of the report. Therefore, the focus was on risk management and internal controls as essential parts of corporate governance (Rayton & Cheng, 2004). In 2001, the Myners Review was published. This report focused on institutional investors (Filatotchev, Jackson, Gospel, & Allcock, 2007). In 2003, the Higgs Review (UK) gave a review regarding the role and effectiveness of non-executive directors. Various recommendations for listed companies were included, such as certain independence criteria for non-executive directors and committee members (Rayton & Cheng, 2004). The next report that was published in the United Kingdom was the Smith Guidance or Smith Report in 2003 (Smith, 2003) focusing on audit committees (Filatotchev et al., 2007). The Tyson Report (Tyson, 2003) from June 2003 dealt with the recruitment of non-executive directors and included ideas to broaden boardroom diversity by encouraging non-executive directors to be drawn from more diverse backgrounds, representing a wider group of external constituencies (Brennan & Solomon, 2008). In July 2003, the independent regulator of corporate governance and reporting in the United Kingdom, the Financial Reporting Council (FRC), gave its approval to a revised version of the UK Combined Code (Solomon & Solomon, 2004, p. 56). The FRC reviewed the UK Combined Code again starting in 2008 and renamed it to the UK Corporate Governance Code, which was in force from 2010 onwards. The UK Corporate Governance Code was changed in 2012, 2014 and 2016. A comprehensive code review took place in 2017 and the revised version of the UK Corporate Governance Code was released in 2018 (Financial Reporting Council, 2018). The Financial Reporting Council (FRC) announced on January 22, 2024 that a new UK Corporate Governance Code will become effective January 1, 2025 with important revisions that enhance transparency and accountability and help to support the growth and competitiveness of the UK and its attractiveness as a place to invest (Financial Reporting Council, 2024). Appendix A gives an overview of the key milestones in the development of UK corporate governance.

The United Kingdom's development in corporate governance has driven other governments to explore the need for implementing similar standards or modifying the existing corporate governance framework. Together with the United States, the United Kingdom and Germany 'represent three of the most advanced in terms of developing effective corporate governance systems.' (Mintz, 2006). According to Hopt (2015), 'corporate governance as a concept […] got its start in the United States and the United Kingdom'. The development of corporate governance in the United States is described as follows; the development in Germany is described in Chapter 2.

The origins of corporate governance in the United States can be traced to the Canal Companies, the first companies in the US that were incorporated in the 19th century (Tawfeeq, Yahya, & Thurasamy, 2014). The Canal Companies had established a review committee composed of shareholders that influenced the financial reporting and the company's corporate governance (Russ, Previts, & Coffman, 2006). The 1920s and 1930s are identified by legal scholars as the period when early discussions on corporate governance began (Lund & Pollman, 2021). During that time, the industry evolved, and innovations fundamentally altered the economy. Berle and Means wrote about the increasing number of huge companies and the diminishing influence of shareholders (Lund & Pollman, 2021). Starting in 1972, the development of corporate governance in the US was significantly influenced, and at the same time accelerated, by a decision of the United States-based federal Securities and Exchange Commission (S.E.C.) to require listed companies to establish audit committees with independent outside directors. In the mid-1970s, the S.E.C. introduced corporate governance to the official reform agenda (Cheffins, 2012). The term 'corporate governance' as a word combination was mentioned for the first time in the Federal Register on December 3, 1976 (Cheffins, 2012). The Federal Register is the official journal of the federal government. In reference to a study that the S.E.C. was commencing on 'shareholder participation in corporate governance and, more generally, shareholder democracy' (Ocasio & Joseph, 2005). Also in 1976, Jensen and Meckling connected the agency theory with the discussion about companies. They believed that 'the relationship between the stockholders and manager of a corporation fit the definition of a pure agency relationship.' (Jensen & Meckling, 1976).

Corporate governance discussions were at all times influenced by company crises, and such crises accelerated the evolution of corporate governance. Scandals are seen as one of the corporate governance determinants (de Villiers & Dimes, 2021). In the mid-1990s, various company crises occurred. One example from the United States is the Enron scandal, a major corporate scandal that came to light in 2001. Enron was an American energy company based in Houston, Texas, that was once considered one of the largest and most successful companies in the United States (Milhaupt & Pistor, 2013). However, it was revealed that the company had engaged in widespread accounting fraud and deceptive business practices. Enron executives had used accounting tricks and special-purpose entities to hide the company's debts and inflate its earnings. They also misled investors and analysts about the financial performance of the company. When the extent of the fraud was exposed, it caused a major financial crisis and a loss of confidence in the stock market. The company's stock price

decreased tremendously, and it filed for bankruptcy in December 2001 (Li, 2010) with the consequence that the shareholders lost their money (Healy & Palepu, 2003). Top executives of the company, including Kenneth Lay, who was both CEO and chairman of the board of directors of Enron (Owen, 2003), Jeffrey Skilling (CEO) and Andrew Fastow (CFO) and his wife Lea, were convicted of fraud and other crimes related to the scandal (Milhaupt & Pistor, 2013). The accounting firm Arthur Andersen, which had been involved in auditing Enron's financial statements, was also found guilty of obstruction of justice and lost its license to practice as an accounting firm (Li, 2010).

At the turn of the 21st century, other large companies in the United States were involved in accounting scandals. These companies include Tyco International, Arthur Anderson, Global Crossing, Computer Associates, Parmalat, WorldCom, and Xerox, among others (Bazantova, 2015). Discussions regarding the function of public governance in privately held corporations were sparked as a result of the scandals (Coffee, 2005). Several states passed new regulatory laws and established new regulatory institutes. The fraudulent behavior of companies in the United States, including Enron and WorldCom (account misstatement and forgery) led to the enactment of the Sarbanes-Oxley Act of 2002. It had the goal of increasing the accountability and transparency of public companies and strengthening the rules regarding the auditing of financial statements (Milhaupt & Pistor, 2013). Different from a comply-or-explain approach, in the United States, the corporate governance regulations are set in the Sarbanes-Oxley Act and thus are mandatory (du Plessis & Low, 2017, p. 5).

Both the UK regulations and the Sarbanes-Oxley Act had a significant influence on corporate governance practices in many countries.

The European Union drafted in 1972 a directive on the harmonization of company law, that proposed to establish a two-tier system (see Chapter 2.1.2 for the characteristics of the two-tier system) within the European Union, as already practiced in Germany and the Netherlands. The proposal and the various revisions of the directive failed (Deckert, 2000). In 1992, the Maastricht Treaty was signed, creating a need for a common framework for corporate governance to ensure that companies operate in a fair and transparent manner (du Plessis et al., 2017, p. 335). In 2002, the European Union introduced the Financial Services Action Plan (FSAP), with the objective of establishing a single market for financial services in the EU (Mäntysaari, 2005, p. 0). This included the implementation of the Markets in Financial Instruments Directive (MiFID), which comprises provisions related to corporate governance (du Plessis et al., 2017, p. 506). In 2003, 'The Action Plan on Modernising

Company Law and Enhancing Corporate Governance in the European Union' (European Commission, 2003), also called the 'Action Plan EU' was published. In 2007, the European Union adopted the Shareholder Rights Directive, which aimed to strengthen the rights of shareholders in companies. The directive included provisions related to the disclosure of information, the right to vote on important issues, and the right to nominate directors (Zetzsche, 2008). The directive was adopted in 2017 to further strengthen shareholders' rights. The directive includes provisions related to the identification of shareholders, related party transactions, and the remuneration of directors (OECD, 2021). Common for the development of European corporate governance is that the European Union decided not to introduce its own corporate governance code. The corporate governance initiatives are either based on directives, action plans, or white papers.

In the author's assessment, implementing a single corporate governance code for the European Union would be advantageous in attracting investors and preventing unfavorable decisions related to the place of incorporation of businesses because of corporate governance. The author contends that achieving this objective necessitates the harmonization of corporation law and tax law throughout the European Union Member States. Currently, the legislation varies significantly, making it unrealistic to implement a universal corporate governance code. Nevertheless, the European Union has a substantial impact on the development of corporate governance in its Member States through directives, recommendations, and white papers, despite the absence of a corporate governance code with validity for the whole European Union. Chapter 1.3.1 describes the corporate governance framework at the European Union level in more detail.

Europe also faced company crises that had a significant influence on corporate governance discussions. Relevant company crises occurred not only in the United States, as mentioned earlier, but also in Europe. Berglöf (1997) highlights the German shipbuilder Bremer Vulkan, the German metals, and mining group Metallgesellschaft, the Spanish bank Banesto, the French conglomerates Navigation Mixte and Suez, and the Italian conglomerate Ferruzzi. All these companies experienced corporate crises in the mid-1990s that were the starting point for reforms outside the United States and the United Kingdom (Berglöf, 1997). As a consequence of such crises, the German corporate governance system was critically discussed in the literature (Forster, 1995; Götz, 1995), after the aforementioned crises occurred.

Since Jensen and Meckling established modern scientific corporate governance in the 1980s, the term 'corporate governance' has gained increasing prominence. By analyzing the

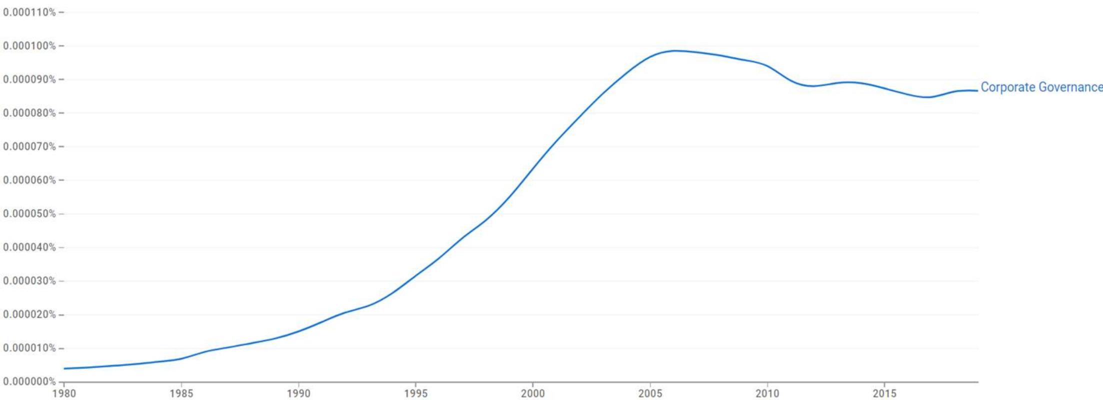
frequency and prominence of a particular topic across multiple newspapers, researchers and analysts can identify emerging trends and patterns, as well as the level of public interest and engagement with a particular issue. For example, in an analysis conducted by Ocasio and Joseph (2005), all articles in the New York Times from 1851 to 2002 were scanned to find the first occurrence of a combined usage of 'corporate' and 'governance'. In December 1972, an article was published in the New York Times in which an increase in stockholder laws describing the legal liabilities of directors of companies was mentioned. According to Ocasio and Joseph (2005), the author of the article published in the New York Times mentioned that 'corporate governance and discipline' improvement needs audit committees with outside directors responsible for monitoring the company's internal control systems. This initial mention of corporate governance in a supra-regional newspaper with significance was followed by the second mention of 'corporate governance' in the New York Times on April 22, 1977 in the article 'Management: Drafting a New Constitution for Corporations' (Andrews, 1977) that informs about discussions within the American Assembly, a public policy group of businessmen, lawyers, legislators, academics, and clergymen who focused on the structural reform of the board and its committee structure (Ocasio & Joseph, 2005), who deliberated on the 'ethics of corporate conduct' as a policy concern and the reform of what they termed 'corporate governance' as the solution. A parallel development took place in the United Kingdom, where the term 'corporate governance' was mentioned in the Times newspaper in 1978 and the Economist in 1990 (Cheffins, 2012).

Corporate governance represents an interdisciplinary subject of investigation in legislation, practice, and academia (Hopt, 2011a, p. 3). As an academic field, it has been known for about 50 years; Denis and McConnell (2001) stated in their study published in 2001 that the research on corporate governance is about 25 years old. In English-language literature, the term 'corporate governance' has been used since the 1990s (Zingales, 1998). Siedel's 1981 article on corporate governance in connection with the Foreign Corrupt Practices Act (Mason & O'Mahony, 2017) and Baysinger and Butler's 1985 analysis of the effects of board compositions on companies' performance, a typical question in the field of corporate governance research, are early influential contributions in the field of corporate governance research (Baysinger & Butler, 1985). In January 1993, the first volume, issue 1 of the journal 'Corporate Governance – An International Review' was published, marking a milestone in the academic recognition of corporate governance. In the editorial entitled 'Corporate governance - the new focus of interest', the author admits that at the beginning of

the 1980s, corporate governance was not a subject for serious academic study, and the phrase couldn't even be found in the professional literature (Tricker, 1993).

A Google search in the Google Books Ngram Viewer[1] that displays a graph showing how often the searched phrases have occurred in a corpus of books over the selected years is shown in Figure 1.

Figure 1 Google Ngram Viewer search results for 'corporate governance' in English literature from 1980 to 2019



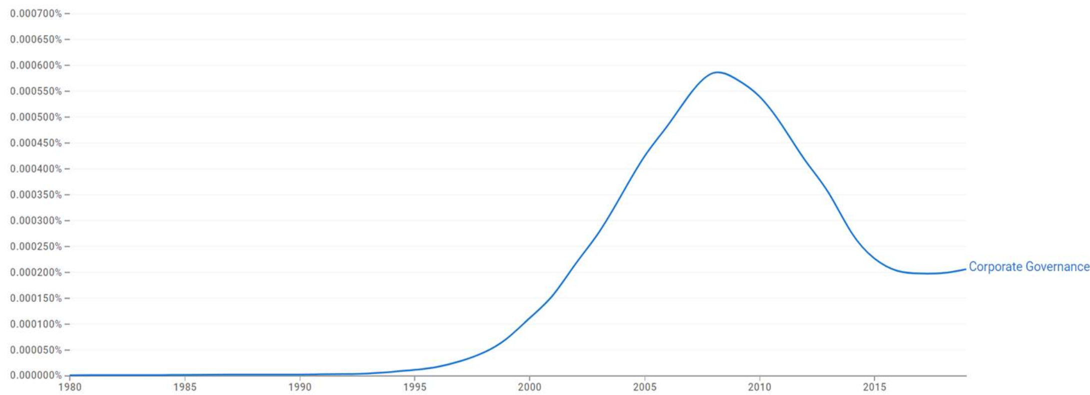
Source: https://books.google.com/ngrams/

The search shows that the relevance of the term 'corporate governance' on top of the corpus of books in English literature rose since 1980 with a rather stable development after 2005.

Figure 2 shows the usage on top of the corpus of books for the term 'corporate governance' in German literature from 1980 to 2019. The timeframe for the search in English literature is aligned with the timeframe for searching in German literature to ensure comparability.

Figure 2 Google Ngram Viewer search results for 'corporate governance' in German literature from 1980 to 2019

[1] The Google Ngram Viewer is a web-based tool provided by Google that allows users to visualize the frequency of words or phrases in the corpus of books over time. It is based on the Google Books project, which involves scanning and digitizing a vast number of books to create a searchable database.



Source: https://books.google.com/ngrams/

The analysis conducted using the Google Ngram Viewer reveals that the utilization of the term 'corporate governance' peaked later in German literature than in English literature, followed by a subsequent decrease to a lower level. The findings of these searches suggest that English literature about corporate governance emerged earlier and has consistently maintained a high level of scholarly output. In contrast, German literature experienced a delayed peak in 2008 and has shown a steady but comparatively lower level of development. The Google Ngram Viewer tracks the frequency of words and phrases in a certain period and can serve as a 'quick-and-dirty heuristic analysis' (Chumtong & Kaldewey, 2017). Beyond the obvious development of the usage of the term 'corporate governance' in the chosen period, additional conclusions need a more comprehensive analysis.

1.1.2 The evolution of corporate governance definitions and the discourse about 'good' corporate governance

Various definitions and interpretations of corporate governance exist, and it is characterized by a variety of legal and factual requirements. 'There is no universally accepted definition of corporate governance' (Mueller & Wells, 2012, p. 88). The attempts to find the right definition existing in the literature are often vague, and definitions vary widely (Claessens, 2011). Claessens (2011) defined two sets of definitions: one concerns a set of behavioral patterns, and the second is the normative framework, whereas Nerantzidis, Filos, and Lazarides (2012) identified six different dimensions: the institutional, shareholder, governance, control, performance, and stakeholder dimensions. These theoretical approaches show that even the categorization of the main elements of the term corporate governance is not commonly accepted. On the other hand, it is a common understanding that corporate governance is not a legal term, and the main approaches to defining it refer to principles of

governance addressed to corporate bodies (Koch, 2023e). Corporate governance is a complex subject that covers a wide range of principles, mechanisms, and regulations. It is inherently adaptable and dynamic (Claessens & Yurtoglu, 2012) and continuously evolving (Claessens, 2011).

Examples of the different types of definitions are shown in this Chapter in chronological order, ascending by date of publication. The definitions provide different perspectives on corporate governance, as the authors are focusing on financial, regulatory, or ethical aspects.

1977 Aguilera, Goyer, and Kabbach de Castro describe that 'effective corporate governance entails mechanisms to ensure executives respect the rights and interests of company stakeholders, as well as guaranteeing that stakeholders act responsibly with regard to the generation, protection, and distribution of wealth invested in the firm' (Aguilera, Goyer, & Kabbach de Castro, 1977).

1979 Shleifer and Vishny (1979, p. 737) define corporate governance as follows: 'Corporate Governance deals with the ways, in which suppliers of finance to corporations assure themselves of getting a return on their investment. […] Our perspective on corporate governance is a straightforward agency perspective, sometimes referred to as separation of ownership and control. We want to know how investors get the managers to give them back their money.'

1992 In the Cadbury Report, paragraph 2.5 (Cadbury, 1992) the term 'corporate governance' is described as 'the system by which companies are directed and controlled'.

1994 Cannon (1994) stated that the governance of an enterprise is the sum of those activities that make up the internal regulation of the business in compliance with the obligations placed on the firm by legislation, ownership, and control. It incorporates the trusteeship of assets, their management, and their deployment.

Garvey and Swan (1994) define: 'governance determines how the firm's top decision makers (executives) actually administer such contracts`.

1995 Parkinson (1995) describes corporate governance as 'the process of supervision and control intended to ensure that the company's management acts in accordance with the interests of shareholders'.

1997 Turnbull defines: 'Corporate governance describes all the influences affecting the institutional processes, including those for appointing the controllers and/or regulators, involved in organizing the production and sale of goods and services.' (Turnbull, 2019, p. 181)

1998 Zingales states that 'The role of a corporate governance system is to ensure that the power to make decisions is allocated to the people with the best opportunities.' (Zingales, 1998).

2001 Aoki links corporate governance to the 'structure of rights and responsibilities among the parties with a stake in the firm' (Aoki, 2001).

Tirole says that corporate governance is 'the design of institutions that induce or force management to internalize the welfare of stakeholders' (Tirole, 2001).

2005 Nader et al. define the term 'corporate governance' in a meaning that is combining analogical thinking from the governance of democracy to the 'governance' of a corporation (Ocasio & Joseph, 2005, p. 176).

2005 Keasey et al. make the definition that 'good governance is a matter of ensuring that decisions are taken and implemented in pursuit of shareholder value' (Keasey et al., 2005, p. 2), acknowledging that an effective system of corporate governance has two requirements, one micro and one macro.

2011 Claessens (2011) describes the set of behavioral patterns as the actual behavior of corporations, in terms of such measures as performance, efficiency, growth, financial structure, and treatment of shareholders and other stakeholders.

Monks and Minow make the following definition: 'Corporate governance is about how public companies are structured and directed.' (Monks & Minow, 2011, p. xviii).

2015 The OECD definition in the initial G20/OECD Principles of Corporate Governance published on July 8, 2015 is: 'Corporate governance involves a set of relationships between a company's management, its board, its shareholders, and other stakeholders. Corporate Governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.' (OECD, 2015).

Mees posits that corporate governance is 'a fairly recent term – or at least it is a term which has only become fashionable lately' and proposes the subsequent definition: 'Corporate governance is best seen as a movement to improve the performance and standards of the directorial and executive teams at the top of listed companies and to improve the confidence of international investors in local securities markets.' (Mees, 2015).

2020 Larcker and Tayan define corporate governance 'as the collection of control mechanism that an organization adopts to prevent or dissuade potentially self-interested managers from engaging in activities detrimental to the welfare of shareholders and stakeholders.' (Larcker & Tayan, 2020).

Solomon uses a broad definition of corporate governance: ‘corporate governance is the system of checks and balances, both internal and external to companies, which ensures that companies discharge their accountability to all their stakeholders and act in a socially responsible way in all areas of their business activity.’ (Solomon, 2020, p. 6).

2023 The OECD published the revised G20/OECD Principles of Corporate Governance with a slightly revised definition of corporate governance compared to the version published in 2015: ‘Corporate governance involves a set of relationships between a company’s management, board, shareholders, and stakeholders. Corporate governance also provides the structure and systems through which the company is directed and its objectives are set, and the means of attaining those objectives and monitoring performance are determined.’ (OECD, 2023b).

The examples of the various definitions of corporate governance show that there are different emphases. The selection of a definition of corporate governance holds significance as it has the potential to impact studies and their results. The utilization of a comprehensive interpretation of corporate governance is considered advantageous. It is reasonable to direct attention towards the conflict between ownership and control within corporate bodies. Nevertheless, a definition of corporate governance that is limited to the connection or relationship between ownership and management or one that is focused on compliance with the law are both too narrow. A definition of corporate governance that is comprehensive and covers all aspects of ‘business governance’ is preferable. The more comprehensive perspective considers the roles played by all relevant stakeholders as well as the contributions made by businesses to the economy. Amongst all definitions, the author prefers the OECD definition from 2023 for the following reasons: The OECD definition is widely used and commonly accepted; it focuses on the relationship between corporate bodies and other stakeholders; it clarifies that the concept of corporate governance is also a structural one; and it highlights the aim of doing business, i.e., to reach goals and ensure performance. Both the OECD’s understanding of corporate governance and the Cadbury Report stress the significance of strong boards, protection of shareholder rights, disclosure and transparency, and the need for effective mechanisms to address conflicts of interest. While the Cadbury Report had a more UK-centric focus, the OECD aimed to offer a broader, internationally applicable framework for corporate governance.

In addition to the examples of corporate governance definitions, it is important to note that academic research also plays a significant role in determining the expectations of ‘good’ corporate governance. The Hampel Report (Hampel, 1997) explains the expectation of ‘good’

corporate governance as follows: ‘Good corporate governance is not just a matter of prescribing particular corporate structures and complying with a number of hard and fast rules. There is a need for broad principles. All concerned should then apply these flexibly and with common sense to the varying circumstances of individual companies.’ (Hampel, 1997). Behind ‘good’ corporate governance, there are various expectations, like a wish list for the ideal company with perfect management working under perfect conditions. Expectations for ‘good’ corporate governance may refer to the appropriate handling of risks, the implementation of a formal, transparent process for proposing and electing board members, the need that management bodies work functionally and that management decisions are focused on long-term value creation, consider the interests of various stakeholders, and provide transparency. Companies shall not only stick to corporate governance principles, as stakeholders expect to deal with companies that ensure ‘good’ corporate governance. The German Corporate Governance Code (in this thesis also abbreviated as the ‘Code’) e.g. expressly states in its foreword that the objective of the Code is to provide a transparent and understandable corporate governance system and thus provides for ‘principles, recommendations, and suggestions … that are accepted nationally and internationally as standards of good and responsible governance’ (Regierungskommission, 2022b). The G20/OECD Principles of Corporate Governance of 2015 (OECD, 2015) also focus on ‘good’ corporate governance. According to the OECD, ‘good corporate governance will reassure shareholders and other stakeholders that their rights are protected and make it possible for corporations to decrease the cost of capital and to facilitate their access to the capital market’ (OECD, 2015). The G20/OECD Principles of Corporate Governance of 2023 also highlight the importance of good corporate governance (OECD, 2023a). On its homepage, the OECD provides a rationale for corporate governance as well: ‘Good corporate governance helps to build an environment of trust, transparency and accountability necessary for fostering long-term investment, financial stability and business integrity, thereby supporting stronger growth and more inclusive societies.’ (OECD, n.d.). Thus, the principles shall be an impetus for policymakers ‘to raise awareness of good corporate governance for all companies, including smaller and unlisted companies’ (OECD, 2023a).

I see the differences between the terms ‘corporate governance’ and ‘good corporate governance’ as follows: The term ‘corporate governance’ *focuses* on compliance with laws and regulations, adherence to recognized standards and recommendations, the development of and adherence to corporate guidelines, as well as the implementation of management and control structures. The term ‘good’ corporate governance also includes a commitment to

ensure responsible, qualified, transparent management that is oriented towards long-term success and is thus intended to serve the organization itself, its owners, and external stakeholders. Corporations practicing good corporate governance enjoy heightened legitimacy in the eyes of the public. This legitimacy is predominantly driven by the disclosure and transparency principles integral to corporate governance. Complete disclosure of relevant information, accessible to both internal and external stakeholders, fosters trust. The decreased risk of fraud and criminal conduct due to well-established corporate governance further contributes to gaining public trust.

1.1.3 The importance of corporate governance

Solomon and Solomon (2004, p. 1) underscore the importance of corporate governance for corporate success and social welfare. Lessons from corporate failures like Enron highlight the consequences of weak governance, emphasizing the need to avoid crises and instill confidence in investors. Confident investors, willing to provide capital and hold shares, positively impact share prices, fostering long-term corporate success and economic growth. Corporate governance streamlines processes, instills accountability, and plays a pivotal role in decision-making.

A company's ownership and board structures fundamentally influence its management and control. Management, responsible for establishing objectives and policies, is pivotal in achieving corporate goals. The financial structure, along with the legal, regulatory, and political environment, further determines the quality of corporate governance.

Corporate governance, at its core, is the systematic structuring and direction of companies. It ensures that the right questions are asked, and a robust system of checks and balances is established to derive answers to such questions, fostering business decisions in the best interest of the company. This extends beyond ensuring legal conduct; it encompasses taking responsibility for corporate decisions and actions. Essentially, corporate governance is about building trust in the company among the various stakeholders through corporate decisions and the resulting actions and maintaining this trust in the long term (Schweikert & Jantz, 2012).

Corporate governance involves balancing the interests of the company's stakeholders, such as shareholders, management, customers, suppliers, financiers, the government, and the community (Ogbechie, 2019, p. 41), which means facilitating effective, entrepreneurial, and prudent management that can deliver the long-term success of the company while considering the interests of stakeholders and complying with legal and regulatory requirements. Corporate

governance embodies accountability and transparency and is a key element in the efficient functioning of capital markets (OECD, 2023a).

The principles of good corporate governance help to ensure that companies are well-run, that they have a clear sense of direction, and that they are responsive to the needs and concerns of their stakeholders. Responsible management of a company ensures that business decisions are made in line with the development of long-term, sustainable value for investors, employees, and the community, but not only for the short-term benefit of one single stakeholder, regardless of the implication a decision may have on other stakeholders. Effective corporate governance provides a transparent and accountable structure for supporting objectively established goals and standards through a system of checks and balances.

A high level of corporate governance contributes to shaping a positive public image. The corporation assumes a greater level of responsibility for its actions because of the implementation of corporate governance, which also enables the corporation to keep track of what is occurring and provides those in charge with assistance in maintaining a greater awareness of the corporation's image in the public eye (Waldenberger, 2016).

Moreover, effective corporate governance is an essential component of risk management. Scandals, fraud, and criminal responsibility of the firm can be avoided entirely or at least reduced to a manageable level with good corporate governance (Waldenberger, 2016). Because everyone involved in the business is aware of the responsibilities they hold, the actions of a single person do not necessarily result in the collapse of the corporation. On the other hand, it is also a sort of self-policing in some situations. It is conceivable for a corporation to address the situation on its own before any external forces can take any action against the corporation. This level of handling business on its own rather than being forced into making decisions outside of the organization helps the corporation sustain itself by ensuring that it can continue to function normally.

The increased likelihood of avoiding company crises, or at least reducing the number of such crises that led to harm to the stakeholders of such companies, will maintain the confidence of investors. Confident investors are more willing to provide companies with capital and to hold shares. Solid businesses have a positive impact on the share price, trust in the market is given, and the companies can deliver long-term corporate success and economic growth more easily. Corporate governance helps to streamline processes and give individuals accountability for their actions. It helps the process of decision-making (Almaschhadani & Almashhadani, 2023).

The relevance and importance of corporate governance for the success of corporations, especially firm performance and its dependency on corporate governance, is the subject of various studies and papers (Schmidt, 2012, p. 34), examples are that Bermig evaluates the dependency between board size and board composition and performance, earnings, management and cash holdings with the conclusion that neither size nor composition have consistent influence on firm valuation and performance (Bermig, 2012), Steinbrecher analysis the relationship between corporate governance and success at German banks and summarizes that relevant aspects for corporate governance of banks are the expertise of the corporate bodies as well as employee remuneration (Steinbrecher, 2016), Lenz focusses on corporate governance of cooperative banks and concludes that there is no dependency between performance and size of the supervisory board (Lenz, 2019). Maintaining a profitable business is crucial for the success of the company.

Corporate governance is crucial due to its significance in ensuring effective management, accountability, and transparency inside a company. The primary responsibility of directors is to integrate the many resources of the company, such as labor and capital, to generate outputs with optimal efficiency. Inadequate management will result in enterprises operating below their production possibility frontier. Hence, the effectiveness of corporate governance plays a crucial role in determining the productivity of individual organizations. Moreover, any systemic deficiencies in corporate governance would inevitably result in a decline in national productivity development. Another crucial factor in the significance of corporate governance is its impact on the availability of financial resources, from financial markets and institutions to corporations. Some academics argue that the Victorian and Edwardian capital markets directed a significant amount of investment towards foreign ventures instead of domestic businesses due to inadequate corporate governance during that period (Turner, 2024).

1.2 Theories of corporate governance in diagnosing and resolving conflicts of interest

The field of corporate governance has witnessed the development of several prominent theories, starting with the agency theory, which has been expanded upon over time to include the stewardship theory and stakeholder theory. The evolution of corporate governance theories has led to the development of the resource dependency theory, transaction cost theory, and others. In the context of this thesis, it is important to discuss corporate governance

theories. They offer a conceptual basis for comprehending the concepts, methods, and structures that regulate the operations of corporate bodies. They are particularly useful in comprehending the conceptual framework for assessing conflicts of interest. The theories provide analytical frameworks for evaluating the relationships, responsibilities, and motivations of different stakeholders within a corporate governance system, thereby improving the depth and rigor of the research. Corporate governance theories provide a framework for understanding conflicts of interest within governance systems. These findings reveal the impact of corporate governance frameworks on board behavior and decision-making, offering clarity on the origins and solutions to conflicts. Gaining knowledge of various corporate governance ideas enables the comparison and differentiation of corporate governance systems. This comparison is important for understanding differences in board practices, laws, and responses to conflicts of interest in different scenarios. The theories provide suggestions for enhancing corporate governance. Integrating this theoretical foundation into the research can contribute to formulating suggestions for dealing with conflicts of interest in supervisory boards and for solving such conflicts.

The corporate governance theories explained in this Chapter help to understand corporate governance, and depending on the relevant perspective, they provide a notion of how complex the issue is. This thesis has a focus on conflicts of interest. Conflicts of interest are discussed as agency dilemmas, the fundamental difficulty and challenge of a corporation, which led to the agency theory. The English phrase 'corporate governance' is closely connected to the discussion about the relationship between a principal (shareholder as company owner) and an agent (management as governing body). The separation of ownership and control is analyzed within the context of the agency theory; this theory provides the fundamental basis for discussions on corporate governance (Berle & Means, 1933; Coase, 1937; Jensen & Meckling, 1976).

1.2.1 Agency theory

The agency theory or principal-agent theory is a widely studied area of organizational economics and goes back to the work of Berle and Means (Gelter, 2010) who wrote about the separation of ownership and control, and the tendency of managers to operate in a manner that is not always in the best interests of shareholders. According to Jensen and Meckling, the agency relationship is described 'as a contract under which one or more person (the principals) engage another person (the agents) to perform some service on their behalf which involves delegating some decision making authority to the agent' (Jensen & Meckling, 1976).

This conflict was first described by Adam Smith (1776) and Ross (1973) further highlighted the problem. The principal-agent relationship is characterized by a situation where the principal (shareholder) hires an agent (manager) to act on behalf of the principal to achieve certain objectives, and it is expected that the agent acts in the best interest of the principal (Jensen & Meckling, 1976). Since ownership and control are kept separate, there is the possibility of a conflict of interest between the owners and the managers. A profitable return on investment is in the owners' best interest (having a form of dividends or yield from selling shares), while the interests of managers may run opposite to those of a company's profitability, as managers may have an interest in increasing their own benefits (Pratt & Zeckhauser, 1985). Whenever cash is distributed to shareholders, conflicts may arise because the power of managers is diminished as dividend payments to shareholders take away resources previously under their control. Because of the conflict of interest, inefficiencies and even financial losses may occur, which is then the principal-agent problem. The agency theory seeks to explain the factors that influence the behavior of agents in this relationship and to provide mechanisms to align the interests of the principal and the agent. It assumes that agents are rational and self-interested and that they may engage in opportunistic behavior, such as pursuing their own goals at the expense of the principal (Abdullah & Valentine, 2009). Balancing the principal-agent relationship is the primary challenge in a principal-agent relationship (Khan, 2011). That means designing and organizing a corporate governance structure that is both functional and effective. Mechanisms for avoiding agency costs may include, for instance, oversight by the supervisory board, incentive-optimized compensation schemes, an effective risk management system, and control by shareholders and the government. The effectiveness of these mechanisms is contingent upon a range of factors, including the nature of the task, the level of information asymmetry, and the quality of the relationship between the principal and the agent (Lopatta, Böttcher, Lodhia, & Tideman, 2020).

The agency theory has contributed to the development of governance mechanisms and management practices that seek to align the interests of principals and agents and promote effective and efficient organizational performance (Tawfeeq et al., 2014). In the view of the author, the agency theory provides the theoretical foundation for understanding the dynamics of conflicts of interest within supervisory boards.

1.2.2 Stewardship theory

The stewardship theory was developed in the 1990s, 'under a vision psycho-sociological of corporate governance' (Garzón Castrillón, 2021). Donaldson describes the stewardship theory as a theory where situations are examined 'in which executives, in their capacity as stewards, are motivated to work in the best interest of their principals' (Davis, Schoorman, & Donaldson, 1997). The stewardship theory is seen as the opposite of the agency theory, as it supports the empowerment of the leadership in a company (Afza & Nazir, 2014). Conflicts of interest are not the focus of the stewardship theory. It emphasizes the importance of shared values and goals between managers and employees, and the need for managers to act as stewards or caretakers of the organization's resources, rather than as self-interested agents (Schweikert & Jantz, 2012). The theoretical underpinnings of the stewardship theory come from the scientific fields of psychology and sociology. In the context of stewardship theory, 'situations in which managers are not motivated by individual goals but are rather stewards whose motives are aligned with the objectives of their principals' are referred to as 'stewardship situations' (Davis et al., 1997). According to Velte (2010), the stewardship theory applies to both the dualistic and the monistic corporate governance systems. The central element of the theory is that it assumes that managers are motivated by intrinsic factors such as autonomy and purpose and that they can be trusted to act in the best interests of the organization if given the opportunity to do so (Davis et al., 1997). The theory also emphasizes the importance of building strong relationships between managers and employees and creating a culture of trust, collaboration, and shared values within the organization. However, the underlying assumptions of the stewardship theory do not accurately reflect reality, as conflicts of interest and information asymmetries are not considered. Accounting scandals that have occurred since the start of the twenty-first century, and regulatory actions taken by standard-setters show that the establishment of institutional monitoring measures following the principal-agent theory, which competes with the stewardship theory, must be qualified as central elements of corporate governance.

This thesis focuses on conflicts of interest among supervisory board members competing with the best interests of a corporation. The stewardship theory's lack of consideration of conflicts of interest leads to its minor significance for the thesis.

1.2.3 Stakeholder theory

The stakeholder theory can trace its roots back to 1984 to Freeman (Dragomir, 2008), who defined stakeholders as 'any group or individual who can affect, or is affected by, the achievement of a corporation's purpose' (Freeman, 1984). This is where the concept of stakeholders first appeared in the context of the theory of corporate governance (Donaldson & Preston, 1995). The Freeman model is one that takes the form of a satellite. The company is in the middle, and the stakeholders are arranged in a satellite-like pattern around it. Everyone who has a stake in the situation has an equal connection to the hub. Stakeholders can include employees, customers, suppliers, communities, and the environment, among others. According to this paradigm, there is no relationship between any of the several stakeholders. Following Freeman, the points are all the same size, which suggests that they should be prioritized and treated similarly. The stakeholder theory argues that companies should operate in a manner that benefits all stakeholders, not just shareholders, because this is ultimately in the best interest of the company. In the Freeman model, each stakeholder has either a direct or indirect influence on the organization (Freeman, 1984). Throughout the years, the stakeholder theory became more important as national and international codes as well as reporting standards were implemented, focusing on different stakeholders (Welge & Eulerich, 2021, p. 0). Stakeholder theory has also gained prominence in recent years as more and more companies recognize the importance of corporate social responsibility and sustainability.

An opposite perspective to the stakeholder theory is a narrow emphasis on the shareholders of a company. The shareholder is a key stakeholder in the company. However, in a broader view, a company depends on all stakeholders, not just the shareholders, albeit to varying degrees. Effectively managing stakeholders and meeting their expectations is an operational responsibility of the executive board, which applies to German stock-listed companies. The stakeholder theory fails to offer solutions for the balancing of conflicts of interest that may arise among the different stakeholders, nor does it address conflicts of interest in the supervisory board.

1.2.4 Other theories

The resource dependency theory focuses on the accessibility of different resources that are necessary for a company's success, especially the requirement to connect the resources of the company and external resources (Yusoff & Alhaji, 2012). Access to resources is a critical dimension of the corporate governance debate (Pfeffer, 1972). The theory interprets

organizations as independent within the context in which they operate. Organizations rely on the resources and information generated by others to ensure that they will remain in business. Under these conditions, companies engage in intense competition with other organizations that make use of the same limited resources. The recourse dependency theory doesn't describe corporate governance as a whole, but is limited to the analysis of the relationship between different organizations providing resources; the relationship with other stakeholders or shareholders is not considered (Garzón Castrillón, 2021).

The transaction cost theory has its origins in the agency theory and was derived from Coase's 'The Nature of the Firm' (Coase, 1937) and further developed by Williams (Wentges, 2002, p. 37). Coase argued that a company could reduce its operating expenses by performing activities internally rather than contracting them out to a third party. The cost of the company's goods or services would be lower if they were obtained internally rather than on the market. This is something that will change if the company grows to the point where the external market is more competitively priced. The transaction cost theory faces a lot of criticism because of its normative nature, assumptions, and opportunism (Ghoshal & Moran, 1996).

The political theory is described by Pound (1993) and Hawley and Williams (1996) who emphasize the importance of political bodies in corporate governance, as political influence in the decision-making process in a company is necessary to protect shareholders' rights. The political theory is based on the approach of getting voting support from shareholders and not acquiring voting power (Hawley & Williams, 1996). As a result, political influence in corporate governance may cause an organization's corporate governance to be directed by political considerations. When the government is involved in the decision-making process of corporations, there is a significant reduction in public interest since cultural challenges are considered (Pound, 1993). Overall, a significant amount of impact on the evolution of governance may be possible through political influence.

The pecking order theory is a financial theory that describes the preferences companies have when choosing between financing options to fund their projects or operations (Myers & Majiuf, 1981). In the scholarly discourse on the pecking order theory, the findings have yielded diverse outcomes. Central to the theory is the proposition that companies exhibit a certain hierarchy in their selection of financing sources. Accordingly, companies prefer to use internal financing options compared to external financing, and there is a preference for debt financing over equity financing (Adair & Adaskou, 2015). The pecking order theory

primarily focuses on the hierarchy of financing sources and doesn't address conflicts of interest within the context of corporate governance or supervisory boards.

Another theory in the context of corporate financing is the market timing theory. Baker and Wurgler (2002) are some of the first scholars to describe this theory in research about market timing. The concept of the theory is that companies can strategically time the issuance of securities based on their perceptions of market conditions, assuming that company managers possess information about the true value of their company's securities. By timing the market, they can issue securities when they believe the market is overestimating their value, thus benefiting existing shareholders. This theory contrasts with the pecking order theory (Högfeldt & Oborenko, 2005), which suggests that companies prefer internal financing and only resort to external financing when internal resources are insufficient. The theory is relevant in the context of equity issuance and may not directly address conflicts of interest but can be related to decision-making in financial management.

The signaling theory goes back to Spence (1973), who was awarded the Nobel Prize in Economic Sciences in 2001 (Spence, 2002). Spence's work primarily focused on how individuals use education as a signal to prospective employers about their abilities, addressing the concept of signaling in the labor market. Subsequent research has built on the signaling theory for many other implications, e.g., how companies may use dividends to signal their profitability to the stock market. The signaling theory doesn't address conflicts of interest.

To conclude, the agency theory is the predominant theory of corporate governance. While other theories, such as the stewardship theory and the resource dependence theory, also offer useful perspectives on corporate governance, the agency theory is widely recognized as one of the most important and influential theories in this academic field and is likely to remain a key reference point for research and practice in corporate governance. The framework and structure that the agency theory offers help to understand the relationship between principals and agents in companies. The agency theory emphasizes the potential for conflicts of interest between principals and agents and suggests that monitoring and incentives are necessary to align their interests and promote the efficient and effective functioning of the organization.

Within the scope of this thesis, which focuses on conflicts of interest among supervisory board members, the agency theory serves as a crucial framework for both research and practical considerations as it highlights the possibility of conflicts of interest arising between principals (e.g., shareholders) and agents (e.g., supervisory board members).

This perspective is particularly relevant when examining the difficulties and solutions associated with conflicts of interest within supervisory boards.

1.3 International and national regulations and the quality of corporate governance and their importance in diagnosing and resolving conflicts of interest

Corporate or company law establishes the legal framework for businesses, covering aspects like incorporation, the appointment of corporate bodies, the relationship between shareholders, and disclosure and filing requirements. Companies must comply with jurisdiction-specific regulations in areas such as taxation, intellectual property, employment, contracting, and accounting. Publicly traded companies must also adhere to stock exchange regulations, with non-compliance risking penalties or delisting.

Countries have utilized a range of legislative and regulatory instruments, as well as codes and principles, to address corporate governance concerns (Koch, 2023g; OECD, 2023b). In addition to the legal framework, which is a complex set of mandatory rules, discretionary corporate governance codes, corporate governance principles, and guidelines exist globally. This Chapter about international and national regulations and the quality of corporate governance in diagnosing and resolving conflicts of interest provides an overview of the various elements that comprise the corporate governance framework. It explores the theoretical models and mechanisms that govern the operation and control of a company and especially investigates how the current corporate governance framework contributes to conflicts of interest among supervisory board members.

1.3.1 Conflicts of interest in the light of the hard and soft international and national corporate governance regulations

International institutions have developed principles and guidelines for corporate governance. The most important and influential organizations are the Organisation for Economic Co-operations and Development (OECD), the United Nations (UN), and the International Corporate Governance Network (ICGN), but there are also various other institutions that publish their guidelines. The OECD published its guidelines, the OECD Principles of Corporate Governance in 1999, and revised them in 2004, 2015, and 2023. Since 2015, they have been entitled G20/OECD Principles of Corporate Governance (OECD, 2015). The OECD reviewed the OECD Principles of Corporate Governance, and the G20 leaders

endorsed them at the G20 Summit on September 9 and 10, 2023. Participants in the review included 52 jurisdictions (OECD, 2023a). The TOP 10 key considerations that led to the decision to initiate a revision of the G20/OECD Principles of Corporate Governance are shown in the Terms of Reference and Roadmap (OECD, 2022) and contain the topics (1) Corporate ownership and increased concentration, (2) The management of environmental, social and governance (ESG) risks, (3) The role of institutional investors and stewardship, (4) The growth of new digital technologies and emerging opportunities and risks, (5) Crisis and risk management, (6) Excessive risk-taking in the non-financial corporate sector, (7) The role and rights of debtholders in corporate governance, (8) Executive remuneration, (9) The role of board committees, and (10) Diversity on boards and in senior management (OECD, 2022). The objective of the review was to enhance the principles by adapting crucial elements to an environment that has emerged in the wake of COVID-19 while also considering any structural effects that the crisis may have had on capital markets and the practices of corporate governance (OECD, 2023a). The primary goals of the updated principles are the improvement of enterprises' access to capital market financing and the strengthening of the resilience of the corporate sector as a whole through enhanced risk management (OECD, 2022). The primary development in the G20/OECD Principles of Corporate Governance 2023 pertains to the inclusion of a new chapter that is dedicated to sustainability and resilience. This new chapter addresses chances and risks in the field of sustainability and climate-related challenges (OECD, 2023a).

The OECD Principles of Corporate Governance (version from 2023) state that ‘Corporate governance involves a set of relationships between a company’s management, its board, its shareholders, and other stakeholders. Corporate Governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.’ (OECD, 2023a). The definition of ‘corporate governance’ is unchanged, the version from 2015 contained the same definition of ‘corporate governance’ (OECD, 2015). According to its foreword (OECD, 2023a), the G20/OECD Principles of Corporate Governance shall ‘help policymakers evaluate and improve their legal, regulatory, and institutional frameworks for corporate governance, to support economic efficiency, sustainable growth, and financial stability’. The G20/OECD Principles of Corporate Governance contain six sections, starting with a principle that always has supporting sub-principles. Focus areas of the corporate governance framework are (i) an effective corporate governance framework, being consistent with the rule of law and ensuring effective supervision and enforcement, (ii) shareholders and key ownership functions,

protected by the corporate governance framework and ensuring that shareholders' rights may be facilitated and shareholders are treated equitable, including minority shareholders and foreign shareholders, (iii) a corporate governance framework that provides sound incentives throughout the investment chain, (iv) disclosures and transparency in a timely and accurate manner, (v) the responsibilities of the board and (vi) sustainability and resilience as additional sections. Four core governance pillars are necessary, according to the OECD's Business Sector Advisory Group on Corporate Governance (OECD, 1998): fairness, transparency, accountability, and responsibility. Fairness refers to equal treatment; for example, shareholders should receive equal consideration in proportion to their respective shareholdings. All stakeholders, including employees, communities, and public officials, should be treated fairly. Transparency refers to a company's openness and willingness to disclose clear information to shareholders and other stakeholders. Material facts about the performance should be timely and accurately disclosed to all investors. Accountability refers to the obligation and responsibility to explain the company's actions and conduct. The board should present a balanced and comprehensive assessment of the company's position and prospects, and it should employ prudent risk management and internal control systems. It should communicate with shareholders at regular intervals about a fair, balanced, and comprehensive assessment of the company's measures to achieve its business objectives (OECD, 2023b). While the OECD provides guidelines and recommendations, there is no enforcement in a strict regulatory sense. Instead, the OECD promotes a 'comply-or-explain' approach (OECD, 2023b). Conflicts of interest are addressed in the introduction of the first chapter and throughout the G20/OECD Principles of Corporate Governance, except for the section on sustainability and resilience. According to my perspective, the G20/OECD Principles of Corporate Governance address conflicts of interest to a variety of stakeholders and emphasize the importance of supervising bodies being independent since they view this issue as one that could impede good corporate governance.

The United Nations published its Guidance on Good Practices in Corporate Governance Disclosure in 2006 (United Nations Conference on Trade and Development, 2006). It describes the expectations regarding non-financial and financial disclosures, recommendations for general meetings, and good practices for compliance. The United Nations refers in its guidance to local corporate governance codes and recommends using the 'comply-or-explain' mechanism where such a code is available; if there is no such code available, companies should stick to international good practices. Conflicts of interest are

governed in the Guidance on Good Practices in Corporate Governance Disclosure in chapter 5, focusing on disclosure obligations.

The International Corporate Governance Network (ICGN) is an investor network established in 1995 by the world's most influential investors. The ICGN established global corporate governance principles on board roles and responsibilities, leadership and independence, composition and appointment, corporate culture, remuneration, risk oversight, corporate reporting, internal and external audit, shareholder rights, and shareholder meetings. The principles address the topic of conflicts of interest with a strong connection to recommendations regarding independence (International Corporate Governance Network, 2017).

Corporate governance is the continuous focus of the European Union. The European Union's company law needs an equal or at least comparable framework throughout all member states in its main pillars like shareholder rights and duties, the role of boards and auditors, and public disclosure requirements. The issues covered have expanded in the past years to include diversity, the environment, and social governance. Table 1 presents a summary of corporate governance development in the European Union.

Table 1 European Union corporate governance development

Year	Publication
2002	High Level Group of Company Law Experts Report (the Winter's Report)
2003	Corporate Governance Action Plan
2004	Directive on Transparency Requirements for Listed Issuers Harmonises
2004	Directive on Takeover Bids
2004	Recommendation on Remuneration
2005	Recommendation on Boards
2005	Amendments on 4th and 7th Company Law Directives
2005	10th Company Law Directive on Cross-Border Mergers
2005	Commission recommendation on the role of non-executive or supervisory directors
2006	Directive on Statutory Audit of Annual and Consolidated Accounts
2007	Shareholder Rights Directive

(Table 1 contd.)

Year	Publication
2009	Recommendation on Remuneration Builds
2010	Green Paper on Audit Policy: Lessons from the Crisis
2010	Green Paper on Corporate Governance in Financial Institutions
2011	Green Paper on Corporate Governance in Listed Companies
2012	Corporate Governance Action Plan
2012	Proposed Directive on Improving Gender Balance on Boards
2013	Accounting Directive
2013	Transparency Directive
2013	Capital Requirements Directive (CRD IV)
2014	Proposed Revisions to the Shareholder Rights Directive
2014	CSR Directive
2014	Accounting Directive Amendment on Disclosures
2014	Statutory Audit of Public-Interest Entities (Regulation 537) Addresses
2018	Commission Implementing Regulation 2018/1212/EU (Shareholder Rights Directive II)
2019	Sustainable Finance Disclosure Regulation (SFDR)
2020	EU Taxonomy 2020/852/EU
2021	Corporate Sustainability Reporting Directive (CSRD)
2022	Corporate Sustainability Due Diligence Directive (CSDDD)
2022	Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures

Source: author's own research, adapted from CFA Institute (Dallas & Pitt-Watson, 2016)

The overview in Table 1 starts with the so-called Winter's group report (Winter et al., 2002). While the experts made various recommendations to improve corporate governance in the European Union, the implementation of a European corporate governance code was not recommended. The reasons are the differences in national company laws across Europe and

the doubt about whether Europe-wide voluntary rules would be effective. A code without harmonizing the underlying company laws is not practical, according to the Winter's group.

Good examples of the evolution of corporate governance in the EU are the Green Papers and Action Plans published in 2003, 2010, 2011, and 2012. These papers set the stage for further regulatory initiatives and are good for observing the intentions and the evolution of thinking behind corporate governance reform in Europe. A 'Green Paper' is a discussion document published by the European Commission to encourage the debate and initiate a consultation process on a particular topic at the European level. Typically, a Green Paper contains a diverse range of ideas and perspectives, with the primary objective of soliciting external opinion. Green Papers themselves are not directly influencing national law but the following directives, which have to be implemented into national law (European Union, n.d.-a). The European Commission may decide to publish a 'White Paper' recommendation, a formal set of proposals in a specific area, or a new directive (IFC, 2008). White papers have the objective of achieving political consensus by initiating a discussion with the general public, various interested parties, the European Parliament, and the Council (European Union, n.d.). A broad review of corporate governance and matters of legal harmonization is the subject of the 2003 Corporate Governance Action Plan (European Commission, 2003). It contributed to driving regulatory initiatives, such as the 2004 Transparency Directive and the 2007 Shareholder Rights Directive, as well as European Commission recommendations in the areas of boards and remuneration (Commission of the European Communities, 2009). The publication of the Corporate Governance Action Plan is seen as the beginning of an intense European discussion on corporate governance. In the definition of the European Commission, corporate governance is not only the appropriate leadership, organization, and control of a company but also the relationship between the company and its shareholders and other stakeholders. The following Green Papers 'Corporate Governance in financial institutions and remuneration policies' (European Commission, 2010) and 'The EU corporate governance framework' (European Commission, 2011) are other main publications in the field of corporate governance. The 2010 Green Paper followed the financial crisis and has a clear focus on risk management and avoiding fraudulent behavior by individuals or companies. The 2011 Green Paper has its focus on listed companies and addresses various corporate governance topics concerning corporate bodies, or the 'comply-or-explain' element. As a response to issues regarding corporate governance and company law in the EU, the European Commission published the 2012 Corporate Governance Action Plan (European Commission, 2012), which emphasizes developing a contemporary framework for corporate governance.

Besides the European Commission Green Papers, the 'Report of the Reflection Group on the Future of European Company Law' (Antunes et al., 2011) is part of the strategy to further develop European company law. While the European Union focused on basic requirements for corporate governance from 2003 to 2012, subsequent developments indicate that the primary interest is now to focus on selected aspects. In April 2014, a proposed amendment to Directive 2007/36/EC (the Shareholder Rights Directive) and Directive 2013/34/EU (the Market Abuse Regulation) was published. The initial Shareholder Rights Directive aimed to improve corporate governance by guaranteeing a base level of protection for shareholders of publicly traded companies. The proposed amendment aimed to boost competitiveness and long-term sustainability by enhancing corporate governance through increased shareholder participation (Johnston & Morrow, 2014). The Commission Implementing Regulation was published on September 3, 2018 (European Commission, 2018).

The regulations that were published until 2018 are the most relevant ones for this thesis, as their overarching goal is to improve corporate governance as well as to strengthen shareholder rights, which is also an important aspect of corporate governance.

The focus of the European Commission is now on sustainable corporate governance, which includes developments on ESG (environmental, social, governance) elements and supply chains. Another focus is an initiative 'corporate reporting – improving its quality and enforcement' with a consultation paper dated November 12, 2021. In this consultation paper, the independence of statutory auditors, strict rotation periods for the auditor, incompatibility rules for advisory services and audit, and a change in liability rules and anti-fraud actions are the focus. The directives CSRD and CSDDD deal with corporate social responsibility and sustainability, with a reporting obligation on sustainability issues for various companies. The 2022 directive is about gender equality on the board level.

Building upon the overview of corporate governance development in European law, the subsequent section will focus on conflicts of interest within the European law. In the context of this thesis, the interpretation of 'conflict of interest' in the European law is important. There are relevant publications from which an interpretation of 'conflict of interest' can be derived, even if there is no exact definition available. The EU recommendation 2005/162/EG, the 'Commission recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board' (European Commission, 2005) contains regulations concerning conflicts of interest (Scholderer, 2012). In this EU recommendation, the term 'conflict of interest' is not defined, but closely connected to 'independence'. The definition of the EU

recommendation says that independence ‘should be understood as the absence of any material conflict of interest. In this context, proper attention should be paid namely to any threats which might arise from the fact that a representative on the board has close ties with a competitor of the company’ (European Commission, 2005). The independence criteria according to the EU recommendation are described in Chapter 4.2.1 of this thesis. The Green Paper ‘The EU corporate governance framework’ of the European Commission (2011) mentions conflicts of interest in different contexts but without a comprehensive definition or any connection to supervisory boards. According to section 2.4.1 of the Green Paper, the European Commission presumes that ‘conflicts of interest often arise where an institutional investor or asset manager, or its parent company, has a business interest in the investee company’ (European Commission, 2011). Another example mentioned in the Green Paper is that proxy advisors may be subject to conflicts of interest when acting as corporate governance consultants to investee companies or when they advise on shareholder resolutions.

The preceding paragraphs addressed international corporate governance regulations, whilst the subsequent sections concentrate on national corporate governance legislation. Corporate law and stock exchange law, along with their ongoing revisions, establish a structural framework for corporate governance. These regulations are implemented by the national government. Frequently, corporate governance codes serve as semi-public frameworks (OECD, 2023b). These codes are typically in the form of non-binding rules that primarily target publicly traded companies. It is important to note that non-compliance with these rules is not considered a legal violation, but rather, it must be justified through an explanation, following the principle of ‘comply-or-explain’ (Leyens, 2016). Corporate governance codes are under perpetual revision, albeit at various times and with varying emphasis. Based on the results of a survey conducted by the OECD and published in its Factbook 2023, about two-thirds of the 49 countries surveyed have revised their national corporate governance standards since 2021-2022 (OECD, 2023b). The framework for corporate governance differs from one jurisdiction to the next with respect to the proportion of formal legislation to an approach known as ‘comply-or-explain’. A ‘comply-or-explain’ approach, or some variant of it, is followed by around 82% of the jurisdictions that were included in the survey of the OECD. Out of the 49 jurisdictions that were assessed, only India, the United States, and China lack such codes but primarily govern the topics through their legal framework and the listing rules of their stock exchange. India and the United States rely on their own laws, regulations, and listing standards to serve as their legal framework for corporate governance. China has a binding national corporate governance code that was

updated in 2018 and contains mandatory regulations (OECD, 2023b). Issuing bodies of the national corporate governance codes are national authorities (26%), private associations (26%), mixed custodians (i) with private associations (23%), (ii) authorities and stock exchanges (9%), or stock exchanges (17%). The regulators of corporate governance also vary within the 50 surveyed jurisdictions: the security authorities are with a percentage of 40% most often responsible, followed by the financial authority (32%), the Central Bank (16%), the financial / security authority & ministry (10%) or the Ministry of Justice (2%) (OECD, 2023b).

Corporate governance codes address the most relevant subjects of corporate governance. Corporate governance codes should regulate conflicts of interest (European Commission, 2003). The issue of conflict of interest emerged as a significant subject in corporate governance rules as early as the 1980s and continues to be a prominent aspect. Its primary purpose is to deter misconduct and promote integrity and ethical conduct codes (White & Montgomery, 1980).

In the context of this thesis, it is also important to highlight the work of proxy advisors. As private standard setters, they have an increasing influence on the governance of companies, especially regarding decisions from the annual general meeting. The proxy vote in the annual general meeting can be exercised by any entity, such as an organization, bank, or other representative acting on behalf of the shareholder (Boehmer, 2005). Proxy advisors vote according to their guidelines. These guidelines have a great impact on business decisions and a high compliance rate with the guidelines among companies shows impressively the power they have (Stöber, 2020). This goes in line with the assessments of Fleischer (2012) and Heinen and Koch (2018) who confirmed the importance of proxy advisors for corporate governance. Many institutional investors rely on advisory firms for the analysis of the annual general meeting agenda and for recommendations on how to vote (Hart & Zingales, 2022), without making their own assessment. If a proxy advisor suggests not voting in favor of the company, institutional investors rely on the analysis of the proxy advisor, and this often has an adverse impact on the vote outcome (Binder-Tietz, 2022, p. 86). The relevance of proxy advisors is obvious, as they have the power to influence shareholders' resolutions. Proxy advisors play an important role as information intermediaries in the capital market, as they collect a large amount of publicly available information on behalf of institutional investors, evaluate it, and, based on this information, make a recommendation on how to exercise voting rights at the annual general meeting (Schwarz, 2013, p. 29).

Institutional investors are increasingly seeking advice from external third parties when exercising their shareholder rights at the annual general meeting (Fleischer, 2012). Reasons attributed to the growing importance of proxy advisors include the expansion of the portfolios of institutional investors in recent years. Given the size of these portfolios, individual preparation and vote casting for each company are impractical and expensive, particularly considering that the annual general meeting season is concentrated within a timeframe of just a few months. These reasons, combined with the complexity and quantity of agenda items requiring voting, have let institutional investors involve proxy advisors (Fleischer, 2012). Moreover, the increasing pressure to exercise shareholder rights and the involvement of proxy advisors as preventive protection against liability and criticism from regulators are additional reasons to work with proxy advisors (Binder-Tietz, 2022, p. 86; Fleischer, 2012).

The most important proxy advisors are the U.S. companies, the Institutional Shareholder Services group of companies, and Glass Lewis, who dominate the market for voting rights consulting. Other major companies are the Swiss ETHOS-Stiftung, the French Proxinvest (Schneider & Anzinger, 2007) or smaller competitors like IVOX. ISS, the Institutional Shareholder Services group of companies, founded in 1985, is a 'leading provider of corporate governance and responsible investment solutions […] for institutional investors and corporations, globally'. ISS is said to be the 'world's most influential proxy advisor' (Linden & Wilk, 2023). There are voting policies for the regions of Asia-Pacific, Europe, the Middle East and Africa, the Americas, and specialty policies. These policies cover a broad range of corporate governance related topics (ISS, 2022). Glass Lewis is a provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management, and technology platforms. Glass Lewis publishes proxy voting policies on a regional level, for Canada, Continental Europe, the United Kingdom, and the United States, they provide for such policies. For ESG initiatives, there are separate proxy voting policies in place. The California Public Employees' Retirement System (CalPERS), which is a public pension fund that provides retirement and health benefits in California/US, published its own Global Corporate Governance Principles first in 1997. The last version is the version as of September 2019 with the title 'CalPERS' Governance & Sustainability Principles' (CalPERS, 2019). CalPERS has identified five core issues with long-term impact on risk and return, which are: A. Investor Rights; B. Board Quality: Diversity, Independence and Competence; C. Executive, Director and Employee Compensation; D. Corporate Reporting; E. Regulatory Effectiveness (CalPERS, 2019). The principles are the basis for proxy voting decisions as well.

There are inherent risks associated with the trend to follow guidelines from proxy advisors. Companies often express their dissatisfaction with the limited opportunities and time available to provide feedback on recommendations, which would allow them to correct misinformation or inaccurate analyses. Another aspect of criticism pertains to one-size-fits-all solutions and standard recommendations, combined with the unwillingness of proxy advisors to adapt their standard guidelines to the specific characteristics of an industry or company.

In the context of voting at annual general meetings, conflicts of interest are particularly relevant for four agenda items: the discharge[2] (Entlastung) of the supervisory board, the (re-)elections to the supervisory board, reorganizations, and related-party transactions (Scholderer, 2012). Proxy advisors give voting recommendations for all agenda points. The question of 'right' or 'wrong' recommendations is always a question of one's perspective. From the company's point of view, the interest lies in obtaining the necessary majorities for the agenda items proposed by the management. From the shareholder's point of view, the interest is to prevent decisions that are not in line with good corporate governance. In this area of tension, it can be assumed that the schematic solutions of the proxy advisors are more likely to lead to the rejection of agenda items that are not critical from a corporate governance perspective. If conflicts of interest arise on the supervisory board, standardized solutions and recommendations of proxy advisors do not allow individual circumstances to be analyzed in detail. Particularly in the case of conflicts of interest, it is important to know the respective backgrounds to properly understand them.

A good example is the Proxy Voting Guidelines for Continental Europa from ISS (ISS, 2022). In these guidelines, ISS gives recommendations regarding conflicts of interest in the following sections: ISS generally votes in favor of the recommendation for supervisory board members, unless there have been questionable transactions with conflicts of interest. In the case of mergers and acquisitions, a case-by-case decision regarding the proxy vote is conducted, but if conflicts of interest are possible in a way that insiders benefit disproportionately or inappropriately, the approval is not given. Third, in the case of related-party transactions, a decision is made on a case-by-case basis, and conflicts of interest in one of the concerned parties are considered in the decision and may rather lead to a rejection of

[2] The approval of the acts of the corporate bodies is also known as 'discharge'. According to the prevailing opinion, granting discharge primarily contains a declaration by the annual general meeting that it approves the management decisions as being generally in accordance with the law and the articles of association. The discharge does not constitute a waiver of claims arising for the company from the actions of the executive board members.

the proposed decision (ISS, 2022). In the suggestions for solving the problem of conflicts of interest, the proxy advisor guidelines as an influencing factor must be considered as well.

The voting behavior of Schutzvereinigung der Kapitalanleger e.V. (SdK) is based on voting guidelines, which are drawn up and developed by a committee set up for this purpose. Examples where SdK declined in the years 2020 – 2023 to vote for the election of supervisory board candidates because of conflicts of interest are (SdK, n.d.): Volkswagen AG, annual general meeting 2021: vote against election of Mr. Pötsch, former executive board member of Volkswagen AG and possibly involved in the diesel case. The primary objective of the German proxy advisors, Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW) and SdK is to advocate for the interests of investors, particularly small investors, during annual general meetings. The SdK participates – according to the information available on its homepage - in more than 500 annual general meetings each year on behalf of its members and voters. The SdK offers proxy voting services to private free-float shareholders at no cost. The SdK discloses its intended voting behavior for the upcoming annual general meeting, together with an explanation, on its openly accessible website[3] approximately two weeks in advance. SdK's voting behavior is determined by voting criteria that are part of their voting guidelines, formulated and established by a dedicated committee. Supervisory board candidates are also rejected by SdK for overboarding, which refers to having an excessive number of other mandates, serving for more than 12 years, being too old, or lacking the necessary qualifications.

In the author's research, the examination of typical conflicts of interest and their significance plays a major role. International corporate governance regulations exist, but with different focus and without giving a clear guidance on the topic of conflicts of interest, moreover, each country may have its own attitude toward conflicts of interest.

1.3.2 Corporate governance: international indices and scorecards and their use for solving conflicts of interest

The assessment of a company's corporate governance is challenging, given the multitude of influencing factors. Standardized ratings shall help the companies to make their own assessment of the maturity grade of their corporate governance and help investors in their decisions to invest or disinvest in a company (Cosma, Mastroleo, & Schwizer, 2018).

[3] The homepage is: www.sdk.org

Standardized indices and scorecards provide a structured and objective framework for evaluating a company's governance practices. Typically, they cover a wide range of governance-related areas, including board composition and structure, executive compensation, risk management, stakeholder engagement, and ethical behavior. The indices and scorecards contain a set of criteria and metrics against which a company's governance practices can be measured. This enables stakeholders, such as shareholders, investors, or analysts, to compare a company's corporate governance activities to corporate governance codes, industry benchmarks, and best practices. In addition, standardized indices and scorecards contribute to the promotion of transparency and accountability in the company's corporate governance. By making the criteria and metrics used to evaluate a company's governance practices publicly available, stakeholders can better understand the company's governance practices and hold it accountable for its actions. Overall, the indices and scorecards are valuable evaluation instruments for corporate governance.

Several indexes and scorecards exist, that measure various aspects of corporate governance, e.g. global indices like the Corporate Governance Quotient, Governance Risk Indicator, Governance Quality Score, Corporate Governance Scorecard, FTSE4Good, Standard and Poor‘s CG Scores, The World Bank Institute‘s Composite Governance Indicators, and others, and country-specific indices like the Scorecard for German Corporate Governance or the US Corporate Governance Quotient (CGQ).

Aguilera and Desender (2012) give an overview of the Governance Index (G-Index) and commercial corporate governance indices. The Corporate Governance Quotient was produced by Institutional Shareholder Services (ISS[4]), one of the most important proxy advisors, and has been replaced by the 'GRId (Governance Risk Indicators)' Index in 2010 and is now available as Governance QualityScore, covering 30 countries and 7,300 issuers, aiming to help assess corporate governance risk of a portfolio or a single investment (Aguilera & Desender, 2012).

Governance Metrics International (GMI) was an index that collected data on several hundred governance mechanisms, used a scoring model, and calculated a rating. The company that issued the index, Governance Metrics International, was merged with The Corporate Library and Audit Integrity into GMI Ratings in 2010. GMI Ratings was acquired by MSCI, Inc. in 2014 (MSCI, 2014). MSCI Inc. is a leading provider of critical decision support tools and services for the global investment community. Since November 2009, MSCI has

[4] The homepage of ISS is available at: www.issgovernance.com

published the MSCI World Governance-Quality Index, which is the basis for investment funds (MSCI, 2024).

The Corporate Library (TCL) is another commercial index that leads to a grade. Standard and Poor's (S&P) also provides a commercial index, the GAMMA index, whereas 'GAMMA' comes from 'governance, management, accountability metrics, and analysis'. Detailed insights into the methodology are not publicly available (Tipuric, Dovrski, & Delic, 2020). Deminor, a rating company, provides 'governance ratings' for the FTSE Eurotop 300 which covers the 300 biggest European stock companies. The ROB (Report on Business) is a marking system for corporate governance for companies in Canada, that is published by The Globe and Mail, a Canadian newspaper. Aguilera and Desender (2012) provide in table 1 of the paper an overview of eight corporate governance indices.

The World Bank provides the Worldwide Governance Indicators (WGI) on its homepage[5]. This powerful indicator combines data from 1996 – 2020 on 'Voice and Accountability', 'Political Stability and Absence of Violence/Terrorism', 'Government Effectiveness', 'Regulatory Quality', 'Rule of Law' and 'Control of Corruption' for more than 200 countries and territories.

In Germany, the DVFA (Deutsche Vereinigung für Finanzanalyse und Asset Management e.V.)[6], a professional organization for investment professionals in the German financial and capital market with more than 1,400 members, established the Scorecard for German Corporate Governance (CG-Scorecard) in the year 2000 (Strenger, 2004). The CG-Scorecard analysis of DVFA provides a meaningful, differentiated picture of the governance quality of German stock-listed companies and its structure follows the German Corporate Governance Code, relevant ICGN requirements and additional best practice criteria are also considered. The main topics are shareholders and annual general meetings, executive board, supervisory board, transparency, governance obligations, accounting, and auditing (Xanthakis, Tsipouri, & Spanos, 2004). The scorecard has been available since 2016 and includes all DAX-listed companies and since 2018, also all MDAX-listed companies. Due to the changes in the composition of DAX and MDAX, a 1:1 comparison of the 2021 CG-Scorecard with scorecards from previous years is not possible. Despite that, only the results from 2022 and 2023 are publicly available (DVFA e.V., 2023). For this thesis, the DVFA CG-scorecard published in November 2023 is used as well as the comparison with the scorecard from 2022.

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[5] The homepage is available at www.govindicators.org

[6] The homepage is available at www.dvfa.de

Table 2 shows a comparison between the percentage reached and the ranking in the years 2022 and 2023. It is sorted by the ranking for 2023. DVFA used the index composition of the DAX as of July 31, 2023. To ensure comparability, the comparison only includes the companies that are analyzed in this thesis.

Table 2 - DVFA Corporate Governance Scorecard – Comparison 2022/2023

	2022		2023			
Company	Percentage	Ranking	Percentage	Ranking	Trend (Percentage)	Trend (Ranking)
Münchener Rück AG	92,73	1	94,44	1	↑	↔
Deutsche Börse AG	88,95	2	92,11	2	↑	↔
Brenntag SE	88,66	3	90,64	3	↑	↔
Deutsche Bank AG	80,23	11	89,18	4	↑	↑
Allianz SE	81,69	10	88,89	5	↑	↑
Commerzbank AG	n.a.	n.a.	88,60	6	n.a.	n.a.
BMW AG	83,14	7	87,72	7	↑	↔
E.ON SE	79,07	15	87,13	8	↑	↑
Covestro AG	79,36	14	86,26	9	↑	↑
Mercedes-Benz Group AG	83,43	6	85,38	10	↑	↓
Deutsche Telekom AG	81,69	10	84,80	11	↑	↓
Bayer AG	84,01	5	84,21	12	↑	↓
BASF SE	84,88	4	83,92	13	↓	↓
DHL Group	74,71	21	83,92	13	↑	↑
Infineon Technologies AG	74,42	22	83,92	13	↑	↑
Daimler Truck Holding AG	76,16	17	83,04	16	↑	↑
RWE AG	82,27	8	82,46	17	↑	↓
Siemens Energy AG	n.a.	n.a.	82,46	17	n.a.	n.a.
Heidelberg Materials AG	77,62	16	82,16	19	↑	↓
SAP SE	70,06	26	81,58	20	↑	↑
Siemens AG	76,16	17	80,99	21	↑	↓
Zalando SE	75,58	19	79,24	22	↑	↓
Merck KGaA	73,55	24	79,24	22	↑	↑
Siemens Healthineers AG	63,37	32	79,24	22	↑	↑
Vonovia SE	75,00	20	78,36	25	↑	↓
Volkswagen AG	65,41	30	77,78	26	↑	↑
Beiersdorf AG	81,40	12	77,49	27	↓	↓
Fresenius SE & Co. KGaA	74,42	22	76,90	28	↑	↓
MTU Aero Engines AG	67,44	27	76,61	29	↑	↓
Symrise AG	67,44	27	76,32	30	↑	↓
Adidas AG	72,09	25	75,73	31	↑	↑
Continental AG	63,37	32	72,51	32	↑	↔
Hannover Rück SE	62,79	35	72,51	32	↑	↑
Rheinmetall AG	n.a.	n.a.	72,51	32	n.a.	n.a.
Henkel AG & Co KGaA	66,57	29	71,93	35	↑	↓
Sartorius AG	59,30	36	63,74	36	↑	↔
Porsche Automobil Holding SE	48,55	37	57,31	37	↑	↔
Porsche AG	n.a.	n.a.	56,36	38	n.a.	n.a.

Source: author’s own illustration based on the publication of the DVFA CG-scorecard

According to Tipuric et al. (2020), two primary criticisms can be mentioned regarding the existing indices of the quality of corporate governance: there is no theoretical and

scientific justification for the composition of the scorecards, and the questions of which variables to include and which not, and the weights assigned to different variables that are included in the index are based on the authors or organizations rationale. Nevertheless, it is worth getting an overview of the different ways of calculating the quality of corporate governance. All indices use the criteria compliance, performance, and accountability, the scientific assessment ‘remains a mystery’ (Tipuric et al., 2020).

CHAPTER 2
DEVELOPMENT OF CORPORATE GOVERNANCE IN GERMANY

2.1 Introduction to the corporate governance systems

There are two common corporate governance systems, known as the one-tier or two-tier corporate governance model. The one-tier model is also known as monistic or Anglo-American/Anglo-Saxon, and the two-tier model is known as the dualistic or continental model (Bazantova, 2015). The primary distinction between the one-tier model and the two-tier model is that in the one-tier model, management and control functions are merged into a single body, whereas in the two-tier model, there is a clear separation between the management and control tasks (Jungmann, 2006).

According to the OECD, the one-tier system is the most common model compared to the two-tier system and a lot of jurisdictions permit both models[7] (OECD, 2023b).

There are other corporate governance models like the Japanese *keiretsu* and the South Korean *chaebol* corporate governance system, which are Eastern corporate governance systems (Tricker, 2019, p. 162). In China, business values are deeply rooted in Chinese socialist beliefs. State-owned enterprises (SOE) are operated with the primary objective of maximizing the financial assets and resources for the state rather than focusing on generating profits for the corporation (Ntongho, 2016). In China, state-owned companies have been partially privatized since 1992 (Oman, 2001), and nowadays, the corporate governance of companies that are not state-owned is characterized by Chinese families controlling a large number of companies. The impact of Chinese families extends beyond China and encompasses several key Asian economies like China, Singapore, Taiwan, Malaysia, Thailand, Indonesia, the Philippines, and Hong Kong (Tricker, 2019, p. 161). In this thesis, the focus is on Germany's corporate governance systems.

Corporate governance systems develop because of historical and cultural influences, as well as the development of company-specific legislation. National law gives the basis for

[7] In the OECD Corporate Governance Factbook 2023, 49 jurisdictions were analyzed. The one-tier board system was the most common, it was found in 23 jurisdictions, nine jurisdictions have a two-tier board system and in 15 jurisdictions, there is a choice between the two systems. The companies allowing both systems are Argentina, Belgium, Brazil, Czech Republic, Denmark, Finland, France, Hungary, Lithuania, Luxembourg, Netherlands, Norway, Slovenia, Slovak Republic, Switzerland. The Societas Europaea also offer that choice. Italy, Japan and Portugal have a hybrid system.

corporate governance systems by establishing mandatory regulations for corporate bodies and shareholders. This framework, together with non-binding rules, forces domestic and foreign corporations to adapt their governance structures to conform (Hopt, 2011b). Given that the stakeholders of a corporation influence the composition of the management, the decisions made by management, and the distribution of either losses or gains, corporate governance systems are in a process of ongoing change or adaptation. All these aspects have the potential to result in convergence, divergence, or even hybridization of corporate governance models (Jerzemowska & Koyama, 2020).

2.1.1 Characteristics of the one-tier system of corporate governance

The one-tier system of corporate governance is characterized by a single body for corporate management and control, the board of directors. The nomenclature of the monistic system as the one-tier system can be traced back to its conceptualization of having a single body (Bazantova, 2015). This model is e.g. used in the United States, Canada, Australia, New Zealand, and South Africa (OECD, 2021). In Europe, this corporate governance model is used especially in the United Kingdom, Sweden, and Italy (Hopt & Davies, 2013). Shareholder meetings are held regularly, and shareholders have control over the company, including the ability to appoint and dismiss board members. Shareholder meetings are also responsible for the approval of the articles of association of the company. The general shareholder meeting elects the board of directors (executive and non-executive), which means that they are exclusively elected by the shareholders (Jungmann, 2006). The board of directors is composed of executive directors and professionals nominated from outside the company (non-executive independent directors) in different proportions. Inside directors conduct the management functions, while outside directors perform the control functions. The inside directors, who are full-time employees of the company, are in charge of managing and representing the company. They are also known as managing directors or executive directors because of their operational management responsibilities. The outside directors, also called the independent non-executive directors, are independent directors from the company, they must control the work of the entire board (Berghe, 2002, p. 11). The independence of these members is ensured by many formal standards given by applicable local law and informal standards; an example of informal standards is provided by the International Finance Corporation (IFC)[8], a member of the World Bank Group. According to the IFC's indicative

[8] The homepage is available at www.ifc.org

independent director definition, independence is given if the director has no significant relationship with the company and fulfills 10 additional criteria, like the absence of affiliation with different stakeholders (IFC, n.d.). The Chief Executive Officer (CEO) is chosen by the board of directors from among its members, is always a member of the group of inside directors, and oversees the company's operations. In addition, the board members elect a chairman of the board. Committees are common within the board of directors to help to increase the efficiency of their work. Usually, certain tasks are assigned to a committee, like control tasks, specifically accounting and the preparation of annual financial statements for an audit committee.

2.1.2 Characteristics of the two-tier system of corporate governance

The continental model of corporate governance is the dualistic system. It is characterized by a strict separation of management and control and is therefore also known as a two-tier system (Bazantova, 2015). The two-tier system has been common in Continental Europe, like in Germany, since the 19th century. Other countries such as Finland, Austria, Denmark, Sweden, Poland (Grabowski, 2015), the Netherlands, and China use the two-tier system as well (Hopt, 2011b). There are also countries in which companies may opt to install a two-tier system, e.g., Belgium, Italy, France, and Romania (Hopt, 2011b). The control function in a two-tier system is performed by the supervisory board, and the management function by the executive board, which is 'the common definition of a two-tier board' (Hopt, 2011b). There are three corporate bodies in a company incorporated in a two-tier system, the annual general meeting, the supervisory board, and the executive board.

The shareholders' meeting (or 'annual general meeting') is one of the corporate bodies of a company. Main decisions fall within the exclusive responsibility of the shareholders' meeting. One is to elect supervisory board members except for employee representatives in case of codetermination. The annual general meeting is also exclusively responsible for deciding on the appropriation of profits, the ractification of the actions of the executive board and supervisory board, the election of the auditor, the decision on the articles of association, capital measures, intercompany agreements, and conversions.

The supervisory board guides and monitors the executive board's business activities and is involved in major decisions where approval is necessary, in addition to the above-mentioned appointment and dismissal of the executive board. The responsibilities include auditing the annual financial statement and the management report. The supervisory board exercises its control and monitoring functions based on the information from the executive

board (Tricker, 2019, p. 160). The supervisory board is responsible for the appointment of the executive board members for removal.

The composition and election of supervisory boards vary in different jurisdictions, mainly depending on whether the national law provides for codetermination or not. Codetermination 'provides for the participation of employees and their representatives in the management of a company' (Fifka, Classen, & Meyer, 2013), it is the involvement of employees in corporate bodies (Koch, 2022). In the case of board-level codetermination, employees, work councils, and union members are elected as supervisory board members as well. Shareholders are responsible for electing members of the supervisory board, whereas, in countries with employee codetermination, the election of employee representatives in the supervisory board is the responsibility of the employees, not of the shareholders meeting (Jäger et al., 2021). The number of supervisory board members is given by the articles of association of the company or a mandatory law.

The executive board manages the company under its own responsibility and is consequently not bound by instructions from other bodies. The relevant laws define the tasks and responsibilities of the executive board and outline the significant role of the executive board. The executive board is, for example, responsible for the preparation and convening of the shareholder's meeting, for organizing the company's accounting, and for reporting to the supervisory board, among other things. The company can only act through the executive board; it is the sole responsibility of the executive board to represent the company (Hopt, 2011c).

Each corporate governance system has its advantages, strengths, and weaknesses. The one-tier system facilitates a closer relationship and better communication between the corporate bodies (du Plessis et al., 2017, p. 10). Due to their direct participation in the decision-making process, non-executive directors not only control decisions but also have direct access to all relevant information (Jungmann, 2006). Decisions can be made faster and with less bureaucracy. The distinct chain of command and the streamlined decision-making process have the potential to increase productivity and eliminate conflicts among various stakeholders. Responsibilities may be allocated flexibly in a one-tier system, and regular monitoring of the management is ensured (du Plessis et al., 2017, p. 10).

However, the one-tier system can lead to potential conflicts of interest. The degree of autonomy between the management and control functions remains limited in this corporate governance model. A concentration of power among a small group of individuals blurs the (theoretical) clear boundaries between management and control. This is particularly evident

when an outside director takes on a more active role in the company, which may be the case when the advice of that outside director becomes indispensable. In addition, the likelihood of role convergence between the chief executive officer (CEO) and the chairperson of the board increases the potential for a concentrated power structure, with the result that effective self-policing becomes unlikely (Welge & Eulerich, 2021, p. 38).

These vulnerabilities collectively contribute to a lack of both accountability and transparency within the system. Consequently, the efficacy of preventing instances of misconduct within the one-tier system is compromised, primarily stemming from the double function of decision-making and supervision on the board, where the monitor-colleague-dilemma (Jungmann, 2006) comes to the fore.

The two-tier system, with its clear separation of control by the supervisory board on the one hand and operational business conducted by the management board on the other hand, offers the benefit of enhanced accountability for members of the management board. This heightened accountability has the potential to foster a more cautious approach to decision-making. The independence of the supervisory board members constitutes a fundamental benefit of the two-tier system (Welge & Eulerich, 2021, p. 40). The applicability of a two-tier system establishes a mechanism for checks and balances, thereby facilitating accountability and transparency, and reducing the probability of conflicts of interest. A weakness of the two-tier system is that the supervisory board is dependent on the executive board for obtaining information. Jungmann (Jungmann, 2006) talks about a ‘strong information asymmetry‘ existing between these two distinct boards. This information dynamic is characterized by the executive board’s direct access to unaltered and unfiltered information from employees and managers, whereas the supervisory board’s sole reliance on information is channeled through the conduit of the executive board (Welge & Eulerich, 2021, p. 40), limiting the supervisory board’s access to critical information. In response to this limitation, the German Stock Corporation Act stipulates provisions that allow the supervisory board to establish a direct communication line with specific senior executives: the law now provides for the right of the supervisory board to directly get in contact with certain senior managers (Hopt, 2022b). The supervisory board’s role is limited to assessing the quality of the management from an ex-post perspective, except in business cases where decisions necessitate supervisory board approval (Habersack, 2020). The frequency of board meetings may also be perceived as a potential disadvantage. Furthermore, the dualistic structure can result in a longer decision-making process and more bureaucracy, both of which can impede the ability of the organization to quickly adjust to changing conditions. Another criticism is

that the orientation towards numerous stakeholder interests complicates the management of the company (Jungmann, 2006).

2.1.3 Characteristics of the corporate governance system of a Societas Europaea

For Societas Europaea, the European legislator even allows for a mixed system. The Societas Europaea is a public company, abbreviated SE. The basis for the incorporation of a Societas Europaea is the corporate laws of the European Union Member States. The Societas Europaea has been a legal form since 2004. It was introduced with the Council Regulation (EC) dated October 8, 2001 on the Statute for a European Company (SE), No. 2157/2001. According to Article 38 of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (as amended on May 13, 2013), a Societas Europaea shall be comprised of ‘either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system)’ (Council of the European Union, 2013). The annual general meeting has the competence to decide between one of the systems. The Societas Europaea is a legal form that has gained significant traction and continues to experience a steady increase in popularity.

Table 3 compares the main differences between a Societas Europaea and a German stock corporation.

Table 3 – Differences between Societas Europaea and a German stock corporation

	Societas Europaea	German stock corporation
Foundation	Merging of a company into a SE, founding of a SE holding company, founding of a subsidiary SE or conversion from a stock corporation	Foundation by entry in the commercial register
Place of Incorporation	European Economic Area (EEA): all European Member States and Iceland, Norway and Liechtenstein	Germany
Jurisdiction	Jurisdiction at the place of incorporation and European law	German
Management structure	Monistic or dualistic	Dualistic
Codetermination	Flexibility in the organization of codetermination	Mandatory according to the relevant codetermination laws

Source: author’s own illustration

In Table 4, a summary of the most important advantages and disadvantages associated with a Societas Europaea are provided.

Table 4 - Advantages and disadvantages of a Societas Europaea

Advantages	Disadvantages
Flexibility in codetermination	From an employee perspective, flexibility in codetermination might lead to a freezing of the status quo
Means of standardizing the corporate structures of companies operating throughout Europe	Multi-state business required
Simplification of cross-border business combinations	Local differences in the relevant laws for SE's in the EEA
SE as a European brand positioning that shows the international setup of the company	

Source: author's own illustration

The question of which system of corporate governance is the better one was replaced by ongoing discussions about convergence versus divergence. This topic receives a lot of attention in corporate governance discussions (Berghe, 2002; Coffee, 1999; Jerzemowska & Koyama, 2020).

To summarize the comparison between the models, it is, in my opinion, important to emphasize that each model was developed on and is influenced by culture, history, national economics, and politics. These conditions are unique to each nation, and ultimately, the corporate governance system in each jurisdiction varies depending on its legal and regulatory framework. Therefore, I conclude that there is no corporate governance model that is ideal or better than the other model. The survival and development of the different models indicate that each model is effective in its own way. If a company has the option to decide between a one-tier or a two-tier corporate governance system, the principle I would suggest is that a one-tier system may be more appropriate for smaller companies or those with a clear and simple business structure, while a two-tier system, as applicable to German stock corporations, may be more suitable for larger companies or those with a more complex business structure.

The German corporate governance system is described in Chapter 2.2 and its corporate bodies are characterized in more detail in Chapter 3.

2.2 German regulation on corporate governance

2.2.1 Development of Germany's stock corporation law

The history of Germany's corporate law is rather short (Schnorr, 2000). In Roman law, companies with limited liability were unknown (Block & Gerstner, 2016). Historians see

a connection between the beginning of the construction of railroads and the rise in popularity of stock corporations. The first German stock corporation is unknown; stock corporations did not appear suddenly but developed gradually from other legal forms. The law governing stock corporations in Germany may be traced back to the Prussian Law on Stock Corporations of November 9, 1843 (Habersack, 2019a). According to this law, the establishment of stock corporations subject to the rights and obligations specified in the current law requires the consent of the sovereign. The concept that the establishment of a stock corporation in Germany required approval from the government remained in place until about 1870. The concession system ended between the years 1860 and 1870. The Berlin Stock Exchange initiated active trading in stocks in 1870 (Gehrig & Fohlin, 2006). The implementation of the German Stock Exchange Act (Börsengesetz) did not happen until the year 1896 (Fleckner & Hopt, 2012).

The General Commercial Code (‚Allgemeines Deutsches Handelsgesetzbuch‘, abbreviated ‘ADHGB’) was put into force in the year 1861 (Normann, 2015). It was drafted by a decision of the Federal Assembly of the German Confederation as of December 18, 1856 in conferences of the German states (the so-called Nuremberg Protocols 1857 – 1861) (Hopt, 2022a), and the proposal of the Nuremberg Commission was released on May 31, 1861 (Bälz, 2019). The main sections of this law were provisions about commerce, including merchants, commercial register, and authorized signatories; regulations about trading companies from establishment to liquidation; regulations for joint-stock companies, their shareholders and board members; and regulations regarding commercial transactions. The principles for stock corporations included the condition that such companies could only be founded with state approval (Section 208), as was before. The requirement to have bylaws and to register the company was contained in the ADHGB as well. In the section about shareholders, basic principles of shareholder rights were included (Moser, 2020), and the main rights and duties of the supervisory board were described in the law (Schauer, 2021, pp. 49-50).

The concession system as a general principle was eliminated by an amendment to the General Commercial Code effective as of June 11, 1870 (Moser, 2020). The compulsory registration system for companies replaced the concession system and is still in effect today. Once the stock corporation fulfilled the statutory requirements and completed registration in the commercial register, it obtained its legal identity and operated autonomously. 1872, the foundation of 478 stock corporations was registered in Germany (Guinnane, 2018). As a lot of these companies collapsed and, consequently, the shareholders lost money, another alteration to the General Commercial Code was implemented. On July 18, 1884, regulations came into

force that tightened up the formation procedures and added minority rights (Habersack, 2019a). The current stock corporation law still contains regulations about the incorporation of companies and regarding the protection of minority shareholder rights. When the Commercial Code (Handelsgesetzbuch) of May 10, 1897 was created, no significant changes were made to the law governing stock corporations, which was regulated in Sections 178 to 334. However, it is important to highlight one specific modification to the law that took place: the stock corporation was the foundation for the regulation of stock corporation law, whereas the partnership limited by shares only received some special provisions (Habersack, 2019a).

The next substantial revisions to the stock corporations' law did not occur until two emergency decrees were issued on September 19, 1931, and October 6, 1931. The first emergency decree modified the structure of annual financial statements, imposed significant new restrictions on the acquisition of so-called treasury shares[9], and made auditing of annual financial statements by independent auditors mandatory. The second emergency decree provided the possibility of a simplified capital reduction. There was no further development of stock corporation law during World War II, even though multiple emergency decrees were enacted. The Stock Corporation Act, which was enacted on January 30, 1937 had its origins in the 1920s, culminating in the two proposals I and II in 1930 and 1931 (Habersack, 2019a). The first reform efforts began shortly after 1945 and the Federal Ministry of Justice took up the preliminary work on the German Stock Corporation Act in 1954. Three goals were emphasized: (1) to strengthen the influence of shareholders and the annual general meeting to an extent that is economically justifiable, (2) to strengthen the publicity requirements and the right of shareholders to receive information, and (3) to have regulations regarding powers and responsibilities of the management, in addition to the protection of minority shareholders in a group of companies (Habersack, 2019b). An overview of the main development of company law in Germany until 1965 is available in Appendix C.

The German Stock Corporation Act, which sets the legal framework for corporate governance in Germany, has been in force since September 6, 1965. Since its implementation, it has been amended 92 times. Until the so-called 'Small Reform of the Law Governing Corporations' (kleine Aktienrechtsnovelle) in 1998, the Stock Corporation Law was amended 26 times.

[9] Treasury shares refer to shares that have been repurchased from the public by the company itself. There are specific limited circumstances under which companies are permitted to repurchase shares, with a maximum limit of 10% of the outstanding capital. Treasury shares do not pay dividends, have no voting rights, and are not included in the calculation of earnings per share.

Corporate governance discussions were at all times influenced by company crises, which accelerated the evolution of corporate governance. Scandals are seen as one of the corporate governance determinants (de Villiers & Dimes, 2021). In the mid-1990s, various company crises occurred. Relevant companies in Europe and the United States, including German shipbuilder Bremer Vulkan, German metals, and mining group Metallgesellschaft, the Spanish bank Banesto, French conglomerates Navigation Mixte and Suez, and the Italian conglomerate Ferruzzi, experienced corporate crises that led to calls for reforms internationally (Berglöf, 1997). Consequently, the German corporate governance system was critically discussed in the literature (Forster, 1995; Götz, 1995), after the aforementioned crises occurred.

In the year 1998, six amending acts to the Stock Corporation Act were announced in the Federal Gazette (Bundesanzeiger) with major amendments to the law, initiated by the aforementioned series of corporate collapses and distressed situations of major companies. According to Seibert, the crisis was the starting point of an era of permanent changes in the Stock Corporation Act (Seibert, 2015). Seibert (2015) summarizes that legislation is often driven by scandals, and the company crises were only external impulses, not the deeper cause of the willingness to reform. These company crises raised the demand for improved corporate governance, more efficient work by supervisory boards, an increase in the auditor's independence, and more transparency in the financial situation, development, and risks of companies (Seibert, 2015).

In the opinion of the author, the legislation since then upgraded and professionalized the supervisory board (accepting that this would at the same time strengthen codetermination), shareholder information and transparency were improved, cross-border voting was facilitated, and electronic media were introduced into company law, as more deeply explained in the following section.

Regarding corporate governance, the 'German Corporate Control and Transparency Act' (Kontroll- und Transparenzgesetz (KonTraG), in force as of May 1, 1998) was the most important amendment in the year 1998. The responsibility of the executive board for internal monitoring and the internal control system has been emphasized since then, and the requirements for supervisory boards have been strengthened, to highlight some of the major changes. After the 'Small Reform of the Law Governing Corporations' and its six amending laws, 56 additional amendments were made until the next reform, the stock corporation law amendment from 2016 (Aktienrechtsnovelle 2016).

The KonTraG was followed by the ‘Further Reform of Stock Corporation and Accounting Law, on Transparency and Disclosure‘ (Transparenz- und Publizitätsgesetz (TransPuG), in force as of July 26, 2002). Recommendations from the Governance Commission were implemented in the stock corporation law. With TransPuG, the ‘comply-or-explain’ principle was newly implemented in Section 161 of the German Stock Corporation Act: since then, the executive board and the supervisory board of a stock-listed company (regulated market) must explain if they comply with the German Corporate Governance Code. The ‘comply-or-explain’ principle asks in Section 161 of the German Stock Corporation Act for an annual declaration that the recommendations of the Government Commission on the German Corporate Governance Code published by the Federal Ministry of Justice and Consumer Protection (BMJV) in the official section of the Federal Gazette (Bundesanzeiger) have been and are being complied with, or which of the Code’s recommendations have not been applied or are not being applied and the reasons therefor. The declaration shall be permanently made accessible to the public on the company’s website (Grigoleit, 2020).

Other important legislative reform acts were the ‘German Law on Corporate Integrity and Modernization of the Right of Avoidance‘ (Gesetz zur Unternehmensintegrität und Modernisierung des Anfechtungsrechts (UMAG), in force as of September 28, 2005, for certain clauses and as of November 1, 2005, for the remaining clauses), with amendments in the right to attend to an annual shareholder’s meeting, the ‘Act on the Implementation of the Shareholders' Rights Directive‘ (Gesetz zur Umsetzung der Aktionärsrechterichtlinie (ARUG), in force as of September 1, 2009), ‘Executive Board Remuneration Disclosure Act‘ (Vorstandsvergütungs-Offenlegungsgesetz (VorstOG) (Bundestag, 2005), in force as of August 11, 2005), ‘German Accounting Law Modernization Act‘ (Gesetz zur Modernisierung des Bilanzrechts (BilMoG), in force since May 29, 2009). With the BilMoG, Section 100 (V) was implemented in the Stock Corporation Act, stating the requirement of independence of at least the financial experts. Financial experts according to this rule are supervisory board members with expertise in the field of accounting and auditing accounts.

The reform of the stock corporation law continued with the ‘Act on the Appropriateness of Management Board Remuneration’ (Gesetz zur Angemessenheit der Vorstandsvergütung (VorstAG), in force as of August 5, 2009). The ‚Gesetz zur Ergänzung und Änderung der Regelungen für die gleichberechtigte Teilhabe von Frauen an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst‘ was implemented on April 24, 2015. The ‘Act on the Implementation of the Second Shareholders' Rights Directive‘ (Gesetz zur Umsetzung der zweiten Aktionärsrechterichtlinie (ARUG II), in force

as of January 1, 2020), was the last important amendment to the Stock Corporation Act since then. The focus of ARUG II are rules concerning the compensation system for the executive board, related party transactions, and regulations regarding ‘know your shareholder’, which means that the company has the right to request information about a shareholder’s identity from an intermediary holding the company’s shares in custody (Stöber, 2020). At the same time, in parallel with ARUG II, a fundamental revision of the German Corporate Governance Code was made (Schmid, 2020).

Effective since July 1, 2021, the ‘German Act on Strengthening the Financial Market Integrity’ (Finanzmarktintegritätsstärkungsgesetz (FISG)) is in force. The FISG is part of a governmental action plan (Aktionsplan zur Bekämpfung von Bilanzbetrug und zur Stärkung der Kontrolle über Kapital- und Finanzmärkte) (Bundesregierung, 2020). This action plan is Germany’s answer/reaction to the Wirecard scandal (Bundesregierung, 2020). The Wirecard case became publicly known in 2020: Wirecard, founded in 1999 in Germany, was a provider of payment services, listed in Germany’s DAX 30[10] index, which includes German’s major companies listed on the Frankfurt Stock Exchange. In the year 2008, the first executive board members of Wirecard were subjected to a criminal investigation after reporting fraudulently created revenues and bookings without real business behind them, mainly with the help of a company in Singapore. In 2015, the newspaper Financial Times got information from a whistleblower in Singapore (McCrum, 2020) and conducted in-depth investigations. At that time, the balance sheet of Wirecard had a €250 million deficit. The company’s share price was at an all-time high of over €190 from the end of August until early October 2018 and Wirecard succeeded Commerzbank in the DAX 30 index in September 2018. The legal department of the Wirecard group investigated the irregularities and a special audit was conducted by the auditing company KPMG. The Financial Times still investigated the irregularities. The annual financial statement as of December 31, 2019 showed €1.9 billion of assets in escrow accounts that did not exist. The statutory auditor EY refused to issue an audit certificate and the lack in the financial figures of Wirecard became public in June 2020 (Langenbucher, Leuz, Krahnen, & Pelizzon, 2020). Wirecard went bankrupt, the Wirecard stockholders lost money, and lawsuits were filed seeking compensation from the statutory auditor, Wirecard AG, and former board members.

With the amendments to the Stock Corporation Act mentioned in Article 15 of the FISG, publicly listed companies are subject to several new requirements impacting their

[10] The DAX 30 index was replaced by the DAX 40 index effective as of September 1, 2021.

corporate governance framework. The new requirements are (1) that stock-listed companies need to implement an internal control system and a risk management system, and (2) that certain companies, meant are companies of public interest according to Section 316a Sentence 2 of the German Commercial Code, need to have at least one supervisory board member with expertise in the field of accounting and another supervisory board member with expertise in the field of auditing of financial statements; such companies also need an audit committee, which is a mandatory requirement. The audit committee has the right to directly obtain information from the heads of the departments that are dealing with tasks that are the responsibility of audit committees (Roth, 2022).

After the FISG, the 'Gesetz zur Ergänzung und Änderung der Regelungen für die gleichberechtigte Teilhabe von Frauen an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst' (FüPoG II) as of August 7, 2021 was incorporated into German law. In the private sector, FüPoG II introduces binding targets for an increase in the number of women represented in executive boards, an obligation to provide reasons when setting zero percent targets for women in boards, and the possibility that board members may pause their mandate due to maternity leave, parental leave, illness, or the need to care for a family member (Leuering & Konstant, 2023). In the context of FüPoG II, a development on the European level needs to be mentioned that has a direct impact on German legislation: The EU directive 2022/2381 (European Parliament and the Council of the European Union, 2022) on improving the gender balance among directors of listed companies and related measures (Leadership Positions Directive) was established in 2022. Its primary objective is to improve gender balance within listed companies' board positions, and it introduces various measures that are related to achieving this goal. Member States of the European Union are obligated to implement regulations ensuring a minimum level of representation, of either 40% of supervisory board positions or 33% of both supervisory board and management board positions for the gender that is underrepresented, predominantly women. The implementation into national law is due by June 30, 2026. The Directive goes beyond the existing German regulations of FüPoG II, as it applies to all publicly traded companies (not limited to those with codetermination) with more than 250 employees and annual sales of more than EUR 50 million or an annual balance sheet total of more than EUR 43 million (Rothenburg & Moench, 2023). The Directive moves the thresholds closer to a supervisory board or executive board with equitable representation of both genders. The current value of generally at least 30% male and 30% female members of the supervisory board in listed and codetermined companies will thus be increased by the Directive to at least 40% in each case (Kumpan &

Pauschinger, 2023). However, the German government has indicated its ability to exercise the suspension clause outlined in Article 12 of the Directive, asserting that there is no need to tighten the regulations under national legislation (Bundesministerium für Familie Senioren Frauen und Jugend, 2022). A final position seems to be open (Mutter & Werner, 2023).

The numerous reforms show that the German Stock Corporation Act has thus also been adapted to the expectations of international investors without, however, abandoning the basic principles of German law like the two-tier board system or codetermination. The provisions in the Stock Corporation Act are hard law, and non-compliance with the law may lead to liability for corporate bodies.

The author believes that the ongoing changes in the German Stock Corporation Act demonstrate the legislator's commitment to enhancing corporate governance in Germany. While it is true that European requirements must be implemented, the legislation in Germany goes beyond mere implementation. The legislator is particularly engaged in modernizing the German Stock Corporation Act to align with evolving social expectations, safeguard shareholder rights, and enforce sustainability requirements.

In the subsequent section, following the comprehensive description of the development of stock company law in Germany, a particular focus shall be made on the regulations in the German Stock Corporation Act, that are closely connected to conflicts of interest. It is necessary to explain and define the term 'conflict of interest' to comprehend its significance for the work and decisions of the supervisory board and relevant actions in case such conflicts occur.

Academic literature contains various definitions of 'conflict of interest'. Valsan, the author of the chapter 'Conflict of Interest' in the Encyclopedia of Law and Economics, provides a broader interpretation of the term 'conflict of interest' that focuses on someone's ability to exercise proper judgment (Valsan, 2021). If this ability to exercise proper judgment is at risk because of a personal interest or a competing duty, then a conflict of interest may occur (Valsan, 2021). This definition is not explicitly related to the work of supervisory boards. Hopt (2013) defines 'conflict of interest' in a way that it 'is [] understood in an objective sense, but arising from a concrete conflict situation. In a broader sense, conflicts of interest exist everywhere, but as such are hardly a concept to be accorded legal consequences. [] In this sense, a principle that is broad, but clear cut, and can therefore be addressed is the principle of the priority of the company interest over the private interest of the director.' (Hopt, 2013). Other definitions in the academic literature are similar, focusing on the fear that the member of the relevant board will not base their decision solely on the interests of the

company but may (also) pursue their own interests or the interests of third parties (Busch & Link, 2023c). Kumpan and Leyens (2008) define the term in an article about conflicts of interest of financial intermediaries as follows: ‘A conflict of interest arises when a person who has a duty to act in another party’s interest has to decide how to act in the interest of that party and another interest interferes with his ability to decide according to his duty.’ De la Rosa and Shopovski (2013) offer the following definition of conflicts of interest: The term ‘usually has the same meaning [in different societal areas] and alludes to situations where a natural person or an organization is involved in multiple interests. This set of circumstances creates risks that professional judgment or a decision will be influenced by a secondary interest.’ Following Mehran and Stulz (2007), a conflict of interest is defined as ‘a situation in which a party to a transaction can potentially gain by taking actions that adversely affect the counterparty’. Jaqua and Jaqua (2021) state that ‘a conflict of interest occurs when what an individual considers to be in his or her best interest is not the same for another person or organization to which the person owes loyalty.’ The legal assessment of ‘conflicts of interest’ must be based on a correctly derived definition of the concept, including an analysis of the law of joint stock companies, legal literature, court decisions, as well as the German Corporate Governance Code. Kumpan (2014, p. 613) comprehensively analyzed conflicts of interest in German law. At the time Kumpan made the analysis, a generally accepted legal definition of the term conflict of interest did not exist and is still not existing (Bachmann, 2023b; Busch & Link, 2023c). The ‘Act on the Implementation of the Second Shareholders' Rights Directive‘ ARUG II brought a few newly implemented regulations in the German Stock Corporation Act that deal with potential conflicts of interest (Busch & Link, 2023c), which are shown in Table 5.

Table 5 Sections in the German Stock Corporation Act dealing with conflicts of interest

Section	Content
87a (1) sentence 2 no. 10	Remuneration system of listed companies
107 (3) sentence 6	Internal organization of the supervisory board
111b (2)	Reservation of consent by the supervisory board in the case of related party transactions
134b (1) no. 5	Engagement policy, engagement report, voting behavior
134c (4) sentence 3 no. 5	Reservation of consent by the supervisory board in the case of related party transactions
134d (2) no. 2 and (4)	Disclose requirements of proxy advisers

Source: author’s own illustration based on the content of the German Stock Corporation Act

In the aforementioned sections, a definition of conflicts of interest for singular cases is available: Section 107 (3) sentences 4-6 is relevant for related party transactions. In the Government Draft of ARUG II (Bundestag, 2019), the German Bundestag defined that a conflict of interest is to be assumed if there are reasons why the supervisory board member does not make his or her decision not only in the interest of the company but also in the interest of the related person. The reason may be a relationship of business, financial, or personal nature (Bachmann, 2023b). In the other sections, the term 'conflict of interest' is mentioned, but none of these sections in the German Stock Corporation Act define it comprehensively. It is broadly accepted that the definitions provided in the legislative process and the government draft pertain specifically to the factual setting presented therein, therefore limiting their applicability to a broader context (Busch & Link, 2023c).

Additional sections in the German Stock Corporation Act exist, as shown in Table 6, where the term 'conflict of interest' is not explicitly mentioned, but the topic of conflicting interest is covered there as well and may serve to find an interpretation for 'conflict of interest'.

Table 6 Sections in the German Stock Corporation Act with relevance for conflicts of interest

Section	Content
100 (2)	Personal pre-requisites and incompatibilities of becoming a supervisory board member
105 (1)	A person may not be a member of the supervisory board and the executive board at the same time
136	Suspension of voting rights in the general meeting

Source: author's own illustration

Court decisions may also be a source for a definition of the term 'conflict of interest'. The German Federal Court of Justice mentions the term, but no general definition can be derived from its decisions (Busch & Link, 2023c). In the decisions from February 16, 2009 (Bundesgerichtshof, 2009b) and from September 21, 2009 (Bundesgerichtshof, 2009a), the German Federal Court of Justice addresses conflicts of interest without providing a specific definition.

2.2.2 The German Corporate Governance Code

In Germany, the theoretical discussion and examination of corporate governance started in 1960. According to Witt (2003, p. 3), the theoretical research on corporate governance in Germany has a long tradition: It was started by Herkenrath (1960) who compared in his 1960 dissertation the managing bodies of an American corporation and a German stock corporation. Other authors, such as Stratoudakis (1961) focused in their research on the organization of a company's management; Gutenberg (1970) discussed the functional transformation of the supervisory board; Albach (1981) researched corporate governance from the perspective of organizational theory; Witte analyzed the impact of shareholders on corporate policy (Witte, 1981); Steinmann et al. showed in 1983 the development of manager controls in huge German companies in 1972 and 1979 (Steinmann, Schreyogg, & Dutthorn, 1983), and Brose (1984) analyzed the relationship between organization and governance.

In Germany, the discussion about a corporate governance code started in 2000 with two private initiatives. The 'Code of Best Practice' from the 'Frankfurter Grundsatzkommission Corporate Governance' (abbreviated 'FGCG') (Grundsatzkommission Corporate Governance, 2000), which was composed of industry representatives, shareholder associations, and academics in law, was addressed to stock-listed companies. The draft code from the 'Berlin initiative German Code of Corporate Governance' (Berliner Initiativkreis, 2000) was the second initiative. The initiatives were widely recognized, but they had different approaches: the Code of Best Practice took a legal approach, while the code from the Berlin initiative was an economic one. It was seen as rather problematic to have two different codes (Werder, 2021a), therefore, none of the initiatives prevailed.

In May 2000, the German government, with the acting person Prof. Dr. Herta Däubler-Gmelin, the German Federal Minister of Justice, set up a government commission on 'Corporate Governance – Corporate Management – Corporate Control – Modernization of Stock Corporation Law' whose chairman was Theodor Baums, a corporate and capital market lawyer. The German government reacted with the set-up of a governmental commission to the bankruptcy of Philipp Holzmann AG (Langer, 2017), at that time the biggest German building contractor. In November 1999, Philipp Holzmann AG announced a tremendous indebtedness, which led to an operating loss and a reduction of employees. Although the German government provided guarantees in the amount of 250 million German Mark (former German

currency), Philipp Holzmann AG had to file for bankruptcy (Drukarczyk & Schueler, 2003, pp. 87-88).

The German Government established a commission which was led by Theodor Baums (the so-called 'Baums-Commission'). The Commission[11] is independent from the German Federal Ministry of Justice. The Baums Commission proposed the implementation of a code commission and the creation of a German corporate governance code (Baums, 2001). Subsequently, the German Federal Ministry of Justice adhered to this recommendation and established the Government Commission German Corporate Governance Code on September 6, 2002 (Cromme, 2001).

The initial German Corporate Governance Code was concluded by the Governance Commission on December 17, 2001, and officially released the next day, via the Governance Commission's website (Cromme, 2001). On January 23, 2002, the Code was approved by the Governance Commission and officially handed over to the Federal Minister of Justice, Prof. Dr. Herta Däubler-Gmelin on February 26, 2002 (Cromme, 2002). On September 30, 2002, the first code was published in the Federal Gazette.

The Governance Commission was established as a 'standing commission' and therefore regularly (until 2017 usually in an annual cycle) revised the Code based on national and international developments (Werder, 2021b). Except for 2004, 2011, and 2016, the Code was revised and amended each year until 2017.

[11] First members of the Government Commission German Corporate Governance Code ('Governance Commission') were Dr. Paul Achleitner (Executive Board member Allianz AG), Dr. Rolf E. Breuer (Chairman of the supervisory board Deutsche Bank AG), Dr. Gerhard Cromme (Chairman of the supervisory board ThyssenKrupp AG), Dr. Hans-Friedrich Gehlhausen (Executive Board member PwC Deutsche Revision AG), Ulrich Hocker (Managing director DSW), Max Dietrich Kley (Vice chairman of the executive board BASF AG), Professor Dr. Dr. Marcus Lutter (University Bonn), Volker Potthoff (Executive Board member Deutsche Börse AG), Heinz Putzhammer (Member of the Federal Executive Board of the Confederation of German Trade Unions), Christian Strenger (Supervisory board member DWS Investment GmbH), Peer M. Schatz (Chairman of the executive board Qiagen N.V.), Dr. Wendelin Wiedeking (Chairman of the executive board Porsche AG) und Professor Dr. Axel v. Werder (Technical university of Berlin)

Appendix provides a compilation of all German corporate governance codes together with the main modifications implemented in each of them.

As of March 1, 2017, Professor Dr. Rolf Nonnenmacher became the new Chairman of the Governance Commission (Regierungskommission, 2017). Nonnenmacher (2017) announced a fundamental reform of the Code and highlighted the main pillars of the reform, which were to have longer revision periods in the future, to implement internationally acknowledged best practices, to distinguish between recommendations and suggestions, and to change the structure, which should in the future follow rather a management logic than the Stock Corporation Act (Nonnenmacher, 2017).

On November 6, 2018, the Governance Commission published its draft of the new Code (Regierungskommission, 2018). The finalization of the code within the Governance Commission was delayed until December 19, 2019 because of the late implementation of ARUG II due to numerous comments (Regierungskommission, 2020). The code became in force on March 20, 2020, and was the first code to adhere to the updated structure.

On January 21, 2022, the Governance Commission[12] published the draft of the adopted Code in the Federal Gazette on June 27, 2022. This Code has been effective since then (Regierungskommission, 2022a). The revision is modest after the general modifications in 2019–2020 and the Code was selectively adapted to legal developments (Linden, 2022). The Governance Commission focuses on the balance of economic, environmental, and sustainable issues, defines sustainability as an integral part of the corporate strategy, and adopts the code to the FISG (Regierungskommission, 2022c). In addition, the Code has (again) grown in complexity. This is especially true for the recommendation that the competencies represented on the supervisory board have to be disclosed in the form of a matrix, which is already, from a current political standpoint, a potential new political issue (Linden, 2022). The publication of a revised German Corporate Governance Code has not been announced yet.

The implicit overarching goal as a background for implementing a German Corporate Governance Code was to enhance Germany's attractiveness as a business destination for both domestic and foreign investors (Cromme, 2001). This shall be achieved through the promotion and reinforcement of investor confidence, as well as the faith of consumers,

[12] The current Commission composes of Clara Christina Streit (Chairwoman), Dr. Werner Brandt, Dr. Daniela Favoccia, Dr. Margarete Haase, Dr. Michael Kemmer, Claudia Kruse, Prof. Dr. Klaus-Peter Naumann, Dr. Bettina Orlopp, Dr. Nicolas Peter, Dr. Ariane Reinhard, Dr. Sebastian C. Schulte, Dr. Sebastian Sick, Ingo Speich, Marc Tüngler, Dr. Jens Weidmann. Status: January 2024

employees, and the general public in German corporate governance. The Code endeavors to eradicate instances of misinterpretation, such as the lack of awareness regarding the two-tier system or the principles of codetermination, and to effectively tackle and resolve areas of concern pertaining to the German corporate constitution, such as the insufficient autonomy of the supervisory board and the exorbitant remuneration of the executive board (Bachmann, 2023d).

The provisions that are included in the codes of most other European markets are far more precise than the rules that are included in the Code, which contains rather general terms. The principles of corporate governance in Germany significantly focus on corporate flexibility and are, in general, less prescriptive than the rules of corporate governance in many other European countries (Hopt & Leyens, 2019). According to the Governance Commission, the purpose of the Code is to promote transparency and comprehensibility for stakeholders to strengthen their confidence in the management and oversight of German stock-listed companies (Regierungskommission, 2022b). Given this background, it is obvious that the Code itself is not a law in the meaning of Section 2 of the Introductory Act to the German Civil Code (EGBGB) and it's also not a commercial practice within the meaning of Section 364 of the German Commercial Code (HGB) (Brugger, 2020). This is the prevailing opinion in legal literature. Brugger summarizes that the Code is a 'quasi-legislative manifesto'. The Code is integrated into German stock corporation law via Section 161 of the German Stock Corporation Act (Schmeing, 2023), the 'comply-or-explain' principle. Given the regulatory content and the purpose of the Code, there is no normative validity towards the addressees of the Code and thus no enforcement by the state, but only a non-binding recommendation of conduct. The German Federal Court of Justice also confirmed in the sentence from October 9, 2018 (II ZR 78/17) (Bundesgerichtshof, 2019) that the Code is not a law. Nevertheless, the legal obligation to explain any non-compliance with the Code is seen as an 'indirect method of enforcement' (Haar, 2018). Incorrect declarations of conformity constitute a breach of duty by the corporate bodies. The shareholders may assess the content of the Code and refuse to discharge[13] the executive board and/or the supervisory board if they believe that the content of the Code is wrong.

All German corporate governance codes, both the obsolete codes and the currently valid German Corporate Governance Code, contain principles, recommendations, and suggestions, as outlined in the foreword of the relevant code. The principles repeat material

[13] See footnote 2

legal requirements and are included for information purposes. The word 'shall' marks recommendations, whereas 'should' is used for suggestions. Overall, the Code consists of 121 recommendations and seven suggestions (Regierungskommission, 2022b). The German Corporate Governance Code from 2020 was the first code, consisting of a preamble and seven sections. This structure persists in the present Code. The preamble describes the fundamental functions of the Code, which are (i) the definition of corporate governance, (ii) the general content and objectives of the Code, (iii) the guiding principles of the executive board and supervisory board, (iv) the binding nature of the Code and (v) the addressees of the Code. Sections A to G are shown in Table 7:

Table 7 Content of the German Corporate Governance Code

Section	Title	Content
Section A	Management and supervision	Governance tasks of the management board, supervision tasks of the supervisory board and function of the general meeting are governed
Section B	Appointments to the Management Board	Candidate suitability, gender participation and composition targets are governed
Section C	Composition of the Supervisory Board	General requirements or supervisory boards are described, independence of supervisory board members and elections to the supervisory board are governed
Section D	Supervisory Board procedures	Rules of procedure, cooperation within the supervisory board and with the management board, cooperation with the external auditors, training and professional development and the self-assessment is governed
Section E	Conflicts of interest	Procedures and disclosure obligations are governed
Section F	Transparency and external reporting	Shareholder communication and disclosures are governed
Section G	Remuneration of the management board and the supervisory board	Remuneration system, resolutions on it and long-term development are governed

Source: author's own research based on the content of the German Corporate Governance Code (Regierungskommission, 2022b)

Companies are, in principle, free to comply with the Code. If companies do not follow recommendations, they have the obligation to disclose and explain them every year ('comply-or-explain'). The disclosure needs to be done on the homepage of the company and must be hyperlinked in the annual report. The declaration of conformity may be the basis for the capital market's assessment of the corporate governance of companies, and if there are concerns, it may lead to the sanctioning of companies. If the explanation of deviations from

the Code is not convincing, the capital market may tend to devalue the company's shares. The academic literature gives no clear picture of the influence of a non-convincing declaration of conformity to the share price. Drobetz, Schillhofer, and Zimmermann (2005) state a positive relationship between corporate governance practices on the one hand, and the valuation of a company on the other hand. Gompers, Ishii, and Metrick (2003) conclude that companies with stronger shareholder rights have a higher value. Nowak, Mahr, and Rott (2006) on the other hand conclude in their empirical study that there is no impact of changes in code compliance levels on stock price performance.

There are different types of non-compliance with Section 161 Stock Corporation Act (the duty to publish a declaration of conformity), first, the non-publication of the declaration of conformity or its late or incomplete publication, second, the publication of a wrong declaration of conformity. The non-compliance with Section 161 Stock Corporation Act in a way that either no declaration is made, or a wrong one is published, has legal effect. The legal obligation of the members of the executive board and supervisory board to issue a declaration of conformity with accurate content can trigger legal consequences that occur if the corporate bodies neglect their duties (Brugger, 2020). Liability, refusal of discharge[14], withdrawal of confidence in the annual general meeting, dismissal, or an imposition of fines or penalties are possible consequences (Wittmann & Kirschbaum, 2020).

The non-publication or late publication of the declaration of conformity is unlikely, as it is closely connected with the financial statement of a company. According to Section 285 No. 16 of the German Commercial Code, the notes of a company's financial statement must contain the information that the declaration of conformity has been issued and where it has been made publicly available. The same is valid for the consolidated financial statement according to Section 314 (I) No. 8 of the German Commercial Code. The declaration of conformity is also part of the management report, which is part of the annual financial statement according to Section 264 of the German Commercial Code; if the declaration of conformity is published on the webpage of a company, the management report must refer to it. The declaration of conformity must be submitted electronically to the registration court and needs to be published (Section 325 German Commercial Code). The supervisory board must examine the management report, which must contain the declaration of conformity, and must inform the annual general meeting in writing about the examination (Section 171 German Commercial Code). This regulatory structure ensures that the executive board and supervisory

[14] See footnote 2

board are forced to issue the declaration of conformity. None of the regulations asks for an accurate or complete declaration of conformity (Goette, 2022b).

The question of non-compliance with Section 161of the German Stock Corporation Act must focus on incorrect, inaccurate declarations of conformity. With regards to the past-oriented declaration – if recommendations have been or haven't been complied with – the declaration of conformity is wrong if the compliance or non-compliance with the recommendations is incorrect or incomplete. Similarly, the future-oriented part of the declaration of conformity is wrong if the executive board and/or supervisory board intend to comply with recommendations, without realizing this intention. In that case, the executive board and the supervisory board need to correct the declaration of conformity during the year. Moreover, missing information about the reasons for non-compliance also leads to a wrong declaration of conformity (Goette, 2022a).

An external control of the content in the declaration of conformity is the task of the courts, shareholders have the option to petition the court to assess the accuracy of the declaration. Besides courts, no other external authority undertakes control of the content. Indirectly, shareholders can doubt the declaration of conformity and vote against the discharge[15] of the company's corporate bodies in the annual general meeting.

Conflicts of interest need to only be mentioned if the company doesn´t stick to the rules in the German Corporate Governance Code regarding the handling and disclosure of conflicts of interest. The mechanism to disclose conflicts of interest is to report to the shareholders in written form or an oral report during the annual general meeting.

In the subsequent section, following the comprehensive description of the development of the German Corporate Governance Code, a particular focus shall be made on the regulations in the Code, that are closely connected to conflicts of interest.

In the German Corporate Governance Code, the term 'conflict of interest' is mentioned in different sections. The first published German Corporate Governance Code, version from February 26, 2002, contained several clauses regarding conflicts of interest among supervisory board members. One pillar of the independence of the supervisory board is a lack of conflicts of interest. Cromme (2001) said that the Code relied on the principles of transparency and disclosure. That led to clause 5.5. of the Code, which mentions the principle that 'all members of the supervisory board are bound by the enterprise's best interests' and the obligation to disclose conflicts of interest (Regierungskommission, 2002). The Governance

[15] See footnote 2

Commission amended the rules regarding conflicts of interest over the years. To further ensure transparency, the Governance Commission decided to include the recommendation that the annual general meeting must be informed about conflicts of interest and that a permanent conflict of interest shall lead to the termination of the mandate. In the current version of the Code, the term ‘conflicts of interest’ is mentioned in several recommendations (Regierungskommission, 2022b):

(ii) Section C: Composition of the supervisory board

Recommendation C.7 (1) sentence 2: This recommendation says that the members of a supervisory board are to be considered independent if they have no personal or business relationship with the company and its executive board that may cause a substantial – and not merely temporary – conflict of interest.

Recommendation C.9 (2): A supervisory board member shall be considered independent from a controlling shareholder if there is no personal or business relationship with the controlling shareholder that may cause a substantial – and not merely temporary – conflict of interest.

(ii) Section E: Conflicts of interest

This section contains one principle and three recommendations regarding conflicts of interest. The current version of principle 20 of the Code is as follows: ‘The members of the Management Board and Supervisory Board are bound to observe the enterprise’s best interests. In all their decisions, they must neither pursue personal interests nor exploit for themselves business opportunities to which the enterprise is entitled. Management Board members are subject to comprehensive noncompete clauses throughout the duration of appointment.’ (Regierungskommission, 2022b). From principle 20, 3 recommendations are derived: Recommendation E.1 is addressed to the supervisory board, it deals with the disclosure of conflicts of interest and recommends terminating the mandate in case of material conflicts of interest: ‘Each member of the Supervisory Board shall inform the Chair of the Supervisory Board of any conflicts of interest without undue delay. In its report, the Supervisory Board shall inform the General Meeting of any conflicts of interest that have arisen and how they were addressed. Material conflicts of interest involving a member of the Supervisory Board that are not merely temporary shall result in the termination of that member’s Supervisory Board mandate.’ (Regierungskommission, 2022b). Recommendations E.2 and E.3 are addressed to the executive board and contain disclosure obligations in case of conflicts of interest (E.2) and recommend in E.3 to allow sideline activities only upon approval of the supervisory board (Regierungskommission, 2022b).

In principle 20, the enterprise's best interests are mentioned as an overarching theme for the Code and the definition of 'conflict of interest'. What this implies can be found in the preamble of the Code: 'The German Corporate Governance Code (the 'Code') contains principles, recommendations and suggestions for the Management Board and the Supervisory Board that are intended to ensure that the company is managed in its best interests. The Code highlights the obligation of Management Boards and Supervisory Boards – in line with the principles of the social market economy – to take into account the interests of the shareholders, the enterprise's workforce, and the other groups related to the enterprise (stakeholders) to ensure the continued existence of the enterprise and its sustainable value creation (the enterprise's best interests).' (Regierungskommission, 2022b). This dedication to serving the best interests of the company is reaffirmed in principle 1, and it is also mentioned in principle 13 ('to the benefit of the company'). The focus of this section is on the individual member of the body, in contrast to the previous statements in the Code that address the executive board or the supervisory board as bodies and, consequently, the objective of their actions. Therefore, the term 'enterprise's best interest' in principle 20 is not to be regarded as a general purpose of a stock corporation but rather as a counter term to the self-interest of the board member (Bachmann, 2023a).

The explicit understanding of the Code regarding the importance of the company's best interest is in accordance with the prevailing opinion in academic literature, stating that it is common sense that supervisory board members must act according to the interests of the company and thus disregard any conflicting interests of their own or of third parties (whether private or public) when exercising their mandate. Habersack (2023f) argues that there is an 'expectation' that supervisory board members act in accordance with the company's best interest. However, due to the continued dominant nature of the mandate as a subsidiary office to a main office (Hopt, 2019) and the supervisory board's heterogeneous composition, conflicts of interest are to be expected (Habersack, 2023b). To comprehend the relationship between the statement that the supervisory board must act in the (best) interest of the company and conflicts of interest, which are addressed under the premise that they are detrimental to the company's interests, additional investigation is required. Both the management board and supervisory board are obliged to act in the best interests of the company, which is not a fixed legal term, but always the result of a consideration of all interests in each case. The risk that either the management board or supervisory board must deal with conflicting interests is obvious. The degree to which the supervisory board can impact the company's interests counts as the deciding factor. This degree is determined by the

supervisory board's responsibilities and powers to influence the decisions of the stock corporation. The three bodies of a stock corporation – annual meeting, supervisory board, and executive board – do not have a hierarchical structure but rather have balanced powers. In addition, the way the corporate interest of the company is evaluated and the degree to which an impact on it because of the activities of the supervisory board means the realization of a disadvantage, are to be analyzed. The company's best interest serves as the universal principle of conduct that guides supervisory board member's behavior. There is not yet a consensus on how to define the company's stake in this matter (Spindler, 2023a). Shareholder's interests are not solely decisive when defining the company's best interests, because there are other stakeholders, such as employees, business partners (customers, suppliers), and the public, whose interests must be considered as well. The company's best interest is not a fixed metric but must be determined based on the individual circumstances and relevant interests of the stakeholders concerned (Al-Wraikat, 2014).

To summarize, the meaning of 'company's best interest' is not clearly defined, even if it is widely acknowledged that the continued existence of the company and sustainable profitability is in the company's best interest (Lieder, 2006, p. 814; Spindler, 2019b; Spindler, 2019c; Weninger, 2011).

With the underlying variety of contexts and attributes that are related to a conflict of interest, the conclusion can be drawn that there is no uniform concept or definition of conflict of interest. The teleological interpretation of the term should consider the respective normative environment; harmonization between the different fields of regulation is necessary because the different regulatory fields are interconnected and not standalone (Koch, 2014). However, it is feasible to describe the concept of conflict of interest and to give contours to that term. Consensus exists that the term should be interpreted objectively, which means that it does not depend on whether the board member feels biased in the given situation and that there must be a certain concretization of the conflict; completely abstract or purely theoretical collisions with other interests are insufficient, even if they are latent.

If one were to attempt a definition in light of these considerations, it could be in line with Bachmann (2023b), who suggests a definition that a conflict of interest in the context of decision-making is to be assumed if a management measure is likely to affect a board member's private or other professional interest in a way that is more than merely insignificant and if the consideration of this other interest could be detrimental to the company's interests.

2.3 Conflicts of interest in the light of German law and the Corporate Governance Code

On a national level, other codes exist, such as codes for family businesses, for public companies, or a code with a focus on sustainability, as outlined in this Chapter: the Code for Family Businesses was first published on the website[16] of a private company that hosts the commission that works on the Code for Family Businesses. This code was later replaced by the Governance Code for Family Businesses, which was adopted on June 19, 2010, updated on May 29, 2015, and then on May 17, 2021. This Governance Code for Family Businesses aims to provide guidelines for the responsible management of family businesses and business-owner families and aims to guidance for the successful management of not-listed, family-owned companies with a focus on financing, the role of different family lines, and the requirements for managing partners. The Governance Code for Family Businesses contains a regulation that when selecting the membership of the body, care should be taken to ensure that conflicts of interest are avoided (clause 3.2.5 of the Governance Code for Family Business) and contains general rules in case of conflicts. Special clauses regarding codetermination are not part of this code. Family-controlled enterprises are of outstanding importance for German industry, as they make up 90% of all German businesses, account for 52% of total turnover, and have 58% of all employment relationships that are subject to social security contributions, according to a study by the Family Business Foundation (Redenius-Hövermann, 2022). Effective governance structures for these important companies and employers are required to ensure long-term success.

The Public Corporate Governance Code is dedicated to companies in which the Federal Republic of Germany has substantial ownership interest. Germany has approximately 100 companies, ranging from large enterprises like Deutsche Bahn AG to smaller ones like Bundesdruckerei GmbH, that fall under the scope of the Public Corporate Governance Code (Ramge & Kerst, 2022). The Public Corporate Governance Code was established in 2009 and revised on September 16, 2020. Background for the Public Corporate Governance Code was the OECD Guidelines on Corporate Governance of State-Owned Enterprises (IFC, 2015), which were released in 2005 and revised in 2015 as well as the acknowledgment that the German Corporate Governance Code is not directly applicable to such companies, because of their legal form (mainly limited liability companies) or because they are not listed companies

[16] The homepage is: http://www.kodex-fuer-familienunternehmen.de/

(Lindenlauf, 2021). The Public Corporate Governance Code includes regulations regarding conflicts of interest, which must be considered in the context of the supervisory board composition. The incompatibility rules for supervisory board members are comparable to those outlined in the Code, and disclosure obligations are also addressed. On a local level, municipal public codes are in place. They are very different from each other so that private experts established a model code[17], which has been in place since 2020.

In 2011, the German Sustainability Council presented the German Sustainability Code[18], the current version is from July 2017. The aim is to make corporate performance measurable for investors, whereas the focus is on non-financial indicators such as environment and social responsibility, neither conflicts of interest nor codetermination are subject of this code. Information about the aforementioned indicators must be provided in the management report, which is part of the annual financial report. The German Sustainability Code is a template that can be used for a voluntary declaration of conformity, which can be published on the German Sustainability Council's webpage. The German Sustainability Code describes core requirements for corporate sustainability management. Sustainability is seen as the equal consideration of economic, ecological, and social aspects to preserve the environment and social cohesion. Sustainability is the topic of the upcoming years for all companies. In addition to the CSR Directive, a system for classifying business activities into environmentally sustainable activities was developed with the EU Sustainable Finance Taxonomy on June 18, 2020 (European Parliament and the Council of the European Union, 2020). This EU Taxonomy Regulation applies to the non-financial statement depending on environmental targets which will be effective from January 1, 2022, or January 1, 2023, depending on the individual regulation, so that information must be collected in the fiscal year 2021 and reported accordingly.

One significant distinction between these codes and the German Corporate Governance Code is that only the German Corporate Governance Code was established by a government commission, and that the 'comply-or-explain' rules, with their legally binding obligation to publicly issue a declaration of conformity, are exclusively applicable for this Code and not for any other national codes. That means that compliance with other corporate governance codes is voluntary, and there is no need for a company to explain or publish any non-compliance.

[17] The model code is available on https://pcg-musterkodex.de/home-english
[18] The homepage is: www.deutscher-nachhaltigkeitskodex.de

CHAPTER 3
CHARACTERISTICS OF CORPORATE BODIES IN GERMAN STOCK CORPORATIONS AND THEIR ROLE IN IDENTIFYING AND ELIMINATING CONFLICTS OF INTEREST

German stock corporations (Aktiengesellschaft) are considered legal persons with their own legal status that sets them apart from their founders and shareholders (Heider, 2023). The stock corporation possesses the legal ability to independently hold rights, such as ownership titles, and is capable of initiating or being subject to legal proceedings under its corporate name. According to the definition provided in the German Commercial Code, the German stock corporation is classified as a merchant (Schulz & Wasmeier, 2012, pp. 38-39).

German stock corporations require three corporate bodies, the General Shareholders' Meeting (Hauptversammlung), the supervisory board (Aufsichtsrat), and the executive board (Vorstand) (du Plessis et al., 2017, p. 63), which are described in more detail in this Chapter. There is no established hierarchy among the three bodies of a stock corporation, yet the powers are balanced (Koch, 2023g). A decision of the German Federal Constitutional Court explicitly confirms the balanced power of the corporate bodies (Bundesverfassungsgericht, 2000).

3.1 Characteristics of the general shareholders' meeting

The general shareholders' meeting (annual meeting/annual general meeting) is a corporate body of a German stock corporation. It is the decision-making body of the company (Section 118 German Stock Corporation Act), and the shareholders can enforce their rights in the annual meeting. Until the amendment of the German Stock Corporation Act in 1937, it was acknowledged that overall responsibility for the direction of the company was assigned to the annual meeting. During the 1930s, it became increasingly apparent that the annual meeting, because of its heterogeneous membership and the slow operating pace, was not able to adequately evaluate the entrepreneurial decisions that were being made regarding day-to-day operations. Therefore, the legislator decided in 1937 to significantly extend the powers of the executive board to the disadvantage of the annual meeting. Since then, the responsibilities of the annual meeting have been mainly of a structural nature. Decisions of a structural nature

are, e.g., decisions about the articles of association, capital increase and decrease, and the dissolution of the company, but not the day-to-day business decisions (Koch, 2023d).

All shareholders have once a year the possibility to discuss and decide about the mandatory agenda items as well as about the additional agenda items from the company. The executive board is responsible for the revocation of the annual meeting. During the annual meeting, the shareholders can exercise their right to speak, to get information, and to exercise their voting rights (Koch, 2023d).

The tasks of the annual meeting are limited to those described by law and given by legislation: Mandatory subjects of every (ordinary) annual meeting are the approval of the acts of the members of the executive board and the supervisory board[19], the election of the auditor. New legislation defines an additional responsibility for the annual general meeting which is to approve the remuneration of the executive board and the supervisory board, as well as the remuneration report, a requirement that is valid since January 1, 2021 for companies listed on the regulated market (Reichenberger, 2020). If certain conditions are met, the following subjects are also mandatory: the resolution on the appropriation of profits (if there is a corresponding balance sheet profit), the election of shareholder representatives to the supervisory board (only if there are one or more corresponding vacancies on the supervisory board), the approval of the compensation system for the members of the executive board (only for companies listed on the regulated market and if the compensation system is amended or resubmitted at least every four years), and the resolution on the remuneration system for the members of the supervisory board. As a third group of resolutions, there are agenda points that are only dealt with by the annual meeting on the initiative of the management or a minority of shareholders, when there is an economic or legal necessity from their point of view. These are amendments to the articles of association, capital measures (capital increases (effective/nominal; authorized/conditional; by way of cash contribution/in-kind; with/without exclusion of subscription rights) and reductions; the issue of convertible bonds and profit participation bonds; granting of profit participation rights, authorization to repurchase treasury shares, transformation measures, in particular mergers, demergers, changes of legal form, control and/or profit and loss transfer agreements, the approval (refused by the supervisory board) of a related party transaction, and the

[19] The approval of the acts of the corporate bodies is also known as 'discharge' (Entlastung). According to the prevailing opinion, granting discharge primarily contains a declaration by the annual general meeting that it approves the management decisions as being generally in accordance with the law and the articles of association. The discharge does not constitute a waiver of claims arising for the company from the actions of the executive board members.

determination of compensation for members of the supervisory board (Simons, 2023b). The dismissal of supervisory board members may also be a subject of the decisions from the annual general meeting, but only for those, who were elected by the annual general meeting. For employee representatives (not elected by the annual general meeting) the dismissal doesn´t lie in the responsibility of the annual general meeting. In the case of these supervisory board members, the appropriate course of action would be that the employees seek a court decision for their removal (Peltzer, 2008).

Moreover, the German Federal Court (Bundesgerichtshof) defined in some fundamental, ground-breaking decisions the unwritten responsibilities of the annual meeting in cases that are comparable to an amendment of the articles of association (Fleischer, 2004). Well-known court decisions of the German Federal Court are cases known as the 'Holzmüller'[20] court case (Bundesgerichtshof, 1982) or the 'Gelatine I'[21] court case (Bundesgerichtshof, 2004).

In Germany, there is an ongoing discussion about the necessity of implementing a new regulation that contains a mandatory 'say on climate' vote (Kühle, 2023). According to Simons (2023c), German lawmakers will likely reconsider their position in light of the European Union's climate disclosure activities.

The primary and significant right of individual involvement is the ability to exercise one's voting at the annual general meeting, which consequently encompasses the right to attend the meeting (Section 118 German Stock Corporation Act). During the meeting, each shareholder has the right to request information regarding business matters, provided that such information is essential for the evaluation of an item included on the agenda. The executive board has the discretion to decline to respond, but this is often limited to extraordinary circumstances, specifically when such a response could potentially result in significant harm to the corporation's financial well-being (Section 131 German Stock Corporation Act). If a shareholder holds the belief that the executive board has infringed upon their rights concerning the annual general meeting, they possess the entitlement to formally express their dissent in the meeting minutes. Furthermore, for a period of one month after the meeting, the

[20] Holzmüller: The German Federal Court decided that fundamental decisions made by the executive board that have an important impact on shareholder's rights can´t be solely made by the executive board, the annual meeting needs to be involved. Holzmüller was a stock corporation that spun off a certain part of its business equalling 80% of the asset value of the company's assets.

[21] Gelatine: In the Gelatine case, the executive board decided to restructure a subsidiary in a way that it became a second-tier subsidiary. The German Federal Court decided that this case is an unwritten competence of the annual meeting.

shareholder retains the option to initiate legal proceedings to contest the relevant resolution(s). For other minority rights, certain quotas are given by the law. For instance, the convocation of an annual general meeting can be requested by shareholders whose combined shareholdings amount to one-twentieth of the capital stock. This request must be in writing and state the purpose and the reasons for it (Heeg, 2012).

Annual meetings are increasingly characterized by the influence of institutional investors. The phenomenon that institutional investors, to achieve their goals, exert an extended influence on the company's management or co-shareholders over and above the rights to which they are entitled as shareholders of the company, is called shareholder activism (Kleinmanns, 2016). Shareholder activism has been known in Germany since 2008, according to Altman (2010) who cites the German newspaper Handelsblatt title from August 22, 2008 'Foreigners increase pressure on companies – international investors use general meetings for criticism.' (Altmann, 2010).

Altman (2010) also describes how, in February 2010, an activist investor from the United Kingdom named Hermes voted against the re-election of Klaus Wucherer as chairman of the board for Infineon Technologies AG. Hermes was opposed to the re-election of Wucherer. The fact that Wucherer was re-elected with only 72.5 percent of the vote while 27.5 percent of the voting rights opposed his re-election gives evidence that there was a considerable amount of opposition to him. According to Altman (2010), 'this meeting may have been a watershed event for corporate governance and shareholder activism in Germany.'

Overall, shareholder activism is of growing importance for the preparation of annual meetings (Bunz, 2014). Activist shareholders can influence the election or re-election of supervisory board members, hence having the authority to shape the composition of supervisory boards. By influencing the appointment of supervisory board members, there is a possibility that individuals with a significant likelihood of conflicts of interest may be appointed, while candidates who have been carefully evaluated for potential conflicts of interest may be prevented from becoming supervisory board members.

In the context of the annual general meeting, conflicts of interest are relevant because the supervisory board has to disclose the conflicts of interest that arose during the fiscal year. It is only at the annual general meeting that shareholders can ask questions regarding conflicts of interest to be answered. Additionally, they can influence the composition of the supervisory board by using their voting power to reject candidates who pose a significant risk of conflict of interest and to prevent the reelection of supervisory board members who have faced conflicts of interest.

3.2 Characteristics of the supervisory board

In the two-tier system, the supervisory board as a corporate body dates back to 1861, it was implemented with the introduction of the German General Commercial Code (Lieder, 2006, p. 65). All stock corporations, cooperatives, and limited liability companies that are subject to codetermination, are investment companies, or have more than 500 employees have a statutory mandatory supervisory board. The tasks as well as the rights and duties of the supervisory board are comprehensively regulated in the German Stock Corporation Act (Aktiengesetz, AktG) (Sections 95 to 116 AktG), the German Commercial Code (Handelsgesetzbuch, HGB) and the codetermination laws (Binder-Tietz, 2022, p. 48).

The following sections about the supervisory board refer to the mandatory supervisory board of stock corporations. It describes the requirements given by mandatory law; the main additional requirements according to the German Corporate Governance Code (see Chapter 2.2.2 for a more comprehensive description) are also described in this Chapter.

3.2.1 Composition and election of the supervisory board

The German Stock Corporation Act provides, together with other laws, the main principles of the composition of German supervisory boards. According to the German Stock Corporation Act, all German stock corporations have two boards, the executive board and the supervisory board. The composition of the supervisory board differs, depending on the applicable law. There is a distinction between companies that are subject to codetermination and companies that are not bound by the regulations regarding codetermination.

The rules for codetermination are stipulated for in Section 96 of the German Stock Corporation Act, which distinguishes three different cases: codetermination according to the German Codetermination Act (Mitbestimmungsgesetz, MitbestG), the German Coal and Steel Codetermination Act (Montanmitbestimmungsgesetz, MontanMitbestG) and the German One-Third Participation Act (Drittelbeteiligungsgesetz, DrittelbG) (Hoppe & Fuhlrott, 2011). The number of supervisory board members in codetermined companies depends on the number of employees. In Germany, there is a minimum number of supervisory board members, which is three; the maximum number is 21.

The German Codetermination Act applies to companies with more than 2,000 employees and provides for equal representation of employees and shareholders in the supervisory board, with the size of the body depending on the number of employees (Bermig, 2012). The Codetermination Act is valid for stock corporations, limited partnerships on

shares, limited liability companies, and cooperatives employing more than 2,000 employees (alone or with their subsidiaries). With up to 10,000 employees, the supervisory board has 12 in a ratio of 6:6; with up to 20,000 employees, the ratio is 8:8; and in companies with more than 20,000 employees, the law provides for a supervisory board composed of 20 members in ratio of 10:10. Amongst the employee representatives, there are employees, union members, and one executive employee ('leitender Angestellter') (Bermig, 2012).

The German Coal and Steel Codetermination Act applies to iron and steel-producing companies and mining companies with more than 1,000 employees (Bermig, 2012). It provides for equal representation on the supervisory board, half representatives of the shareholders and half employees, and one additional member that is a neutral member jointly proposed by both the representatives of the shareholders and the employees (Habersack, 2023f). The German Coal and Steel Codetermination Act has lost much of its importance (Velten, 2010) because of the decline of this industry (Dribbusch & Birke, 2019). In the year 2016, only 31 companies had a supervisory board composed according to that law, compared to 105 companies in the year 1951 (Bayer, 2016). If the Amending Act on Employee Codetermination in the Iron- and Steel-Producing Industry (Montanmitbestimmungsergänzungsgesetz, MontanMitbestGErgG) applies, the composition of the supervisory board is with stockholders, employees, and one further neutral member. Salzgitter AG, SDAX listed, is the only stock-listed company (not Societas Europaea) in the regulated market (DAX, MDAX, SDAX) that has a supervisory board of 21 members, as it is composed according to that law.

For German stock corporations and partnerships limited by shares (Kommanditgesellschaft auf Aktien) with at least 500 and less than 2,000 employees, the One-Third Participation Act applies. It also applies to German limited liability companies with more than 500 employees. One-third of the supervisory board must be composed of members who are employee representatives and two-thirds stockholders (Bermig, 2012). For companies within the scope of the One-Third Participation Act, no executive employees are elected to the supervisory board, as the employees select the candidates amongst non-executive employees and union representatives.

A mandatory requirement for supervisory boards of stock-listed companies that are composed according to the Codetermination Act or the Coal and Steel Codetermination Act is the obligation to ensure that the Supervisory Board is composed of at least 30% women and at least 30% men (Section 96 German Stock Corporation Act) (Weber, 2023). The gender quota has been effective since January 2016 with the Act on the Equal Participation of Women and

Men in Leadership Positions in Germany. The fixed 30% quota for the respective underrepresented gender for new supervisory board appointments is applicable in around 100 listed companies, subject to full codetermination. If the quota is not met, then the seats intended for the underrepresented gender remain legally vacant ('empty chair') (BMFSFJ, 2017).

Table 8 summarizes the size of codetermined supervisory boards.

Table 8 Number of supervisory board members in German stock-listed companies

Codetermined companies			
	DrittelbG	MitbestG	MontanMitbestG
Employees	501-2,000	> 2,000	> 1,000
Number of supervisory board members	minimum 3, number as per articles of association	12-20:	11, 15 or 21
		up to 10,000 employees: 12	up to 10,000,000 EUR registered capital: 11
		10,000 - 20,000: 16	Articles of association may contain higher numbers:
		20,001 or more: 20	more than 10,000,000 EUR registered capital: 15
			more than 25,000,000 EUR registered capital: 21
Composition of the supervisory board	1/3 employees, 2/3 shareholders	equal number of employees and shareholders	equal number of employees and shareholders, 1 neutral person
Employee participation	no mandatory seat for unions	employees of the company (4-6), union members (2-3) and one executive employee (leitender Angestellter)	employees of the company, union members
Gender quota	no, only obligation to determine a quota goal	30% each gender for stock-listed companies	30% each gender for stock-listed companies
Speciality		one executive employee as employee representative	one neutral member

Source: author's own illustration, adapted from Hoppe and Fuhlrott (2011)

All publicly traded companies must establish a supervisory board. In companies that are not subject to codetermination, the supervisory board is composed exclusively of members who represent the stockholders. According to Section 95 of the German Stock Corporation Act, the minimum number of supervisory board members is three. However, the articles of

association have the flexibility to increase this number to a maximum of twenty-one, depending on the registered capital of the company.

Table 9 shows the number of supervisory board members in stock corporations that are not subject to codetermination.

Table 9 Supervisory Board members of stock corporations with no codetermination

Stock corporation with no codetermination requirement (up to 500 employees)	
	Number of supervisory board members
Minimum number of supervisory board members (legal requirement)	3
Maximum number of supervisory board members depending on registered capital:	
up to 1,500,000 EUR registered capital	maximum number of 9 supervisory board members
1,500,000 EUR - 10,000,000 EUR registered capital	maximum number of 15 supervisory board members
more than 10,000,000 EUR registered capital	maximum number of 21 supervisory board members

Source: author's own research

Jäger, Schoefer, and Heining (2020) describe the election procedures for supervisory board members. They differ between the shareholder representatives and the employee representatives. The shareholder representatives are elected by the annual general meeting upon the proposal of the supervisory board. The maximum election period is approximately five years. The rule in Section 102 of the Stock Corporation Act is that there is a maximum term until the end of the annual general meeting that takes place four years after the election, whereas the year of the election is not counted. Shorter election terms are possible. Re-election is possible, even multiple times, and a mandatory age limit does not exist. The German Corporate Governance Code recommends an age limit and avoiding long-lasting terms because there are doubts that a supervisory board member is still independent in such cases. The election of employee representatives is governed by the respective Codetermination Act. For example, under the Codetermination Act, the election is carried out directly by the workforce or indirectly by elected delegates (Section 9 MitbestG) of the company or group concerned (Section 5 MitbestG).

Trade unions may propose candidates to the supervisory board but don´t have any rights to elect supervisory board members. The details are complex, and additional election

rules exist. The position on the supervisory board ends in case of death, resignation, dismissal, or if the employee, being a supervisory board member, leaves the company (Kalss, 2019).

The supervisory board may establish committees to prepare negotiations and resolutions or to monitor the implementation of its resolutions (Section 107 German Stock Corporation Act). Some committees must be set up following the applicable statutory provisions, like the mediation committee in companies with equal codetermination and the audit committee, which needs to be implemented for a capital market-oriented stock corporation. Audit committees, finance committees, nomination or personnel committees, and a supervisory board presidium are frequently found (Hopt & Leyens, 2005), other committees, e.g., for strategy (Eulerich & Welge, 2010; Müller-Stewens & Schimmer, 2008), technology, sustainability, or special topics, are also becoming increasingly common (Ruhwedel, 2015). The German Corporate Governance Code (see Chapter 2.2.2 for a more comprehensive description) recommends the establishment of an audit committee and a nomination committee, with the exclusive responsibility of the nomination committee to coordinate the selection process for members of the supervisory board and providing recommendations for their elections. Only the audit committee is mandatory for stock-listed companies; the nomination committee is not mandatory.

For its work, members of the supervisory board have no right to claim remuneration by law, but the German Corporate Governance Code says that it may be granted suitable remuneration (Habersack, 2023e). To grant a suitable remuneration is good practice, all of the companies in the DAX 40 and MDAX index pay a remuneration to the supervisory board[22]. The annual general meeting decides on the remuneration of the supervisory board, either directly by resolution of the annual general meeting or by way of a decision to regulate the remuneration of the supervisory board in the bylaws of the company (German Stock Corporation Act (Section 113)). The proposed resolution is submitted to the annual general meeting by the management. According to Oetker (2023), the compensation package may consist of both fixed elements, such as a fixed compensation and additional supplements for committee activities and attendance fees, as well as variable components that are contingent upon performance. However, the implementation of a variable compensation that correlates with the share price is forbidden by law (Oehlrich, 2019). It is compulsory to yearly publish on the company's website a remuneration report containing the supervisory board's (and the

[22] In the DSW Aufsichtsratsstudie 2021, it is mentioned that Ströer, a company listed in the MDAX, pays no remuneration to the supervisory board. Until September 30, 2021, only fees for attending meetings were paid, as of October 1, 2021, the company also pays a fixed remuneration to supervisory board members.

executive board's) remuneration granted and owed in the previous financial year. The remuneration report has to be audited by the statutory auditor. The compensation provided to the supervisory board has experienced a consistent upward trend in recent years, with the primary justification being the increased range of responsibilities (Habersack, 2023e).

3.2.2 Qualification criteria and eligibility conditions for supervisory board members: legal framework and skill requirements

Individual conditions to be eligible for election to the supervisory board are governed in Section 100 of the German Stock Corporation Act, whose objective is to guarantee efficient supervision of the executive board (Habersack, 2023a). A supervisory board member must be a natural person with unlimited legal capacity; moreover, to prevent an excessive concentration of supervisory board mandates, the number of mandates is restricted to ten supervisory board mandates in commercial companies, which are required by law to form a supervisory board; chairing of a board counts twice (Binder-Tietz, 2022, p. 56). A person who is a legal representative of a company dependent on another company is not allowed to be a supervisory board member of such a company. Another exclusion to being a supervisory board member of a company exists for a legal representative of a company whose supervisory board includes a member of the executive board of such a company. The fourth individual condition that excludes persons from being supervisory board members exists for persons who have been executive board members of such company in the last two years (the so-called 'cooling-off period') unless the election is based on a proposal by shareholders holding more than 25% of the voting rights in the company (Andreas, Rapp, & Wolff, 2012).

Besides the conditions given by law, the articles of association of a company may provide for additional individual prerequisites for shareholder representatives.

The question of qualifications is of major importance for a functioning supervisory body. A distinction can be made between the individual qualifications of the individual members and the qualification profile of the entire supervisory body (Binder-Tietz, 2022, p. 57). The legal qualification profile for election to the supervisory board is extremely narrow (Simons, 2021). The German Stock Corporation Act contains only some conditions regarding the necessary qualifications of supervisory board members; the only explicit requirement is that audit committees need to have two financial experts[23] (Section 100 (5) German Stock

[23] The term 'financial expert' is used in Germany according to Section 100 (V) of the German Stock Corporation Act for supervisory board members with expertise in the field of accounting and with expertise in the field of auditing accounts.

Corporation Act). For the board as a corporate body, the law provides for the necessity of ‘sector familiarity’. The purpose of specifying skill requirements for certain supervisory board members in the form of a financial expert, is to increase the quality and efficiency of the supervisory board’s work (Weber-Rey, 2013). If the supervisory board has formed an audit committee, it must include at least one financial expert (Section 107 (4) German Stock Corporation Act). The level of appropriate qualification is still set today by the Hertie decision of the Federal Court of Justice (Bundesgerichtshof, 1983), which requires supervisory board members to ‘possess or acquire the minimum knowledge and skills necessary to understand and properly assess all business transactions that normally arise, even without outside assistance.’ (Simons, 2021). As per the provisions outlined in the German Corporate Governance Code, it is expected that the supervisory board establishes specific goals for its composition and competence profile, while also implementing an age limit for its members. While the law permits a maximum of ten mandates, the German Corporate Governance Codes propose a limitation of five supervisory board mandates, considering one supervisory board chairmanship as two mandates. Furthermore, it is advised that individuals holding such positions refrain from simultaneously holding any other board or advisory roles within competitor organizations. It is recommended that individuals currently serving as members of the executive boards of publicly traded companies should be limited to holding a maximum of two external supervisory board mandates (Regierungskommission, 2022b).

3.2.3 Internal organization of the supervisory board

The German Stock Corporation Act, in Sections 107-110 gives guidance on the internal organization of the supervisory board; it prescribes the election of a supervisory board chairperson and deputy chairperson by all supervisory board members; it stipulates that minutes of meetings of the supervisory board must be prepared; and it contains regulations regarding committees. The legal framework allows for setting up rules for the internal organization in the articles of association or the rules of procedure (Habersack, 2023c). It is required for the supervisory board to convene two meetings within each half-year period of the calendar. Each member is entitled and obliged to participate in the meetings. The determination of whether members of the executive board should participate in meetings is made by the chairperson of the supervisory board. Specialists and individuals with expertise may be invited to participate in discussions about specific agenda items (Habersack, 2023d).

The German Corporate Governance Code (see Chapter 2.2.2 for a more comprehensive description) provides additional recommendations regarding the internal

organization of the supervisory board; it recommends, for example, that rules of procedure be issued, which are also required to be made publicly available on the company's official website (Simons, 2023a). According to the German Corporate Governance Code (Regierungskommission, 2022b), it is furthermore recommended that the annual supervisory board report includes information regarding the number of meetings attended by individual participants of the supervisory board and its committees (Busch & Link, 2023b).

As a rule, for decisions of the supervisory board, a simple majority applies (Köstler, 2014, p. 34). Decisions may only be made if the supervisory board has a quorum. The quorum is dependent on the participation of at least half of the members of the supervisory board, and the requirement that at least three members of the supervisory board participate in the meeting must be fulfilled. Absent supervisory board members may ask other supervisory board members to have their vote given in a meeting. The annual general meeting may add regulations to the bylaws with different requirements. Decisions are made in meetings, as a rule, but it is also possible to pass resolutions outside meetings, in writing, by telephone, or in a comparable form (Habersack, 2023c).

In the case of codetermined companies, according to the Codetermination Act 1976, the chairperson has the right to use the double voting right in the second vote if this vote also results in a tie. This right is called a 'casting vote' (du Plessis et al., 2017, p. 175) and this casting vote has the effect that there is no real parity because the power is balanced in favor of the shareholder representatives; therefore, in academic literature, this type of codetermination is also called a 'quasi-parity codetermination' (Hopt, 2017).

The German Corporate Governance Code advises that the supervisory board should engage in periodic assessments to evaluate its effectiveness (Schäfer, 2023). The primary emphasis of the assessment pertains to the organizational structure and operational processes, while also encompassing an assessment of the substantive aspects of the supervisory board's activities. A common standard for this evaluation is not available, due to the fact, that the German Corporate Governance Code does not provide a detailed explanation and implementation instructions (Welge & Eulerich, 2021, p. 337).

3.2.4 Responsibilities and liability of supervisory board members

'The supervisory board shall supervise the management of the company', as Section 111 of the German Stock Corporation Act states, which is not a precise description of the supervisory board's responsibilities. The focus is on the management measures of the board, not only management decisions, but also essential individual measures that must be lawful,

orderly, and economic (Koch, 2023c). The responsibilities of the supervisory board are not only ‘supervising’, but the responsibilities can be categorized into the control function, the function of balancing interests, and the advisory function (Hutzschenreuter, Metten, & Weigand, 2012) as outlined in the following section.

The primary task of the supervisory board is to control the executive board (control function). This includes the comprehensive control and supervision of the executive board and the selection, appointment, and dismissal of the executive board members, as well as the remuneration of the executive board. Since the Act Implementing the Second Shareholders’ Rights Directive (ARUG II) in 2019, the supervisory board must decide on a clear and comprehensible remuneration system for the executive board and, in doing so, set a maximum remuneration. The annual general meeting must vote on the compensation system at least every four years and can reduce the maximum compensation (so-called ‘say on pay’), however, the resolution is not binding. The supervisory board is also responsible for auditing the annual financial statements and the management report. Important transactions intended by the executive board may only be carried out with the consent of the supervisory board. They are mentioned in the articles of association. By listing transactions requiring its approval, the supervisory board is granted a kind of veto right with which it can actively influence management (Habersack, 2020). The supervisory board has the authority to decide about issuing regulations that contain rules regarding the operations of the executive board. Customary are rules on cooperation within the executive board, like meeting modalities, rules of representation, the rights of the chairperson of the executive board, information management, committees within the executive board, and cooperation between the executive board and the supervisory board (Koch, 2023h).

The supervisory board also holds responsibility for the balancing of interests. This responsibility is described by some authors as an additional function performed by the supervisory board (Hopt & Leyens, 2005). Balancing of interest entails the representation of shareholders’ interests and, in the case of codetermined supervisory boards, the representation of employees’ interests as well (Hutzschenreuter et al., 2012). The inclusion of employees in the supervisory board expands its control function (Metten, 2010, p. 270). The supervisory board acts independently and is responsible for prioritizing the interests of the company’s stakeholders rather than focusing on the personal interests of specific groups (Nieber, 2017, p. 35).

While the law does not explicitly state this obligation, it has become widely accepted that the supervisory board of a stock corporation has a responsibility to provide guidance and

advice to its management board (Jäger, 1996). In the mid of the '90s, the advisory function of the supervisory board was defined as a controlling function, but exclusively retrospective; since then, there has been a fundamental change in the supervisory board's understanding of its function (Metten, 2010, p. 275). The German Federal Court of Justice (Bundesgerichtshof, 1991) recognized the advisory function as the primary means of future-oriented control of the executive board. Nowadays, the supervisory board must perform an advisory function, which includes the retrospective monitoring of the management, and also advisory on ongoing topics. The advice can thus also relate to fundamental questions of future corporate policy, such as the basic strategic orientation of the company or the development of a new field of business (Cahn, 2023). For example, the strategy of the company must be reviewed from the perspective of the supervisory board.

The tasks of the supervisory board primarily pertain to the internal operations of the company (Plagemann, 2016). The legal framework restricts the ability of the supervisory board to engage in public activities, permitting such actions only under specific and exceptional circumstances. For instance, it serves as the legal representative of the company in relation to the executive board members and the auditor, both within and outside the judicial system. The most relevant cases are concluding and terminating contracts. A practical requirement to conduct public activities is the investor relations communication of the supervisory board, in most cases of the chairperson of the supervisory board (Leyendecker-Langner, 2015).

The supervisory board fulfills its control and monitoring duties by relying on the reports provided by the executive board. The availability of information is therefore a crucial resource (Reuter, 2015). In the course of the years, additional responsibilities, including in the areas of risk management, compliance, and sustainability, were assigned to the supervisory board. This enhanced role of the supervisory board has resulted in a notable rise in the responsibilities and potential legal liabilities borne by its members. This is expressly highlighted in the explanatory memorandum accompanying the government's draft of ARUG II (Hopt, 2019). Supervisory board members who breach their obligations are subject to various sanctions. It is possible to differentiate between three categories of liability: criminal liability, liability towards third parties, and liability towards the company (Loritz & Wagner, 2012). Criminal liability includes various offenses, such as making false statements, engaging in misleading presentations, violating the duty of confidentiality, and breaching trust, amongst others (Krause, 2011). When considering liability towards third parties, it may be incurred due to an inaccurate or omitted declaration of compliance in accordance with Section 161 of

the German Stock Corporation Act, the 'comply-or-explain' requirement (Brugger, 2020). The most significant liability in practice is that towards the company itself. This can manifest in various ways, such as the failure to adequately oversee the executive board during a corporate crisis, intentionally or negligently neglecting to prevent fraudulent activities by the executive board, such as delaying the submission of an insolvency petition, or neglecting to pursue legal action for damages against external parties, particularly members of the executive board. The consequences if liability towards third parties or towards the company is proven are monetary claims for damages. Directors' and officers' liability insurance policies, commonly referred to as D&O insurance, serve the purpose of insuring liability risk (Spindler, 2023b). In the case of criminal liability, the possible penalties are fines or prison sentences, depending on the relevant criminal offense. An example would be an offense against the obligation to look after assets (Section 266 of the German Penal Code), the prison sentence could be up to five years. Other relevant offenses could be those in connection with the duty of confidentiality and those in connection with accounting and bookkeeping (Krause, 2011).

Conflicts of interest and their reasons are described in Chapter 4.1. Independence criteria for supervisory board members under European law, under German law, and according to the German corporate governance code are described in Chapter 4.2.

3.3 Characteristics of the executive board

Since 1884 (Morck & Steier, 2005), German company law has provided for a separation between the executive board and the supervisory board: a member of the executive board cannot at the same time be a member of the supervisory board (Guinnane, 2018).

The main principles of the composition of the executive board of German companies are provided for in the German Stock Corporation Act (Section 76) together with other laws and the articles of association of each company. The law stipulates that the executive board may consist of one or more natural persons, and for a company with a capital of more than 3,000,000 EUR, two or more persons are mandatory unless the articles of association provide for one person. All executive board members must have full legal capacity without any restrictions and may not have obstacles to the appointment, such as an employment ban or final convictions for certain offenses. If the executive board of a stock-listed or codetermined company consists of more than three persons, then at least one woman and one man must be members of the executive board (Spindler, 2023a). Stock-listed means that the company is listed on the regulated market (Koch, 2023f). The gender quota has been valid since the

implementation of FüPoG II, a law that introduces binding targets for an increase in the number of women represented on executive boards (Leuering & Konstant, 2023).

The primary responsibility of the executive board is that of managing and directing the business of the corporation (du Plessis et al., 2017, p. 72).

The executive board acts independently from shareholders' or supervisory board's orders (Cahn, 2023). The executive board is the decision-making body of a stock corporation and acts for and on behalf of the company, establishing its strategy and internal guidelines and policies (Fest, 2023). The strict separation between the operational management of the company and supervision is intended to ensure that the long-term and profitable existence of the company is secured and the interests of its investors are protected (Gabius, 2023). As a principle, all executive board members have joint representation power unless the supervisory board decides to grant sole power of representation. A major section in the German Stock Corporation law is Section 93, the business judgment rule, which says that executive board members in managing the affairs of the company must exercise the due care of a prudent manager faithfully complying with the relevant duties (Freund, 2023).

The executive board has the obligation to give reports to the supervisory board concerning the business policy the executive board intends to follow, important budget indicators, the profitability of the company, and significant transactions influencing major balance sheet figures. The supervisory board, on the other hand, has the right to ask for additional reports about matters concerning the company, its legal and business relations, and affiliated entities (Manger, 2010).

The supervisory board has to supervise the management of the company (Section 111 German Stock Corporation Act), but isn´t the corporate body in charge of granting discharge[24] to the executive board; this is the exclusive right of the annual general meeting. According to the prevailing opinion, granting discharge primarily contains a declaration by the annual general meeting that it approves the management decisions as being generally in accordance with the law and the articles of association. The discharge does not constitute a waiver of claims arising for the company from the actions of the executive board members (Koch, 2023a).

[24] See footnote 2

3.4 Codetermination in Germany’s supervisory boards as a factor contributing to conflicts of interest

Codetermination (Mitbestimmung) ‘provides for the participation of employees and their representatives in the management of a company’ (Fifka et al., 2013), it is the involvement of employees in corporate bodies (Koch, 2022).

Codetermination in Germany has its roots in the middle of the 19th century, when industrialization led to a decline in the living conditions of the working class and, for the first time, workers demanded an active role concerning the development of the economic system (Ackermann & Klein, 2015). The Revolutions of March 1848, also known as the Spring of Nations, are regarded as the legal beginning of codetermination. At that time, the country's instability brought the German industrial revolution to its peak. Traditional labor was substituted by machine production, and unemployment and food shortages caused protests. In February 1848, the Germans followed the French, who had initiated a revolution. Even though the first codetermination agreements would not be reached for another 60 years, this was a crucial step in the evolution of the law (McGaughey, 2015). Codetermination laws are a result of workers’ resistance but not a sudden empowerment of workers by a government act (Jäger, Noy, & Schoefer, 2022). It was the ‘acceptable alternative to revolutionary employee practices’ (du Plessis et al., 2017, p. 170). Between 1868 and 1878, the first German unions were incorporated (Hemmer, 1999, p. 17). For workplace codetermination, the Works Constitution Act of 1920 (Betriebsrätegesetz) was of high importance, as it gave employees certain rights on the shop-floor level (Lesch, 2020), amongst others the right to establish works councils (Addison, Bellmann, & Schnabel, 2021). In 1922, it was amended, and codetermination at the board-level was implemented (McGaughey, 2015). With the national socialists taking power in Germany and the implementation of Adolf Hitler as Chancellor (McGaughey, 2015), trade unions had to be liquidated from 1933 until 1945 (Greef, 2014, p. 676). During this time, union leaders were either sentenced to death or imprisonment, and capitalists rose to the positions of power they had held previously (Jäger et al., 2022).

After World War II, Germany reorganized its economy (Yamazaki, 2013, p. 55). The coal and steel industry in Germany had a significant role, and companies in those industries wanted to involve their employees and prevent permanent foreign control over the industry with the help of trade unions (Ackermann & Klein, 2015). This led to the first codetermination acts: 1951, the Act on the Codetermination by Employees in the Supervisory Boards and Management Boards of Mining Enterprises and Enterprises in the Iron- and Steel-

Producing Industry (MontanMitbestG) was set in force (Lampert, Althammer, & Sommer, 2021, p. 91), 1956 the Amending Act on Employee Codetermination in the Iron- and Steel-Producing Industry (MontanMitbestErgG) (du Plessis & Sandrock, 2005). Starting in 1952, codetermination was also regulated for the rest of the large-scale industry. The Act on One-Third Employee Representation in the Supervisory Board (DrittelbG) was implemented (Jackson, 2004); however, the regulations were not as strong as for the coal and steel industry, as this act only allowed employees to fill one-third of the seats on the supervisory board (Ackermann & Klein, 2015). In the next step, and to an increasing degree by the middle of the 1960s, the trade unions attempted to extend codetermination to all industry sectors. A commission headed by Kurt Biedenkopf (the so-called Biedenkopf commission) was set up in 1968 to present proposals for a reform of the 1976 Codetermination Act (Klös et al., 2006). The commission published a report (Bundestag, 1970) in which it proposed a model of codetermination based on lower parity (Wilkesmann, Virgillito, & Wilkesmann, 2011). After various drafts of the parliamentary parties and governmental drafts, the Employee Codetermination Act (MitbestG) was passed on March 18, 1976, and came into force on July 1, 1976. For companies with more than 2,000 employees, a numerical parity of employee representatives was implemented. Since then, it has been amended ten times (Ackermann & Klein, 2015), but in the next decades, codetermination was not a major focus of German politics (Jäger et al., 2022). Because of ongoing and increasing globalization, the German federal government decided in 2005 to build up a commission to review and modernize corporate codetermination (Oetker, 2005). An agreement was not reached, and the report was published with no further governmental action. The academic members of the commission presented the current situation and proposed changes in three areas: (1) flexibility and simplification of the codetermination laws, including proposals to streamline the election process, the ability for group companies to deviate from the statutory rules on a contractual basis, and the right to adjust (both upwards and downwards) the number of supervisory board members; (2) under the heading of ‘Europeanisation and internationalization’ the commission proposes inclusion of employees working abroad and vote for a monistically constituted German stock corporation; and (3) the commission requests that the current law be cleared of existing system discontinuities and contradictions (Spindler, 2019c). The work of the commission ended with the report, and the modernization of codetermination in Germany made no major progress.

Codetermination has different forms in Germany. Codetermination in the sense of participation in decisions that affect employees in their capacity as employees has been

developed at the workplace level, the board level, and the macroeconomic level (Lampert et al., 2021, p. 189). Workplace codetermination is the right of employees in a company to be involved in certain company decisions. Work councils represent the employees in exercising their rights. The primary role of work councils lies within the domain of 'social' affairs at the level of the workplace. The work councils in Germany hold significant influence (du Plessis et al., 2017, p. 171). In certain matters, work councils possess the entitlement to receive information and engage in consultation. In other instances, they hold the authority to veto management initiatives, while in yet other cases, they possess the right to participate in policy design and execution on an equal footing. Examples of strong rights are the involvement of work councils in the implementation of payment systems, the decision about working hours, the use of tools intended to assess employee productivity, and the promotion or demotion of employees (Jirjahn & Le, 2023). This form of codetermination is also known as shop-floor level codetermination (du Plessis et al., 2017, p. 169). Board-level codetermination is the right of employees or their representatives to participate in decisions of the managing bodies of the company. It is participation at the supervisory board level, provided the company is organized in the German two-tier board system (du Plessis et al., 2017, p. 169). Codetermination at the macroeconomic level is the right of employees or their representatives to participate in economic, social, or socio-political decisions that are taken outside companies but directly affect employees, e.g., decisions of the social security administration, the labor administration, or the administration of justice under labor law (Lampert et al., 2021, p. 189).

The supervisory board is responsible for the control function, and the executive board is responsible for the management of a company. In the dualistic system, not only shareholder interest is taken into account but also employee interest (Welge & Eulerich, 2021, p. 39). In accordance with the principles of agency theory, two divergent consequences arise: on the one hand, codetermination can be regarded as an alternative mode of managerial oversight. Conversely, the presence of multiple interests on the board may lead to an escalation of agency costs due to potential conflicts among them (Metten, 2010, p. 50). Authors in favor of codetermination argue that incorporating employee representatives onto the supervisory board leads to greater proximity to the organization and that the employee representatives may serve as an additional information resource in the decision-making process (Jansen, 2013, p. 284).

In contemporary times, Germany has one of the strongest systems for codetermination (Jäger et al., 2022). The German model with board-level and workplace codetermination (Teichmann & Monsenepwo, 2018) is 'unique' (Schulz & Wasmeier, 2012, p. 23) in the world because no other country has comparably comprehensive employee codetermination

rights (Bauer, 2017). Germany has the most extensive provisions among all nations for employee codetermination, no other country introduced a comparable set of regulations (Sandrock, 2015). In an international comparison, the principle of codetermination itself is not unique. According to the OECD Corporate Governance Factbook 2023 (OECD, 2023b, p. 167 - 168), 49 countries were evaluated. China and 11 European countries[25] have legal requirements for employee representation on the board-level. Three of the relevant jurisdictions with mandatory employee representation have a two-tier system[26] or allow for one-tier or two-tier systems[27], one jurisdiction with mandatory employee representation (Sweden) has a one-tier system (Sweden), and only six countries[28] (allow in their codetermination system real parity of 50% as maximum codetermination). Poland has a two-tier system, but no mandatory requirement for employees on the board (OECD, 2023b, p. 167 - 168).

The German system of codetermination presents both benefits and drawbacks, or, in the words of du Plessis and Sandrock, one could speak of 'the rise and fall of supervisory codetermination in Germany' (du Plessis & Sandrock, 2005). The employee representatives on the supervisory board may, because of their position in one of the corporate bodies, be regarded as co-managers inside their organization. Due to their role, they depend on a good relationship with both the employees and the trade unions and can serve as mediators between employees and management. The work on the supervisory board and together with the executive board is successful if they all work together in a solution-oriented way.

The disadvantages of the German model of codetermination are summarized by Lieder (2010), focusing on the professionalism of supervisory boards: first, the codetermination weakens the monitoring ability of the supervisory board, because the management and the shareholder representatives may work together to limit the influence of the employees, and thus, decision-making gets harder. Second, there might be little trust in the management in the discretion of the employee representatives, and because of the fear that the employee representatives might forward confidential information to the works council, important information may be hidden. Third, conflicts of interest may occur, because employee representatives are also representatives of the workforce of a company. The conclusion might be that German codetermination is weakening corporate governance in the two-tier system.

[25] Austria, Czech Republic, Denmark, France, Germany, Hungary, Luxembourg, Norway, Slovak Republic, Slovenia, and Sweden
[26] Austria, China, Czech Republic, Germany
[27] Denmark, France, Hungary, Luxemburg, Norway, Slovak Republic, Slovenia
[28] Czech Republic, Denmark, Germany, Slovak Republic, Slovenia, Sweden

Another aspect is that the strong German codetermination system has drawbacks for Germany as a business site (Bauer, 2017), as the influence of employees is greater compared to other countries. However, it is important to note that the appeal of a holding company location is influenced by other factors, and the right of codetermination is not the sole determinant. The combination of board and workplace codetermination does not fit into today's times and into an environment in which global structures, international constraints, and strict capital market regulations are standard (Campagna, Eulerich, Fligge, Scholz, & Vitols, 2020). Codetermination in German labor law is not often regarded as a distinct competitive advantage (Adomeit, 1998). The election of employee representatives on supervisory boards proceeds following the relevant provisions of the applicable codetermination law. The main criteria are described in Chapter 3.2.1.

Societas Europapeas have a special role regarding codetermination. The argument that the transformation into a Societas Europapea is used to circumvent codetermination (Werner, 2022), is one that needs to be taken seriously. According to the relevant regulations, the Societas Europaea was originally not subject to the principles of codetermination. A German company that has previously been exempt from codetermination can maintain this status by transforming its legal form into a Societas Europaea, even if it would become subject to codetermination in its current legal form. Similarly, a company that has previously been subject to one-third codetermination can avoid transitioning to parity-based codetermination. The applicable regulations provide protection only for the status quo, which means the status quo is protected for participation that is already in existence at the moment of the transformation into a Societas Europaea (Friedeborn, 2022). The change to the legal form into a Societas Europaea is particularly appealing for start-ups experiencing rapid growth and medium-sized family businesses that have fewer than 2,000 employees and are not governed by the German One-Third Participation Act (DrittelbG). This transition offers several advantages, including the avoidance of codetermination or the applicability of stricter codetermination rules, the prestigious 'European label' a Societas Europaea has, and the possibility of implementing a monistic corporate constitution (Bayer, 2016).

In essence, employee codetermination can be seen as the abolition of unilaterally exercised powers of the management through the participation of those affected by decisions to consider the interests of those affected in these decisions, or at the very least to exclude any violation of these interests. The effectiveness of the German model of codetermination is reliant upon the presence of a positive environment characterized by consensus among both shareholder and employee representatives (Jürgens & Rupp, 2002). If the willingness to find

mutual solutions is given, the supervisory board can serve as a corporate body that reconciles the interests of shareholders and employees.

Conflicts of interest are an important topic in the discussion about codetermination in Germany. Employee representatives serve as representatives of the employees and are at the same time supervising the executive board and have the responsibility to approve major decisions. As a result, there is a high probability that the interests of the employees and the company may be in a conflict that apparently cannot be resolved. The conflicts of interest that may occur have a broad range; from the perspective of employee representatives, there might be disadvantageous decisions concerning job security, wages, or working conditions proposed by the executive board to meet the financial or strategic objectives of all kinds of labor disputes.

CHAPTER 4
EXAMINATION OF CONFLICTS OF INTEREST OF SUPERVISORY BOARD MEMBERS IN GERMAN STOCK CORPORATIONS

4.1 Conflicts of interest in German supervisory boards and their reasons and consequences

It is reasonable to provide an overview and to investigate the potential conflicts of interest of supervisory board members given the multitude of interests that are associated with the decision-making processes of corporations and the pivotal role played by the members of the supervisory board. Supervisory board members are entrusted with oversight of the strategic direction and major decisions of stock corporations, making it crucial to ensure decisions are made in the best interest of the company. However, the supervisory board members may have diverse professional backgrounds and affiliations, which may contradict the best interests of the company, creating the potential for conflicts of interest. Identifying and mitigating conflicts of interest safeguards the integrity of corporate governance and helps to ensure transparency, accountability, and trust in the supervisory board's actions and decisions.

The German Stock Corporation Act exhibits a degree of tolerance towards conflicts of interest that may arise among members of the supervisory board (Semler & Stengel, 2003). Theoretically, the members of the supervisory board should be able to perform their tasks unbiasedly and without conflicts of interest, but a supervisory board member is not only part of the company's governing body but is at the same time representative of the shareholders or the employees. Due to the continued dominant nature of the mandate as a subsidiary office to a main office (Hopt, 2019), one could speak of a dual role supervisory board members have. However, this dual role is even more pronounced in the case of employee representatives.

4.1.1 Conflicts of interest of shareholder representatives

The German two-tier system distinguishes between management and control. The assignment of former executive board members to the supervisory board disrupts this theoretical notion in practice because a former executive board member would control 'processes and strategies which he himself has formerly developed and implemented' (Velte

& Stiglbauer, 2012). This 'German bad habit' ('deutsche Unsitte') (Bender & Vater, 2003) was criticized by investors in Germany and abroad. Thus, the law was amended. Section 100 (2) No. 4 of the German Stock Corporation Act, in force since August 5, 2009, states that a former executive board member must wait two years before being eligible for election to the supervisory board. The concern that the previous executive board member could hinder the progress and work of the new executive board and prevent the rectification of strategic errors or the elimination of irregularities from their own time on the executive board (Grigoleit, Nippa, & Steger, 2011), has been acknowledged and corrected (OLG Stuttgart, 2017). There is a notable exemption to the rule, wherein the application of the two-year cooling-off period is waived if a minimum of shareholders, constituting 25% of the voting rights, put forth a proposal to the annual general meeting to vote for a previous executive board member to become a member of the supervisory board. The cooling-off period for former executive board members is discussed in scholarly literature, with varying perspectives, and remains a subject of significant debate (Velte & Stiglbauer, 2012).

According to Section 114 of the German Stock Corporation Act, consultancy agreements between supervisory board members and the company must be approved by the supervisory board. The subject of the consultancy agreement should not be relevant to the duties of the supervisory board member. No special compensation is allowed for carrying out the official duties of a supervisory board member (Deckert, 1997). The purpose of this regulation is to ensure that the competencies of the annual general meeting to decide the remuneration of supervisory board members are not undermined. The executive board is not allowed to grant special benefits to supervisory board members through the conclusion of consultancy agreements without the knowledge of the annual general meeting and supervisory board; this would jeopardize the independent performance of the duties of the supervisory board members (Spindler, 2012). Neither the supervisory board members themselves can determine their remuneration, nor is the executive board involved in this task and thus placed in the position of deciding on the remuneration of those who are to control it. In addition, the approval requirement aims to ensure that the independence of a supervisory board member isn't jeopardized (Lorenz & Pospiech, 2011). In this context, the Federal Court of Justice refers to the prevention of 'self-service' in view of the intention of Sections 113 and 114 of the German Stock Corporation Act (Bundesgerichtshof, 2006). The approval requirement also applies because of economic identity if a corporation whose sole shareholder-managing director is a supervisory board member is a party to a consultancy agreement. According to the Federal High Court, it is even sufficient if the supervisory board member holds an interest

in the company and thus indirectly receives benefits that are not only very minor or negligible in comparison with the supervisory board remuneration (Selter, 2021). Conflicts of interest may arise when a member of a supervisory board seeks to obtain specific benefits through a consulting agreement, using their position for personal gain. One professional group on the supervisory board must be given special consideration: the representatives of the legal, tax, and auditor professions. There are no legal limitations on a lawyer's ability to become a member of a supervisory board (Müller, 2002), the same is true for tax advisors and auditors. Electing experts to the supervisory board offers advantages such as improved access to legal and tax guidance, especially in the form of ad hoc advice, and the inclusion of specialized professional experience on the board. As a member of a supervisory board, however, the legal, tax, and auditing experts have better chances of getting consulting assignments. One significant drawback arises from the potential for conflicts between the professionals and the executive board. This conflict arises due to the advisor's dual role of providing professional advice to the company, which is represented by the executive board, while also being responsible for monitoring the executive board in its capacity as the supervisory board. The approval of the supervisory board for the commissioning/appointment of supervisory board members is additionally required. It is important to note that any services rendered by these members must be limited to activities that fall beyond the scope of their supervisory board responsibilities. In this context, it is important to consider the potential conflict of interest that may arise if the advisor seeks to secure business opportunities for their company through their involvement in the supervisory board (Heinemann & Müller-Henneberg, 2023).

The solution to avoid such conflicts would be that a supervisory board membership of such professionals mandatorily leads to a blocking effect for the further mandating of the professional and the associated law firm, tax advisory firm, or auditing company. The distinction between monitoring and providing advice presents inherent challenges and is consistently accompanied by case-specific conflicts that are difficult to prevent (Heussen, 2001). Conflicts of interest may arise when a lawyer, tax advisor, or auditor, being a member of a supervisory board, seeks to obtain specific benefits through a consultancy agreement, using their position for personal gain.

According to a study conducted by Achleitner et al. (2019) about 40% of all German listed companies are family businesses, if a definition of 'family business' is used in a broader sense. The definition the authors have chosen is the so-called founding family definition (Ampenberger, 2010), qualifying a listed company as a family business, if the founding family holds at least 25% of the voting rights (as ultimate owner) and/or if a member of the

founding family holds a management board or supervisory board position. Family businesses account for one-third of the market capitalization (Achleitner et al., 2019). The founding family is represented on the supervisory board or management board of more than 50% of the family businesses. Founding families are the most important shareholders in family businesses, in non-family businesses, strategic investors are most important (Achleitner et al., 2019). Conflicts of interest may arise within this context when personal interests surpass the interests of the company. In the scenario where a member of the supervisory board has been appointed by a part of the family that holds disputes with other shareholders, there is a possible issue regarding the disclosure of internal information (Manger, 2010).

The academic literature examines the unique position of supervisory board members, who also represent competitors, and identifies this as a potential source of conflicts of interest (Diekmann & Bidmon, 2009). This is primarily due to the privileged access to critical information that these individuals possess (Langenbucher, 2007). Manger (2010) discusses a notable scenario wherein a member of the supervisory board, who also happens to be a representative of a competing company, exploits their right to request information in a manner that serves the competitor's interests at the expense of the company's interests. This is primarily due to the concern that the requested information, given its nature, may potentially be shared with the competitor. This might also be relevant for strategic discussions that shouldn't be in the knowledge of competitors (Scholderer, 2012).

Stakeholders such as lenders, suppliers, and customers of a company may also be represented on the supervisory board. If they have a substantial business relationship with the company, conflicts of interest may arise when the supervisory board engages in matters pertaining to financing or the approval of certain transactions, which may influence the supervisory board members' business (Scholderer, 2012). Representatives of banks are often in a role as significant creditors of the company. A conflict of interest arises if the bank decides to follow a risk-averse approach that restricts the company's investment opportunities and potential for growth (Berghe, 2002). This approach may even result in the company being unable to secure the necessary capital, thereby jeopardizing its survival.

Conflicts of interest among shareholder representatives on supervisory boards can arise from various sources. The composition of supervisory boards, the professional backgrounds of the individuals, and in family-owned companies the personal relationships also play a major role.

As a summary, the main sources for conflicts of interest are:

- Former executive board members appointed to the supervisory board

- Consultancy agreements between supervisory board members and the company
- Representation of family members on the supervisory board
- Representation of competitors on the supervisory board
- Representation of lenders, suppliers, and customers on the supervisory board.

4.1.2 Conflicts of interest of employee representatives

Employee representatives on supervisory boards include union members, works council members, and executive employees, depending on the applicable codetermination system. Union members are individuals who, despite not being employed by the company, advocate for the interests of the employees. The individuals serving as works council members and the executive management are employees either directly employed by the company or by an affiliated company. An employee representative is an equal member of the supervisory board and an employee of the company on whose body he or she serves. For this reason, it is required not only to comply with the duties of the supervisory board but also to fulfill the requirements of the main profession. In all decisions and activities, the employee representative must simultaneously observe the interests of the company, maintain confidentiality about confidential information within the supervisory board, and be confronted with the expectation of the employees that the employee representative fights for the interests of the employees and that the employees are informed about important events (Scholderer, 2012).

These preliminary remarks show that codetermination on supervisory boards implies the potential for conflicts of interest. According to Semler and Stengel (2003), conflicts of interest are even ‘unavoidable’ for employee representatives. It is important to note that employee representatives on the supervisory board are appointed based on their main profession as work council members, union members, or executive employees. This structurally different starting point for the discussion about conflicts of interest must be acknowledged and considered because codetermination and employee representation are decisions by the legislator (Ruzik, 2004).

Labor disputes might potentially give rise to conflicts of interest. It is broadly accepted that employees’ representatives passively participate in the strike. There are different opinions regarding active participation in a strike. When employee representatives intend to engage in a strike, a situation of conflict arises due to their simultaneous commitment to the interests of

the company. Furthermore, notable tension arises due to the circumstance that, in the event of a strike, the supervisory board members typically become cognizant of the countermeasures planned by the company. Consequently, from the perspective of the shareholder representatives, there exists a potential risk of early disclosure to the opposing party (Ruzik, 2004). One opinion says that active participation in a strike is not allowed for employee representatives for reasons of incompatibility with the company's best interests (Murko, 2013). The other opinion says that it is allowed because of the specialty of codetermination (Döring, 2020). The legislator allows both the mandate as supervisory board member and union member or work council member, and if the combination of both would lead to the fact that striking is forbidden, it would weaken codetermination. If the employee representatives on the supervisory board do not initiate a strike or oppose the company in public statements and therefore actively act against the company's interests, the employee representatives can fulfill their supervisory board responsibilities. Nonetheless, in consultations during labor disputes, company agreements, and the negotiation of in-house collective agreements, i.e., when acting in the capacity of a corporate body, the member of the supervisory board must adhere to the priority of the company's interests, as ensuring the company's continued existence is as important to employees as any other particular interest. Therefore, conflicts of interest that occur with employees' representatives must be accepted (Hutzschenreuter et al., 2012).

The role of executive employees ('leitende Angestellte') in supervisory boards needs to be discussed, especially because of their main profession as executive employees in the company. Executive employees have the legal status of employees, but they are a special kind of employee. Due to the authority to manage certain work on their own responsibility and their corresponding powers of attorney, the executive employee participates in the management of the company and is thus closer to the employer than other, non-managerial, employees. Labor law also takes this special position into account (Fuhlrott, 2011). However, there is no uniform concept of an executive employee under labor law, leading to differences in the applicability of the various labor law regulations. With regard to the composition of the supervisory board, the definition of executive employee as stipulated in Section 5 para. 3 of the German Works Constitution Act ('Betriebsverfassungsgesetz', abbreviated 'BetrVG') applies. Special characteristics to distinguish between 'normal' employees and executive employees are, according to this regulation, that the status as an executive employee is to be assessed considering the 'employment contract and position in the company or the business' (Annuß, 2023). This means that the job title is not sufficient to establish the status of an

executive employee. Executive employees are not represented by works council members; they have the right to implement their own representation through a committee ('Sprecherausschuss'). The unique function and position of executive employees arising from these specialties and explain their unique position on the supervisory board. Executive employees must obey instructions and directives from their superiors just like other employees do. Superior is often the executive board over which they have supervisory authority, which sounds contradictory. Additionally, they form a distinct group within the framework of collective representation structures, and their proximity to the employer side is a result of their position and responsibilities inside the organization. One result of this occurrence is that, in contrast to the remaining employee representatives serving on the supervisory board, executive employees experience greater conflict between their own personal and professional objectives in situations where they face a confrontation with the employer's interests. For this circumstance, Kronisch (2001) utilized the metaphor of 'being caught between two stools'.

Various sources of conflicts of interest among employee representatives in supervisory boards exist due to the special role of such employee representatives and their profession as union members, works council members, and executive employees.

As a summary, the main sources for conflicts of interest among employee representatives are:

- Employee interest in contradiction to the company's interest
- Laber disputes and strikes
- Representation of executive employees with managerial responsibilities on the supervisory board.

4.1.3 Conflicts of interest impacting shareholder representatives and employee representatives

There are cases of conflicts of interest, that are relevant and affect both the employee representatives and the shareholder representatives.

All decisions pertaining to individuals or companies associated with members of the supervisory board possess the inherent potential for conflicts of interest. According to Rieder (2020), conflicts of interest can arise in various relationships, such as those involving economic, financial, or personal interests. It is important to note that not every minor or socially customary interaction would constitute a conflict of interest; rather, a specific level of

materiality must be present. The implementation of provisions on related party transactions in the German Stock Corporation Act occurred with the introduction of ARUG II on January 1, 2020. The new provisions have received significant attention as a fundamental innovation for listed companies under German stock corporation law (Backhaus, 2020). Related parties involved in a specific transaction are excluded from its valuation. Transactions involving related parties may potentially give rise to a conflict of interest. Hence, it is imperative to disclose any potential conflict of interest to provide the supervisory board with the opportunity to address or mitigate such conflicts.

In the context of a takeover situation, there is a substantial likelihood of conflicts of interest. In the occurrence of an attempted hostile takeover, whereby control is obtained without the consent of the management of the targeted entity, especially representatives of banks and credit institutions, serving on the supervisory board of the target company may encounter conflicts of interest (Hopt, 2005). Credit institutions are often at the forefront of takeover activities due to their solid financial resources and expertise. The bank representative is obligated to maintain confidentiality as a member of the credit institution, while also fulfilling their duty of loyalty as a member of the supervisory board towards the company. In cases where a member of the supervisory board concurrently has a position within the bidding corporation or a competing entity, conflicts of interest are likely to arise, too. To minimize the potential for decisions driven by self-interest, corporate bodies involved in a takeover situation must prioritize the interests of the target company (Semler & Stengel, 2003).

Conflicts of interest may have their source in reasons that are relevant for both shareholder representatives and employee representatives. In my opinion, the main sources of conflicts of interest affecting all supervisory board members are:

- Economic, financial, or personal interests in relationships associated with members of the supervisory board
- Related Party Transactions
- Takeover situations.

4.2 The importance of independent members of the supervisory board for avoiding conflicts of interest

The academic discourse about the independence of supervisory board members is closely connected to conflicts of interest. According to recommendation 2005/162/EU, ‘independence should be understood as the absence of any material conflict of interest’

(European Commission, 2005) and ‘a director should be considered to be independent only if he is free of any business, family or other relationship, with the company, its controlling shareholder or the management of either, that creates a conflict of interest such as to impair his judgement.’ (European Commission, 2005). Both sections in the EU recommendation connect the topic of independence with that of conflicts of interest. The German Corporate Governance Code contains clauses about both independence and conflicts of interest; recommendation C.7 links both terms: ’Supervisory Board members are to be considered independent from the company and its Management Board if they have no personal or business relationship with the company or its Management Board that may cause a substantial – and not merely temporary – conflict of interest.’ (Regierungskommission, 2022b). The Code considers conflicts of interest and independence to be equivalent concepts (Scholderer, 2012).

In this Chapter, the systematic connection between conflicts of interest and independence is analyzed.

4.2.1 Independence criteria for supervisory board members in the European Law

In 2003, the European Commission announced an Action Plan for the improvement of corporate governance within the European Union, ‘The Action Plan on Modernizing Company Law and Enhancing Corporate Governance in the European Union’ (European Commission, 2003). In this Action Plan, the European Commission addressed, because of conflicts of interest that may occur, that certain minimum standards of what cannot be considered independent should be established on the EU level as a short-term action, which means in a timeframe from 2003 - 2005 (European Commission, 2003).

As mentioned in the introduction to this Chapter, in the EU recommendation 2005/162/EU (European Commission, 2005) the word ‘independence’ is defined, as ‘should be understood as the absence of any material conflict of interest; in this context, proper attention should be paid namely to any threats which might arise from the fact that a representative on the board has close ties with a competitor of the company’. In the recommendation, the independence of a director is defined in clause 13.1. The EU recommendation describes the independence criteria in a catalog using detailed examples on the one hand, and on the other hand, the EU recommendation submits that a comprehensive list is not possible and a variation among member states may be possible, as well as a change of best practices, that may evolve over time (see Annex II of the EU recommendation). Nevertheless, the European Commission suggests adopting its recommendations at the national level. The summary of the independence criteria is that supervisory board members

(a) shall not be a member of the executive board of the company (including affiliated companies) and shall not have held such office in the preceding five years;

b) shall not be employed by the company as an employee and shall not have been employed as an employee in the past three years;

(c) shall not receive or have received from the company any additional remuneration of a significant amount (such as stock options and other performance-related remuneration);

d) must not be or represent a shareholder with a controlling interest;

e) shall not have, or have had in the past year, a significant business relationship with the company, either directly or as a partner, shareholder, director, or officer of a company or organization that has such a business relationship with the company;

f) must not be a partner or employee of the current or former external auditor of the company and must not have held that position within the last three years;

g) must not be a board member of any other company in which a board member of the company is a board member; must not have any other significant connection with executive directors of the company through participation in other companies or organizations;

h) must not have served as a supervisory board member for more than three terms (or more than 12 years).

i) must not be a close family member of an executive board member or of persons who are in one of the positions described in letters a) to h).

The EU recommendation 2005/162/EU was amended by the EU recommendation 2009/385/EU (Commission of the European Communities, 2009), highlighting that the definitions have the same meaning as laid down in the former recommendation.

The Green Paper 'The EU corporate governance framework' of the European Commission (European Commission, 2011) does not provide further details concerning the independence of supervisory board members but only mentions it as a criterion for the composition of the supervisory board: 'The composition of the board has to suit the company's business. Non-executive board members should be selected based on a broad set of criteria, i.e. merit, professional qualifications, experience, the personal qualities of the candidate, independence, and diversity.' (European Commission, 2011, p. 5). In a footnote, the European Commission mentions that some member states have employee participation in boards, which implies that these criteria do not apply without restriction.

4.2.2 Independence criteria for supervisory board members in the German Stock Corporation Law

An independence definition is not included in the German Stock Corporation Act. Before the corporate governance discussions in the past, the supervisory board was often regarded as an 'old boys' network' (Seibert, 2015). The independence of its members was not discussed, nor were conflicts of interest. With ARUG II, the legislation stopped the attitude of accepting supervisory boards as 'old boys' networks'. Section 100 (5) of the German Stock Corporation Act in a former version, which was implemented with ARUG II, asks for an independent person on the audit committee; if the supervisory board does not constitute an audit committee, one of its members must be independent. This regulation has been updated to indicate in C.10 that the chairperson of the supervisory board should be independent. According to Hopt (2013), 'Independence is understood as an objective status of a director, not as a subjective state of mind, as important as such a mental disposition may actually be.' Some authors argue that the European Commission's recommendation can serve as a means of interpreting and filling in gaps in national law (Koch, 2023b). As the German Stock Corporation Act lacks detailed information about the assessment of the independence of supervisory board members, the German Corporate Governance Code is the primary instrument for the assessment of the independence of supervisory board members (Koch, 2023b).

4.2.3 Independence criteria for supervisory board members in the German Corporate Governance Code

Starting with the implementation of the German Corporate Governance Code, version February 26, 2002, the independence of supervisory board members was mentioned in the Code. Cromme (2001) mentioned in his speech when presenting the first draft of the Code on December 18, 2001, that the Government Commission aimed to make Germany more attractive to international and national investors. The Government Commission considered all (at that time) main and especially international points of criticism of the German corporate governance system and corporate management and brought them, according to Cromme, to a solution. Cromme (2001) summarized that the points of criticism were the inadequate alignment with shareholder interests, dual corporate governance with the executive board and supervisory board, a lack of transparency of German corporate governance, a lack of independence of German supervisory boards, and limited independence of the auditor.

The first German Corporate Governance Code mentioned the independence of the supervisory board in two provisions (5.4.1. and 5.4.2.): When proposing candidates for the election to the supervisory board members, attention must be drawn to ensure that the supervisory board always consists of individuals with the knowledge, abilities, and professional experience to perform their tasks effectively, as well as appropriate independence. Independent advice to and oversight of the executive board by the supervisory board is also made possible by the fact that the supervisory board shall not include more than two former members of the executive board and that supervisory board members shall not hold any board positions or advisory roles at the company's significant competitors (Regierungskommission, 2002).

Over the years, the Governance Commission has tried to further improve its independence rules. The Governance Commission added the principle that the supervisory board is bound to observe the company's best interests and that neither personal interest nor business opportunities may lead them in their decisions. The topic ‘independence` is mentioned in several recommendations in the Code (Regierungskommission, 2022b). All independence criteria are solely addressed to the shareholder representatives among the supervisory board members. That means that there is no requirement that employee representatives need to be independent.

From the perspective of the German Corporate Governance Code, independence is the absence of conflicts of interest, as highlighted in recommendation C.7 (see Table 10). If there is a congruence between the Code and the Stock Corporation law, then the Code must be in line with the law and the same interpretations are necessary; the Code could also ask for stricter rules, but never for more lax rules.

Table 10 presents the sections of the currently valid German Corporate Governance Code that contain suggestions concerning independence. These subsections C.6 – C.12 are as follows:

Table 10 Sections of the German Corporate Governance Code containing recommendations regarding independence

Recommendation	Content
C.6	The supervisory board shall include what it considers to be an appropriate number of independent members from the group of shareholder representatives, thereby taking into account the shareholder structure. Within the meaning of this recommendation, a supervisory board member is considered independent if he/she is independent from the company and its Management Board, and independent from any controlling shareholder.
C.7	More than half of the shareholder representatives shall be independent from the company and the management board. Supervisory board members are to be considered independent from the company and its management board if they have no personal or business relationship with the company or its management board that may cause a substantial – and not merely temporary – conflict of interest. When assessing the independence of supervisory board members from the company and its management board, shareholder representatives shall particularly take into consideration the following aspects; whether the respective supervisory board member – or a close family member: - was a member of the company's management board in the two years prior to appointment; - whether he/she currently is maintaining (or has maintained) a material business relationship with the company or one of the entities dependent upon the company (e.g. as customer, supplier, lender or advisor) in the year up to his/her appointment, directly or as a shareholder, or in a leading position of a non-group entity; - whether he/she is a close family member of an executive board member; or, - whether he/she has been a member of the supervisory board for more than twelve years.
C.8	If one or more of the indicators set out in recommendation C.7 are met and the supervisory board member concerned is still considered independent, the reasons for this shall be given in the Corporate Governance Statement
C.9	If the company has a controlling shareholder, and the supervisory board comprises more than six members, at least two shareholder representatives shall be independent from the controlling shareholder. If the supervisory board comprises six members or less, at least one shareholder representative shall be independent from the controlling shareholder. A supervisory board member is considered independent from the controlling shareholder if he/she, or a close family member, is neither a controlling shareholder nor a member of the executive governing body of the controlling shareholder, and does not have a personal or business relationship with the controlling shareholder that may cause a substantial – and not merely temporary – conflict of interest.
C.10	The chairperson of the supervisory board, the chair of the audit committee, as well as the chair of the committee that addresses management board remuneration, shall be independent from the company and the management board. The chair of the audit committee shall also be independent from the controlling shareholder.
C.11	No more than two former members of the management board shall be members of the supervisory board.
C.12	Supervisory board members shall not be members of governing bodies of, or exercise advisory functions at, significant competitors of the enterprise, and shall not hold any personal relationships with a significant competitor.

Source: author's own illustrations based on the German Corporate Governance Code, convenience translation (Regierungskommission, 2022b)

While the Code has a complete chapter regarding the independence of shareholder representatives on the supervisory board, none of the regulations explain the meaning of 'independence' in the form of a definition.

4.2.4 Independence criteria in proxy voting policies

Major proxy advisors have their own independence criteria. Glass Lewis makes a distinction depending on the type of relationship a supervisory board member has with the corporation (Glass Lewis, 2022a). Independent are supervisory board members with no material financial, familial, or other current relationship with the company, its executives, or other board members in the past three years. Former employees are deemed to be independent if they have been employed with the company longer than five years ago. If a supervisory board member has a material financial, familial, or other relationship with the company or its executives, they are categorized as 'affiliated', if they have been employees within the last five years or have or had within the past three years a material business relationship with the company, have 10% or more of the shares or voting rights in the company, have been a supervisory board member for more than 12 years, or have close family ties with any of the company's advisors, board members, or employees (Glass Lewis, 2022b). The next category is the inside supervisory board member, which is the shareholder representative on the supervisory board and, at the same time, an employee of the company. In Germany, this happens only in extremely exceptional cases, as the law provides for a timely limited combination of membership in the supervisory board and the executive board. The fourth category is employee representatives. Glass Lewis excludes employee representatives in the supervisory board from analysis on independence because they are not elected by the shareholders (Glass Lewis, 2022a), the same is valid for ISS (ISS, 2022). This goes in line with the Green Paper 'The EU corporate governance framework' of the European Commission (European Commission, 2011, p. 5) that mentions that some member states have employee participation in boards, which implies that the independence criteria do not apply without restriction as well as the independence criteria in the Code. Comparing the independence criteria of European law, German law, and the Code with these proxy voting guidelines, the independence criteria for affiliated supervisory board members are mostly comparable with the criteria in the regulatory framework.

4.3 Examination of the relationship between conflicts of interest and the independence of supervisory board members in German corporations

The systematic relationships between conflicts of interest and the independence of supervisory boards play a major role in understanding the importance of both elements. Conflicts of interest, independence, and also fiduciary duties are frequently discussed together, and, indeed, the distinctions between conflict of interest and independence or even these three ideas are not always evident (Hopt, 2013). The supervisory board is responsible for supervising the executive board and consulting the executive board on matters of business policy and other essential tasks related to corporate planning (Hopt, 2013).

The members of the supervisory board have the obligation to fulfill their duties as board members while keeping the company's best interests in mind and always acting in the best interests of the company. Supervisory board members are not allowed to prioritize personal interests when making decisions, nor are they allowed to take advantage of business opportunities of the company for their own benefit. However, conflicts of interest strike at the very heart of corporate governance. When there is a potential for a conflict of interest, the 'business judgment rule'[29] does not apply (Bunz, 2011 (for German law); Frankel, 1984 (for US law)).

The connection between the possibility of conflicts of interest and the independence of supervisory board members is obvious when (former) executive board members move from the executive board to the supervisory board. (Former) executive board members have a deep understanding of the company, its operations, and the competitive advantages and disadvantages it faces (Grigoleit et al., 2011). Nevertheless, it is self-evident that simultaneous management and supervision are mutually exclusive, and the law states that this incompatibility shall continue within a two-year phase, the cooling off period, until the move is possible. The former discussion on a mandatory 'cooling-off' period showed that there is a strong connection between conflicts of interest and the independence of supervisory board members.

The link between the independence and conflicts of interest of members of the supervisory board is evident, but only regarding shareholder representatives in the supervisory board. Dependencies of shareholder representatives represent a theoretical risk to the

[29] The business judgment rule is regulated in Section 93 of the German Stock Corporation Act. It stipulates that executive board members must exercise the affairs of the company with the due care of a prudent manager faithfully complying with the relevant duties.

company's interests, whereas conflicts of interest represent a concrete risk to the company's interests. When analyzing conflicts of interest, it is imperative to consider the close connection between independence and conflicts of interest among shareholder representatives.

For employee representatives, on the other hand, it is obvious that they are not independent. Employee representatives are elected by the employees of the company to represent their interests on the supervisory board. The purpose of codetermination is to achieve a balance between the interests of shareholders and those of employees. The employee representatives affiliated with the corporation signed an employment agreement with the company and received substantial compensation from the company. Based on the established independence criteria, they are not independent (Scholderer, 2012).

4.4 Categorization of conflicts of interest in German corporations

Various elements, such as the reasons, duration, likelihood, severity, and other differentiating characteristics, can be used to categorize conflicts of interest occurring with supervisory board members.

There are various approaches to how conflicts of interest can be categorized. Valsan (2021) distinguishes between actual, potential, and apparent conflicts of interest. Möllers (2009, p. 432) differentiates between external and internal factors; Krebs (2002) sees the main differences in the questions of whether the conflicts of interest are permanent or temporary. Kumpan (2014, pp. 37-44) differentiates conflicts of interest according to the type of interest, the duration of the conflict, and the cause of the conflict, as well as whether there is an abstract or concrete conflict of interest. The different approaches described by Möllers, Krebs, and Kumpan are outlined below.

In the following section, conflicts of interest are discussed (i) according to internal vs. external factors, (ii) according to permanent or temporary conflicts, (iii) according to whether it is a potential or existing conflict, and finally (iv) according to the severity of the conflict of interest.

The classification of conflicts of interest can be based on whether the conflict arises from internal or external circumstances, or internal and external factors, respectively. The election of a former executive board member to the supervisory board is an example of a typical internal factor-based conflict of interest. The applicability of codetermination rules to supervisory boards is a fundamental structural factor that may result in conflicts of interest. On supervisory boards, union members and executive employees serve as employee

representatives. In legitimate labor conflicts, for instance, it is permissible for employees' representatives to participate passively in the strike. If they do not initiate a strike or oppose the company through public statements and therefore actively act against the company's interests, the employee representatives can fulfill their supervisory board mandate. Nonetheless, in consultations during labor disputes, company agreements, and the negotiation of in-house collective agreements, for instance, when acting in the capacity of a corporate body, the member of the supervisory board must adhere to the priority of the company's interests, as ensuring the company's continued existence is as important to employees as any other particular interest. Therefore, conflicts of interest that occur with employees' representatives who are exercising their rights in case of labor conflicts, as described before, must be accepted as a specialty because of the German codetermination system (Hutzschenreuter et al., 2012). That means that such inherent conflicts are accepted as part of the codetermination system.

External factors that may lead to conflicts of interest are based on the activities of supervisory board members outside of the company, particularly for other companies. The more external responsibilities a member of the supervisory board has, the more difficult it is to focus on each company. Depending on the competitive situation of the companies, timing conflicts and conflicts of interest may arise, particularly if the companies are direct competitors (Strenger, Redenius-Hövermann, & Demirtaş, 2023). Conflicts of interest can arise not only for bank representatives on supervisory boards but also for supervisory boards with stock ownership.

Because of their prevalence, conflicts of interest can also be categorized as those of sporadic, temporary occurrence and those that are ongoing or of permanent nature (Kumpan, 2014, p. 57). Conflicts of interest in temporary cases may arise from a personal concern or interest of a supervisory board member in connection with a resolution of the supervisory board, for example, when a resolution is passed on a related party transaction or decisions that are advantageous or disadvantageous for the individual member, such as the decision to initiate or terminate a legal dispute. Permanent conflicts of interest may arise because of a special relationship between the company and the supervisory board member concerned, such as being the representative of a customer or supplier of the company, or in particular in the case of competitive relationships. In such cases, the own interests of the supervisory board member concerned may be of such weight concerning the interests of the supervised company that they must result in legal consequences that go beyond the individual case (Semler & Stengel, 2003). According to C.7, C.9, and E.1, the Code refers in a section about the

independence of supervisory board members to ‘substantial - and not merely temporary - conflicts of interest’, implying that only permanent conflicts of interest are covered by the Code's recommendations regarding independence. That would be the incorrect interpretation; conflicts of interest that arise only in specific circumstances and only in relation to a specific subject but have no lasting impact on the work as a member of the board cannot be ignored.

Existing and (only) potential conflicts of interest can be distinguished in the classification of conflicts of interest. The German Corporate Governance Code speaks about conflicts of interest if it is to be feared that the supervisory board member will not base a decision solely on the interests of the company (recommendation C.6) but could (also) pursue their own interests or the interests of third parties (recommendation E.1). The potential for such a dilemma is sufficient to designate this situation as a potential source of conflict. It is therefore important to consider not only which actual or potential conflicts of interest exist in each situation but also those that may arise in the future. However, the recommendation that the supervisory board member resign from his or her position does not apply to potential conflicts of interest (Busch & Link, 2023a).

When classifying conflicts of interest, it is possible to differentiate between material, immaterial, and irrelevant conflicts based on their degree of materiality. In doing so, there is a risk of subjectivizing the classification because the degree of materiality is challenging to measure. However, this classification should not be completely disregarded, as the Code itself refers to ‘material conflicts of interest’ in recommendation E.1. At a minimum, there must be a threat to the company's interests; consequently, a certain relevance threshold must be surpassed, and a certain level of specificity is necessary. This is to be presumed if certain precautionary measures (such as disclosure or exclusion of the board member from consulting) are necessary to prevent and manage a conflict of interest. As with potential conflicts, the recommendation that a member of the supervisory board resign from the mandate does not apply to immaterial conflicts of interest (Busch & Link, 2023c).

Concerning codetermination, internal conflicts of a temporary nature are the type of conflicts of interest that are the most obvious ones, thinking of labor conflicts. For shareholder representatives, external conflicts are more likely.

CHAPTER 5
DIAGNOSIS AND EVALUATION OF THE MOST IMPORTANT CONFLICTS OF INTEREST IN SUPERVISORY BOARDS: ANALYSIS OF GERMAN DAX 40 COMPANIES FROM 2020 TO 2023

5.1 Empirical analysis of conflicts of interest in DAX 40 supervisory boards in the period 2020 – 2023

Based on publicly accessible information, published conflicts of interest of supervisory board members of DAX 40 companies for the fiscal years 2020, 2021, 2022, and partly for the fiscal year 2023 (in case of a deviating fiscal year) were investigated empirically in this thesis. This period was chosen to get results based on a large amount of data, to draw robust conclusions, and to identify trends. In cases where conflicts of interest were published, the information about the independence of the supervisory board members concerned was further investigated. This cross-sectional analysis is conducted from the perspective of an investor who analyses publicly available information to determine the extent to which the conflict of interest criteria of corporate governance standards are satisfied.

The DAX 40 consists of 40 companies. Overall, 38 companies30 and 115 annual reports were analyzed. To ensure comparability, two companies (Airbus SE and Qiagen N.V.) listed in the DAX 40 were not considered in the analysis, because they are not incorporated under German law. Appendix E

DAX 40 companies in Germanycontains an overview and information regarding the DAX 40 companies under investigation and includes the references for the examined annual reports.

Among these companies, 27 are stock corporations, 10 are Societas Europaea, and one is a limited partnership by shares. Five supervisory boards of the Societas Europaea are composed of a parity number of shareholder and employee representatives (Allianz, BASF,

[30] Adidas AG, Allianz SE, BASF SE, Bayer AG, Beiersdorf AG, BMW AG, Brenntag SE, Commerzbank AG, Continental AG, Covestro AG, Daimler Truck Holding AG, Deutsche Bank AG, Deutsche Börse AG, Deutsche Post AG, Deutsche Telekom AG, E.ON SE, Fresenius SE & Co. KGaA, Hannover Rück SE, Heidelberg Materials AG, Henkel AG & Co. KGaA, Infineon Technologies AG, Mercedes-Benz Group AG, Merck KGaA, MTU Aero Engines AG, Münchener Rück AG, Porsche AG, Porsche Automobil Holding SE, Rheinmetall AG, RWE AG, SAP SE, Sartorius AG, Siemens AG, Siemens Energy AG, Siemens Healthineers AG, Symrise AG, Volkswagen AG, Vonovia SE, Zalando SE

E.ON, Fresenius, SAP), three supervisory boards consist of only shareholder representatives (Brenntag, Porsche, Vonovia) two of them have a ratio of six shareholder representatives and three employee representatives (Hannover Rück, Zalando). The main branches are automotive and financial services. The sample selection and data sources are presented in Table 11.

Table 11 - Sample selection and data sources

Sample size		
Number of companies		38
> stock-corporations	27	
> Societas Europaea	10	
> Limited partnership by shares	1	
Industries		
Number of companies		38
> Automotive	7	
> Financial Services/Insurance	6	
> Chemicals/Pharmaceuticals	5	
> Telecommunication/Utilities/Energy/Real Estate	5	
> Consumer goods/Retail/E-Commerce	4	
> Medical Technology and Equipment/Healthcare	3	
> Industry/Construction Material	2	
> Technology	2	
> Logistics and Distribution	2	
> Defence	2	
Codetermination		
Number of companies		38
> Stock-corporation with ratio shareholder : employee representatives		
ratio 10:10	15	
ratio 8:8	5	
ratio 6:6	6	
ratio 10:0 (because of the transition phase towards parity)	1	
> Societas Europaea with ratio shareholder : employee representatives		
ratio 9:9	1	
ratio 8:8	1	
ratio 6:6	3	
ratio 6:3	2	
ratio 6:0	1	
ratio 10:0	2	
> Limited partnership by shares ratio 8:8	1	
Annual Reports		
Number of annual reports		115
Fiscal Year 2020	36	
Fiscal Year 2021	36	
Fiscal Year 2022	37	

Fiscal Year 2023	4

Source: author’s own illustration based on the empirical research

Due to changes in the composition of the DAX 40 index effective September 2021 (Brühl, 2022), only companies that were listed in the DAX 40 at the time of the analysis were considered. This explains why 36 annual reports from the fiscal years 2020 and 2021 and 37 reports from the fiscal year 2022 were evaluated in the analysis. At the time of the analysis, there were only four annual reports available for the fiscal year 2023. The overview and information regarding the relevant DAX 40 companies and the references for the examined annual reports are available in Appendix E.

Table 12 provides an overview of reported conflicts of interest among the relevant DAX 40 companies. The focus is on the quality of the disclosure and the specific information that is disclosed by the companies.

Table 12 - Conflicts of interest 2020-2023

Conflicts of interest - overview		
Number of companies		38
> Companies with reported conflicts of interest in one fiscal year	6	
> Companies with reported conflicts of interest in two fiscal years	1	
> Companies with reported conflicts of interest in three fiscal years	3	
> Companies with precautionary reporting	3	
> Companies with no reported conflicts of interest	25	
Conflicts of interest - details: reporting of names		
Number of companies with conflicts of interest		13
> Companies with reported names	7	
> Companies without reporting names	5	
> Companies that report names on a case-by-case basis	1	
Conflicts of interest - details about supervisory board members concerned		
Number of companies with conflicts of interest		13
> Companies with shareholder's representatives with conflicts of interest	6	
> Companies with employee representatives with conflicts of interest	1	
> Undisclosed	5	
Conflicts of interest - details: reporting of actions		
Number of companies with conflicts of interest		13
> Companies with reported action that the supervisory board member didn´t participate either in the meeting or on certain agenda points	12	
> Companies with potential conflicts of interest: no actions	1	
Conflicts of interest - details: reasons for conflicts of interest		
> Legal proceedings with involvement of supervisory board members	4	
> Business relationship	4	
> Relevance of former decisions of executive board members who are now supervisory board members	3	
> Annual general meeting's decision against supervisory board members	1	
> Controlling shareholder	1	
> no information	3	

Source: author's own illustration based on the empirical research

Overall, 14 of the 38 DAX 40 companies (37%) reported conflicts of interest in one or more of their annual reports for the fiscal years 2020, 2021, 2022, and 2023. From the total of 38 companies, 18% reported a conflict of interest in one fiscal year, 3% (which is one company) reported conflicts of interest in two fiscal years, 8% of the companies reported conflicts of interest in three fiscal years, and the same percentage (8%) reported with the comment that the report is made for reason of caution. The companies considered the circumstances not to constitute a conflict of interest but disclosed them since there was a possibility that they might be interpreted as one. The analysis shows that there are four categories of company publications concerning conflicts of interest: (i) published conflicts of interest; (ii) published statements that there were no conflicts of interest; (iii) general information that there might be a conflict of interest or explanations why certain circumstances are not seen as being a conflict of interest; or (iv) no clear statements about conflicts (which indicates that there was no conflict of interest).

The reasons that were mentioned are legal proceedings with the involvement of supervisory board members (25%), conflicts of interest because of the other business relationships a supervisory board member has (19%), decisions from a former executive board member who is now a member of the supervisory board (19%), an annual general meeting's decision against a supervisory board member (6%) and conflicts of interest because the supervisory board member is a controlling shareholder of the company (6%). For three conflicts of interest, the companies didn´t report reasons (19%).

The relation between a good corporate governance index and conflicts of interest may be derived from an analysis of the DVFA Corporate Governance Scorecard. The DVFA Corporate Governance Scorecard was developed to give a picture of the governance quality of German stock-listed companies, and national and international best practice criteria are considered in the index, like shareholders, annual general meetings, executive board, supervisory board, transparency, governance obligations, accounting, and auditing. For detailed information about the DVFA Corporate Governance Scorecard, please see Chapter 1.3.2.

A high percentage and ranking in the DVFA Corporate Governance Scorecard can be considered evidence of a greater degree of conflict of interest avoidance compared to companies with a lower percentage or ranking. Table 13 proves that the occurrence of conflicts of interest is independent of a good ranking in the DVFA Corporate Governance

Scorecard. Table 13 contains the results for the DAX 40 companies, whereby 'percentage' is the number achieved in fulfilling the requirements of the DVFA Scorecard. The order of the 'ranking' is according to the percentage of corporate governance quality received. Conflicts of interest are mentioned as reported (yes/no, 'Y'/'N') and precautionarily reported ('P'). Table 13 also shows the fiscal years in which conflicts of interest occurred.

Table 13 - DVFA Corporate Governance Scorecard 2023 and reported conflicts of interest

	2023			
Company	Percentage	Ranking	Conflict of interest	Fiscal Year
Münchener Rück AG	94,44	1	Y	2020, 2021, 2022
Deutsche Börse AG	92,11	2	Y/P	2022
Brenntag SE	90,64	3	N	
Deutsche Bank AG	89,18	4	Y	2020
Allianz SE	88,89	5	N	
Commerzbank AG	88,60	6	N	
BMW AG	87,72	7	Y	2021
E.ON SE	87,13	8	Y	2020
Covestro AG	86,26	9	N	
Mercedes-Benz Group AG	85,38	10	Y/P	2020
Deutsche Telekom AG	84,80	11	Y/P	2020
Bayer AG	84,21	12	N	
BASF SE	83,92	13	N	
DHL Group	83,92	13	N	
Infineon Technologies AG	83,92	13	Y	2022
Daimler Truck Holding AG	83,04	16	N	
RWE AG	82,46	17	N	
Siemens Energy AG	82,46	17	N	
Heidelberg Materials AG	82,16	19	N	
SAP SE	81,58	20	N	
Siemens AG	80,99	21	N	
Zalando SE	79,24	22	Y	2020, 2021
Merck KGaA	79,24	22	N	
Siemens Healthineers AG	79,24	22	N	
Vonovia SE	78,36	25	N	
Volkswagen AG	77,78	26	Y	2020, 2021, 2022
Beiersdorf AG	77,49	27	N	
Fresenius SE & Co. KGaA	76,90	28	N	
MTU Aero Engines AG	76,61	29	N	
Symrise AG	76,32	30	N	
Adidas AG	75,73	31	N	
Continental AG	72,51	32	Y	2022
Hannover Rück SE	72,51	32	N	
Rheinmetall AG	72,51	32	N	
Henkel AG & Co KGaA	71,93	35	N	
Sartorius AG	63,74	36	N	
Porsche Automobil Holding SE	57,31	37	Y	2020, 2021, 2022
Porsche AG	56,36	38	Y	2022
Y=Yes				
N=No				
P=Precautionary				

Source: author's own illustration

The data in Table 13 indicates that two out of the three highest-ranked companies disclosed conflicts of interest, with one of them doing so as a precautionary measure. Out of the top 10 ranked companies, six of them have reported conflicts, with two of them precautionarily. A corporate governance quality score of 80% is considered good according to the DVFA. In the 2023 DVFA Corporate Governance Scorecard, a total of 21 companies

achieved this score. Out of the 21 companies, eight of them disclosed conflicts of interest, with three of them doing so as a precautionary measure. If there were a direct correlation between compliance with the scorecard standards and the occurrence of conflicts of interest, the author would have anticipated evidence indicating that organizations with higher scores have fewer or no conflicts of interest compared to those with lower scores. There is no evidence that a good score is an indicator that there is a lower likelihood of conflicts of interest.

A description of the voting behavior of SdK (Schutzvereinigung der Kapitalanleger e.V.) was provided in Chapter 1.3.1 of this thesis. For eleven out of the thirteen companies, SdK rejected voting for supervisory board candidates and/or for the discharge of the supervisory board. At the supervisory board level, candidates were rejected for a variety of reasons: supervisory board candidates were rejected because of overboarding (six candidates), lack of experience (one candidate), missing international experience (one candidate), age (one candidate), missing independence (one candidate), and potential conflicts of interest (one candidate). Additionally, SdK rejected discharge in six companies, which are overall ten cases in the annual general meetings for the fiscal years 2020-2022).

The companies that have reported conflicts of interest are included in Table 14, which also provides information regarding the independence of members of the supervisory board and establishes a connection between the conflict of interest and the independence status of the individual who encountered the conflict. It is interesting to know who of the supervisory board members of these companies is regarded as independent, and in a second step, if the reported conflict of interest concerns an independent supervisory board member. Not all companies publish information about the individuals involved, like Continental AG, Deutsche Börse AG, Infineon AG, Münchener Rück AG, and Vonovia SE, as mentioned in the column ‘specialities’ of Table 14. There is information available that an individual who is not independent had a conflict of interest, however this information is only available in the cases of Porsche Automobil Holding SE, Volkswagen AG, and Zalando SE.

Only Volkswagen published the information that an employee representative had a conflict of interest. Due to the fact that the situation of that employee representative was already known to the public, including the name of the employee representative, I am assuming that there was no requirement to conceal the name in publications.

Table 14 - Independence of conflicted supervisory board members in DAX 40 companies that reported a conflict of interest

Company with reported conflicts of interest	Year	Independence of supervisory board members	Specialities	Conflicted person is independent*
BMW AG	2021	Eight shareholder representatives are independent		Y
Continental AG	2022	Eight shareholder representatives are independent	Name is not disclosed	No information
Deutsche Bank AG	2020	all shareholder representatives are independent	Four supervisory board members with reported conflicts of interest	Y
Deutsche Börse AG	2022	all shareholder representatives are independent	Name is not disclosed	No information
Deutsche Telekom AG	2020	all shareholder representatives are independent	Two supervisory board members with reported potential conflicts of interest	Y
E.ON SE	2020	all supervisory board members are independent		Y
Infineon Technologies AG	2022	all supervisory board members are independent	Name is not disclosed	Y
Mercedes-Benz Group AG	2020	2020: at least 15 supervisory board members are independent; 2021/2022: all shareholder representatives are independent	Three supervisory board members with reported conflicts of interest	Y
Münchener Rück AG	2020, 2021, 2022	all shareholder representatives are independent	Name is not disclosed, only the information that the supervisory board member was on the Board of Management before	Y
Porsche AG	2022	four shareholder representatives are independent, the other four shareholder representatives have > 12 years of service, but are seen to be independent	The disclosure speaks of 'some members'	no information
Porsche Automobil Holding SE	2020, 2021, 2022	Seven members are independent from the company and the executive board, three members are independent from a controlling shareholder		Y/N
Vonovia SE	2022	all supervisory board members are independent	Name is not disclosed	Y
Volkswagen AG	2020, 2021, 2022	at least four members of the shareholder representatives are independent	Various conflicts of interest, Volkswagen mentions three different persons; one employee representative involved	N
Zalando SE	2020, 2021	five of six supervisory board members are independent	2020: one supervisory board member with reported conflict of interest, 2021: two supervisory board members with reported conflicts of interest	Y/N

Y = Yes, the conflicted person is independent
N = No, the conflicted person isn't independent
Y/N = Both independent and non-independent persons are conflicted
No information = The name of the person is not disclosed or the information, if the conflicted person is independent is not disclosed

Source: author's own illustration

The following conclusions were drawn from the examination of Table 14, which provides information on whether a conflicted individual is independent:

- There is no causal connection between a good corporate governance score according to the DVFA Corporate Governance Scorecard and the occurrence of conflicts of interest: Conflicts of interest occur in companies that are best ranked as well. There is no connection between a good corporate governance score (DVFA score) of a company and conflicts of interest.
- The occurrence of conflicts of interest is independent of the legal form of the stock-listed company. They occur both in stock corporations (10 from 27 = 37%) and Societas Europaea (3 from 10 = 30%).
- There is no unified reporting standard for the disclosure of conflicts of interest. The level of detail provided in the company information varies significantly. The range goes from 'one conflict of interest was reported' with no additional information to some information up to very detailed information about the affected supervisory board member and the reaction of the supervisory board.

- Almost all companies have no individualized definition of ‘conflict of interest’. The main definition used is the one from the German Corporate Governance Code.
- Three companies (8%) mention precautionary measures as a solution for potential conflicts of interest. This observation indicates that there is uncertainty about the qualification of disclosed circumstances to be classified as conflicts of interest.
- The most relevant disclosed reasons for conflicts of interest are legal proceedings (25%) or conflicts of interest because of a business relationship (25%), followed by conflicts of interest that occur because of decisions that were taken by former executive board members that are now supervisory board members (19%).
- Among the study sample, there is only one reported conflict of interest that can be directly associated with an employee representative. It must be mentioned that not all companies provide the name of the conflicted supervisory board member.
- There are companies with supervisory board members exceeding the maximum of 12 years of service, which is an independence criterion according to the Code. Some companies argue that the supervisory board member concerned is nevertheless independent. The following companies adhere to the independence criteria for supervisory board members exceeding 12 years of service: Adidas, BASF, Bayer, Deutsche Telekom, Hannover Rück, Siemens, and Volkswagen. Other companies accept that the supervisory board member is deemed to not be independent. The following companies don´t adhere to the independence criteria for supervisory board members exceeding 12 years of service. In an analysis of the individual circumstances, they conclude that the affected supervisory board members are independent: Beiersdorf, Deutsche Post, Heidelberg Materials, and MTU Aero Engines.
- There is a mixed picture if employee representatives are independent in the view of a company. While the majority of companies are of the opinion that the employee representatives are independent as well, there are other companies that restrict their declaration regarding independence to the shareholder representatives and remain silent regarding the employee representatives.

5.2 Analysis of conflicts of interest in the light of expert interviews with members of supervisory boards or experts in corporate governance

5.2.1 Methodology to explore insights, validate findings and enhance research depth

Expert interviews were chosen as a survey method in the context of this work to thoroughly investigate the practical significance of conflicts of interest and to get insights into the measures employed by supervisory boards to mitigate such conflicts. Given the objectives and theoretical framework of this study, it can be argued that expert interviews are a suitable research approach for the following reasons: Expert interviews are considered a good approach due to their ability to support a more profound comprehension of the observations, knowledge, and actions of the participants involved in the interview process. Conducting interviews allows interviewees to articulate their thoughts, opinions, and personal experiences regarding the topic being investigated. By doing so, interviewees can guide the discussion towards specific aspects that might not have been considered otherwise. In the opinion of the author, interviews enrich the understanding of the topic by providing additional, firsthand information. Moreover, because the interviews are tailored to the expertise and experiences of the participants, the results obtained are deeply rooted in the specific contexts of these experts. The insights gained through the interviews are highly relevant and applicable to the real-world situations and challenges faced by those involved in the field being studied.

A general overview of the theoretical method and the process of conducting expert interviews is provided in this Chapter, as is the practical implementation in this thesis. The relevant questions for this study were determined, and a roadmap for conducting interviews was established. In the interview guide (see Appendix F), different open questions were addressed, and the interviewees were asked about their experiences in supervisory board work regarding these questions. The questions for all interviewees were adapted to the course of the interview in the sense of an open-ended interview. For employee representatives on the supervisory board, additional questions were formulated. The questions are about the individual definition of conflicts of interest in the supervisory board in which the person is or was acting, the disclosure of conflicts of interest, and actions in cases of conflicts of interest. The questions focus on the election and re-election of supervisory board members, the opinions of the supervisory board members about the importance of conflicts of interest and the independence of supervisory board members, and their own experiences with conflicts of interest. For employee representatives, additional questions relating to codetermination were

raised. The goal of the questionnaire was to find out whether supervisory board members are familiar with the concept of conflicts of interest as part of their work in the supervisory board. After finalizing the interview guide, all DAX 40 companies were contacted by e-mail addressed to the Investor Relations department with the request for an expert interview on the research topic. The focus was to get interview partners holding a supervisory board mandate. Furthermore, current and former supervisory board members of other companies were contacted personally or by phone to ask for an expert interview. On request, the interview guide was sent to the companies before the interview. After the initial contact with the DAX 40 companies, it was obvious that there was a willingness to participate in interviews, mainly from company experts, but rarely from supervisory board members. Therefore, the interviews were also conducted with company experts not being supervisory board members. The decision that an interview partner is a company expert, was taken by the researcher based on the question of whether this person has special (practical) knowledge within the functional context of the research topic and based on an attribution that is usually institutionally and organizationally secured, following Gläser and Laudel (2010, p. 12). ‘Who is identified as an expert and who is not depends on the researcher’s judgement.’ (Meuser & Nagel, 2009, p. 18).

The interviews encompassed three distinct categories of participants: one present member of the supervisory board, one past member of the supervisory board, and five experts within the organization, one of whom was a former supervisory board member. All interviewees have a high level of competence and expertise in the field of corporate governance and especially in the work of supervisory boards, either as active or former members of supervisory boards or as experts with a strong connection and thorough understanding of the functioning of supervisory boards. All interviewees demonstrate a comprehensive understanding of the framework relating to conflicts of interest. All interviewees are either actively engaged in the discussions of the supervisory board about conflicts of interest or are included to provide advice. The author’s ability to draw upon shared experiences and knowledge allowed the author to form a coherent group of interviewees whose responses and information provided the capacity for comparison and subsequent analysis.

The utilization of the videoconferencing platform Microsoft Teams facilitated the execution of expert interviews; other interviews were conducted through face-to-face interactions and one session was conducted by telephone. The interviews were conducted between July 20, 2022 and February 1, 2023.

Each interview commenced with a preliminary phase in which both the interviewee and the researcher were given the chance to introduce themselves. The researcher presented an overview of the research topic and the objectives of the interview and asked for a recording of the interviews. Matters of data protection and anonymity in the work and the subsequent analysis were discussed. To initiate the discussion, the experts were prompted to provide insights into the definition of conflicts of interest within the supervisory board they are associated with or represent. The questions according to the interview guide were raised, and additional details and examples for the further questions in the interview guide were requested. All interviews were closed by posing an open-ended question to the interviewee, inquiring whether they believe there are any further aspects of the topic that have not yet been considered. The absence of recorded interviews can be attributed to the lack of consent provided by the interviewees. During the interview sessions, detailed notes were recorded and subsequently transcribed into memory logs within a time frame of three hours. The interview guide/questionnaire is available in Appendix F.

5.2.2 Evaluation of the expert interviews: comprehensive assessment

All DAX 40 companies, which are incorporated under German law, were contacted on December 29, 2022. Among these companies, six (16%) were willing to contribute to the study. Four companies expressed their willingness to participate in an interview with company experts, and two companies sent written information but declined to participate in an interview. The written information of the two companies was restricted to publicly available information on the homepages of the companies. This information is the content of the analysis of all DAX 40 companies, no additional information can be derived from the written information.

Additionally, nine companies sent an answer to the inquiry but declined to participate in the interview. Among those nine companies, seven provided explanations for their rejection. The cited reasons included a high volume of requests (three companies), the general unavailability of supervisory board members for such interviews (two companies), a lack of capacity (one company), and rejection due to the confidential nature of supervisory board work (one company). 22 companies (59%) did not provide any responses.

Table 15 contains information about the relevant sample size. It is broken down according to the companies that participated in an interview, provided information in written form, or did not participate. The reasons for non-participation were categorized.

Table 15 - Sample Size DAX 40 companies

Sample size DAX 40 companies			
Number of companies			37
> Contributors (interview)		4	
> Contributors in written form		2	
> Answer: no participation		9	
> With reason:	7		
high volume of requests: 3			
general unavailability: 2			
lack of capacity: 1			
confidentiality reasons: 1			
> Without reason:	2		
> No answer		22	

Source: author's own presentation

In addition to the DAX 40 firms, supervisory board members and company experts from non-DAX 40 companies were invited to participate in an interview. Two supervisory board members expressed their willingness to provide answers in an interview, one of them in person, and the other by telephone. Additionally, one company expert was interviewed. Another three supervisory board members engaged in a joint discussion about conflicts of interest.

The author faced difficulties in conducting the research through interviews due to the refusal or unwillingness of the companies and individuals contacted, as explained before and shown in table 15. Therefore, the analysis is based on seven interviews conducted with present and past supervisory board members or company experts of German stock-listed companies and one group discussion. The secondary sources utilized in this study encompassed the curricula vitae of the members of the supervisory board, together with data obtained from the companies where the interviewees held positions on the supervisory board or where the company specialists were employed, and written information from the two DAX 40 companies. One interview was conducted with an employee representative (executive employee), two with shareholder representatives, and five with company experts, whereas one company expert has experience as a supervisory board member as well. One of the supervisory board members possesses considerable experience derived from multiple supervisory board mandates. The companies were six stock corporations and three Societas Europaea. Most of the companies are subject to codetermination, one of the supervisory board members also held mandates in companies that are not subject to codetermination. The size of the companies in the dataset ranges from about 200 people to a maximum of over 100,000

employees. The duration of the shortest interview was roughly 30 minutes, while the longest session lasted approximately 70 minutes. All interviewees were promised anonymization. Consequently, exclusively anonymized statements are employed, ensuring that any personal or corporate identity is modified to the extent that re-identifying becomes unfeasible. The details of the experts are not disclosed. The interview memos are not meant for publication due to the sensitivity of the data and the guaranteed anonymity; the author summarizes the essence of the interviews in this Chapter. Most experts expressed their willingness to address inquiries; nevertheless, no utilization of this offer was necessary. Most of the experts are the heads of the corporate office. The corporate office is an internal division within the company that comprises professionals specializing in stock corporation law and capital markets law. Their primary responsibility is to provide guidance to the supervisory board and facilitate the preparation and documentation of supervisory board meetings. The specific tasks assigned to the corporate office may vary depending on the specific setup of this role. In this department, it is quite common for in-house lawyers to assume leadership roles, often accompanied by a team of supporting individuals. The authorities of the corporate office include that they have access to the legal department.

The aim of evaluating the interviews with the experts is to identify specific patterns and recurring comments and to demonstrate a practical perspective on conflicts of interest. The interviews consisted of seven questions that commenced with an inquiry into the individual definition of conflicts of interest, followed by insights into disclosure practices, actions to be taken in the event of conflicts of interest, strategies for avoidance, particularly in the nomination and election process, individual perspectives on the significance of conflicts, connections to the importance of independence among supervisory board members, and concluded with an open question regarding any other relevant information.

The following part presents the responses of the interviewees, a summary of the findings, and the author's conclusions.

Question 1: Definition of conflicts of interest

The interviewees were asked how they define 'conflicts of interest', if there is a definition in place that lists conflicts of interest by giving examples, and if the supervisory board has ever discussed the necessity of an (individual) definition.

Common for all companies is that they use the definition of the Code and the relevant laws. All companies have rules regarding conflicts of interest in their rules of procedure. Other than some companies in the analysis in this Chapter, none of the interviewees and the

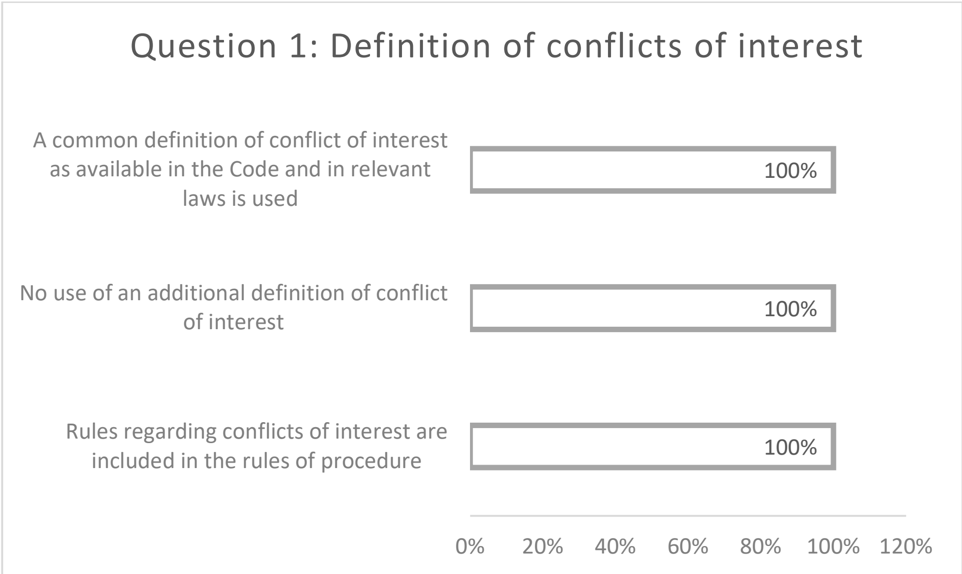
respective companies use a definition that goes beyond this. The reason mentioned by interviewee B is ‘that there is no necessity and that the rules are sufficiently known’. This company also puts the focus on the conflict between company interest and personal interest. Interviewee E also confirmed that the supervisory board has not yet faced any circumstances that would necessitate refining the current definition.

Interviewee C mentioned using legal literature to define conflict of interest and acknowledged that there is no single definition of conflict of interest. Considerations from European law and a comparison with the regulations in other jurisdictions are considered when defining conflicts of interest. Moreover, personal experience as well as the proxy advisor’s requirements are considered.

Interviewee F mentioned being part of a rather small supervisory board that does not require an additional definition of conflict of interest. During the time of their office, no conflict of interest occurred; thus, interviewee F assumes that this is the reason why there is no additional definition of conflict of interest.

Figure 3 illustrates the summary for question 1 concerning the definition of conflicts of interest. There is a common understanding of the definition of conflicts of interest in German stock-listed companies, and rules regarding conflicts of interest exist in all interviewed companies.

Figure 3 - Question 1: Definition of Conflicts of Interest



Source: author’s own illustration

Conclusions:

- 100% of the interviewees use the common definition of conflict of interest as available in the Code and the relevant laws;
- None of the interviewees use a definition in addition to the standard definition. The reason given is that it is not necessary;
- 100% of the interviewees have rules regarding conflicts of interest in their rules of procedure.

Question 2: Disclosure of conflicts of interest

The interviewees were asked how the supervisory board learns about conflicts of interest and which instrument is used to ensure that supervisory board members disclose any existing or anticipated conflict of interest to the chairperson or the entire supervisory board. The question about reporting requirements was raised, as were the actions if the supervisory board discovers the existence of a conflict of interest that was not disclosed before.

Interviewee A emphasized the significance of conflicts of interest as an important topic for the company, thereby necessitating the establishment of strict rules that are part of the rules of procedure. Interviewee A characterizes the chairperson of the supervisory board as an exceptionally proactive individual who puts significant emphasis on transparency. In situations where transactions or decisions may give rise to conflicts of interest, the chairperson actively handles this matter, even without prior disclosure. During each meeting, the company requests the supervisory board members to provide updates on their external mandates. This serves as a reminder to all members of the supervisory board to promptly notify the chairperson of any uncertainties regarding potential conflicts of interest. The procedure is as follows: disclosed conflicts of interest are discussed by the head of the corporate office[31] together with the general counsel of the company. Their proposed solution will be discussed with the chairperson of the supervisory board and either the complete supervisory board or the standing committee ('Ständiger Ausschuss'). All disclosed conflicts of interest are mentioned in the meeting minutes of the supervisory board meetings, even if the company concluded that no conflict of interest exists.

[31] The corporate office is an internal division within the company that comprises professionals specializing in stock corporation law and capital markets law. Their primary responsibility is to provide guidance to the supervisory board and facilitate the preparation and documentation of supervisory board meetings. The specific tasks assigned to the corporate office may vary depending on the specific setup of this role. In this department, it is quite common for in-house lawyers to assume leadership roles, often accompanied by a team of supporting individuals. The authorities of the corporate office include that they have access to the legal department.

Interviewee B describes the reporting line for the disclosure of conflicts of interest: conflicts of interest have to be disclosed to the chairperson of the supervisory board or the personnel committee, a committee of the supervisory board. The corporate office organizes an annual survey pertaining to the independence criteria, and related parties and thereafter derives conclusions regarding possible conflicts of interest. In the company of interviewee B, conflicts of interest do not occur frequently. This can be attributed to the supervisory board, which is described as very proactive and addresses doubt by raising relevant questions. The assessment of conflict of interest is conducted by the legal department, and the outcome is recorded within their files, not necessarily in the minutes of the supervisory board meeting. Conflicts of interest are part of the corporate governance training, with no separate or distinct training sessions specifically dedicated to conflicts of interest. The company conducts annual surveys.

Interviewee C provided a comprehensive explanation of the disclosure method, which included notifying the chairperson of the supervisory board and together with the chairperson or the corporate office in the event of a potential conflict of interest. The corporate office provides support to the chairperson of the supervisory board in conducting a comprehensive examination of conflicts of interest. Additionally, it creates a memorandum for the supervisory board that outlines potential solutions to address these conflicts. Interviewee C found a mechanism to ensure that supervisory board members disclose conflicts of interest: Conflicts of interest constitute a significant component of the onboarding process for newly appointed supervisory board members. The onboarding process encompasses comprehensive legal training. During the duration of the mandate, the company regularly (annually) requests the supervisory board members to complete a document known as the ‘code questionnaire’. One crucial aspect of the code questionnaire pertains to the prompt disclosure of any additional supervisory board positions. This is of utmost relevance for interviewee C because competing mandates may lead to conflicts of interest, and the company would have to evaluate if the supervisory board member is (still) considered independent.

Interviewee D described the process: a conflict of interest must be reported to the chairperson of the supervisory board, who involves the legal department to provide a legal opinion about the conflict and to provide solutions. If necessary, according to the chairperson, the entire supervisory board is involved. The company provides regular, at least yearly, trainings for their supervisory board members with different focuses, conflict of interest is one of them. The onboarding also contains such legal training, and the training is repeated.

Interviewee D prefers incorporating practical examples of other companies or jurisdictions in the training sessions.

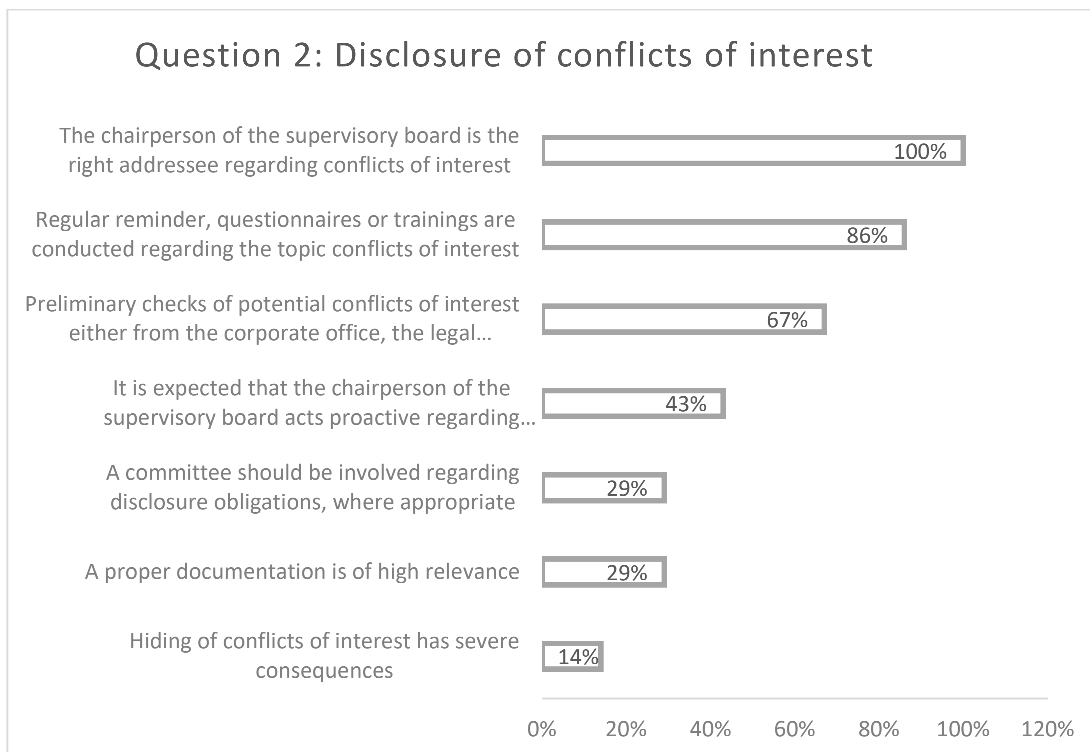
Interviewee E described two possible ways to learn about conflicts of interest. The disclosure from a member of the supervisory board who holds a conflict of interest or a potential conflict of interest to the chairperson, who subsequently shares it with the full board. Another aspect is that one worries about the potential occurrence of a conflict of interest involving another individual. The interviewee would prioritize addressing this concern by initiating a discussion with the representatives associated with the interviewee and believes that such discussions are typically conducted among the shareholder representatives and the employee representatives, excluding the other side in each case. The chairperson or the entire supervisory board would only be contacted with that suspect if the representatives concluded that a conflict of interest was present.

Interviewee F confirms that the chairperson of the supervisory board is the right person to contact. The procedure is described within the rules of procedure, which necessitate strict adherence by all members of the supervisory board. If there exists a potential conflict of interest that has not (yet) been declared, it is expected that the chairperson of the supervisory board will contact the relevant member of the board and work together to resolve the issue and find a solution with this individual. If no solution is found, it becomes necessary to involve the entire supervisory board.

Interviewee G also confirms that the standard reporting line is directed toward the chairperson of the supervisory board. Each member is obligated to disclose any conflicts of interest to the chairperson, and subsequently, these disclosures are also included in the report of the supervisory board. If members of the supervisory board hide a conflict of interest, it would be regarded as a violation of trust and have a negative impact on the collaboration. If it is a major issue and trust is compromised, it is advisable for the supervisory board member to resign from their position on the supervisory board. In cases with minor significance, it would be necessary to refine the existing guidelines.

Figure 4 illustrates the summary of question 2 about the disclosure obligations regarding conflicts of interest.

Figure 4 - Question 2: Disclosure of conflicts of interest



Source: author's own illustration

Conclusions:

- 100% of the interviewees see the chairperson of the supervisory board as the right addressee of conflicts of interest;
- 86% of the interviewees regularly remind the supervisory board about the topic conflicts of interest; they use questionnaires or conduct training;
- 67% of the interviewees state that a preliminary check of conflicts of interests is necessary (either from the corporate office, the legal department, or an external law firm); one interviewee prefers to discuss the potential conflict first on the relevant side of the supervisory board (either shareholder representatives or employee representatives);
- 43% of the interviewees expect the chairperson of the supervisory board to be proactive regarding conflicts of interest;
- 29% of the interviewees mention the involvement of a committee (e.g. the personnel committee), where appropriate;
- 29% of the interviewees highlight the relevance of proper documentation of the (potential) conflicts of interest;

- One interviewee (14%) highlighted that hiding conflicts of interest has severe consequences, including the loss of trust, which might finally lead to pressure from the chairperson or the entire supervisory board to ask the affected supervisory board member to resign.

Question 3: Actions in case of conflicts of interest

The interviewees were asked about the actions in case of conflicts of interest and how it is ensured that the supervisory board will take appropriate actions. The interviewees were asked to indicate which actions were deemed appropriate.

Interviewee A confirms that the set of actions, from exclusion from meetings to the withdrawal of the mandate, are appropriate, depending on the conflict of interest in question. For interviewee A, it is important to completely exclude the supervisory board member from all information and the decision-making process and to exclude the member from meetings. The action to choose under the given circumstances must be 'fit and proper'.

Interviewee B affirms that the involvement of the legal department is conducted to determine the appropriate course of action. The response to a conflict of interest starts with a voting ban and exclusion from the meeting and goes to their resignation from the mandate, which is coordinated between the supervisory board member and the chairperson.

According to interviewee C, subsequent to the acknowledgment of a conflict of interest, a comprehensive legal assessment is conducted, resulting in a recommendation from the in-house legal team regarding the appropriate course of action. The recommendation should contain an action that effectively addresses the conflict. In practical application, the recommendations are quite different; there are even cases where competition law needs to be considered. The recommendation provided by the in-house legal counsel is discussed with the chairperson of the supervisory board and thereafter shared with the entire supervisory board for their involvement. The experience is that the supervisory board opts for the harder course of action when faced with two potential responses. The action that is, in many cases, appropriate is to exclude the supervisory board member from the meeting and the voting.

According to interviewee D, the potential reactions are to be seen hierarchically, with increasing levels of intensity. The primary cause of conflicts of interest is, according to the professional experience of interviewee D, the presence of additional mandates from supervisory board members. Interviewee D emphasizes that the criteria for dismissing individuals with conflicts of interest are quite stringent; consequently, it is crucial that supervisory board members act reasonably and in a professional way and are willing to resign

from their mandate if the company determines an incompatibility between their supervisory board position and other mandates.

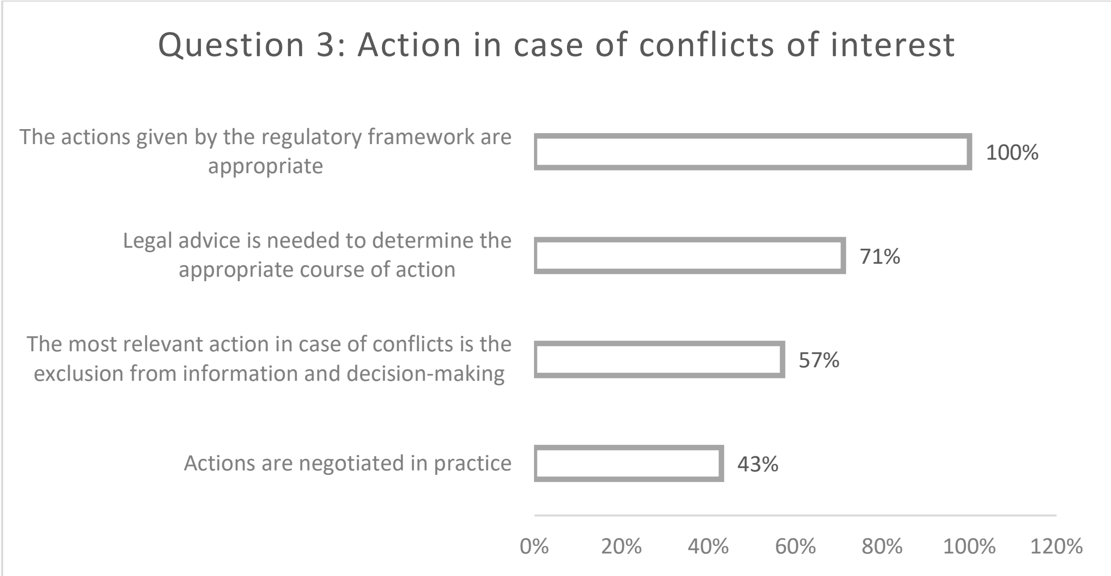
Interviewee E emphasizes the importance of seeking legal advice to mitigate potential liability risks associated with reactions to conflicts of interest that may be deemed inappropriate or incorrect. Legal advice can be provided either by the company's own legal department or by engaging an external law firm. Interviewee E expresses a preference for implementing preventive actions in situations where there is uncertainty regarding the assessment of the presence or absence of a conflict of interest. The interviewee is comfortable with excluding a supervisory board member even if there might be no conflict of interest because the individual vote is in most cases not decisive for decision-making. The interviewee expressed a willingness to exclude a member of the supervisory board from voting as appropriate action, despite the absence of clear evidence of the conflict of interest, due to the limited impact of an individual vote on the decision-making process in most instances.

Interviewee F advocates for an open conversation aimed at resolving the conflict of interest. If the supervisory board has experienced members, it is easier to find a solution. As the head of the supervisory board, interviewee F would initiate the conversation with the individual concerned by inviting the individual to provide a potential solution. Interviewee F asserts that in the vast majority of conflicts of interest, the adequate measure is the exclusion of participation in meetings and access to relevant information. Cases in which an individual is required to resign from their mandate are extraordinarily rare.

Interviewee G agrees with all possible actions; however, it is important to acknowledge that the decision regarding the appropriate measure is hard to take because of the publicity due to the disclosure requirement in the report of the supervisory board. The guidance provided by an external law firm is beneficial. Ultimately, it is a legal topic, and it is advisable to engage an external law firm to discuss the issue and find appropriate actions.

Figure 5 illustrates the summary for question 3 about the appropriate actions in cases of conflicts of interest.

Figure 5 - Question 3: Action in case of conflicts of interest



Source: author's own illustration

Conclusions:

- 100% of the interviewees believe the actions stipulated by law or Corporate Governance Code are appropriate. 57% of the interviewees emphasized that the action taken depends on the circumstances. 57% also mentioned that the most relevant action is the complete exclusion of the individual facing a conflict of interest from all information and the decision-making process;
- 71% of the interviewees say that legal advice is needed to determine the appropriate course of action.
- 43% of the interviewees mentioned that in practice, there is a discussion among the supervisory board members or the committee that is involved and the conflicted individual about the right action.

Question 4: Avoidance strategies in the nomination/(re-)election process

The interviewees were asked if the supervisory board checks and considers anticipated conflicts of interest during the nomination process for the election of new or the re-election of current supervisory board members and were asked to describe the procedure.

The company of interviewee A has established an elaborate procedure for the selection of candidates and their reappointment. The most important topic is whether supervisory board members hold additional mandates that have the potential to cause conflicts of interest. The nomination process is characterized as a continuous pipeline aimed at identifying people who are ideal candidates. Additionally, the company implemented an onboarding program that

included a thorough explanation of the topic of conflicts of interest. Based on the statements provided by interviewee A, the ownership of shares in the company by supervisory board members does not raise any concerns. Most supervisory board members do not possess shares in the company, but, if they do, it is generally regarded as positive. The interviewee highlighted that in the nomination phase, there are often conversations about overboarding (that means that a candidate holds too many mandates in the view of the company). To be considered eligible as a candidate for this company, the candidates are informed about the fact that it is necessary to waive certain mandates.

Interviewee B highlights that the assessment of prospective candidates includes an inquiry into the perception of potential conflicts of interest. If a certain likelihood is identified, the company will propose an alternative candidate. The company conducts annual surveys and performs certain background checks.

Interviewee C describes the nomination phase as a phase where the internal team focuses on other mandates of the supervisory board members, besides the general criteria for supervisory board members.

Interviewee D also emphasizes that the nomination phase is crucial to mitigating the potential for conflicts of interest. Every candidate undergoes a comprehensive evaluation, which includes a detailed assessment, and only those individuals with an outstanding reputation are deemed qualified for the subsequent stage. It might happen that a candidate has to resign from another mandate to be eligible. Interviewee D describes it as an unwritten rule that no former executive board members, founders, or family members are considered supervisory board members. During onboarding, the topic of conflicts of interest is addressed. To pertain high quality in the work of the supervisory board, the supervisory board additionally gets continuous training.

Interviewee E possesses prior experience working with external consultants and assumes that these consultants look for independent candidates unless there are specific provisions outlined in the agreement. Additionally, it is or should be included in their engagement agreement that they are obliged to conduct an assessment to determine the potential presence of conflicts of interest. The nomination committee also needs to undertake a thorough assessment, as the entire supervisory board has to do based on the work of the nomination committee. The process of re-election is easier because the supervisory board has previous experience if the supervisory board member was conflicted in the past. When supervisory board members propose possible candidates from their personal or professional networks, it is critical to conduct further investigations about conflicts of interest because

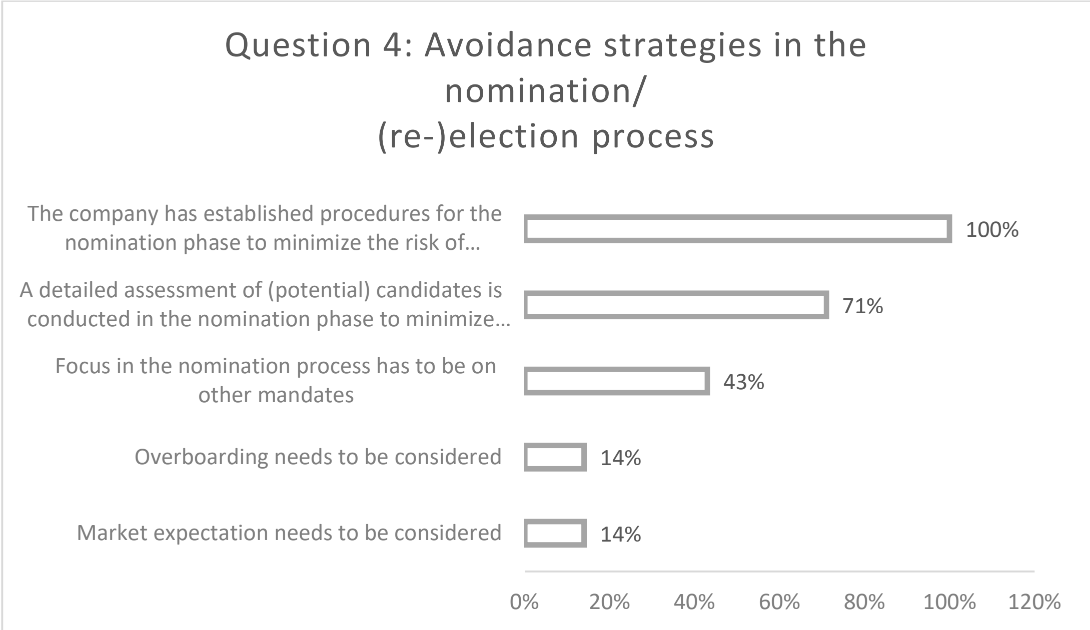
there is a kind of inherent uncertainty because the assumption is that the proposed candidate is appropriate.

Interviewee F sees an important part of the nomination process as being in the responsibility of either the corporate office or the legal department, depending on the organizational setup in the company. The legal experts play a vital role in guiding the legal obligations regarding conflicts of interest and independence for potential supervisory board candidates. It is important for the supervisory board to also assess the market's expectations regarding the composition of the supervisory board. Interviewee F possesses prior experience having a mandate on a supervisory board that had no nomination committee. In such companies, all supervisory board members actively participate in the evaluation of potential candidates' curriculum vitae. Ultimately, the nomination process results in a mutual decision made by the supervisory board.

Interviewee G confirms a strict policy for the company to only accept new potential candidates fulfilling the independence criteria.

Figure 6 illustrates the summary for question 4 regarding the avoidance strategies in the nomination/(re-)election process.

Figure 6 - Question 4: Avoidance strategies in the nomination/(re-)election process



Source: author's own presentation

Conclusions:

- 100% of the interviewees have established procedures for the nomination phase to minimize the risk of conflicts of interest (also including the corporate office, the legal department, or external companies).
- 71% of the interviewees mentioned that there is a detailed assessment of the potential candidates; 43% of the interviewees have a special focus on additional mandates; one interviewee (14%) highlights the additional factors of overboarding; and another one (14%) highlights market expectation. One interviewee (14%) confirmed that there is no concern if a supervisory board member holds shares in the company.

Question 5: Importance of conflicts of interest

The interviewees were asked if, in their opinion, conflicts of interest are an important problem in German companies, and if yes, how and by whom this problem can be solved.

Interviewee A highlights that conflicts of interest are the primary topic during the initial stages of candidate selection. During the daily work, it is not very often a topic.

Interviewee B says that conflicts of interest do not hold a prominent position but are regarded as a corporate governance subject of equal importance to other topics within the field of corporate governance.

Interviewee C is not often confronted with the disclosure of conflicts of interest. The most relevant topic is that of other (competing) mandates, which are to a certain extent governed by the checks during the nomination phase.

Interviewee D mentioned that the topic itself is important. In interviewee D's professional experience, conflicts of interest occurred quite seldom.

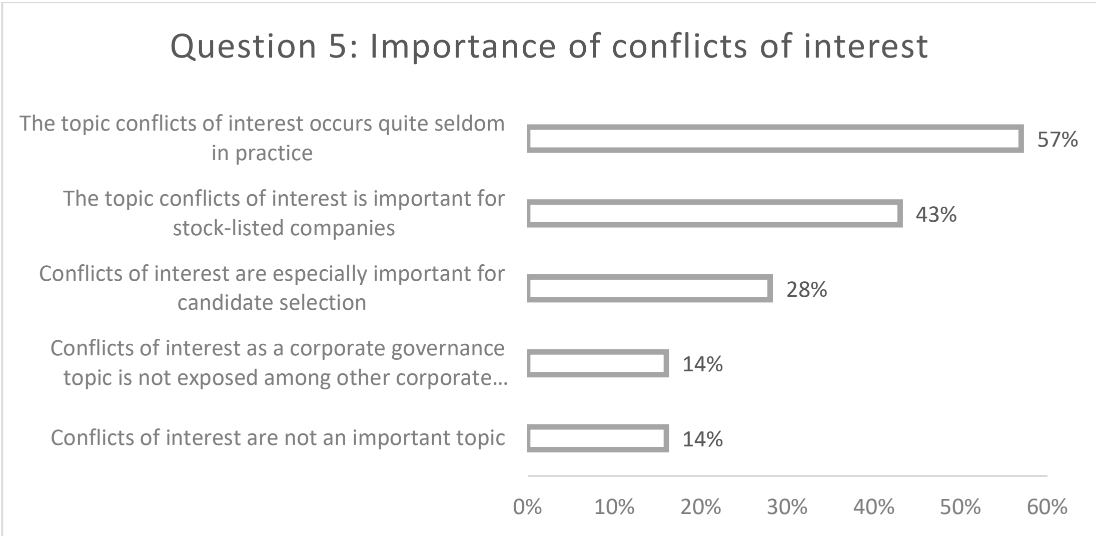
Interviewee E stated not to possess any personal experience with conflicts of interest. Additionally, the supervisory board has not encountered any instances of conflicts of interest. The interviewee expresses a subjective viewpoint by asserting that conflicts of interest hold significance in general, but not in their specific situation.

According to interviewee F, the topic of conflicts of interest is not an important problem in German corporations. The reason is that supervisory board members know their roles.

Interviewee G confirmed that conflicts of interest are an important topic. Professional supervisory board members must be able to deal with them.

Figure 7 illustrates the summary of question 5 of the interview questionnaire regarding the general assessment of the importance of conflicts of interest for stock-listed companies.

Figure 7 - Question 5: Importance of conflicts of interest



Source: author's own presentation

Conclusions:

57% of the interviewees confirm that the topic of conflicts of interest occurs quite seldom in practice.

43% of the interviewees state that the topic is important, whereas one interviewee (14%) says that it is not important and one interviewee (14%) says that it is not exposed among the other corporate governance topics.

28% of the interviewees say that the topic is especially important for candidate selection.

Question 6: Importance of independence of supervisory board members

The interviewees were asked if the independence criteria provided in the Code are sufficient to prevent the majority of conflicts of interest, and if not, what is missing.

Interviewee A expressed the opinion that the Code's regulations pertaining to independence are unnecessary. The criteria provided by legislation are adequate. According to the interviewee, the prolongation of a term of office exceeding 12 years does not pose a threat to independence, and it is regrettable to lose competent supervisory board members due to this stipulation. The interviewee noted that former executive board members can provide valuable contributions to the supervisory board. A cooling-off period of two years is deemed adequate, while a longer period is considered excessive.

Interviewee B expresses no objections regarding the cooling-off period for former executive board members. The independence criteria for dealing with business relationships is a significant requirement. Interviewee B expresses a significant degree of skepticism regarding consulting agreements with supervisory board members. The timely limitation of the mandate to 12 years is reasonable for interviewee B, whereas the more relevant question is whether a long-serving supervisory board member is still capable of providing impetus to the supervisory board. The relationship with a controlling shareholder is accepted as a criterion for non-independence. However, it is important for interviewee B to note that the decision-making process is not solely determined by a single person, since the majority of supervisory board members collectively contribute to the decision.

Interviewee C sees a close connection between conflicts of interest and the independence of supervisory board members, but at the same time highlights that conflicts of interest and independence are not congruent. The criteria of the Code are fine, according to company C; they are 'not too weak'.

Interviewee D has a distinct perspective on the independence criteria of the Code. Interviewee D agrees with most of them but discusses the necessity of a restriction on the duration of the mandate of 12 years. The primary emphasis should be on the competencies of the supervisory board members. In general, it is crucial to have regular fluctuation in the supervisory board to prevent 'operational blindness', but this is not primarily motivated by conflicts of interest. In the view of interviewee D, there is no explicit demonstration of a direct association between conflicts of interest and independence.

Interviewee E agrees with all the independence criteria. The most important ones are those that are connected to related parties, such as familial links to members of the executive board, associations with a controlling shareholder, or engagement in business transactions with the controlling shareholder. Within these constellations, there exists a significant likelihood that individual interests take precedence over the interest of the company. Interviewee E agrees with the maximum mandate term of 12 years, with the argument that beyond this timeframe, supervisory board members may lose their energy to provide and implement new concepts and ideas.

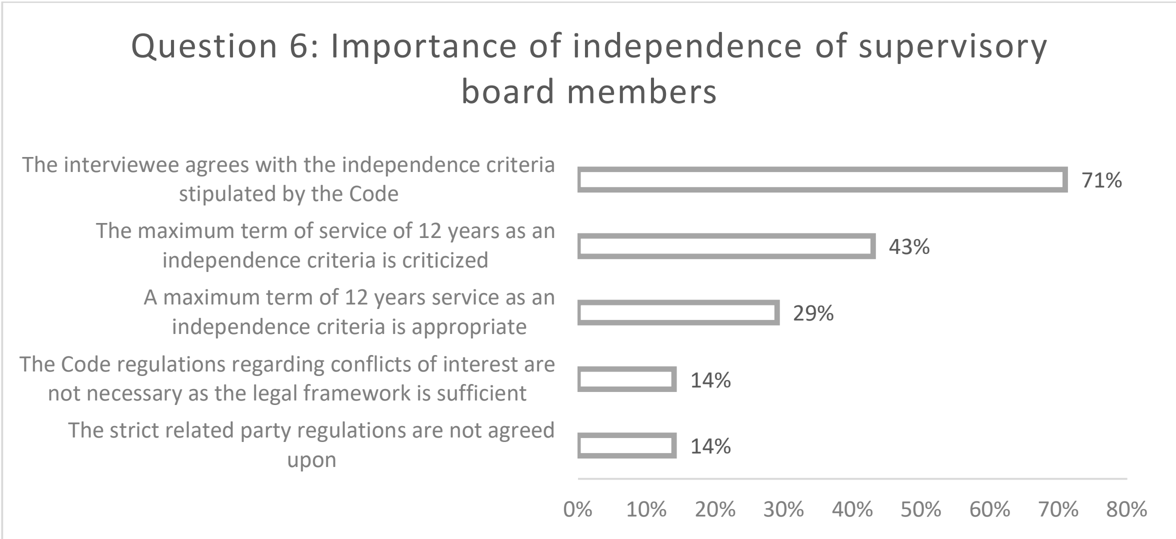
Interviewee F has a differing opinion on the requirements concerning independence. Similar to other interviewees, the maximum of 12 years of service is not adequate to avoid conflicts of interest. Interviewee F also thinks that it is in the vital interest of a controlling shareholder to send a representative to the supervisory board. Interviewee F also believes that it is important for a controlling shareholder to appoint a representative to the supervisory

board. The alignment of interests between the controlling shareholder and the company is evident; they are not opposed.

Interviewee G agrees with all independence criteria.

Figure 8 illustrates the summary for question 6 of the interview questionnaire regarding the importance of fulfilling the independence criteria.

Figure 8 - Question 6: Importance of independence of supervisory board members



Source: author’s own illustration

Conclusions:

71% of the interviewees agree with the independence criteria, whereas one interviewee (14%) says that the Code’s regulations are not necessary, and the legal framework is sufficient.

43% of the interviewees criticize the maximum term of service of 12 years, and 29% accept that requirement as appropriate.

One interviewee (14%) doesn’t agree with the regulations concerning related parties.

Question 7: Own experience with conflicts of interest

The question about their own experience with conflicts of interest was raised, especially towards the interviewed supervisory board members, but also to the company experts. The question of dealing with it and additional insights were raised. In this section of the interview, the special role of the employee representatives was mentioned by the author, and the interviewees were asked about conflicts of interest based on codetermination.

Interviewees A, E, and F have no experience with conflicts of interest.

Interviewee B's sole case ('case 1') was the move of an executive board member to the supervisory board following the expiration of the cooling-off period. Ultimately, this move was not seen as a reason for an increased risk of conflicts of interest.

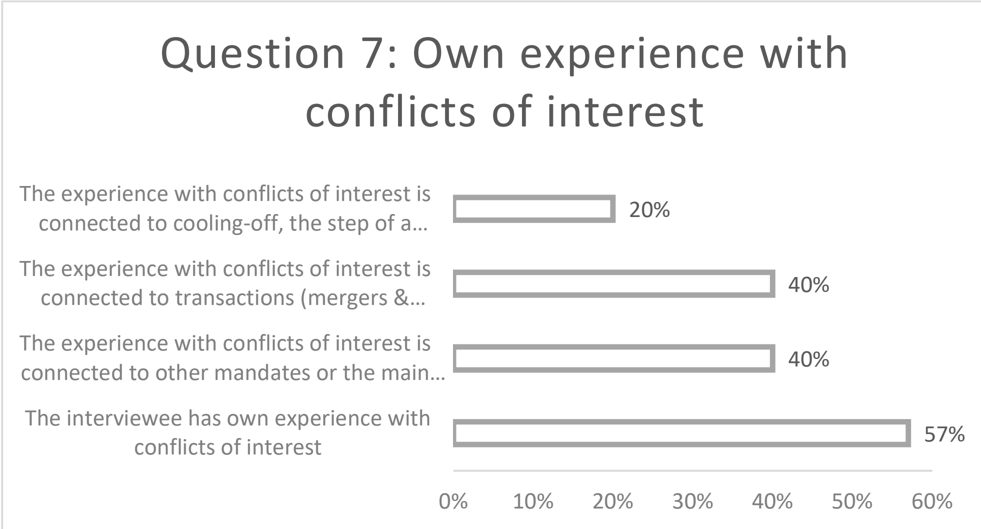
Interviewee C had a situation in the past fiscal years where an individual from a competing organization took over a supervisory board role ('case 2'). The company was aware of the potential for conflicts of interest ('it was clear that conflicts of interest will arise') and has implemented organizational and procedural measures to deal with that situation. The conflicts of interest were disclosed in the supervisory board report. A second experience was shared: at the time of the interview, the corporate office analyzed the case that a supervisory board member took over an additional mandate in a business sector with certain overlapping ('case 3').

Interviewee D describes a case that happened in 2022 and was linked to a transaction ('case 4'). The individual with the conflict of interest was excluded from meetings and voting; it was not necessary that the individual resign from the mandate.

Interviewee F remembers a case wherein a transaction was discussed on the supervisory board ('case 5'). The presence of a supervisory board member who held a major investment in the company could potentially give rise to conflicts of interest. In this particular case, the members of the supervisory board did not make any decisions that would have had a negative impact on the company.

Figure 9 illustrates the summary for question 6 of the interview questionnaire regarding the importance of fulfilling the independence criteria.

Figure 9 - Question 7: Own experience with conflicts of interest



Source: author's own illustration

Conclusions:

57% of the interviewees have their own experience with conflicts of interest, and 43% don't have their own experience with conflicts of interest.

40% of the experienced conflicts of interest are connected with other mandates or the main profession of the supervisory board member (cases 2 and 3), 40% with regards to a transaction (cases 4 and 5), and 20% with cooling-off (case 1).

Final question for all interviewees: Missing relevant questions

In an open question at the end of the interview, all interviewees were asked if, according to their experience, anything relevant with regards to conflicts of interest was missing. They were asked if there was important information regarding the topic that had not been discussed before.

Company A emphasizes that a competent chairperson of the supervisory board is of utmost importance since they must effectively fulfill their responsibilities, one of which is to react to (potential) conflicts of interest.

Additional questions for the employee representative among the interviewees

One employee representative was interviewed. The interviewee was asked additional questions to gain insight into their perception of their role in supervisory boards, their approach to handling conflicts of interest, and their outlook on the future of employee representation in supervisory boards.

The outcome is summarized as follows: the role of employee representatives is perceived to be distinct from that of shareholder representatives. Employee representatives ensure that decisions concerning employees of a company align with their interests and they actively advocate for the interests of the employees. This is not perceived as a conflict of interests, as the employees are a crucial pillar of the company's success. In almost all cases, a solution can be found that reflects the company's and the employees' interests. The interviewees had no situation in the past where the chairperson of the supervisory board used its second voting right to decide against the employee representatives.

Balancing the interests of the employees with the interests of the company is the main task of the employee representatives. This is the fundamental principle of the German system of codetermination. In practice, the employee representatives collaborate closely in their examination of the potential courses of action.

If labor disputes are taking place, employee representatives have to strongly differentiate between their mandate as a supervisory board member and their profession as a union or works council member. Even when they are acting as employee representatives, members of the union or work council are nevertheless required to carry out their responsibilities as members of the supervisory board. They are not permitted to prioritize the interests of employees or to put them ahead of other considerations. During labor disputes, no decisions should be made by the supervisory board that have a direct impact on the dispute. That would lead to a conflicting situation for employee representatives. Both employee representatives and shareholder representatives have to collaborate, otherwise, the supervisory board is not effective.

To identify potential conflicts of interest, the employee representatives can discuss them internally and can also ask for legal advice from the union's legal department. The potential for conflicts of interest is quite limited for employee representatives compared to shareholder representatives. If there is a conflict of interest, the employee representative is obliged to disclose it, and appropriate actions need to be taken. There is no difference between employee representatives and shareholder representatives in handling conflicts of interest. The chairperson of the supervisory board will be addressed with information about a conflict of interest.

The employee representative describes a situation where plant closures were discussed with the supervisory board, a decision that needed the approval of the supervisory board. The approval to close the plant would have had the consequence of terminating the employment contracts of a substantial number of employees. The goal for the employee representatives was not to vote against the closure, given the rationale of the decision, but to make the terminations socially acceptable with appropriate payments for the employees.

The role of employee representatives will evolve in the future. The codetermination status can be frozen by electing the legal form of a Societas Europaea, and an amendment of the relevant codetermination laws regarding the composition of supervisory boards for stock corporations can be expected in the mid-term to allow more flexibility. The role of work councils needs to be redefined; they have to take over more operational responsibilities, which means that the approval requirements on the operational level also need to be discussed.

CHAPTER 6
SUGGESTIONS FOR SOLVING THE PROBLEM OF CONFLICT OF INTEREST IN GERMAN SUPERVISORY BOARDS

This Chapter presents a comprehensive overview of the diverse approaches to responding to conflicts of interest and the suggestion of the author based on the study conducted. The initial focus lies on the disclosure requirement pertaining to any supervisory board member who may be impacted by a (possible) conflict of interest (Chapter 6.1). In this context, it is necessary to give particular attention to the function of the individual receiving the information about a (potential) conflict of interest, who typically is the chairperson of the supervisory board rather than the entire board. The second step involves presenting the responsive approaches to conflicts of interest, as outlined in existing scholarly literature (Chapter 6.2 for reactive solutions and Chapter 6.3 for preventive solutions). Additionally, the author makes up own recommendations for potential solutions. The academic literature currently lacks emphasis on preventive remedies; nonetheless, in-depth discussions and proposed solutions are offered in this regard. The discourse surrounding preventive measures frequently centers on the issue of ensuring the independence of supervisory board members; however, it should be noted that these measures are not synonymous. The fact that Germany has a board-level codetermination needs to be evaluated and proposals to overcome inherent conflicts of interest are developed, including both short-term and mid- and long-term perspectives (Chapter 6.4). Finally, the author gives impulses on optimizing the stock corporation law (Chapter 6.5).

6.1 Disclosure obligations regarding conflicts of interest

Initially, a member of the supervisory board must declare any conflict of interest that exists or is becoming evident unless the supervisory body is already aware of this conflict. The fiduciary duty of the supervisory board member gives rise to a corresponding obligation of disclosure, whereas an explicit provision in the law is missing but would be very useful. According to recommendation E.1 of the Code (Regierungskommission, 2022b), it is deemed adequate to disclose the information solely to the chairperson of the supervisory board, if the chairperson is unavailable or conflicted, the information should be directed toward the deputy

chairperson. Following that, the chairperson is responsible for determining the subsequent steps to be taken and typically communicates the information to the plenum, whereas this requirement is not explicitly stated in the Code. Depending on the circumstances of the scenario, the information given to the complete supervisory board may be highly irrational or unsuitable. There might be cases where a disclosure towards the chairperson is sufficient, with the responsibility of the chairperson of the supervisory board to decide, at their discretion, whether to inform the other members of the supervisory board and to what extent. An intermediate solution might be informing all members of the supervisory board of the fact that a colleague has a conflict of interest but not specifying the nature and content of the conflict of interest.

According to the Code, the report that the supervisory board gives to the general meeting should include a discussion of any conflicts of interest that have emerged and the steps that have been taken to resolve them. The required degree of detail to be disclosed is not described in the Code. If the supervisory board, as required by the Higher Regional Court of Frankfurt a. M. (OLG Frankfurt a.M., 2011) and discussed by Litzenberger (2011), discloses the conflict of interest that has arisen in detail and its resolution, this might be incompatible with the supervisory board's duty of confidentiality. Reporting on a conflict of interest, that does not contain any information that is relevant to the shareholders without giving details, is nevertheless sufficient, according to the German High Court (Bundesgerichtshof, 2013).

A clear systematic weakness is already apparent in this context. The member of the supervisory board must actively decide to disclose a conflict of interest, most likely to the chairperson of the supervisory board. There exists a lack of safeguarding mechanisms preventing a supervisory board member from following their subjective understanding of conflicts of interest or disregarding them at all, particularly when personal benefits are at stake. Furthermore, the subsequent steps to be taken and the determination on the disclosure to the entire supervisory board rest solely with an individual, the chairperson of the board, after the prior evaluation of the provided facts, which are also in the sole discretion of the chairperson. In unfavorable constellations, especially in the case of an alignment of interests, such as friendship, family relationships, or other potential motivations, the collusive interaction of the only two persons involved can ultimately lead to the consequence that a conflict of interest reported to the chairperson of the supervisory board is without consequences. To mitigate the occurrence of these negative constellations, there are several possible solutions, one of which is ensuring the permanent independence of the chairperson of the supervisory board. For this purpose, the current legislative framework of independence is

not universally applicable in all its dimensions, necessitating the enforcement of more stringent criteria for independence on the part of the chairperson of the supervisory board compared to the criteria that are currently in place. According to the author's perspective, these are the following principles that need to be additionally implemented for the supervisory board’s chairpersons: absence of shares in the company, either through direct or indirect ownership, lack of prior appointments within the organization, and absence of any consulting agreement with the company. Furthermore, it is imperative that there be no personal affiliations or connections between the chairperson and the other members of the supervisory board that extend beyond their collaborative involvement inside the board. For the chairman of the supervisory board, the job description may evolve into the profession of an independent chairperson. Additional factors to be taken into account may include the possibility of the chairperson of the supervisory board being appointed by a third-party entity, such as an independent authority like the stock exchange supervisory authority.

The interviews have shown that the corporate office and the legal department may play a vital role in the disclosure stage. In a kind of preliminary assessment, supervisory board members use this company's internal departments to get an estimation or a judgment on whether certain facts are a conflict of interest that needs to be disclosed. This helps streamline the work of the supervisory board and reduces the shyness to ask for advice. It is clear that not all companies have implemented a corporate office. If a corporate office is established in the company, these preliminary stages should be an officially allowed way to get some advice. The independence of the advice can be ensured if the in-house lawyers working for the corporate office are authorized to give such advice. The supervisory board member must have the possibility of getting this advice on a confidential basis with documentation only within the internal department. Alternatively, the supervisory board member must have the right to contact external lawyers for advice.

6.2 Reactive solutions to conflicts of interest

Once a conflict of interest has been disclosed, a decision must be made regarding how to deal with it. The law and the Code are silent on how to proceed in the event of a disclosed conflict of interest. It is common practice to specify the process in the rules of procedure for the supervisory board. For practical reasons, it may also be advisable for the supervisory board to give responsibility to a committee to analyze the conflict of interest and provide a proposal on how to handle it (Bachmann, 2023b). According to Bachmann (2023b), the

appropriate committee may be the presidential committee[32]. The interviews show that preliminary work to assess the specific case and even to provide a legal opinion is also done by the corporate office and the legal department.

In the context of the idea of a ‘flexible reaction’, a scale of measures with increasing intensity has emerged in practice for concrete conflicts of interest (Hoffmann-Becking, 2014). The supervisory board member might even be required to resign from the position. Reactions fitting to the degree of the conflict of interest might be voting bans, exclusion from certain information, a ban on participating in certain board meetings (in whole or partly) and getting access to minutes, a judicial examination of the election, or a dismissal by a court decision.

The major responsibility of the chairperson is to assess the necessary actions, including determining the applicability of a voting ban based on general legal principles or the potential limitations on a supervisory board member's participation in the board. The minimum reaction is to refrain from casting a vote on the relevant matter. The chairperson possesses the power to request that the conflicted supervisory board member refrain from attending the meeting or exit the room during the relevant agenda item, excluding the member from the prior discussion to ensure an open and unbiased discussion of the topic amongst the other members of the supervisory board. This is inevitable in all situations where the adoption of a resolution has an impact on a supervisory board member or a related party, for example, when the resolution is expected to directly benefit or harm the individual in question. In most situations, it is also necessary to make sure that this member is not given additional information, like a presentation or the relevant parts of the meeting minutes. In the event of doubt or a dispute about the right reaction to a conflict of interest, the supervisory board shall make the decision, not only the chairperson, about the exclusion of the matter from further discussion (Bachmann, 2023c).

Codetermination at the supervisory board level leads to an increase in complexity. In the scenario where a shareholder representative abstains from voting, the employee representatives possess the ability to determine the resolution through their majority without the supervisory board chairperson being able to exercise the second voting right. Bachmann (2023c) suggests that if a shareholder representative abstains from voting due to a conflict of interest, an employee representative should also abstain from voting (and vice versa). The discussion in a committee is particularly useful for preparing such solutions. There may be

[32] The presidential committee (Präsidialausschuss) of the supervisory board is the committee that is responsible for tasks that are usually the responsibility of the chairperson of the supervisory board, such as the preparation of supervisory board meetings, the coordination of committee meetings, the dialogue with the executive board.

skepticism over the efficacy of the proposed approach in its real-world application, leading to discussion about both codetermination and the second voting right of the chairperson of the board.

Just excluding supervisory board members from voting is insufficient. In cases of conflicts of interest, it is generally recommended to exclude the supervisory board member concerned from participating in discussions about the relevant matter. Additionally, it is important to restrict this individual's access to any material related to the relevant subject. Only this course of action is appropriate to ensure an uninfluenced discussion among the remaining supervisory board members and to prevent the potential misuse of confidential information. The initial step to take as a standard is to exclude the supervisory board member concerned from participation in the meetings and discussions and to exclude the individual from access to information. It automatically includes the voting ban, which is, as a stand-alone measure, not appropriate.

6.3 Preventive solutions to avoid conflicts of interest

Irrespective of the need to deal with conflicts of interest from the moment they arise, which is more comprehensively discussed in Chapter 6.1, the question arises at an earlier stage as to what extent they can and should be prevented in advance. The approach is to prevent such persons from serving on the supervisory board who are likely to become involved in conflicts of interest due to their personal circumstances. The analysis of the expert interviews revealed that this is regarded as a very effective means of avoiding conflicts of interest, and many companies make great efforts in the nomination process to exclude candidates who are more likely to have conflicts of interest. In addition to the individual approach in the supervisory board bodies or the nomination committees of the supervisory board, conceivable approaches to preventive exclusion include revising the incompatibility standards or the obstacles to appointment. These exist in both the Stock Corporation Act and the Code.

In the realm of potential conflicts of interest, it is crucial to note that non-competition obligations do not apply to members of the supervisory board (Spindler, 2023b). The specific section within the stock corporation law is explicitly limited in its application to executive board members (Bachmann, 2023a). Supervisory board members are not legally required to dedicate their professional efforts completely and exclusively to the company, and the imposition of a non-compete obligation would have implications for their primary

employment responsibilities. The regulations about the non-competition obligation for employees, as outlined in Sections 74 et seq. of the German Commercial Code (HGB), exclusively pertain to supervisory board members who also hold employment positions within the company. Consequently, these provisions hold significance for employee representatives in codetermined companies. However, a potential conflict of interest can occur because of engaging in competitive activity, necessitating the fulfillment of (at least) a disclosure obligation. While in academic literature, some authors discuss an implicit non-compete obligation that is applicable for supervisory board members, it is worth noting that the prevailing viewpoint in academic literature refutes the existence of such an obligation, hence rendering any related application implausible (Armbrüster, 1997).

The discourse about preventive solutions is also made regarding remuneration, which might be a criterion that helps to avoid conflicts of interest. Saenger (2005) proposes to synchronize the interests of supervisory board members and shareholders by means of remuneration. It is best practice that supervisory board members only get fixed salaries for their mandate. The discussion of whether a certain amount of the remuneration shall depend on performance incentives is no longer active in Germany.

6.4 Solutions to avoid conflicts of interest related to codetermination

The concept of codetermination is a politically sensitive topic in Germany. It seems unlikely that significant alterations will be made to codetermination in Germany. It is anticipated that the discourse surrounding the enhancement of the German two-tier board and codetermination will persist and potentially escalate within Germany. It is unlikely that the German corporate governance system will undergo significant, immediate changes. However, there are several compelling factors indicating that the German corporate governance model needs refinement in the near and intermediate future.

In this context, it is more promising to focus first on short-term actions:

Corporate codetermination should not include external bodies. In the German system, union representatives are required to be elected to the supervisory board. However, it shouldn´t be mandatory to elect external trade union representatives to the supervisory board unless proposed by the company's employees and confirmed through a free and confidential election process.

Currently, in Germany, it is not prohibited for individuals to be members of both the supervisory board and the works council. This situation creates inherent conflicts of interest.

In a supervisory board with equal representation of employee and shareholder representatives, it would be appropriate to forbid simultaneous membership in a works council and the supervisory board. The instrument of a mandate pause might be a solution.

In the long run, the elimination of board-level codetermination needs to be discussed (Bauer, 2017). A complete replacement would restrict employee rights; therefore, an alternative solution is necessary. Instead of a supervisory board membership for employees, a consultation council comprising employee representatives should be established. This council would have information and consultation rights concerning the representative body and the supervisory board. An alternative approach would be to redefine corporate codetermination to focus on negotiations and agreements between employees and the company. This would involve statutory regulations for negotiations, and in cases where an agreement cannot be reached, a fallback solution would be implemented. The German dualistic system, with employees one-third participation, could serve as a guide for this solution.

It is not recommended to standardize the supervisory board mandate for employees as an honorary position without liability. Instead, the duty of care owed by all supervisory board members should be based on that of a diligent and conscientious supervisor and advisor (Section 116 Sentence 1 of the German Stock Corporation Act in conjunction with Section 93 I 1 of the same Act). In this context, it is advisable to provide basic and advanced training on supervisory board activities for employees serving on the board, at the expense of the companies. Insufficiently qualified supervisory board members always pose a disadvantage.

6.5 Proposals concerning amendments to the German stock corporation law and German Corporate Governance Code regarding the resolution of conflicts of interest

The German stock corporation law itself is a result of constant change. A lot of reforms took place in the last few decades; modernization and improvement of corporate governance were always the focus of the legislators.

Given that not all companies opt for a transition into a Societas Europaea, it is imperative for the legislator to grant stock corporations increased flexibility in negotiating resolutions and greater autonomy in shaping the supervisory board. This pertains particularly to matters such as determining the size of the supervisory board and deliberating on the inclusion of union members or executive employees on the supervisory board.

The significance of board-level codetermination should not be underestimated in sociopolitical terms, particularly for German companies operating in the globalized economy. In contrast, relying solely on unions and public demonstrations to protect employee interests, as seen in France, may not be the most desirable approach. The German economy has managed the global financial crisis more effectively than several other developed nations. This accomplishment may be attributed to the successful collaboration between capital and labor. The evidence of the superiority of the board system without employee representatives over the dualistic model with codetermination, a topic frequently discussed in the corporate governance discourse, remains lacking. However, it is worth noting that the presence of employee representatives on the supervisory board might still be seen as a potential hindrance to the establishment of effective corporate governance practices. Altering the perception of employee representatives to not only represent the interests of employees but also the interests of the company could potentially influence this viewpoint. This would involve fostering collaboration between employee representatives and shareholder representatives to advance good corporate governance. This approach has the potential to significantly improve the reputation of employee representatives on the supervisory board, as well as the social status of board-level codetermination (Uffmann & Thönißen, 2022).

Companies will continue in their legitimate search for structures that enable main shareholders to retain control, exercise flexibility in their business decisions-making, and safeguard the protection of confidential information among them. This holds particular significance in the context of family-owned enterprises. There exist various sustainable organizational models that enable organizations to grow organically while maintaining autonomy and independence, rather than being influenced or controlled by external factors. Legislators continue to avoid the courageous but necessary step of abandoning the previous system of mandatory codetermination. A structurally reorganized system of codetermination that grants autonomy to codetermination would not only strengthen the national legal forms in the European competition for legal forms. It would also take proper account of the special and economically positive understanding of the main shareholders or families as company owners.

CONCLUSIONS

The main objective of this dissertation was to identify and discuss conflicts of interest in German listed companies and to formulate suggestions to reduce the risk of conflicts of interest by offering preventive and reactive solutions. Methods for assessing corporate governance through indicators and scorecards, relevant theoretical concepts of corporate governance theory, especially agency theory, as well as differences in corporate governance systems and legal frameworks are examined in the context of conflicts of interest on supervisory boards by contextualizing these factors and assessing their impact on conflicts of interest.

The study took into account the criteria of independence of supervisory board members, composition of supervisory boards, and codetermination as factors contributing to conflicts of interest.

The conclusions from the research conducted by the author are summarized in Table 16, which provides a comprehensive overview of the findings related to the hypotheses.

Table 16 – Verification of the hypotheses

	Hypothesis	Verified	Not verified
H1	The primary source of conflicts of interest within supervisory boards in German stock-listed companies is attributed to supervisory board members having personal interests arising from their secondary professional engagements or close affiliations with third parties, whereas the German system of codetermination is not the primary source for conflicts of interest within German stock-listed companies.	X	
H2	The role of the supervisory board chairperson is essential in the process of identifying and managing conflicts of interest within German stock-listed companies.	X	
H3	Implementing a structured nomination process that identifies potential candidates for the supervisory board, taking into consideration their expected qualifications and the likelihood of the absence of conflicts of interest, is an effective preventive measure.	X	
H4	An enhancement of corporate governance can be achieved through the modernization of the German codetermination system.	partly verified	

Source: author's own illustration

Avoiding conflicts of interest is of utmost importance for supervisory boards. The supervisory board sets the framework conditions for the actions of the executive board.

Therefore, conflicts of interest are harmful and there is a high risk that decisions will be made based on facts that are not aimed at the good of the company, and therefore, corporate goals will be jeopardized.

It is imperative to ensure that the supervisory board possesses adequate mechanisms to safeguard the company's best interest. The supervisory board retrospectively controls the executive board and possesses certain information and inspection privileges, as well as monitoring tools. From a forward-looking perspective, the supervisory board contributes, to some degree, to shaping company's policy. It has a duty to be loyal to the company and to act in the best interests of the company. The company's interests include a number of group interests, especially of shareholders, while prohibiting the pursuit of individual interests.

The thesis aims to present suggestions to mitigate (reduce) the risk of conflicts of interest by providing both preventive and reactive solutions. Supervisory board members are particularly exposed to conflicts of interest. The election of members of the supervisory board by shareholders and employees creates a significant risk that the members of the board will put the interests of shareholders, employees, or trade unions above the interests of the company. Since members of supervisory boards often hold positions in other companies or institutions, the interests of these people may differ from the best interests of the company. Therefore, it is an important task of each member of the supervisory board concerned, and an inherent task of the entire supervisory board, to avoid such situations by applying preventive and reactive measures. The dissertation presents starting points on how this can be done. In summary, the work explains what challenges arise in the area of avoiding conflicts of interest, and at the same time, provides professional members of supervisory boards with a set of tools to achieve this goal, as well as an impulse to further explore this research topic.

Conflicts of interest in supervisory boards of German listed companies are analyzed in this dissertation from various perspectives: (i) the general classification of conflicts of interest in the broader context of corporate governance, its development, definitions, and underlying theories; (ii) the different corporate governance systems and the existing legal framework for companies as well as national and supranational developments, the requirements of the German corporate governance code and relevant guidelines from third parties; (iii) the specificity of co-decision at board level in Germany; (iv) the correlation between conflicts of interest and independence of supervisory board members; (iv) the classification of conflicts of interest, common cases of discussed conflicts of interest and their consequences. A

questionnaire aimed at assessing the importance of conflicts of interest is discussed with members of the supervisory board and experts of the company.

In the interviews, both the company experts and the supervisory board members were also asked about the definition of conflicts of interest, the disclosure obligations, appropriate actions, avoidance strategies, the relevance of independence criteria, and their own experience. Their statements are combined with theoretical and empirical findings to identify factors determining success in avoiding conflicts of interest.

The conclusion includes key statements summarizing the most important findings of the dissertation and establishing their relationship to the research questions. The first step is to present the findings of the analysis of published reports on conflicts of interest. The practical significance of conflicts of interest was determined through interviews. The author faced difficulties in conducting the research through interviews. Only a few members of the supervisory board and company experts were willing to respond to the author's inquiry. Most of the companies or individuals who were contacted refused to participate in an interview. The majority of these companies/persons did not provide any information regarding the causes. The reasons provided include the large number of requests received, their limited availability for such requests, insufficient capability owing to their daily workload, and concerns regarding confidentiality.

This thesis shows that different definitions of conflict of interest exist. The legal regulations and the German Corporate Governance Code lack a universally applicable meaning for that term. Common for these regulations is that certain circumstances are only defined as a conflict of interest if a certain level of relevance or materiality is given. The study confirms uncertainties inside companies regarding the existence of a conflict of interest concerning an issue that has been brought forward or came to the knowledge of the supervisory board. In theory, a conflict of interest exists if a management measure is likely to affect the private or other professional interest of a member of the supervisory board in a more than insignificant way, and if taking into account this other interest could harm the interests of the company.

Practice, however, shows that the basis for a conflict of interest is a subjective assessment made by the supervisory board member who experiences the conflict.
The assessment of whether members of the supervisory board perceive themselves as having conflicts of interest in a given situation depends on their subjective assessment and is largely dependent on the personal view and reflections of the members of the supervisory board.

Hence, it is possible that conflicts of interest will not be disclosed, which may influence the decision-making of a given member of the supervisory board in accordance with his or her own interests.

These considerations, especially that supervisory board members with conflicting personal or professional interests may act detrimentally to the company's interests, necessitate maintaining a legal framework for identifying and managing such conflicts of interest. Within a given corporate governance framework, there are two basic ways to address this problem: addressing and resolving conflicts of interest that have occurred and implementing suitable measures for preventing conflicts of interest, especially in the nomination process, which is closely linked to the independence criteria of supervisory board members. Furthermore, it is crucial to evaluate the existence of additional strategies for mitigating conflicts of interest. Therefore, rethinking the corporate governance framework is a promising approach and includes rethinking both the concept of codetermination as well as the stock corporation law.

Furthermore, the findings of this dissertation show that supervisory boards may need professional advice and support as well as soft skills to address conflicts of interest. Mediation could be an instrument or an anonymous advice. The lessons that can be drawn for practical application are that strong, independent board members with good communication skills and the courage to speak out are essential to achieve the goal of further professionalizing supervisory boards by avoiding conflicts of interest. This is of great importance for nomination committees and the process of selecting new supervisory board members. Evidence shows that the problem of conflicts of interest cannot be completely resolved, even preventive solutions cannot completely resolve them, because a company's activities can always lead to unforeseen circumstances. The primary goal of the professional work of the supervisory board must be to implement mechanisms that limit conflicts of interest as much as possible. Avoiding conflicts of interest between members of the supervisory board is an interdisciplinary research topic at the intersection of economic and legal research on corporate governance.

The main goal of this dissertation is to conceptualize preventive and reactive solutions, both from an economic and legal perspective. As the research topic is subject to dynamic changes, the developed analytical framework offers future research an instrument to identify further modifications to German corporate governance, with particular emphasis on avoiding conflicts of interest.

In addition, the dissertation offers starting points for transferring the findings to one-tier corporate governance systems and non-listed corporations. The findings cannot be applied in the same way, but they can provide an analytical starting point.

The dissertation also introduces supervisory board chairs as important communicators in the context of conflicts of interest. Research on corporate governance and the added value provided by a well-thought-out composition of supervisory boards is constantly developing.

Many suggestions can be drawn from the study for improving corporate governance in German listed companies in terms of avoiding conflicts of interest. Suggestions include revising disclosure obligations regarding conflicts of interest. These obligations must be legally binding and contain precise definitions or examples of conflicts of interest, as well as the minimum required information to be disclosed.

Another important element in solving the problem of conflicts of interest is the implementation of reactive and preventive measures. Responding to a conflict of interest requires clarity about the appropriate addressee; there is a need to access legal advice for an initial assessment; or a committee is needed to manage conflicts of interest. A significant preventive measure is to focus on finding candidates for the supervisory board who face a low risk of conflicts of interest. A structured program for new supervisory board members has to be defined to onboard them and to familiarize them with the rules and processes, such program needs to address the issue of conflict of interest, so that the newly appointed member of the supervisory board is aware of the requirements in the event of a conflict of interest.

The concept of the independence criteria needs revision; a stricter approach is necessary. The adoption of the codetermination law might also be a solution to prevent conflicts of interest and it is necessary to eliminate the unacceptable simultaneous holding of a high managerial position and membership in the supervisory board. Finally, medium and long-term solutions should be considered through reform of German stock corporation law and an example for this reform could be the law applicable to Societas Europaea, which provides flexibility for codetermination.

The details of these recommendations are described in the following section.

1. The initial disclosure of a (potential) conflict of interest is essential to taking further steps and is seen as part of the fiduciary duty or loyalty obligation of supervisory board members. Disclosure obligations are currently only governed by the Code. Binding legal regulation would emphasize the importance of the

disclosure obligation and must include a definition and examples of conflicts of interest, such as independence criteria.

2. There are no rules for communicating potential conflicts of interest as a non-conflicted supervisory board member, consequently, it is in the discretion of each individual supervisory board member to decide whether to report potential conflicts and to whom. Reporting of other supervisory board member's conflicts is a particular challenge for individual members of the supervisory board, therefore it is necessary to adapt the internal organizational structures and procedures of the supervisory board regarding speaking out in the events of suspected conflicts of interest and, consequently, to avoid them. In this context, the limitations of this approach are obvious and should also be mentioned: the conflict of interests is not always obvious enough for clear communication between members of the supervisory board to lead to the expected result of implementing appropriate actions.
3. The addressee of the conflict of interest is important for the appropriate response to this conflict of interest. Currently, reporting to the chairperson of the supervisory board is seen as sufficient. The chairperson faces a high degree of responsibility in the further handling of this conflict of interest. Therefore, to avoid collusive behavior, the independence of the chairperson of the supervisory board must be ensured. The author suggests stricter independence criteria for the chairperson, such as the absence of shares in the company, either through direct or indirect ownership, no previous nominations (appointments) in the organization, the lack of any consulting agreement with the company and the lack of personal connections or connections between the chairman and other members of the supervisory board. In a medium or long-term approach, the legislator should decide on the evolution of the profession of an independent chairperson or the mandatory appointment of the chairperson by a third party, e.g. an independent body such as the Stock Exchange Authority.
4. The details of the obligations concerning disclosure of information are not specified. Therefore, the minimum requirement concerning the written report of the supervisory board and the statement on the application of corporate governance principles should be the obligation of the company to disclose relevant information about conflict of interest. It is the task of the legislator to define the disclosure

details. The information that is given orally to the annual general meeting is not seen as sufficient as it is not replicable.

5. For a preliminary assessment of potential conflicts of interest and their consequences, the supervisory board members must have the possibility to contact the corporate office or the legal department of the company, or alternatively, external lawyers, on a confidential basis. This entails allocating financial resources for the engagement of external legal professionals, as well as the establishment of a systematic procedure to protect confidentiality inside the organization and all involved departments.
6. In some situations, it is reasonable (prudent) to assign responsibility for managing conflicts of interest to a committee. This may potentially be important in the composition of the supervisory board whose members are relatives or representatives of major shareholders (related parties). The committee must be composed of members independent from related parties.
7. Reactive solutions to disclosed conflicts of interest usually start with a voting ban but without further exclusion from information. The author argues that this is an insufficient action. It is necessary to ensure that this member does not receive additional information, such as presentations or certain parts of the minutes of the meeting. If the person concerned is excluded from information, a voting ban is the necessary consequence of getting no information.
8. The study provides evidence that the nomination process is quite significant in preventing conflicts of interest. There are different ways to find potential candidates for supervisory board positions and methods to identify prospective candidates for positions on the supervisory board. If external consultants make recommendations, they are responsible for conducting the first assessment. However, this does not release the nomination committee and the supervisory board from their duty to evaluate the candidate's eligibility.

   It is necessary to create a well-defined profile of the potential candidate, taking into account the expectations of the supervisory board towards the candidate as well as regarding various scenarios that may cause a conflict of interest. This includes topics such as the admission or exclusion of representatives of competing companies from consideration. When sourcing potential candidates from their network, the requirements should be even more stringent.

9. The onboarding phase is a period during which newly appointed members of the supervisory board undergo training regarding internal processes and the procedures for dealing with conflicts of interest in the case they arise, amongst other topics. The onboarding process also includes an element of legal training. The responsibility of coordinating the onboarding process lies within each company. According to the findings of the study, all interviewed companies conduct onboarding activities. The assertion that all listed companies follow this practice lacks validity, and no conclusions can be drawn about how onboarding is carried out in other companies. One potential strategy to promote professionalism in the onboarding process could be to require mandatory disclosure of such activities.
10. Meeting the independence criteria cannot guarantee the prevention of conflicts of interest, especially since it is assumed (accepted) that a certain number of members of the supervisory board are not independent. A revision of this concept is necessary:
    a. The notion that an individual's independence is compromised after being a member of the supervisory board for 12 years is criticized. In particular, proxy advisor voting guidelines may result in the departure of highly competent members from the supervisory board who still have the potential to make significant contributions to the board's effectiveness. A balanced combination of fresh energy and senior expertise is more important. Hence, it is recommended to permit extended terms of 12 years of service in the supervisory board without compromising the notion of independence. However, this provision should be limited to a particular proportion of supervisory board members.
    b. The author suggests stricter independence criteria for the chairperson of the supervisory board; details are provided in suggestion no. 3: no ownership of company shares, no prior mandates within the organization, no consulting agreement, and no personal affiliations, a mid- or long-term approach should additionally be to evolve the profession of an independent chairperson or to mandate them by a third party.
    c. The permitted number of non-independent supervisory board members needs to be reduced. Currently, the Code defines that more than half of the shareholder representatives shall be independent from the company and the

executive board. If the company has a controlling shareholder, and the supervisory board comprises more than six members, at least two shareholder representatives shall be independent of the controlling shareholder. If the supervisory board comprises six members or less, at least one shareholder representative shall be independent from the controlling shareholder. In cases where there is a controlling shareholder, the same proportion should be valid: for all independence criteria, the definition can be changed in such a way, that more than half of the shareholder representatives should be independent.

d. Former executive board members are required to observe a cooling-off period of two years. Exceptions should be completely banned. Moreover, those who have previously served on the executive board should not be considered qualified for the position of supervisory board chairperson, because the chairperson holds the privilege of having a double voting right which grants disproportionate influence over decision-making in the supervisory board compared to other supervisory board members.

11. Although, precautionary measures in cases of doubt about the existence of a conflict of interest are currently not provided, neither in the legal framework nor in the Code, they are quite common in practice. Managing conflicts of interest on supervisory boards would be easier by including preventive measures in the Code of Good Practice or relevant legal provisions. Precautionary measures should be permitted in cases where there is uncertainty about the assessment of certain circumstances that may constitute a potential conflict of interest.
12. Codetermination is a fundamental element of the German two-tier corporate governance system, and its elimination is not a desirable goal in Germany. The primary goal is therefore to improve the codetermination system at board level, one proposal is to eliminate the mandatory requirement for the election of union representatives.

    To reduce conflicts of interest, simultaneous holding of membership (leading position) in the works council and the supervisory board should be eliminated. A temporary suspension of the leading position in the works council could be considered a suitable measure. In the context of longer-term considerations, potential alternatives to codetermination at board level could include the establishment of an advisory (consultation) board and a review of the powers and

responsibilities granted to the works council to mitigate any potential shortcomings in the protection of workers' rights.

13. The German corporation law is subject to continuous reform. In anticipation of an upcoming reform, it cannot be excluded that the legislator will consider granting stock corporations the option of maintaining the current level of co-determination. At the very least, it is important to ensure companies and employee representatives a significant flexibility in negotiations regarding the composition and structure of the supervisory board. The provisions applicable to Societas Europaea could serve as a solid foundation for this approach.
14. The German legislature should not ignore developments taking place in the European context. Maintaining a competitive legal framework for businesses is important to encourage companies to choose Germany as their preferred location for incorporation. Of course, not only the advantages or disadvantages of joint-stock companies in the German legal system are important. In a holistic approach, a comprehensive analysis should also consider accompanying variables, such as the tax system, the job market, subsidies, and other factors. One crucial aspect of attractiveness for investors might be the presence of a rather moderate level of codetermination.

Conflicts of interest will always exist, even if strong preventive measures are established, due to the nature of a company's business, which can always give rise to unforeseen circumstances. The aforementioned preventive and reactive actions, integrated into the broader discussion of corporate governance and a new thinking of codetermination on the board level, can be considered the primary goal of self-organization of supervisory boards.

REFERENCES

Abdullah, H., & Valentine, B. (2009). Fundamental and Ethics Theories of Corporate Governance. *Middle Eastern Finance and Economics*, *73*(3). https://doi.org/10.1103/PhysRevA.73.033420

Achleitner, A.-K., Braun, R., Kaserer, C., Jarchow, S., Keppler, H., & Szewczyk, J. (2019). *Börsennotierte Familienunternehmen in Deutschland - Bedeutung, Merkmale, Performance*. Retrieved from https://www.familienunternehmen.de/media/public/pdf/publikationen-studien/studien/Boersennotierte-Familienunternehmen-in-Deutschland_Studie_Stiftung-Familienunternehmen_2019.pdf

Ackermann, H.-C., & Klein, R. (2015). a) Geschichte der Unternehmensmitbestimmung. In A. Braun & G. Wisskirchen (Eds.), *Konzernarbeitsrecht* (1st ed.). München: Verlag C.H. Beck oHG.

Adair, P., & Adaskou, M. (2015). Trade-off theory vs. Pecking order theory and the determinants of corporate leverage: Evidence from a panel data analysis upon french SMEs (2002–2010). *Cogent Economics and Finance*, *3*(1). https://doi.org/10.1080/23322039.2015.1006477

Addison, J. T., Bellmann, L., & Schnabel, C. (2021). The Long Awaited Reform of the German Works Constitution Act. *SSRN Electronic Journal*, (1). https://doi.org/10.2139/ssrn.299682

Adomeit, K. (1998). Euro-Geld , Euro-Arbeit , Euro-Recht. *Neue Juristische Wochenschrift*, (28), 2021–2024.

Afza, T., & Nazir, M. S. (2014). Theoretical perspective of corporate governance: a review. *EuropeanJournal of Scientific Research*, *119*(2), 255–264.

https://doi.org/10.1504/ijca.2020.105065

Aguilera, R. V., & Desender, K. A. (2012). *Challenges in the Measuring of Comparative Corporate Governance: A Review of the Main Indices*. *8387*(June 2014), 289–322. https://doi.org/10.1108/s1479-8387(2012)0000008014

Aguilera, R. V., Goyer, M., & Kabbach de Castro, L. R. (1977). Regulation and comparative corporate governance. In *The Oxford Handbook of Corporate Governance*.

Al-Wraikat, N. M. (2014). *Interessenkonflikte im Aufsichtsrat bei Mehrfachmandaten im faktischen Aktienkonzern*.

Albach, H. (1981). Verfassung folgt Verfassung. Ein organisationstheoretischer Beitrag zur Diskussion um die Unternehmensverfassung. In K. Bohr, J. Drukarcyk, H.-J. Drumm, & G. Scherrer (Eds.), *Unternehmensverfassung als Problem der Betriebswirtschaftslehre* (pp. 53–79). Berlin.

Almaschhadani, H. A., & Almashhadani, M. (2023). Corporate Governance Science, Culture and Financial Performance. *International Journal of Business and Management Invention*, *11*(2), 55–60.

Altman, K. (2010). Current Corporate Governance Trends in Germany. *Harvard Law School Forum on Corporate Governance*, 1–6.

Ampenberger, M. (2010). *Unternehmenspolitik in börsennotierten Familienunternehmen*. https://doi.org/https://doi.org/10.1007/

Andreas, J. M., Rapp, M. S., & Wolff, M. (2012). Determinants of director compensation in two-tier systems: Evidence from German panel data. *Review of Managerial Science*, *6*(1), 33–79. https://doi.org/10.1007/s11846-010-0048-z

Andrews, F. (1977). Management: Drafting a New Constitution for Corporations. *New York Times*, p. 91. Retrieved from https://www.nytimes.com/1977/04/22/archives/management-the-first-draft-of-a-new-

constitution-for-corporations.html

Annuß, G. (2023). MitbestG § 3 Arbeitnehmer und Betrieb. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Antunes, J. E., Baums, T., Clarke, B., Conac, P.-H., Enriques, L., Hanák, A., … Wymeersch, E. (2011). *Report of the Reflection Group on the Future of EU Company Law*. Retrieved from http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf%0Ahttps://papers.ssrn.com/sol3/papers.cfm?abstract_id=1851654

Aoki, M. (2001). Toward a comparative institutional analysis. *MIT Press*.

Armbrüster, C. (1997). Wettsbewerbsverbote im Kapitalgesellschaftsrecht. *Zeitschrift Für Wirtschaftsrecht Und Insolvenzpraxis*, 1269.

Armour, J., Hansmann, H., Kraakman, R., & Pargendler, M. (2017). What Is Corporate Law? *The Anatomy of Corporate Law*, *5349*, 1–28. https://doi.org/10.1093/acprof:oso/9780198739630.003.0001

Bachmann, G. (2023a). DCGK Abs. Grds20 Grundsatz 20 [Interessenwahrungspflicht]. In T. Kremer, G. Bachmann, D. Favoccia, & A. v. Werder (Eds.), *Deutscher Corporate Governance Kodex* (9th ed.). München: Verlag C.H. Beck oHG.

Bachmann, G. (2023b). DCGK E.2 [Interessenkonflikte]. In T. Kremer, G. Bachmann, D. Favoccia, & A. v. Werder (Eds.), *Kommentar zum Deutschen Corporate Governance Kodex* (9th ed.). München: Verlag C.H.Beck oHG.

Bachmann, G. (2023c). DCGK E.2 [Interessenkonflikte]. In T. Kremer, G. Bachmann, D. Favoccia, & A. v. Werder (Eds.), *Deutscher Corporate Governance Kodex* (9th ed.). München: Verlag C.H. Beck oHG.

Bachmann, G. (2023d). Teil 2. Einleitung. In T. Kremer, G. Bachmann, D. Favoccia, & A. v. Werder (Eds.), *Deutscher Corporate Governance Kodex* (9th ed.). München: Verlag

C.H.Beck oHG.

Backhaus, R. (2020). Das interne Verfahren zur Bewertung von Geschäften mit nahestehenden Personen (Related Party Transactions) gemäß § 111 a II 2 AktG. *Neue Zeitschrift Für Gesellschaftsrecht*, (18), 695–702.

Baker, M., & Wurgler, J. (2002). Market Timing and Capital Structure. *The Journal of Finance*, *LVII*(1), 1–32.

Bälz, M. (2019). Zur Kodifizierung des deutschen Handelsrechts. *Toyo University Repository for Academic Resources*, *62*(3), 255–272. Retrieved from http://id.nii.ac.jp/1060/00010351/

Bauer, J.-H. (2017). Unternehmensmitbestimmung 4.0. *NZA-Beilage*, (3), 85–89.

Baums, T. (2001). Bericht der Regierungskommission Corporate Governance. *Drucksache*. https://doi.org/10.9785/9783504385484

Bayer, W. (2016). Die Erosion der deutschen Mitbestimmung. *Neue Juristische Wochenschrift*, 1930–1936.

Baysinger, B. D., & Butler, H. N. (1985). Corporate governance and the board of directors: Performance effects of changes in board composition. *Journal of Law, Economics, & Organisation*, *1*(1), 101–124. https://doi.org/10.1093/oxfordjournals.jleo.a036883

Bazantova, I. (2015). The emergence and development of corporate governance as an economic and institutional phenomenon. *Journal of International Scientific Publications*, *9*, 167–178.

Bender, C., & Vater, H. (2003). Lückenhaft und unverbindlich - Der Deutsche Corporate Governance Kodex lässt auch nach der Überarbeitung wichtige Kernprobleme der Unternehmensüberwachung ungelöst. *Deutsches Steuerrecht (DStR)*, Vol. 42, pp. 1807–1812.

Berghe, L. van den. (2002). *Corporate Governance in a Globalising World: Convergence or*

Divergence? A European Perspective (Vol. 148). Kluwer Academic Publishers.

Berglöf, E. (1997). Reforming corporate governance: Redirecting the European agenda. *Economic Policy*, *12*(24), 91–123. https://doi.org/10.1111/1468-0327.00017

Berle, G. C., & Means, A. A. J. (1933). *Modern Corporation & Private Property* (Vol. 30). Macmillián Co.

Berliner Initiativkreis. (2000). German Code of Corporate Governance (GCCG). *Der Betrieb*, 1573–1581.

Bermig, A. (2012). *German Supervisory Board Size and Composition – A Detailed Evaluation of their Effects on Performance, Earnings Management and Cash Holdings*. Retrieved from http://d-nb.info/1036553361/34

Binder-Tietz, S. (2022). Die Kommunikation von Aufsichtsratsvorsitzenden. In *Kommunikation von Aufsichtsratsvorsitzenden*. https://doi.org/10.1007/978-3-658-37717-5_5

Block, D., & Gerstner, A.-M. (2016). One-Tier vs. Two-Tier Board Structure: A Comparison Between the United States and Germany. *Comparative Corporate Governance and Financial Regulation*, *1*.

Boehmer, E. (2005). Corporate Governance in Germany: Institutional Background and Empirical Results. *SSRN Electronic Journal*, (78). https://doi.org/10.2139/ssrn.157823

Brennan, N. M., & Solomon, J. (2008). Corporate governance, accountability and mechanisms of accountability: An overview. *Accounting, Auditing & Accountability Journal*, *21*(7), 885–906. https://doi.org/10.1108/09513570810907401

Brose, P. (1984). Erkenntnisstand und Perspektiven von Unternehmensverfassungen aus interdisziplinärer Sicht. *Die Aktiengesellschaft*, *26*, 38–48.

Brugger, F. (2020). Deutscher Corporate Governance Kodex. *Neue Zeitschrift Für Gesellschaftsrecht*, 281–285. https://doi.org/10.1007/978-3-322-90505-5_22

Brühl, V. (2022). Ein Jahr DAX 40 – weitere Verbesserungen sind erforderlich (One Year DAX 40 – Further Improvements are Necessary. *SSRN Electronic Journal*, (681). https://doi.org/10.2139/ssrn.4220234

Bundesgerichtshof. (1982). Ausgliederung des wertvollsten Teilbetriebs ohne Zustimmung der Hauptversammlung. *Neue Juristische Wochenschrift*, *31*, 1703–1708.

Bundesgerichtshof. Zuziehung eines Sachverständigen durch Aufsichtsratsmitglied bei Einsicht in Abschlußprüfungsbericht. , 18 Neue Juristische Wochenschrift 991–993 (1983).

Bundesgerichtshof. (1991). Beratungsvertrag mit Aufsichtsratsmitglied. *Neue Juristische Wochenschrift*, *29*, 1830–1833.

Bundesgerichtshof. (2004). Ungeschriebene Mitwirkungsbefugnisse der Hauptversammlung - Gelatine. *Neue Zeitschrift Für Gesellschaftsrecht*, *12*, 575–580.

Bundesgerichtshof. (2006). Anspruch der Gesellschaft auf Rückgewähr der Beratungsvergütung eines Aufsichtsratsmitglieds. *Neue Zeitschrift Für Gesellschaftsrecht*, (18), 712–716.

Bundesgerichtshof. (2009a). Aussetzung der Umschreibung vor Hauptversammlung und Entlastung bei fehlerhafter Entsprechenserklärung – Umschreibungsstopp. *Neue Zeitschrift Für Gesellschaftsrecht*, (32), 1270–1273.

Bundesgerichtshof. (2009b). Kirch / Deutsche-Bank - Entlastungsbeschlüsse betreffend Vorstand und Aufsichtsrat nichtig. *Neue Zeitschrift Für Gesellschaftsrecht*, (9), 342–350.

Bundesgerichtshof. (2013). Anfechtbarkeit von Entlastungsbeschlüssen bei unzureichender Mitteilung von Interessenkonfliken im Aufsichtsratsbericht. *Neue Zeitschrift Für Gesellschaftsrecht*, (20), 783–784.

Bundesgerichtshof. (2019). Wahl des Aufsichtsratsmitglieds unter Abweichung von Kodex-

Empfehlungen. *Neue Juristische Wochenschrift*, 669–676.

Bundesministerium für Familie Senioren Frauen und Jugend. (2022). Bundesregierung stimmt der EU-Führungspositionen-Richtlinie zu. Retrieved from https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/bundesregierung-stimmt-der-eu-fuehrungspositionen-richtlinie-zu-198786

Bundesregierung. (2020). *Aktionsplan der Bundesregierung zur Bekämpfung von Bilanzbetrug und zur Stärkung der Kontrolle über Kapital- und Finanzmärkte*.

Bundestag. (1970). *Drucksache VI/334*.

Bundestag. (2005). *Gesetz über die Offenlegung von Vorstandsvergütungen (Vorstandsvergütungs-Offenlegungsgesetz - VorstOG)*.

Bundestag. (2019). *Drucksache 19/9739*. Retrieved from https://dip21.bundestag.de/dip21/btd/19/134/1913452.pdf

Bundesverfassungsgericht. (2000). BVerfG: Einschränkung des Rede- und Fragerechts in der Hauptversammlung („Wenger / Daimler-Benz"). *Neue Zeitschrift Für Gesellschaftsrecht*, *4*, 192–194.

Bunz, T. (2011). Die Business Judgment Rule bei Interessenkonflikten im Kollegialorgan. *Neue Zeitschrift Für Gesellschaftsrecht*, *14*(33), 1294–1297.

Bunz, T. (2014). Vorbereitungs- und Reaktionsmöglichkeiten börsennotierter Unternehmen auf Shareholder Activism. *Neue Zeitschrift Für Gesellschaftsrecht*, (27), 1049–1053.

Busch, D., & Link, S. P. (2023a). DCGK C08 C.8. In N. Ghassemi-Tabar (Ed.), *Deutscher Corporate Governance Kodex: DCKG* (2nd ed.). München: Verlag C.H.Beck oHG.

Busch, D., & Link, S. P. (2023b). DCGK D07 D.7. In N. Ghassemi-Tabar (Ed.), *Deutscher Corporate Governance Kodex: DCGK* (2nd ed.). München: Verlag C.H.Beck oHG.

Busch, D., & Link, S. P. (2023c). DCGK E01 E.1. In N. Ghassemi-Tabar (Ed.), *Deutscher Corporate Governance Kodex: DCKG* (2nd ed.). München: Verlag C.H.Beck oHG.

Cadbury, A. (1992). *Report of the Committee on the Financial Aspects of Corporate Governance*.

Cadbury, A. (2002). *Corporate Governance and Chairmanship: A Personal View*. New York: Oxford University Press Inc.

Cahn, A. (2023). Die Leitung der Aktiengesellschaft durch den Vorstand. *Neue Zeitschrift Für Gesellschaftsrecht*, (13), 299–302.

CalPERS. (2019). *Governance & Sustainability Principles*. (09/19).

Campagna, S., Eulerich, M., Fligge, B., Scholz, R., & Vitols, S. (2020). Entwicklung der Wettbewerbsstrategien in deutschen börsenorientierten Unternehmen: Der Einfluss der Mitbestimmung auf die strategische Ausrichtung und deren Performanz. *Mitbestimmungsreport*, (57).

Cannon, T. (1994). *Corporate Responsibilities a Textbook on Business Ethics, Governance, Environment: Roles and Responsibilities.*

Cheffins, B. R. (2012). The History of Corporate Governance. *SSRN Electronic Journal*.

Cheffins, B. R., & Berwin, S. J. (2000). Corporate Governance Reform: Britain as an Exporter. *Corporate Governance and the Reform of Company Law*, *8*(1).

Cheffins, B. R., & Reddy, B. V. (2022). Thirty years and done – Time to abolish the UK Corporate Governance Code. *ECGI Law Working Paper*. https://doi.org/10.1080/14735970.2022.2140496

Chumtong, J., & Kaldewey, D. (2017). *Beyond the Google ngram viewer: Bibliographic databases and journal archives as tools for the quantitative analysis of scientific and meta-Scientific concepts*. Bonn.

Claessens, S. (2011). Corporate Governance and Development. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.642721

Claessens, S., & Yurtoglu, B. B. (2012). Corporate Governance and Development: An

Update. *Global Corporate Governance Forum*. Retrieved from ssrn: https://ssrn.com/abstract=2061562

Coase, R. H. (1937). *The Nature of the Firm*. Retrieved from http://mobile.kwansei.ac.jp/s_hws/attached/0000052629.pdf%5Cnhttp://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:No+Title#0

Coffee, J. C. (1999). The future as history: The prospects for global convergence in corporate governance and its implications. *Northwestern University Law Review*, *93*(3), 641–707. https://doi.org/10.2139/ssrn.142833

Coffee, J. C. (2005). A theory of corporate scandals: Why the USA and Europe differ. *Oxford Review of Economic Policy*, *21*(2), 198–211. https://doi.org/10.1093/oxrep/gri012

Commission of the European Communities. (2009). 2009/385/EC. *Official Journal of the European Union*, Vol. 52, pp. 28–31.

Conway, M. (2003). *The Combined Code on Corporate Governance*. 1–86. Retrieved from papers2://publication/uuid/0E375975-09FD-4407-888C-491D6C5A9EA1

Cosma, S., Mastroleo, G., & Schwizer, P. (2018). Assessing corporate governance quality: substance over form. *Journal of Management and Governance*, *22*(2), 457–493. https://doi.org/10.1007/s10997-017-9395-3

Council of the European Union. (2013). *Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)*. Retrieved from https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006R1881:20100701:EN:PDF

Cromme, G. (2001). *Ausführungen von Dr. Gerhard Cromme Vorsitzender der Regierungskommission Deutscher Corporate Governance-Kodex anlässlich der Veröffentlichung des Entwurfs Deutscher Corporate Governance-Kodex am 18 . Dezember 2001 in Düsseldorf*.

Cromme, G. (2002). *Ausführungen von Dr . Gerhard Cromme Vorsitzender der Regierungskommission Deutscher Corporate Governance-Kodex anlässlich der Pressekonferenz nach Übergabe des Deutschen Corporate Governance-Kodex*.

Dallas, G., & Pitt-Watson, D. (2016). *Corporate governance policy in the European Union*.

Davis, J. H., Schoorman, F. D., & Donaldson, L. (1997). Toward a Stewardship Theory of Management. *The Academy of Management Review*, *22*(1), 20–47. Retrieved from https://www.jstor.org/stable/259223

De La Rosa, G. E., & Shopovski, J. (2013). Directors' Conflicts of Interest: Different European Legal Perspectives. *Beijing Law Review*, *04*(04), 174–179. https://doi.org/10.4236/blr.2013.44022

de Villiers, C., & Dimes, R. (2021). Determinants, mechanisms and consequences of corporate governance reporting: a research framework. *Journal of Management and Governance*, *25*(1), 7–26. https://doi.org/10.1007/s10997-020-09530-0

Deckert, M. (1997). Beratungsverträge mit Aufsichtsratsmitgliedern. *WiB*, 561.

Deckert, M. (2000). Zu Harmonisierungsbedarf und Harmonisierungsgrenzen im Europäischen Gesellschaftsrecht. *The Rabel Journal of Comparative and International Private Law*, 478–496.

Denis, D. K., & McConnell, J. J. (2001). International Corporate Governance. *Journal of Financial and Quantitative Analysis*, (17).

Diekmann, H., & Bidmon, K. (2009). Das „unabhängige" Aufsichtsratsmitglied nach dem BilMoG – insbesondere als Vertreter des Hauptaktionärs. *Neue Zeitschrift Für Gesellschaftsrecht*, (28), 1087–1092.

Donaldson, T., & Preston, L. (1995). The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications. *The Academy of Management Review*, *20*(1), 65–91.

Döring, R. (2020). Unternehmensmitbestimmung. In I. Grobys & A. Panzer-Heemeier (Eds.),

StichwortKommentar Arbeitsrecht (3rd ed., pp. 1–167). Baden-Baden: Nomos Verlagsgesellschaft.

Dragomir, V.-D. (2008). Highlights For A History of Corporate Governance. *European Journal of Management*, *2008*, 1–12.

Dribbusch, H., & Birke, P. (2019). Gewerkschaften in Deutschland. In *Internationale Politikanalyse*. https://doi.org/10.1007/978-3-322-83344-0_2

Drobetz, W., Schillhofer, A., & Zimmermann, H. (2005). Corporate Governance and Expected Stock Returns: Evidence from Germany. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.379102

Drukarczyk, J., & Schueler, A. (2003). Der Fall Holzmann - Ein Beispiel über den Nutzen einer kapitalgeberorientierten Performance-Messung. In A. W. Rathgeber (Ed.), *Finanzwirtschaft, Kapitalmarkt und Banken, Festschrift für Prof. Dr. Manfred Steiner*. https://doi.org/965955672

du Plessis, J. J., Großfeld, B., Luttermann, C., Saenger, I., Sandrock, O., & Casper, M. (2017). German corporate governance in international and European context: Third edition. In *German Corporate Governance in International and European Context: Third Edition*. https://doi.org/10.1007/978-3-662-54198-2

du Plessis, J. J., & Low, C. K. (2017). Corporate Governance Codes for the 21st Century: International Perspectives and Critical Analyses. In *Corporate Governance Codes for the 21st Century: International Perspectives and Critical Analyses*. https://doi.org/10.1007/978-3-319-51868-8

du Plessis, J. J., & Sandrock, O. (2005). The rise and fall of supervisory codetermination in Germany? *International Company and Commercial Law Review*, (2), 67–79.

DVFA e.V. (2023). DVFA Scorecard for Corporate Governance. Retrieved from https://dvfa.de/2023/dvfa-scorecard-for-corporate-governance-auswertung-2023-

ueberzeugende-ergebnisse-und-weiterer-verbesserungsspielraum/

Elliott, J. E. (2000). Adam Smith's conceptualization of power, markets, and politics. *Review of Social Economy*, *58*(4), 429–454. https://doi.org/10.1080/00346760050204292

Eulerich, M., & Welge, M. K. (2010). *Strategische Unternehmensüberwachung durch den mitbestimmten Aufsichtsrat in Krisenzeiten: Eine empirische Untersuchung der Überwachungspraxis von Arbeitnehmer- und Arbeitgebervertretern in DAX-Unternehmen*. Düsseldorf.

European Commission. (2003). *Communication from the Commission to the Council and the European Parliament - Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward*. 147–173.

European Commission. (2005). Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC). *Official Journal of the European Union*, *L52*(2003), 51–63.

European Commission. (2010). *Green Paper - Corporate governance in financial institutions and remuneration policies.* 1–19. Retrieved from http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf

European Commission. (2011). The EU corporate governance framework. *Green Paper*.

European Commission. (2012). *Action Plan: European company law and corporate governance from 12.12.2012*.

European Commission. (2018). *Commission Implementing Regulation (EU) 2018/1212*. *2016*(68), 48–119.

European Parliament and the Council of the European Union. (2020). Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020. *Official Journal of the European Union*, *L198/13*(22.06.2020).

European Parliament and the Council of the European Union. (2022). Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures. *Official Journal of the European Union*, *L315/44*(07.12.2022). Retrieved from http://data.europa.eu/eli/dir/2022/2381/oj

European Union. (n.d.). White Paper. Retrieved from EUR-Lex website: https://eur-lex.europa.eu/EN/legal-content/glossary/white-paper.html

Farrar, J. H. (1999). A Brief Thematic History of Corporate Governance. *Bond Law Review*, *11*(2). https://doi.org/10.53300/001c.5331

Fest, T. (2023). Die rechtliche Stellung des Vorstands nach § 76 I AktG. *Juristische Schulung*, *4*, 304–308.

Fifka, M. S., Classen, D., & Meyer, J. (2013). Encyclopedia of Corporate Social Responsibility. In *Encyclopedia of Corporate Social Responsibility*. https://doi.org/10.1007/978-3-642-28036-8

Filatotchev, I., Jackson, G., Gospel, H., & Allcock, D. (2007). *Key Drivers of "Good" Corporate Governance and the Appropriateness of UK Policy Responses*. Retrieved from http://libdcms.nida.ac.th/thesis6/2010/b166706.pdf

Financial Reporting Council. (2018). *The UK Corporate Governance Code*.

Financial Reporting Council. (2024). FRC Revises UK Corporate Governance Code. Retrieved from https://www.frc.org.uk/news-and-events/news/2024/01/frc-revises-uk-corporate-governance-code/

Fleckner, A. M., & Hopt, K. J. (2012). Stock Exchange Law: Concept, History, Challenges. *SSRN Electronic Journal*, (14). https://doi.org/10.2139/ssrn.2068574

Fleischer, H. (2004). Ungeschriebene Hauptversammlungszuständigkeiten im Aktienrecht : Von „Holzmüller" zu „Gelatine". *Neue Juristische Wochenschrift*, (33), 2335–2339.

Fleischer, H. (2012). Zur Rolle und Regulierung von Stimmrechtsberatern (Proxy Advisors)

im deutschen und europäischen Aktien- und Kapitalmarktrecht. *Die Aktiengesellschaft*, 2–11.

Forster, K. H. (1995). Schneider, Balsam und die Folgen - was können Aufsichtsräte und Abschlussprüfer gemeinsam tun? *Die Aktiengesellschaft*, *40*, 1–7.

Frankel, T. (1984). The Business Judgement Rule. *Ohio State Law Journal*, *45*(615).

Freeman, R. E. (2015). Strategic management: A stakeholder approach. In *Strategic Management: A Stakeholder Approach*. https://doi.org/10.1017/CBO9781139192675

Freund, S. (2023). Unternehmerische Entscheidungen in Zeiten der Unsicherheit. *Neue Zeitschrift Für Gesellschaftsrecht*, (14), 635–641.

Friedeborn, J. (2022). Unternehmensmitbestimmung bei formwechselnder Umwandlung in eine SE. *Neue Zeitschrift Für Gesellschaftsrecht*, 9–16.

Fuhlrott, M. (2011). Die rechtliche Stellung leitender Angestellter. *ArbRAktuell*, 55–59.

Gabius, K. (2023). Das G in ESG: Herausforderungen durch die Nachhaltigkeitstransformation für den Aufsichtsrat. *CCZ - Corporate Compliance*, (3), 51–58.

Garvey, G. T., & Swan, P. L. (1994). The economics of corporate governance: Beyond the Marshallian firm. *Journal of Corporate Finance*, *1*(2), 139–174.

Garzón Castrillón, M. A. (2021). The concept of corporate governance. *Visión de Futuro*, pp. 178–194.

Gehrig, T., & Fohlin, C. (2006). Trading costs in early securities markets: The case of the Berlin stock exchange 1880-1910. *Review of Finance*, *10*(4), 587–612. https://doi.org/10.1007/s10679-006-9010-y

Gelter, M. (2010). Taming or Protecting the Modern Corporation? Shareholder-Stakeholder Debates in a Comparative Light. *NYU Journal of Law & Business*, *7*(1669444), 641–730.

Ghoshal, S., & Moran, P. (1996). Bad for Practice: A Critique of the Transaction Cost

Theory. *The Academy of Management Review*, *21*(1), 13. https://doi.org/10.2307/258627

Gilson, R. J. (2018). From Corporate Law to Corporate Governance. In J. N. Gordon & W.-G. Ringe (Eds.), *Oxford Handbook of Corporate Law and Governance*. Oxford University Press.

Gläser, J., & Laudel, G. (2010). *Experteninterviews und qualitative Inhaltsanalyse als Instrumente rekonstruierender Untersuchungen*. Springer Verlag.

Glass Lewis. (2022a). *2022 Policy Guidelines Germany*. Retrieved from https://www.glasslewis.com/voting-policies-upcoming/

Glass Lewis. (2022b). *Continental Europe 2023 Policy Guidelines*. Retrieved from https://www.glasslewis.com/voting-policies-upcoming/

Goette, W. (2022a). AktG § 161 - 1. Grundlagen. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Goette, W. (2022b). AktG § 161 - IV. Publizität. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Gompers, P. A., Ishii, J. L., & Metrick, A. (2003). Corporate Governance and Equity Prices. *Quarterly Journal of Economics*, *118*(1), 107–155.

Götz, H. (1995). Die Überwachung der Aktiengesellschaft im Lichte jüngerer Unternehmenskrisen. *Die Aktiengesellschaft*, *40*, 337–353.

Grabowski, P. (2015). The role and effectiveness of supervisory boards of companies listed on Warsaw stock exchange in Poland. *Journal of International Scientific Publications*, *9*, 6.

Greef, S. (2014). Gewerkschaften im Spiegel von Zahlen, Daten und Fakten. In *Handbuch Gewerkschaften in Deutschland*. https://doi.org/10.1007/978-3-531-19496-7

Greenbury, R. (1995). *Directors' Remuneration: Report of a study group chaired by Sir Richard Greenbury*. Gee Publishing.

Grigoleit, H. C. (2020). AktG § 161 Erklärung zum Corporate Governance Kodex. In H. C. Grigoleit (Ed.), *Aktiengesetz Kommentar*. München: Verlag C.H.Beck oHG.

Grigoleit, J., Nippa, M., & Steger, T. (2011). Ökonomische Konsequenzen der Mitgliedschaft ehemaliger Vorstandsmitglieder im Aufsichtsrat: Eine empirische Analyse. *Zfbf*, *63*, 578–608.

Grundsatzkommission Corporate Governance. (2000). Corporate Governance-Grundsätze ('Code of Best Practice') für börsennotierte Gesellschaften. *Der Betrieb*, (53 Jg.), 238–241. Retrieved from http://www.uni-leipzig.de/bankinstitut/files/dokumente/2000-07-01-01.pdf

Guinnane, T. W. (2018). German company law 1794–1897. In *Research Handbook on the History of Corporate and Company Law* (pp. 170–204). https://doi.org/https://doi.org/10.4337/9781784717667

Gutenberg, E. (1970). Funktionswandel des Aufsichtsrats. *Zeitschrift Für Betriebswirtschaft*, *40*, Ergänzungsheft, 1-10.

Haar, B. (2018). Shareholder Wealth vs. Stakeholder Interests? Evidence from Code Compliance Under the German Corporate Governance Code. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.2875275

Habersack, M. (2019a). AktG Rn. 1-260 - B. Geschichtliche Entwicklung des Aktienrechts und der Aktiengesellschaft. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Habersack, M. (2019b). Wahl des Aufsichtsratsmitglieds unter Abweichung von Kodex-Empfehlungen. *Neue Juristische Wochenschrift*, 669–676.

Habersack, M. (2020). Der Aufsichtsrat zwischen Geschäftsführungsverbot und Überwachungsaufgabe - Zu Reichweite und Schranken des § 111 IV 2 AktG, insbesondere im Zusammenhang mit ad hoc-Vorbehalten. *Neue Zeitschrift Für*

Gesellschaftsrecht, (23), 881–887.

Habersack, M. (2023a). AktG § 100 - 1. Inhalt, Zweck und Anwendungsbereich der Vorschrift. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Habersack, M. (2023b). AktG § 100 - Persönliche Voraussetzungen für Aufsichtsratsmitglieder. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Habersack, M. (2023c). AktG § 107 - Innere Ordnung des Aufsichtsrats. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Habersack, M. (2023d). AktG § 110 - Einberufung des Aufsichtsrats. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Habersack, M. (2023e). AktG § 113 - Vergütung der Aufsichtsratsmitglieder. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Habersack, M. (2023f). AktG § 96 - Zusammensetzung des Aufsichtsrats. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Habersack, M. (2023g). AktG vor § 95 Rn. 15 - 1. Bindung an das Unternehmensinteresse. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Hampel, R. (1997). *Committee on Corporate Governance Final Report*. Gee Publishing Ltd.

Harris, R. (1994a). *Industrialization without free incorporation: The legal framework of business organization in England, 1720-1844*. Columbia University.

Harris, R. (1994b). The Bubble Act: Its Passage and Its Effects on Business Organization. *The Journal of Economic History*, *54*(3), 610–627. https://doi.org/10.1017/S0022050700015059

Hart, O. D., & Zingales, L. (2022). The New Corporate Governance. *NBER Working Paper Series*. https://doi.org/10.2139/ssrn.4159981

Harvey, C., Maclean, M., & Price, M. (2020). Executive remuneration and the limits of disclosure as an instrument of corporate governance. *Critical Perspectives on Accounting*, *69*. https://doi.org/10.1016/j.cpa.2019.06.003

Hawley, J. P., & Williams, A. T. (1996). Corporate Governance in the United States: the rise of fiduciary capitalism. *School of Economics and Business Administration*.

Healy, P. M., & Palepu, K. G. (2003). The fall of Enron. *Journal of Economic Perspectives*, *17*(2), 3–26. https://doi.org/10.1257/089533003765888403

Heeg, V. (2012). Zum Verlangen einer Aktionärsminderheit auf Einberufung einer Hauptversammlung. *Neue Zeitschrift Für Gesellschaftsrecht*, (27), 1056–1058.

Heider, K. (2023). AktG § 1 Wesen der Aktiengesellschaft. In W. Goette, M. Habersack, & S. Kalss (Eds.), *Münchener Kommentar zum Aktiengesetz* (6th ed.). München: Verlag C.H.Beck oHG.

Heinemann, J., & Müller-Henneberg, G. (2023). Das 13. Österbergseminar zum Wirtschaftsrecht. *Neue Zeitschrift Für Gesellschaftsrecht*, (18), 832.

Heinen, V., & Koch, C. (2018). Stimmrechtsberater in der Corporate Governance - Implikationen für Unternehmen. *Betriebsberater*, 2731–2735.

Hemmer, H. O. (1999). Bilanz mit Aussichten. In *Westdeutscher Verlag*. https://doi.org/10.1007/978-3-322-83344-0

Herkenrath, K. (1960). *Die Leitungsorgane der amerikanischen Corporation und der deutschen Aktiengesellschaft: Darstellung und Vergleich in rechtlicher und*

organisatorischer Hinsicht. Cologne.

Heussen, B. (2001). Interessenkonflikte zwischen Amt und Mandat bei Aufsichtsräten. *Neue Juristische Wochenschrift*, (10), 708–710.

Hoffmann-Becking, M. (2014). Unabhängigkeit im Aufsichtsrat. *Neue Zeitschrift Für Gesellschaftsrecht*, 801–809.

Högfeldt, P., & Oborenko, A. (2005). Does Market Timing or Enhanced Pecking Order Determine Capital Structure? *European Corporate Governance Institute (ECGI) Research Paper*, (072), 1–46.

Hoppe, C., & Fuhlrott, M. (2011). Die nationale Mitbestimmung im Unternehmen: Ein Überblick. *Arbeitsrecht Aktuell*, (10), 235–237.

Hopt, K. J. (2005). Takeovers, Secrecy, and Conflicts of Interest: Problems for Boards and Banks. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.343520

Hopt, K. J. (2011a). Comparative corporate governance: The state of the art and international regulation. In *ECGI Law Working Paper 170/2011*. https://doi.org/10.1017/CBO9781139177375.003

Hopt, K. J. (2011b). Comparative corporate governance: The state of the art and international regulation. *American Journal of Comparative Law*, *59*(1), 1–73. https://doi.org/10.5131/AJCL.2010.0025

Hopt, K. J. (2011c). European Company Law and Corporate Governance: Where Does the Action Plan of the European Commission Lead? *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.863527

Hopt, K. J. (2013). Conflict of Interest, Secrecy and Insider Information of Directors - A Comparative Analysis. *European Company and Financial Law Review (ECFR)*, *10*(2), 167–193. https://doi.org/10.2139/ssrn.2178152

Hopt, K. J. (2015). Law and Corporate Governance: Germany within Europe. *Journal of*

Applied Corporate Finance, *27*(4), 7–16.

Hopt, K. J. (2017). The German Law of and Experience with the Supervisory Board. *Max Planck Private Law Research Paper Series*, (17). https://doi.org/10.2139/ssrn.2722702

Hopt, K. J. (2019). Der Aufsichtsrat - Bedeutungswandel, Konvergenz, unternehmerische Mitverantwortung, Pflichten- und Haftungszuwachs. *Zeitschrift Für Unternehmens- Und Gesellschaftsrecht*, *48*(4), 507–543. https://doi.org/10.1515/zgr-2019-0016

Hopt, K. J. (2022a). B. ADHGB. In *Handelsgesetzbuch*.

Hopt, K. J. (2022b). The German Supervisory Board | Oxford Law Blogs. Retrieved from Oxford Law Blogs website: https://blogs.law.ox.ac.uk/blog-post/2022/12/german-supervisory-board

Hopt, K. J., & Davies, P. L. (2013). Corporate Boards in Europe-Accountability and Convergence. *The American Journal of Comparative Law*, *61*(2), 301–375.

Hopt, K. J., & Leyens, P. C. (2005). Board Models in Europe - Recent Developments of Internal Corporate Governance Structures in Germany, the United Kingdom, France, and Italy. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.487944

Hopt, K. J., & Leyens, P. C. (2019). Der Deutsche Corporate Governance Kodex 2020 - Grundsatz- und Praxisprobleme. *Zeitschrift Für Unternehmens- Und Gesellschaftsrecht*, 929–995. https://doi.org/10.9785/9783504386894-006

Hutzschenreuter, T., Metten, M., & Weigand, J. (2012). Wie unabhängig sind deutsche Aufsichtsräte? *Zeitschrift Für Betriebswirtschaft*, *82*(7–8), 717–744. https://doi.org/10.1007/s11573-012-0590-z

IFC. (n.d.). IFC Indicative Independent Director Definition. Retrieved from https://www.ifc.org/en/what-we-do/sector-expertise/corporate-governance/cg-methodology-tools

IFC. (2008). The EU Approach to Corporate Governance. *Global Corporate Governance*

Forum.

IFC. (2015). A Guide to Governance Practices in the European Union. *Office of the Publisher World Bank*, 5–90.

International Corporate Governance Network. (2017). ICGN Global Governance Principles. In *Icgn*. Retrieved from www.icgn.org

Irwin, D. A. (2014). Adam Smith's "Tolerable Administration of Justice" and the Wealth of Nations. In *NBER Working Paper Series*.

ISS. (2022). *Continental Europe Proxy Voting Guidelines, Benchmark Policy Recommendations*.

Jackson, G. (2004). Contested Boundaries: Ambiguity and Creativity in the Evolution of German Codetermination. *RIETI Discussion Paper*, *04*, 1–32.

Jäger, A. (1996). Die Beratung des Vorstands als Teil der Überwachungsaufgabe des Aufsichtsrats. *Deutsches Steuerrecht*, *17*, 671–676.

Jäger, S., Noy, S., & Schoefer, B. (2022). Codetermination and Power in the Workplace. *Journal of Law and Political Economy*, *3*(1). https://doi.org/10.5070/lp63159039

Jäger, S., Noy, S., Schoefer, B., Anderson, E., Autor, D., Burdín, G., … Yan, A. (2021). *What does codetermination do?* Retrieved from http://www.nber.org/papers/w28921

Jäger, S., Schoefer, B., & Heining, J. (2020). Labor in the Boardroom Labor. *NBER Working Paper Series*, *26519*.

Jansen, T. (2013). *Mitbestimmung in Aufsichtsräten*. Springer Berlin Heidelberg.

Jaqua, E., & Jaqua, T. (2021). Conflict of interest. *International Journal of Scientific Advances*, *2*(4). https://doi.org/10.51542/ijscia.v2i4.9

Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: managerial behavior, agency costs and ownership structure. *Journal of Financial Economics*, *3*, 305–360.

Jerzemowska, M., & Koyama, Y. (2020). The board as an example of japanese corporate

governance system hybridization: An outline of the problem. *Economics and Sociology*, *13*(3), 171–202. https://doi.org/10.14254/2071-789X.2020/13-3/11

Jirjahn, U., & Le, T. X. T. (2023). Political spillovers of workplace democracy in Germany. *Annals of Public and Cooperative Economics*, 1–27. https://doi.org/10.1111/apce.12451

Johnston, A., & Morrow, P. (2014). Commentary on the Shareholder Rights Directive. *University of Oslo Faculty of Law Legal Studies Research Paper Series*, *41*.

Jungmann, C. (2006). The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board System - Evidence from the UK and Germany-. *European Company and Financial Law Review*, *3*(4), 426–474.

Jungmann, C. (2007). The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board Systems – Evidence from the UK and Germany –. *European Company and Financial Law Review*, *3*(4). https://doi.org/10.1515/ecfr.2006.019

Jürgens, U., & Rupp, J. (2002). The German System of Corporate Governance. Characteristics and Changes. *WZB Discussion Paper*, *FS II*(02–203), 70.

Kalss, S. (2019). 3. Arbeitnehmervertreter. In *Münchener Kommentar zum Aktiengesetz*.

Keasey, K., Thompson, S., & Wright, M. (2005). *Corporate Governance - Accountability, Enterprise and International Comparison*. https://doi.org/10.1201/9781315376462-1

Khan, H. (2011). A Literature Review of Corporate Governance. *International Conference on E-Business, Management and Economics*, *25*(May), 1–5.

Kleinmanns, H. (2016). Shareholder Activism – bedeutender Einfluss institutioneller Investoren auch in Deutschland ? *IRZ - Zeitschrift Für Internationale Rechnungslegung*, (7/8), 341–345. Retrieved from https://beck-online.beck.de/Bcid/Y-300-Z-IRZ-B-2016-S-341-N-1

Klös, H. P., Stettes, O., Hexel, D., Thannisch, R., Adams, M., Frick, B., & Kraft, K. (2006). Reform der überbetrieblichen Mitbestimmung. *Wirtschaftsdienst*, *86*(11), 691–711.

https://doi.org/10.1007/s10273-006-0582-0

Koch, J. (2014). Begriff und Rechtsfolgen von Interessenkonflikten und Unabhängigkeit im Aktienrecht. *Zeitschrift Für Unternehmens- Und Gesellschaftsrecht*, *43*(6), 697. https://doi.org/10.1515/zgr-2014-0697

Koch, J. (2023a). § 120 Entlastung. In *Aktiengesetz* (17th ed.). München: Verlag C.H.Beck oHG.

Koch, J. (2023b). AktG § 100 - Persönliche Voraussetzungen für Aufsichtsratsmitglieder. In *Aktiengesetz* (17th ed.). München: Verlag C.H.Beck oHG.

Koch, J. (2023c). AktG § 111 - Aufgaben und Rechte des Aufsichtsrats. In *Aktiengesetz* (17th ed.). München: Verlag C.H.Beck oHG.

Koch, J. (2023d). AktG § 119 - Rechte der Hauptversammlung. In *Aktiengesetz* (17th ed.). München: Verlag C.H.Beck oHG.

Koch, J. (2023e). AktG § 161 - Erklärung zum Corporate Governance Kodex. In *Aktiengesetz* (17th ed.). München: Verlag C.H.Beck oHG.

Koch, J. (2023f). AktG § 3 - Formkaufmann; Börsennotierung. In *Aktiengesetz* (17th ed.). München: Verlag C.H.Beck oHG.

Koch, J. (2023g). AktG § 76 - Leitung der Aktiengesellschaft. In *Aktiengesetz* (17th ed.). München: Verlag C.H.Beck oHG.

Koch, J. (2023h). AktG § 77 - Geschäftsführung. In *Aktiengesetz* (17th ed.). München: Verlag C.H.Beck oHG.

Koch, U. (2022). Mitbestimmung (Unternehmensmitbestimmung). In *Arbeitsrecht von A-Z.*

Köstler, R. (2014). *Rechtsleitfaden für Aufsichtsratsmitglieder nach dem Mitbestimmungsgesetz '76.*

Krause, D. M. (2011). Strafrechtliche Haftung des Aufsichtsrates. *Neue Zeitschrift Für Strafrecht*, (2), 57–65. Retrieved from https://beck-online.beck.de/Bcid/Y-300-Z-NSTZ-

B-2011-S-57-N-1

Krebs, K. (2002). *Interessenkonflikte bei Aufsichtsratsmandaten in der Aktiengesellschaft*.

Kremer, T., Bachmann, G., Marcus, L., & Werder, A. v. (2021). *Deutscher Corporate Governance Kodex* (8th ed.). C.H.Beck.

Kronisch, G. (2001). Leitender Angestellter - Der Sitz zwischen den Stühlen. *Arbeit Und Arbeitsrecht*, *11*(1), 484–487.

Kühle, M. (2023). Bedürfnis für eine Say on Climate-Regelung. *Neue Zeitschrift Für Gesellschaftsrecht*, 1583–1590.

Kumpan, C. (2014). *Der Interessenkonflikt im deutschen Privatrecht*. Tübingen: Mohr Siebeck.

Kumpan, C., & Leyens, P. C. (2008). Conflicts of Interest of Financial Intermediaries – Towards a Global Common Core in Conflicts of Interest Regulation –. *European Company and Financial Law Review*, *5*(1). https://doi.org/10.1515/ecfr.5.1.72

Kumpan, C., & Pauschinger, P. (2023). Entwicklung des europäischen Gesellschaftsrechts 2022. *Europäische Zeitschrift Für Wirtschaftsreht*, (10), 446–452.

Lampert, H., Althammer, J., & Sommer, M. (2021). *Lehrbuch der Sozialpolitik*. Springer Berlin Heidelberg New York.

Langenbucher, K. (2007). Wettbewerbsverbote, Unabhängigkeit und die Stellung des Aufsichtsratsmitglieds. *Zeitschrift Für Unternehmens- Und Gesellschaftsrecht*, *36*(4). https://doi.org/10.1515/zgr.2007.028

Langenbucher, K., Leuz, C., Krahnen, J. P., & Pelizzon, L. (2020). *What are the wider supervisory implications of the Wirecard case*. https://doi.org/10.2861/92641

Langer, M. (2017). *Der Deutsche Corporate Governance Kodex und die Unternehmensentwicklung*.

Larcker, D., & Tayan, B. (2020). *Corporate governance matters*. FT Press.

Lenz, B. (2019). *Corporate Governance von Genossenschaftsbanken: Ergebnisse einer empirischen Analyse zum Zusammenhang von Governanceelementen und der Bankperformance*.

Lesch, H. (2020). 100 Years of the Works Council Act and Current Participation of Employees in Germany. *Wirtschaftsdienst*, *100*(7), 550–555. https://doi.org/10.1007/s10273-020-2696-1

Leuering, D., & Konstant, V. (2023). Das Zweite Führungspositionen-Gesetz – FüPoG II. *NJW-Spezial*, (5), 527–528.

Leyendecker-Langner, B. E. (2015). Kapitalmarktkommunikation durch den Aufsichtsratsvorsitzenden. *Neue Zeitschrift Für Gesellschaftsrecht*, (2), 44–47.

Leyens, P. C. (2016). Comply or Explain im Europäischen Privatrecht - Erfahrungen im Europäischen Gesellschaftsrecht und Entwicklungschancen des Regelungsansatzes. *Zeitschrift Für Europäisches Privatrecht*, (2), 388–425. Retrieved from http://beck-online.beck.de/Bcid/Y-300-Z-ZEUP-B-2016-S-388-N-1

Li, Y. (2010). The Case Analysis of the Scandal of Enron. *International Journal of Business and Management*, *5*(10), 37–41. https://doi.org/10.5539/ijbm.v5n10p37

Lieder, J. (2006). *Der Aufsichtsrat im Wandel der Zeit - Leitlinien der geschichtlichen Entwicklung sowie der Fortentwiclung des deutschen Aufsichtsratssystems*.

Lieder, J. (2010). The German Supervisory Board on its Way to Professionalism. *German Law Journal*, *11*(2), 115–158. https://doi.org/10.1017/s2071832200018472

Linden, K. von der. (2022). Deutscher Corporate Governance Kodex 2022 – Grüner, diverser, kleinteiliger. *Deutsches Steuerrecht*, 1765–1769.

Linden, K. von der, & Wilk, C. (2023). Neue Guidelines der Stimmrechtsberater - Kraftproben bei HV-Formaten und Mehrstimmrechten. *Neue Zeitschrift Für Gesellschaftsrecht*, (5), 193.

Lindenlauf, J. (2021). Modernisierte Grundsätze guter Unternehmens- und Beteiligungsführung des Bundes. *Neue Zeitschrift Für Arbeitsrecht*, (4), 149–153.

Litzenberger, G. (2011). Verstoß gegen Berichtspflichten bei der Ausnutzung genehmigten Kapitals unter Bezugsrechtsausschluss und fehlerhafte Entsprechenserklärungen zum DCGK – Die Deutsche Bank Hauptversammlung 2009. *Neue Zeitschrift Für Gesellschaftsrecht*, (26), 1019–1021.

Lopatta, K., Böttcher, K., Lodhia, S. K., & Tideman, S. A. (2020). Parity codetermination at the board level and labor investment efficiency: evidence on German listed firms. In *Journal of Business Economics* (Vol. 90). https://doi.org/10.1007/s11573-019-00930-9

Lorenz, D., & Pospiech, L. (2011). Beratungsverträge mit Aufsichtsratsmitgliedern in Zeiten moderner Corporate Governance. *Neue Zeitschrift Für Gesellschaftsrecht*, (2), 81–86.

Loritz, K.-G., & Wagner, K.-R. (2012). Haftung von Vorständen und Aufsichtsräten. *Deutsches Steuerrecht*, (43), 2189–2195.

Lund, D. S., & Pollman, E. (2021). The Corporate Governance Machine. *Columbia Law Review*, *121*(2775).

MacNeil, I., & Esser, I.-M. (2022). The emergence of “comply or explain” as a global model for corporate governance codes. *European Business Law Review*, *33*(1), 1–56. Retrieved from http://eprints.gla.ac.uk/233111/http://eprints.gla.ac.uk

Manger, R. (2010). Das Informationsrecht des Aufsichtsrats gegenüber dem Vorstand – Umfang und Grenzen. *Neue Zeitschrift Für Arbeitsrecht*, (32), 1255–1258.

Mäntysaari, P. (2005). *Comparative Corporate Governance*. Springer Berlin Heidelberg New York.

Mason, M., & O’Mahony, J. (2017). Post-traditional corporate governance. *Globalization and Corporate Citizenship: The Alternative Gaze: A Collection of Seminal Essays*, 74–90. https://doi.org/10.4324/9781351284240

McCrum, D. (2020). The early years Key read : The House of Wirecard. *Financial Times*, pp. 1–8.

McGaughey, E. (2015). The Codetermination Bargains: The History of German Corporate and Labour Law. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.2579932

Mees, B. (2015). Corporate governance as a reform movement. *Journal of Management History*, *21*(2), 194–209. https://doi.org/10.1108/JMH-01-2014-0015

Mehran, H., & Stulz, R. (2007). The economics of conflicts of interest in financial institutions. *Journal of Financial Economics*, *85*, 267–296.

Metten, M. (2010). *Corporate Governance: Eine aktienrechtliche und institutionenökonomische Analyse der Leitungsmaxime von Aktiengesellschaften*.

Meuser, M., & Nagel, U. (2009). The Expert Interview and Changes in Knowledge Production. In A. Bogner, B. Littig, & W. Menz (Eds.), *Interviewing Experts*. Palgrave Macmillan.

Milhaupt, C. J., & Pistor, K. (2013). The Enron Scandal. *Law & Capitalism*, 47–68. https://doi.org/10.7208/chicago/9780226525297.003.0004

Mintz, S. M. (2006). A comparison of corporate governance systems in the U.S., UK and Germany. *Corporate Ownership & Control*, *3*(4).

Möllers, T. M. J. (2009). *Treuepflichten und Interessenkonflikte bei Vorstands- und Aufsichtsratmitgliedern*.

Monks, R. A. G., & Minow, N. (2011). *Corporate Governance* (5th ed.). John Wiley & Sons, Ltd.

Morck, R. K., & Steier, L. (2005). The global history of corporate governance – an introduction. *NBER Working Papers Series*. Retrieved from http://www.nber.org/papers/w11062

Moser, B. (2020). *Der Einfluss staatsrechtlicher Entwicklungen auf die*

Organisationsverfassung von Aktiengesellschaften.

MSCI. (2014). *MSCI Completes Acquisition of GMI Ratings*.

MSCI. (2024). MSCI World Governance-Quality Index (USD). Retrieved from Index Factsheet website: https://www.msci.com/documents/10199/4eed2f51-d62e-4d70-8bf4-c20e22f9923c

Mueller, J., & Wells, P. (2012). *Governance in Action Globally - Strategy, Process and reality*. RossiSmith Academic Publications Ltd., Oxford, UK.

Müller-Stewens, G., & Schimmer, M. (2008). Braucht es einen Strategieausschuss im Aufsichtsrat? *Der Aufsichtsrat*, (7–8), 98–100.

Müller, H.-F. (2002). Aufsichtsratsmandat und anwaltliche Tätigkeit. *Neue Zeitschrift Für Gesellschaftsrecht* , 797–802.

Murko, M. (2013). *Die Rolle der Arbeitnehmervertreter im Aufsichtsrat und auftretende Interessenkonflikte*.

Mutter, S., & Werner, J. (2023). EU-Richtlinie für gleichberechtigte Teilhabe der Geschlechter. *Die Aktiengesellschaft*, *68*(6), r78–r79.

Myers, S. C., & Majiuf, N. S. (1981). Corporate Financing and Investment Decisions when Firms have Information the Investors do not have. *NBER Working Paper Series*, (1396).

Nerantzidis, M. D., Filos, J., & Lazarides, T. (2012). The Puzzle of Corporate Governance Definition(s): A Content Analysis. In *Corporate Board: Role, Duties & Composition* (Vol. 8).

Nieber, M. (2017). *Die neue Rolle des Aufsichtsrates in der Kapitalmarktkommunikation*. Retrieved from http://boyden.de/mediafiles/attachments/5264.pdf%5Cn

Nonnenmacher, R. (2017). Standortbestimmung: Deutsche Corporate Governance im internationalen Vergleich. *16. Konferenz Deutscher Corporate Governance Kodex*.

Normann, D. K. (2015). *L'articolazione interna degli organi sociali nel sistema dualistico*.

Universita Commerciale Luigi Bocconi-Milano.

Nowak, E., Mahr, T. G., & Rott, R. (2006). The (Ir)relevance of Disclosure of Compliance with Corporate Governance Codes-Evidence from the German Stock Market. *Swiss Finance Institute Research Paper Series*, 06–11.

Ntongho, R. A. (2016). Culture and corporate governance convergence. *International Journal of Law and Management*, *58*(5), 523–544. https://doi.org/10.1108/IJLMA-04-2015-0016

O'Connell, M., & Ward, A. M. (2020). Greenbury Report (UK). *Encyclopedia of Sustainable Management*, 1–6. https://doi.org/10.1007/978-3-030-02006-4_52-1

Ocasio, W., & Joseph, J. (2005). Cultural adaptation and institutional change: The evolution of vocabularies of corporate governance, 1972-2003. *Poetics*, *33*(3–4), 163–178. https://doi.org/10.1016/j.poetic.2005.10.001

OECD. (n.d.). Corporate Governance. Retrieved from https://www.oecd.org/corporate

OECD. (1998). *Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets*. https://doi.org/10.1787/9789264162709-en

OECD. (2015). G20/OECD Principles of Corporate Governance. In *G20/OECD Principles of Corporate Governance*. https://doi.org/10.1787/9789264257443-tr

OECD. (2021). *OECD Corporate Governance Factbook 2021*. 252. Retrieved from https://www.oecd.org/corporate/Corporate-Governance-Factbook.pdf%0Ahttps://www.oecd.org/corporate/corporate-governance-factbook.htm

OECD. (2022). *OECD Secretary-General's Report to G20 Finance Ministers and Central Bank Governors on the Review of the G20 / OECD Principles of Corporate Governance*.

OECD. (2023a). *G20/OECD Principles of Corporate Governance 2023*. https://doi.org/10.1787/ed750b30-en

OECD. (2023b). *OECD Corporate Governance Factbook 2023*. https://doi.org/10.1787/6d912314-en

Oehlrich, M. (2019). Vorstands- und Aufsichtsratsvergütung im Lichte der Principal-Agent- und Kapitalmarkttheorie. *Neue Zeitschrift Für Gesellschaftsrecht*, 1049–1053. Retrieved from http://beck-online.beck.de/Bcid/Y-300-Z-NZG-B-2019-S-1049-N-1

Oetker, H. (2005). Unternehmensmitbestimmung in der rechtspolitischen Diskussion - Ein Zwischenbericht. *Recht Der Arbeit*, (6), 337–345.

Oetker, H. (2023). AktG § 113 - 1. Vergütungsanspruch. In R. Müller-Glöge, U. Preis, & I. Schmidt (Eds.), *Erfurter Kommentar zum Arbeitsrecht*. München: Verlag C.H.Beck oHG.

Ogbechie, C. (2019). The Nature of Boards in Developing and Emerging Markets. In *Enhancing board effectiveness* (pp. 41–58). https://doi.org/10.4324/9781315169477

OLG Frankfurt a.M. (2011). Berichtspflicht des Vorstands bei Schaffung neuen genehmigten Kapitals. *Neue Zeitschrift Für Gesellschaftsrecht*, (26), 1029–1031.

OLG Stuttgart. (2017). Gerichtliche Bestellung eines Mitglieds des Aufsichtsrats der Daimler AG. *Neue Juristische Wochenschrift-Spezial*, (8), 239–240.

Oman, C. P. (2001). Corporate Governance and National Development. In *OECD Development Centre Working Papers*. Retrieved from https://www.oecd-ilibrary.org/development/corporate-governance-and-national-development_113535588267

Owen, C. J. (2003). Board Games: Germany’s Monopoly on the Two-Tier System of Corporate Governance and Why the Post-Enron United States Would Benefit From Its Adoption. *Penn State International Law Review*, *1*, 167–190.

Parkinson, J. E. (1995). Corporate Power and Responsibility: Issues in the theory of company law. *OUP Catalogue*.

Peltzer, M. (2008). § 20 Sonstige Pflichten des AR und dabei auftretende Haftungsrisiken. In *Die Haftung von Vorstand Aufsichtsrat Wirtschaftsprüfer* (1.). München: Verlag

C.H.Beck oHG.

Pfeffer, J. (1972). Size and composition of corporate boards of directors: The organization and its environment. *Administrative Science Quarterly*, 218–228.

Pillay, R. G. (2013). Greenbury Report (UK). In *Encyclopedia of Corporate Social Responsibility* (pp. 1303–1308). https://doi.org/10.1007/978-3-642-28036-8_320

Plagemann, N. (2016). Überlegungen zur Einrichtung und Ausgestaltung eines Aufsichtsratsbüros. *Neue Zeitschrift Für Gesellschaftsrecht*, 211–217.

Pound, J. (1993). The rise of the political model of corporate governance and control. *NYUL Rev.*, *68*, 1003.

Pratt, J. W., & Zeckhauser, J. R. (1985). Principals and Agents - the Structure of Business - Pratt, Zeckhauser. *Harvard Business School Press*, *61*(4), 781–782.

Ramge, S., & Kerst, A. (2022). Modernisierung der Grundsätze guter Unternehmens- und aktiver Beteiligungsführung im Bereich des Bundes – Public Corporate Governance Kodex des Bundes. *Neue Zeitschrift Für Gesellschaftsrecht*, 1124–1126.

Rayton, B. A., & Cheng, S. (2004). Corporate governance in the United Kingdom: Changes to the regulatory template and company practice from 1998-2002. *University of Bath Working Paper Series*, 385–413.

Redenius-Hövermann, J. (2022). Corporate Governance in Familienunternehmen. *Recht Der Familienunternehmen*, 173. https://doi.org/10.9785/ovs.9783504380632.721

Regierungskommission. (2002). *German Corporate Governance Code*. https://doi.org/10.9785/9783504384555-045

Regierungskommission. (2017). *Pressemitteilung vom 14. Februar 2017 - Beschlüsse für Kodexänderungen 2017*.

Regierungskommission. (2018). *Press release*.

Regierungskommission. (2020). *Press Release*. Retrieved from http://www.bmelv.de/

Regierungskommission. (2022a). *Draft German Corporate Governance Code*. https://doi.org/10.9785/9783504384555-045

Regierungskommission. (2022b). *German Corporate Governance Code*. https://doi.org/10.9785/9783504384555-045

Regierungskommission. (2022c). *Press release*.

Reichenberger, T. (2020). Wesentliche Änderungen durch das ARUG II. *NJW-Spezial*, 79–80. Retrieved from http://beck-online.beck.de/Bcid/Y-300-Z-NJW-SPEZIAL-B-2020-S-79-N-1

Reuter, A. (2015). Unternehmenslenkung im Dialog zwischen Geschäftsleitung und Aufsichtsgremium - Praktische Fragen der Berichterstattung aus gesellschaftsrechtlicher Sicht. *Neue Zeitschrift Für Gesellschaftsrecht*, (7), 249–255.

Rieder, M. S. (2020). Related Party Transactions nach ARUG II – Relevanz des neuen Rechts im Licht von alten Leading Cases. *Zeitschrift Für Die Gesamte Privatrechtswirtschaft*, (2), 129–149.

Robins, N. (2012). *The corporation that changed the world* (2nd ed.). London: Pluto Press.

Ross, S. A. (1973). The economic theory of agency: the principal's problem. *American Economic Review*, *63*(2), 134–139.

Roth, M. (2022). Aufsichtsrat und interne Kontrolle nach dem Finanzmarktintegritätsstärkungsgesetz (FISG). *Neue Zeitschrift Für Gesellschaftsrecht*, (2), 53–59.

Rothenburg, V., & Moench, L. (2023). Führungspositionen-Richtlinie: Strengere Vorgaben für deutsche börsennotierte Unternehmen? *Die Aktiengesellschaft*, *68*(7), 217–219.

Ruhwedel, P. (2015). *Aufsichtsrats-Score 2015*. Duisburg.

Russ, R. W., Previts, G. J., & Coffman, E. N. (2006). The stockholder review committee of the Chesapeake and Ohio Canal Company, 1828-1857: Evidence of changes in financial

reporting and corporate governance. *The Accounting Historians Journal*, 125–143.

Ruzik, A. (2004). Zum Streit über den Streik - Aufsichtsratsmandat und Gewerkschaftsführung im Arbeitskampf. *Neue Zeitschrift Für Gesellschaftsrecht*, (10), 455–459.

Saenger, I. (2005). Conflicts of Interest of Supervisory Board Members in a German Stock Corporation and the Demand for Their Independence. *Corporate Governance Law Review*, *1*, 147–190.

Sandrock, O. (2015). German and International Perspectives of the German Model of Codetermination. *European Business Law Review*, *26*(1), 129–146. https://doi.org/https://doi.org/10.54648/eulr2015008

Schäfer, H. (2023). DCGK D.12 [Selbstbeurteilung]. In *Deutscher Corporate Governance Kodex* (2.). München: Ghassemi-Tabar, Nima.

Schauer, P. J. (2021). *Aufsichtsratskommunikation - ein Beitrag zur Definition der Rolle des Aufsichtsrats und seines Vorsitzenden im Bereich der Investor Relations*. Nomos Verlagsgesellschaft.

Schmeing, T. (2023). Vorbemerkung zu § 161 AktG. In N. Ghassemi-Tabar (Ed.), *Deutscher Corporate Governance Kodex: DCGK* (2nd ed.). München: Verlag C.H.Beck oHG.

Schmid, M. (2020). ARUG II und DCGK – das Paket ist vollständig! Retrieved from https://www.cmshs-bloggt.de/gesellschaftsrecht/arug-ii-und-dcgk-das-paket-ist-vollstaendig/

Schmidt, T. (2012). *Corporate Governance, Controlling und Unternehmenserfolg: konzeptionelle Gestaltung und empirische Analyse*. https://doi.org/https://doi.org/10.3726/978-3-653-01443-3

Schneider, U. H., & Anzinger, H. M. (2007). Institutionelle Stimmrechtsberatung und Stimmrechtsvertretung - "A quiet guru’s enormous clout”. *Neue Zeitschrift Für*

Gesellschaftsrecht, (3), 88–95.

Schnorr, T. (2000). *Historie und Recht des Aufsichtsrats - Deutsche Erfahrungen als Beitrag zum Statut der Europäischen Aktiengesellschaft 1991*.

Scholderer, F. (2012). Unabhängigkeit und Interessenkonflikte der Aufsichtsratsmitglieder. *Neue Zeitschrift Für Gesellschaftsrecht*, *5*, 168–200.

Schulz, M., & Wasmeier, O. (2012). The Law of Business Organizations. In *The Law of Business Organizations*. https://doi.org/10.1007/978-3-642-17793-4

Schwarz, P. (2013). *Institutionelle Stimmrechtsberatung: Rechtstatsachen, Rechtsökonomik, rechtliche Rahmenbedingungen und Regulierungsstrategien*.

Schweikert, C., & Jantz, M. (2012). Corporate Governance in Abhängigkeit von Unternehmensstruktur und Unternehmensgröße – eine betriebswirtschaftlich-juristische Analyse. *KICG-Forschungspapiere*, *3*.

SdK. (n.d.). Abstimmungsverhalten. Retrieved from https://sdk.org/veroeffentlichungen/abstimmungsverhalten/

Seibert, U. (2015). 50 Jahre Aktiengesetz 1965 - Entwicklung von Kapitalmarkt und Corporate Governance in Deutschland aus der Sicht der Gesetzgebung. *Die Aktiengesellschaft*, *17*(60), 593–596. https://doi.org/10.1515/9783110424843

Selter, W. (2021). Weitere Ausdehnung des persönlichen Anwendungsbereichs von § 114 I AktG. *Neue Zeitschrift Für Gesellschaftsrecht*, (29), 1301–1304.

Semler, J., & Stengel, A. (2003). Interessenkonflikte bei Aufsichtsratsmitgliedern von Aktiengesellschaften am Beispiel von Konflikten bei Übernahme. *Neue Zeitschrift Für Gesellschaftsrecht*, 1–14.

Shleifer, A., & Vishny, R. W. (1979). A Survey of Corporate Governance. *The Journal of Finance*, *LII*(2), 573–574. https://doi.org/10.1111/j.1540-6261.1979.tb02125.x

Simons, C. (2021). Die Änderungen der Aufsichtsrats-Governance durch das FISG. *Neue*

Zeitschrift Für Gesellschaftsrecht, *32*(3), 1429–1438.

Simons, C. (2023a). DCGK D01 D.1. In N. Ghassemi-Tabar (Ed.), *Deutscher Corporate Governance Kodex: DCGK* (2nd ed.). München: Verlag C.H.Beck oHG.

Simons, C. (2023b). DCGK G8 Grundsatz 8. In N. Ghassemi-Tabar (Ed.), *Deutscher Corporate Governance Kodex: DCKG* (2nd ed.). München: Verlag C.H.Beck oHG.

Simons, C. (2023c). "Say-on-Climate" im Praxistest. *HV Magazin*.

Smith, A. (2010). *The Wealth of Nations: An Inquiry into the Nature and Causes of the Wealth of Nations*. Harriman House.

Smith, R. (2003). *Audit Committees Combined Code Guidance*. London.

Solomon, J. (2020). *Corporate governance and accountability*. John Wiley & Sons.

Solomon, J., & Solomon, A. (2004). *Corporate Governance and Accountability*. Chichester: John Wiley & Sons, Ltd.

Spence, M. (1973). Job Market Signaling. *The Quarterly Journal of Economics*, *87*(3), 355–374.

Spence, M. (2002). Signaling in Retrospect and the Informational Structure of Markets. *The American Economic Review*, *92*(3), 434–459.

Spindler, G. (2012). Beratungsverträge mit Aufsichtsratsmitgliedern Die Fresenius-Entscheidung des BGH. *Neue Zeitschrift Für Gesellschaftsrecht*, (30), 1161–1164.

Spindler, G. (2019a). d) Dauerhafte Rentabilität. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Spindler, G. (2019b). e) Gewinnmaximierung. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Spindler, G. (2019c). III. Mitbestimmung. In *Münchener Kommentar zum Aktiengesetz*.

Spindler, G. (2023a). AktG § 76 - Leitung der Aktiengesellschaft. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck

oHG.

Spindler, G. (2023b). AktG § 93 - Sorgfaltspflicht und Verantwortlichkeit der Vorstandsmitglieder. In W. Goette & M. Habersack (Eds.), *Münchener Kommentar zum Aktiengesetz*. München: Verlag C.H.Beck oHG.

Steinbrecher, J. (2016). *Corporate Governance und Unternehmenserfolg - Eine empirische Analyse zwischen den Führungs-, Kontroll- und Anreizstrukturen und der Geschäftsentwicklung deutscher Banken*.

Steinmann, H., Schreyogg, G., & Dutthorn, C. (1983). Managerkontrolle in deutschen Großunternehmen - 1972 und 1979 im Vergleich. *Zeitschrift Für Betriebswirtschaft*, (53), 4–25.

Stöber, M. (2020). Neuerungen im Aktienrecht durch das ARUG II. *Deutsches Steuerrecht*, (8), 391–398.

Stratoudakis, P. (1961). *Organisation der Unternehmensführung*. https://doi.org/https://doi.org/10.1007/978-3-663-02807-9

Strenger, C. (2004). The Corporate Governance Scorecard: a tool for the implementation of corporate governance. *Corporate Governance: An International Review*, *12*(1), 11–15.

Strenger, C., Redenius-Hövermann, J., & Demirtaş, G. (2023). *The Governance System of Germany: Background and Discussion of its Code*. Frankfurt am Main.

Tawfeeq, T., Yahya, S., & Thurasamy, R. (2014). Corporate Governance Development: New or Old Concept? *European Journal of Business and Management*, *6*(7), 2005–2008.

Teichmann, C., & Monsenepwo, J. (2018). Co-management (Mitbestimmung) in German law. *Revue de Droit Comparé Du Travail et de La Sécurité Sociale*, (4), 86–99. https://doi.org/10.4000/rdctss.1772

Temin, P., & Voth, H. J. (2004). Riding the South Sea bubble. *American Economic Review*, *94*(5), 1654–1668. https://doi.org/10.1257/0002828043052268

Tipuric, D., Dovrski, K., & Delic, M. (2020). Measuring the Quality of Corporate Governance – A Review of Corporate Governance Indices. *Journal of Corporate Governance, Insurance, and Risk Management*, *1*(1), 224–241.

Tirole, J. (2001). Corporate Governance. *Econometrica*, *69*(1), 1–35.

Tricker, R. I. (1982). The Independent Director. In K. Midgley (Ed.), *Management Accountability and Corporate Governance* (pp. 27–40). https://doi.org/10.1007/978-1-349-05944-7_3

Tricker, R. I. (1993). EDITORIAL: Corporate governance - the new focus of interest. *Corporate Governance: An International Review*, *1*(1), 1–4. https://doi.org/10.1111/j.1467-8683.1993.tb00001.x

Tricker, R. I. (2019). *Corporate Governance: Principles, Policies, and Practices* (4th ed.). Oxford University Press.

Turnbull Committee. (1999). *Internal Control: Guidance for Directors on the Combined Code*. London.

Turnbull, S. (2019). Corporate governance: Its scope, concerns and theories. *Corporate Governance: Values, Ethics and Leadership*, *5*(4), 415–440.

Turner, J. D. (2017). The Development of English Company Law before 1900. *QUCEH Working Paper Series*, (2017–01).

Turner, J. D. (2024). Three centuries of corporate governance in the UK. In *QUCEH Working Paper Series* (Vol. 24). Retrieved from http://www.quceh.org.uk/working-papers

Tyson, L. (2003). *The Tyson Report on the Recruitment and Development of Non-Executive Directors*.

Uffmann, K., & Thönißen, K. (2022). Mitbestimmungsorientierte Rechtsformgestaltung in Familienunternehmen quo vadis? *Recht Der Familienunternehmen*, (8), 345–354.

United Nations Conference on Trade and Development. (2006). *Guidance on good practices*

in corporate governance disclosure (United Nations, Ed.). https://doi.org/10.18356/409eafb3-en

Valsan, R. (2021). Conflict of Interest. In A. Marciano & G. B. Ramello (Eds.), *Encyclopedia of Law and Economics*. https://doi.org/10.1007/978-1-4614-7753-2

Velte, P. (2010). Stewardship-Theorie. *Zeitschrift Fur Planung Und Unternehmenssteuerung*, *20*(3), 285–293. https://doi.org/10.1007/s00187-009-0078-3

Velte, P., & Stiglbauer, M. (2012). Switching from a Managing to a Monitoring Function on the Board: Is a Cooling-Off Period Necessary? *The IUP Journal of Corporate Governance*, (4), 7–16.

Velten, C. A. (2010). *Gewerkschaftsvertreter im Aufsichtsrat - Eine verfassungsrechtliche, gesellschaftsrechtliche und arbeitsrechtliche Analyse*.

Vogel, H. L. (2012). Financial market bubbles and crashes. In *Financial Market Bubbles and Crashes*. https://doi.org/10.1017/CBO9780511806650

Waldenberger, F. (2016). *Corporate governance*. 59–74. https://doi.org/10.4324/9781315832661

Weber-Rey, D. (2013). Der Aufsichtsrat in der europäischen Perspektive – Vorschläge und Ideen für eine wirksame Corporate Governance. *Neue Zeitschrift Für Gesellschaftsrecht*, 766–770.

Weber, K. (2023). Quotenregelung. In *Weber kompakt, Rechtswörterbuch* (p. 96).

Welge, M. K., & Eulerich, M. (2021). *Corporate-Governance-Management*. https://doi.org/10.1007/978-3-658-34146-6

Weninger, H. (2011). *Mitbestimmungsspezifische Interessenkonflikte von Arbeitnehmervertretern im Aufsichtsrat*.

Wentges, P. (2002). *Corporate Governance und Stakeholder-Ansatz* (University of Ulm). https://doi.org/10.1007/978-3-322-81993-2

Werder, A. v. (2021a). 3. Vorarbeiten in Deutschland. In *Deutscher Corporate Governance Kodex*.

Werder, A. v. (2021b). b) Kodexpflege. In *Deutscher Corporate Governance Kodex*.

Werner, R. (2022). Die SE als Instrument zur Einschränkung der Mitbestimmung. *Neue Zeitschrift Für Gesellschaftsrecht*, 541–545.

White, B. J., & Montgomery, B. R. (1980). Corporate Codes of Conduct. *California Management Review*, *23*(2), 80–87.

Wilkesmann, U., Virgillito, A., & Wilkesmann, M. (2011). Erwartungen an betriebliche Interessenvertretungen. *Industrielle Beziehungen*, *18*(3), 205–233. https://doi.org/10.1688/1862-0035

Winter, J., Garrido Garcia, J. M., Hopt, K. J., Rickford, J., Rossi, G., Schans Christensen, J., & Simon, J. (2002). *Report of the high level group of company law experts on a modern regulatory framework for company law in Europe*.

Witt, P. (2003). *Corporate Governance-Systeme im Wettbewerb* (Humboldt-Universität zu Berlin). https://doi.org/DOI 10.1007/978-3-663-07943-9

Witte, E. (1981). Der Einfluß der Anteilseigner auf die Unternehmenspolitik. *Zeitschrift Für Betriebswirtschaft*, (51), 733–779.

Wittmann, M., & Kirschbaum, T. (2020). H. Haftungsrisiken. In *Aktienrecht und Kapitalmarktrecht*.

Xanthakis, M., Tsipouri, L., & Spanos, L. (2004). The construction of a corporate governance rating system for a small open capital market: Methodology and applications in the Greek market. *Annual Conference of the Hellenic Finance and Accounting Association-HFAA*.

Yamazaki, T. (2013). Business management. In *German Business Management*. https://doi.org/10.1007/978-4-431-54303-9

Yusoff, W. F. W., & Alhaji, I. A. (2012). Insight of Corporate Governance Theories. *Journal of Business & Management*, *1*(1), 52–63. Retrieved from www.todayscience.org/jbm

Zetzsche, D. (2008). Shareholder Passivity, Cross-Border Voting and the Shareholder Rights Directive. *Arbeitspapiere Des Instituts Für Unternehmensrecht (IUR)*, *0031*(07).

Zingales, L. (1998). Corporate Governance. In *The New Palgrave Dictionary of Economics and the Law* (Newman, P.). Stockton Press, London.

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APPENDIX

Appendix A

Key milestones in the development of UK corporate governance

Year	Publication	Initial publication (I)/ Revision (R)	Description
1992	**The Cadbury Report of Best Practice**	I	First code of its kind in the United Kingdom, it includes corporate governance rule for boards of directors, reporting, and financial controls
1995	**The Greenbury Code**	I	Compensation framework for top executives that addresses issues including compensation committees, transparency, compensation plans, and termination packages
1998	**The Hampel Report**	I	
1998	**The Combined Code**	I	Combines the Cadbury, Greenbury and Hampel documents
1999	**The Turnbull Report**	I	
2001	**The Myners Report**	I	
2003	**The Higgs Report**	I	Covered mainly board-related issues, such as board composition, board committees, the chairpersons' duties, director nominations, and compensation
2003	**The Tyson Report**	I	
2003	**The Smith Report**	I	
2003	The Combined Code	R	Revision regarding listing rules
2005	The Turnbull Report	R	Revision
2006	The Combined Code	R	Revision regarding proxy voting
2008	The Combined Code	R	Revision regarding board chairpersons
2008	The Myners Report	R	Revision
2008	The Smith Report	R	Revision
2010	**The UK Corporate Governance Code**	I	Rules regarding the chairperson and non-executive directors, board composition, director commitment, board resources, board responsibility for risk management, and gender diversity. Additional rules for FTSE 350 listed companies.
2010	**The UK Stewardship Code**	I	
2012	The UK Corporate Governance Code	R	Revisions regarding audit committees and diversity
2012	The UK Stewardship Code	R	Revision
2014	The Turnbull Report	R	Revision
2014	The UK Corporate Governance Code	R	Revision regarding 'viability statement' and remuneration
2016	The UK Corporate Governance Code	R	Revision of audit committees' provisions
2018	The UK Corporate Governance Code	R	Revision with a 'new focus on stakeholders, integrity and corporate culture'
2024	The UK Corporate Governance Code	R	Major revision with focus on transparency and accountability (effective 1. January 2025)

Source: Author's own summary based on the content of the publication

Appendix B

Development of the company law in Germany until 1965

No.	Amending Law	Announcement Date	Source
1	Prussian Law on Stock Corporations (Gesetz über die Aktiengesellschaften)	09.11.1843	
2	Allgemeines Deutsches Handelsgesetzbuch	31.05.1861	
3	Gesetz, betreffend die Kommanditgesellschaften auf Aktien und die Aktiengesellschaften.	25.06.1870	BGBl. des Norddt. Bundes p. 375
4	Amending law	18.07.1884	RGBl. 1884 I 213
5	Commercial Code	10.05.1897	RGBl. 1897 I 219
6	Emergency decree	19.09.1931	RGBl. 1931 I 493
7	Emergency decree	06.10.1931	RGBl. 1931 I 537
8	Stock Corporation Act	30.01.1937	RGBl. 1937 I 107

Source: Author's own research based on Münchener Kommentar zum Aktiengesetz, Band 1,

Einleitung, 1. Teil, B. Geschichtliche Entwicklung des Aktienrechts und der Aktiengesellschaft

Appendix C

Amendments to the German Stock Corporation Law since 1965

No.	Amending Law	Announcement Date	Source in the Federal Law Gazette
1	Einführungsgesetz zum Gesetz über Ordnungswidrigkeiten (EGOWiG)	14.05.1968	BGBl. I 503
2	Gesetz zur Durchführung der Ersten Richtlinie des Rates der Europäischen Gemeinschaften zur Koordinierung des Gesellschaftsrechts	15.08.1969	BGBl. I 1146
3	Gesetz zur Ergänzung der handelsrechtlichen Vorschriften über die Änderung der Unternehmensform	15.08.1969	BGBl. I 1171
4	Gesetz über die Rechnungslegung von bestimmten Unternehmen und Konzernen	15.08.1969	BGBl. I 1189
5	Beurkundungsgesetz	28.08.1969	BGBl. I 1513
6	Gesetz zur Änderung des Gesetzes betreffend die Erwerbs- und Wirtschaftsgenossenschaften	09.10.1973	BGBl. I 1451
7	Einführungsgesetz zum Strafgesetzbuch (EGStGB)	02.03.1974	BGBl. I 469
8	Gesetz über die Mitbestimmung der Arbeitnehmer (Mitbestimmungsgesetz – MitbestG)	04.05.1976	BGBl. I 1153
9	Einführungsgesetz zur Abgabenordnung (EGAO 1977)	14.12.1976	BGBl. I 3341
10	Gesetz zur Durchführung der Zweiten Richtlinie des Rates der Europäischen Gemeinschaften zur Koordinierung des Gesellschaftsrechts	13.12.1978	BGBl. I 1959
11	Gesetz zur Änderung des Gesetzes betreffend die Gesellschaften mit beschränkter Haftung und anderer handelsrechtlicher Vorschriften	04.07.1980	BGBl. I 836
12	Gesetz zur Durchführung der Dritten Richtlinie des Rates der Europäischen Gemeinschaften zur Koordinierung des Gesellschaftsrechts (Verschmelzungsrichtlinie-Gesetz)	25.10.1982	BGBl. I 1425
13	Vierzehntes Gesetz zur Änderung des Versicherungsaufsichtsgesetzes	29.03.1983	BGBl. I 377
14	Gesetz zur Durchführung der Vierten, Siebten und Achten Richtlinie des Rates der Europäischen Gemeinschaften zur Koordinierung des Gesellschaftsrechts (Bilanzrichtlinien-Gesetz BiRiLiG)	19.12.1985	BGBl. I 2355
15	Gesetz zur Änderung des Betriebsverfassungsgesetzes, über Sprecherausschüsse der leitenden Angestellten und zur Sicherung der Montan-Mitbestimmung	20.12.1988	BGBl. I 2312
16	Gesetz zur Änderung des Arbeitsgerichtsgesetzes und anderer arbeitsrechtlicher Vorschriften (Arbeitsgerichtsgesetz-Änderungsgesetz)	26.06.1990	BGBl. I 1206
17	Gesetz zur Reform des Rechts der Vormundschaft und Pflegschaft für Volljährige (Betreuungsgesetz – BtG)	12.09.1990	BGBl. I 2002
18	Gesetz zur Durchführung der Richtlinie des Rates der Europäischen Gemeinschaften über den Jahresabschluss und den konsolidierten Abschluss von Banken und anderen Finanzinstituten (Bankbilanzrichtlinie-Gesetz)	30.11.1990	BGBl. I 2570
19	Fünfte Zuständigkeitsanpassungs-Verordnung	26.03.1993	BGBl. I 1278
20	Gesetz zur Durchführung der Elften gesellschaftsrechtlichen Richtlinie des Rates der Europäischen Gemeinschaften und über Gebäudeversicherungsverhältnisse	22.07.1993	BGBl. I 1282

No.	Amending Law	Announcement Date	Source in the Federal Law Gazette
21	Gesetz zur Durchführung der Richtlinie des Rates der Europäischen Gemeinschaft über den Jahresabschluss und den konsolidierten Abschluss von Versicherungsunternehmen (Versicherungsbilanzrichtlinie-Gesetz – VersRiLiG)	24.06.1994	BGBl. I 1377
22	Gesetz über den Wertpapierhandel und zur Änderung börsenrechtlicher und wertpapierrechtlicher Vorschriften (Zweites Finanzmarktförderungsgesetz)	26.07.1994	BGBl. I 1749
23	Gesetz für kleine Aktiengesellschaften und zur Deregulierung des Aktienrechts	02.08.1994	BGBl. I 1961
24	Einführungsgesetz zur Insolvenzordnung (EGInsO)	05.10.1994	BGBl. I 2911
25	Gesetz zur Bereinigung des Umwandlungsrechts (UmwBerG)	28.10.1994	BGBl. I 3210
26	Begleitgesetz zum Gesetz zur Umsetzung von EG-Richtlinien zur Harmonisierung bank- und wertpapieraufsichtsrechtlicher Vorschriften	22.10.1997	BGBl. I 2567
27	Gesetz zur weiteren Entwicklung des Finanzplatzes Deutschland (Drittes Finanzmarktförderungsgesetz)	24.03.1998	BGBl. I 529
28	Gesetz über die Zulassung von Stückaktien (Stückaktiengesetz – StückAG)	25.03.1998	BGBl. I 590
29	Gesetz zur Kontrolle und Transparenz im Unternehmensbereich (KonTraG)	27.04.1998	BGBl. I No. 24, p. 786 (30.4.1998)
30	Gesetz zur Einführung des Euro (Euro-Einführungsgesetz – EuroEG)	09.06.1998	BGBl. I 1242
31	Gesetz zur Neuregelung des Kaufmanns- und Firmenrechts und zur Änderung anderer handels- und gesellschaftsrechtlicher Vorschriften (Handelsrechtsreformgesetz – HRefG)	22.06.1998	BGBl. I 1474
32	Gesetz zur Umsetzung der EG-Einlagensicherungsrichtlinie und der EG-Anlegerentschädigungsrichtlinie	16.07.1998	BGBl. I 1842
33	Gesetz zur Durchführung der Richtlinie des Rates der Europäischen Union zur Änderung der Bilanz- und der Konzernbilanzrichtlinie hinsichtlich ihres Anwendungsbereichs (90/605/EWG), zur Verbesserung der Offenlegung von Jahresabschlüssen und zur Änderung anderer handelsrechtlicher Bestimmungen (Kapitalgesellschaften- und Co-Richtlinie-Gesetz – KapCoRiLiG)	24.02.2000	BGBl. I 154
34	Gesetz zur Namensaktie und zur Erleichterung der Stimmrechtsausübung (Namensaktiengesetz – NaStraG)	18.01.2001	BGBl. I 123
35	Gesetz zur Beendigung der Diskriminierung gleichgeschlechtlicher Gemeinschaften: Lebenspartnerschaften	16.02.2001	BGBl. I 266
36	Gesetz zur Umstellung des Kostenrechts und der Steuerberatergebührenverordnung auf Euro (KostREuroUG)	27.04.2001	BGBl. I 751
37	Gesetz zur Anpassung der Formvorschriften des Privatrechts und anderer Vorschriften an den modernen Rechtsgeschäftsverkehr	13.07.2001	BGBl. I 1542
38	Gesetz zur Reform des Zivilprozesses (Zivilprozessreformgesetz – ZPO-RG)	27.07.2001	BGBl. I 1887
39	Siebente Zuständigkeitsanpassungs-Verordnung	29.10.2001	BGBl. I 2785
40	Gesetz über elektronische Register und Justizkosten für Telekommunikation (ERJuKoG)	10.12.2001	BGBl. I 3422

No.	Amending Law	Announcement Date	Source in the Federal Law Gazette
41	Gesetz zur Regelung von öffentlichen Angeboten zum Erwerb von Wertpapieren und von Unternehmensübernahmen	20.12.2001	BGBl. I 3822
42	Gesetz zur Vereinfachung der Wahl der Arbeitnehmervertreter in den Aufsichtsrat	23.03.2002	BGBl. I 1130
43	Verordnung zur Ersetzung von Zinssätzen	05.04.2002	BGBl. I 1250
44	Gesetz über die integrierte Finanzdienstleistungsaufsicht	22.04.2002	BGBl. I 1310
45	Gesetz zur weiteren Fortentwicklung des Finanzplatzes Deutschland (Viertes Finanzmarktförderungsgesetz)	21.06.2002	BGBl. I 2010
46	Gesetz zur weiteren Reform des Aktien- und Bilanzrechts, zu Transparenz und Publizität (Transparenz- und Publizitätsgesetz)	19.07.2002	BGBl. I No. 50, p. 2681 (25.7.2002)
47	Gesetz zur Neuordnung des gesellschaftsrechtlichen Spruchverfahrens (Spruchverfahrensneuordnungsgesetz)	12.06.2003	BGBl. I 838
48	Achte Zuständigkeitsanpassungsverordnung	25.11.2003	BGBl. I 2304
49	Zweites Gesetz zur Vereinfachung der Wahl der Arbeitnehmervertreter in den Aufsichtsrat	18.05.2004	BGBl. I 974
50	Erstes Gesetz zur Modernisierung der Justiz (1. Justizmodernisierungsgesetz)	24.08.2004	BGBl. I 2198
51	Gesetz zur Einführung internationaler Rechnungslegungsstandards und zur Sicherung der Qualität der Abschlussprüfung (Bilanzrechtsreformgesetz – BilReG)	04.12.2004	BGBl. I 3166
52	Gesetz zur Anpassung von Verjährungsvorschriften an das Gesetz zur Modernisierung des Schuldrechts	09.12.2004	BGBl. I 3214
53	Gesetz zur Kontrolle von Unternehmensabschlüssen (Bilanzkontrollgesetz – BilKoG)	15.12.2004	BGBl. I 3408
54	Gesetz zur Unternehmensintegrität und Modernisierung des Anfechtungsrechts (UMAG)	22.09.2005	BGBl. I No. 60, p. 2802 (27.9.2005)
55	Gesetz zur Umsetzung der Richtlinie 2004/25/EG des Europäischen Parlaments und des Rates vom 21.4.2004 betreffend Übernahmeangebote (Übernahmerichtlinie-Umsetzungsgesetz)	08.07.2006	BGBl. I 1426
56	Neunte Zuständigkeitsanpassungsverordnung	31.10.2006	BGBl. I 2407
57	Gesetz über elektronische Handelsregister und Genossenschaftsregister sowie das Unternehmensregister (EHUG)	10.11.2006	BGBl. I 2553
58	Gesetz zur Umsetzung der Regelungen über die Mitbestimmung der Arbeitnehmer bei einer Verschmelzung von Kapitalgesellschaften aus verschiedenen Mitgliedstaaten	21.12.2006	BGBl. I 3332
59	Gesetz zur Umsetzung der Richtlinie 2004/109/EG des Europäischen Parlaments und des Rates vom 15.12.2004 zur Harmonisierung der Transparenzanforderungen in Bezug auf Informationen über Emittenten, deren Wertpapiere zum Handel auf einem geregelten Markt zugelassen sind, und zur Änderung der Richtlinie 2001/34/EG (Transparenzrichtlinie-Umsetzungsgesetz – TUG)	05.01.2007	BGBl. I 10
60	Zweites Gesetz zur Änderung des Umwandlungsgesetzes	19.04.2007	BGBl. I 542

No.	Amending Law	Announce ment Date	Source in the Federal Law Gazette
61	Gesetz zur Umsetzung der Richtlinie über Märkte für Finanzinstrumente und der Durchführungsrichtlinie der Kommission (Finanzmarktrichtlinie-Umsetzungsgesetz)	16.07.2007	BGBl. I 1330
62	Art. 3 RisikobegrenzungsG	12.08.2008	BGBl. I 1666
63	Art. 5 G zur Modernisierung des GmbH-Rechts und zur Bekämpfung	23.10.2008	BGBl. I 2026
64	Art. 2 G zur Änd. des G über die Überführung der Anteilsrechte an de	08.12.2008	BGBl. I 2369
65	Art. 74 FGG-ReformG	17.12.2008	BGBl. I 2586
66	Art. 5 BilanzrechtsmodernisierungsG (BilMoG)	25.05.2009	BGBl. I No. 27, p. 1102 (28.5.2009)
67	Art. 1 G zur Umsetzung der AktionärsrechteRL	30.07.2009	BGBl. I No. 50, p. 2479 (4.8.2009)
68	Art. 1 G zur Angemessenheit der Vorstandsvergütung	31.07.2009	BGBl. I No. 50, p. 2509 (4.8.2009)
69	Art. 6 RestrukturierungsG	09.12.2010	BGBl. I 1900
70	Art. 2 Abs. 49 G zur Änd. von Vorschriften über Verkündung und Bekanntmachungen sowie der ZPO, des EGZPO und der AO	22.12.2011	BGBl. I 3044
71	Art. 3 Kleinstkapitalgesellschaften-BilanzrechtsänderungsG	20.12.2012	BGBl. I 2751
72	Art. 12 AIFM-Umsetzungsgesetz 9	04.07.2013	BGBl. I 1981
73	Art. 26 2. KostenrechtsmodernisierungsG	23.07.2013	BGBl. I 2586
74	Art. 2 Abs. 53 G zur Modernisierung der Finanzaufsicht über Versicherungen	01.04.2015	BGBl. I 434
75	Art. 3 G für die gleichberechtigte Teilhabe von Frauen und Männern a	24.04.2015	BGBl. I No. 17, p. 642 (30.4.2015)
76	Art. 4 Bilanzrichtlinie-Umsetzungsgesetz	17.07.2015	BGBl. I 1245
77	Art. 198 Zehnte ZuständigkeitsanpassungsVO	31.08.2015	BGBl. I 1474
78	Art. 7 G zur Umsetzung der Transparenzrichtlinie-Änderungsrichtlinie	20.11.2015	BGBl. I 2029
79	Art. 1 Aktienrechtsnovelle 2016	22.12.2015	BGBl. I 2565
80	Art. 5 Abschlussprüfungsreformgesetz	10.05.2016	BGBl. I 1142
81	Art. 8 CSR-Richtlinie-Umsetzungs-gesetz	11.04.2017	BGBl. I 802
82	Art. 24 des 2. FiMaNoG	23.06.2017	BGBl. I 1693
83	Art. 9 Gesetz zur Umsetzung der Zweiten Zahlungsdiensterichtlinie	17.07.2017	BGBl. I 2446
84	Artikel 24 Zweites Finanzmarktnovellierungsgesetz (2. FiMaNoG)	23.06.2017	BGBl. I 1693
85	Artikel 1 Gesetz zur Umsetzung der zweiten Aktionärsrechterichtlinie (ARUG II)	12.12.2019	BGBl. I No. 50 p. 2637 (19.12.2009)
86	Artikel 15 Sanierungs- und Insolvenzrechtsfortentwicklungsgesetz (SanInsFoG)	22.12.2020	BGBl. I 3256
87	Artikel 7 Gesetz zur Umsetzung der Richtlinie (EU) 2019/2034 über die Beaufsichtigung von Wertpapierinstituten	12.05.2021	BGBl. I 990
88	Artikel 15 Finanzmarktintegritätsstärkungsgesetz (FISG)	03.06.2021	BGBl. I 1534
89	Artikel 2 Gesetz zur Einführung virtueller Hauptversammlungen von Aktiengesellschaften und Änderung genossenschafts- sowie insolvenz- und restrukturierungsrechtlicher Vorschriften	20.07.2022	BGBl. I 1166
90	Artikel 18 Gesetz zur Umsetzung der Digitalisierungsrichtlinie (DiRUG)	05.07.2021	BGBl. I 3338
91	Artikel 15 Gesetz zur Reform des Vormundschafts- und Betreuungsrechts	04.05.2021	BGBl. I 882
92	Artikel 61 Personengesellschaftsrechtsmodernisierungsgesetz (MoPeG)	10.08.2021	BGBl. I 3436

Sources: Münchener Kommentar zum Aktienrecht; https://www.buzer.de/gesetz/4702/l.htm; own research

Appendix D

German corporate governance codes

Date	Effective as of Source in the Federal Gazette	Links to the convenience translation	Main amendments
26.02.2002	30.08.2002 eBAnz AT1 2002 B1	German Corporate Governance Code	First German corporate governance code
07.11.2002	14.11.2002 eBAnz AT2 2002 B1	German Corporate Governance Code	Deletion of the recommendation about the disclosure of purchase and sale of shares by members of the executive board and supervisory board (directors' dealings) because of a new regulation in Section 15a of the German Securities Trading Act (WpHG).
21.05.2003	30.06.2003 eBAnz AT1 2003 B1	German Corporate Governance Code	Recommendations to increase transparency in board remuneration added
02.06.2005	12.07.2005 eBAnz AT17 2005 B1	German Corporate Governance Code	Recommendations to strengthen the independence of supervisory board members added; clarification that a change from chairmanship of the executive board to chairmanship of the supervisory board should not be the rule
12.06.2006	24.07.2006 eBAnz AT39 2006 B1	German Corporate Governance Code	Integration of relevant provisions of the German Executive Board Compensation Disclosure Act (VorstOG) and of the German Act on Corporate Integrity and Modernization of the Right of Avoidance (UMAG) into the Code, mainly regarding the individualized disclosure of executive board compensation and the strengthening of the rights of the chairman of the Annual General Meeting
14.06.2007	20.07.2007 eBAnz AT23 2007 B1	German Corporate Governance Code	Suggestion to limit severance payments for executive board members to two years added, nomination committee recommended for the supervisory board, clean-up of Code sections
06.06.2008	08.08.2008 eBAnz AT93 2008 B1	German Corporate Governance Code	Responsibility of the full supervisory board for executive board compensation strengthened; severance payment cap becomes a recommendation
18.06.2009	05.08.2009 eBAnz AT79 2009 B1	German Corporate Governance Code	Implementation of amendments in the course of the Act on the Appropriateness of Executive Board Compensation (VorstAG)
26.05.2010	02.07.2010 eBAnz AT68 2010 B1	German Corporate Governance Code	Recommendations to increase diversity on supervisory boards through women and international experts: appropriate consideration of women also in management positions and management boards added, recommendations to support training and continuing education for supervisory boards added
15.05.2012	15.06.2012 eBAnz AT 15.06.2012 B1	German Corporate Governance Code	Amendment of the recommendation on independence of supervisory board members; adjustment of the recommendation on compensation structure for supervisory board members
13.05.2013	10.06.2013 eBAnz AT 10.06.2013 B3	German Corporate Governance Code	New recommendations on executive board compensation added for greater transparency and better comparability: company-specific cap on total compensation, target setting for pension level; amendments to streamline the Code and to improve readability
24.06.2014	30.09.2014 BAnz AT 30.09.2014 B1	German Corporate Governance Code	Minor adaptations in the footnotes to the standard tables for executive board compensation
05.05.2015	12.06.2015 BAnz AT 12.06.2015 B1	German Corporate Governance Code	Recommendation to set a limit for the membership, recommendation to ascertain that a supervisory board candidate can devote the expected amount of time and recommendation to disclose if a supervisory board member has attended only half or fewer of the meetings
07.02.2017	24.04.2017 BAnz AT 24.04.2017 B2	German Corporate Governance Code	Clarification in the preamble, recommendation to disclose the principles of the compliance management system, recommendation to disclose composition goals of the supervisory board and to develop a competence profile. For candidates, a CV shall be published, and the name of the independent members shall be published
16.12.2019	20.03.2020 BAnz AT 20.03.2020 B3	German Corporate Governance Code	Amendment according to ARUG II
28.04.2022	27.06.2022 BAnz AT 27.06.2022 B1	German Corporate Governance Code	Current version of the Code; focus on sustainability.

Source: Author's own research based on the archive section on the commissions' website https://www.dcgk.de/en/code/archive.html and www.bundesanzeiger.de

Appendix E

DAX 40 companies in Germany

DAX 40 companies	Securities identification number		Annual Report	Legal form	one-tier/two-tier system	Codetermination (shareholder/employee representatives)	Sector
Adidas AG	A1EWWW	**2020**	annual-report-adidas-ar20.pdf (adidas-group.com)	Stock Corporation	two-tier (parity)	8/8	Retail
		2021	https://report.adidas-group.com/2021/en				
		2022	https://report.adidas-group.com/2022/en				
Allianz SE	840400	**2020**	https://www.allianz.com/en/investor_relations/results-reports/annual-reports.html	Societas Europaea	two-tier (parity)	6/6	Financial Services
		2021	https://www.allianz.com/en/investor_relations/results-reports/annual-reports.html				
		2022	https://www.allianz.com/en/investor_relations/results-reports/annual-reports.html				
BASF SE	BASF11	**2020**	https://report.basf.com/2020/en	Societas Europaea	two-tier (parity)	6/6	Chemicals
		2021	https://report.basf.com/2021/en				
		2022	https://report.basf.com/2022/en				
Bayer AG	BAY001	**2020**	https://www.bayer.com/en/investors/integrated-annual-reports	Stock Corporation	two-tier (parity)	10/10	Pharmaceuticals
		2021	https://www.bayer.com/en/investors/integrated-annual-reports				
		2022	https://www.bayer.com/en/investors/integrated-annual-reports				

Beiersdorf AG	520000	**2020**	https://www.beiersdorf.com/investor-relations/financial-reports/financial-reports-and-presentations	Stock Corporation	two-tier (parity)	6/6	Consumer goods
		2021	https://www.beiersdorf.com/investor-relations/financial-reports/financial-reports-and-presentations				
		2022	https://www.beiersdorf.com/investor-relations/financial-reports/financial-reports-and-presentations				
BMW AG	519000	**2020**	https://www.bmwgroup.com/en/investor-relations/company-reports.html	Stock Corporation	two-tier (parity)	10/10	Automotive
		2021	https://www.bmwgroup.com/en/investor-relations/company-reports.html				
		2022	https://www.bmwgroup.com/en/investor-relations/company-reports.html				
Brenntag SE	A1DAHH	**2020**	https://annualreport.brenntag.com/en/downloadcenter	Societas Europaea	two-tier (non-parity)	6/0	Distribution
		2021	https://annualreport2021.brenntag.com/wp-content/uploads/2022/03/AnnualReport_2021.pdf				
		2022	https://annualreport.brenntag.com/en/downloadcenter				
Commerzbank AG	CBK1001	**2020**	https://investor-relations.commerzbank.com/financial-reports/	Stock Corporation	two-tier (parity)	10/10	Financial Services
		2021	https://investor-relations.commerzbank.com/financial-reports/				
		2022	https://investor-relations.commerzbank.com/financial-reports/				
Continental AG	543900	**2020**	https://www.continental.com/en/investors/reports	Stock Corporation	two-tier (parity)	10/10	Automotive
		2021	https://www.continental.com/en/investors/reports				
		2022	https://www.continental.com/en/investors/reports				
Covestro AG	606214	**2020**	https://report.covestro.com/annual-report-2020	Stock Corporation	two-tier (parity)	6/6	Chemicals
		2021	https://report.covestro.com/annual-report-2021				
		2022	https://report.covestro.com/annual-report-2022				

Daimler Truck Holding AG	DTR0CK	**2020**	DAIMLER was split from Daimler AG / no data available for 2020	Stock Corporation	two-tier (parity)	10/10	Automotive
		2021	https://www.daimlertruck.com/en/investors/reports/financial-reports				
		2022	https://www.daimlertruck.com/en/investors/reports/financial-reports				
Deutsche Bank AG	514000	**2020**	https://investor-relations.db.com/reports-and-events/annual-reports/index	Stock Corporation	two-tier (parity)	10/10	Financial Services
		2021	https://investor-relations.db.com/reports-and-events/annual-reports/index				
		2022	https://investor-relations.db.com/reports-and-events/annual-reports/index				
Deutsche Börse AG	581005	**2020**	https://deutsche-boerse.com/dbg-en/investor-relations/financial-reports/annual-reports	Stock Corporation	two-tier (parity)	8/8	Financial Services
		2021	https://deutsche-boerse.com/dbg-en/investor-relations/financial-reports/annual-reports				
		2022	https://deutsche-boerse.com/dbg-en/investor-relations/financial-reports/annual-reports				
Deutsche Post AG	555200	**2020**	https://www.dpdhl.com/en/investors/ir-download-center.html	Stock Corporation	two-tier (parity)	10/10	Logistics
		2021	https://www.dpdhl.com/en/investors/ir-download-center.html				
		2022	https://www.dpdhl.com/en/investors/ir-download-center.html				
Deutsche Telekom AG	555750	**2020**	https://report.telekom/com/annual-report-2020	Stock Corporation	two-tier (parity)	10/10	Telecommunication
		2021	https://report.telekom.com/annual-report-2021/_assets/downloads/entire-dtag-ar21.pdf				
		2022	https://report.telekom/com/annual-report-2022				
E.ON SE	ENAG99	**2020**	https://www.eon.com/en/investor-relations/financial-publications/annual-report.html	Societas Europaea	two-tier (parity)	8/8	Utilities
		2021	https://www.eon.com/en/investor-relations/financial-publications/annual-report.html				
		2022	https://www.eon.com/en/investor-relations/financial-publications/annual-report.html				

Fresenius SE & Co. KGaA	578560	**2020**	https://annualreport.fresenius.com/2022	Societas Europaea	two-tier (parity)	6/6	Healthcare
		2021	https://annualreport.fresenius.com/2021				
		2022	https://annualreport.fresenius.com/2022				
Hannover Rück SE	840221	**2020**	Hannover Re - Annual Report 2020 (hannover-re.com)	Societas Europaea	two-tier (non-parity)	6/3	Insurance
		2021	https://www.hannover-re.com/1846913/annual-report-2021pdf				
		2022	https://www.hannover-re.com/1945664/annual-report-2022.pdf				
Heidelberg Materials AG	604700	**2020**	https://www.heidelbergmaterials.com/en/reports-and-presentations	Stock Corporation	two-tier (parity)	6/6	Construction Material
		2021	https://www.heidelbergmaterials.com/en/reports-and-presentations				
		2022	https://www.heidelbergmaterials.com/en/reports-and-presentations				
Henkel AG & Co. KGaA	604843	**2020**	https://www.henkel.com/investors-and-analysts/financial-reports/annual-reports	Stock Corporation	two-tier (parity)	8/8	Consumer goods
		2021	https://www.henkel.com/investors-and-analysts/financial-reports/annual-reports				
		2022	https://www.henkel.com/investors-and-analysts/financial-reports/annual-reports				
Infineon Technologies AG	623100	**2020**	https://www.infineon.com/cms/en/about-infineon/investor/reports-and-presentations	Stock Corporation	two-tier (parity)	8/8	Technology
		2021	https://www.infineon.com/cms/en/about-infineon/investor/reports-and-presentations				
		2022	https://www.infineon.com/cms/en/about-infineon/investor/reports-and-presentations				
Mercedes-Benz Group AG	710000	**2020**	https://group.mercedes-benz.com/investors/reports-news/	Stock Corporation	two-tier (parity)	10/10	Automotive
		2021	https://group.mercedes-benz.com/investors/reports-news/				
		2022	https://group.mercedes-benz.com/investors/reports-news/				

Merck KGaA	659990	**2020**	https://www.merckgroup.com/en/investors/reports-and-financials.html	KGaA	two-tier (parity)	8/8	Pharmaceuticals
		2021	https://www.merckgroup.com/en/investors/reports-and-financials.html				
		2022	https://www.merckgroup.com/en/investors/reports-and-financials.html				
MTU Aero Engines AG	A0D9PT	**2020**	https://www.mtu.de/investor-relations/publications-events/financial-reports/financial-reports-archive	Stock Corporation	two-tier (parity)	6/6	Defence
		2021	https://www.mtu.de/investor-relations/publications-events/financial-reports/financial-reports-archive				
		2022	https://www.mtu.de/investor-relations/publications-events/financial-reports/financial-reports-archive				
Münchener Rück AG	843002	**2020**	https://www.munichre.com/en/company/investors/reports-and-presentations/results-reports.html	Stock Corporation	two-tier (parity)	10/10	Financial Services
		2021	https://www.munichre.com/en/company/investors/reports-and-presentations/results-reports.html				
		2022	https://www.munichre.com/en/company/investors/reports-and-presentations/results-reports.html				
Porsche AG	PAG9113	**2022**	https://newsroom.porsche.com/en/company.html	Stock Corporation	two-tier (parity)	10/10	Automotive
Porsche Automobil Holding SE	PAH003	**2020**	https://www.porsche-se.com/en/investor-relations/financial_publications	Societas Europaea	two-tier (non-parity)	10/0	Automotive
		2021	https://www.porsche-se.com/en/investor-relations/financial_publications				
		2022	https://www.porsche-se.com/en/investor-relations/financial_publications				
Rheinmetall AG	7030009	**2020**	https://www.rheinmetall.com/en/media/publications/publications-overview	Stock Corporation	two-tier (parity)	8/8	Defence
		2021	https://www.rheinmetall.com/en/media/publications/publications-overview				
		2022	https://www.rheinmetall.com/en/media/publications/publications-overview				
RWE AG	703712	**2020**	https://www.rwe.com/en/investor-relations/financial-calendar-and-publications/reporting	Stock Corporation	two-tier (parity)	10/10	Utilities
		2021	https://www.rwe.com/en/investor-relations/financial-calendar-and-publications/reporting				

		2022	https://www.rwe.com/en/investor-relations/financial-calendar-and-publications/reporting				
SAP SE	716460	**2020**	https://www.sap.com/investors/en/report.html	Societas Europaea	two-tier (parity)	9/9	Technology
		2021	https://www.sap.com/investors/en/report.html				
		2022	https://www.sap.com/investors/en/report.html				
Sartorius AG	716563	**2020**	https://www.sartorius.com/en/company/investor-relations/sartorius-ag-investor-relations/news-financial-publication	Stock Corporation	two-tier (parity)	6/6	Medical Technology
		2021	https://www.sartorius.com/en/company/investor-relations/sartorius-ag-investor-relations/news-financial-publication				
		2022	https://www.sartorius.com/en/company/investor-relations/sartorius-ag-investor-relations/news-financial-publication				
Siemens AG	723610	**2020**	https://www.siemens.com/global/en/company/investor-relations.html	Stock Corporation	two-tier (parity)	10/10	Industrials
		2021	https://www.siemens.com/global/en/company/investor-relations.html				
		2022	https://www.siemens.com/global/en/company/investor-relations.html				
		2023	https://www.siemens.com/global/en/company/investor-relations.html				
Siemens Energy AG	ENER6Y	**2020**	https://www.siemens-energy.com/global/en/home/investor-relations/publications-ad-hoc.html	Stock Corporation	two-tier (parity)	10/10	Energy Sector
		2021	https://www.siemens-energy.com/global/en/home/investor-relations/publications-ad-hoc.html				
		2022	https://www.siemens-energy.com/global/en/home/investor-relations/publications-ad-hoc.html				
		2023	https://www.siemens-energy.com/global/en/home/investor-relations/publications-ad-hoc.html				
Siemens Healthineers AG	SHL100	**2020**	https://www.siemens-healthineers.com/investor-relations/presentations-financial-publication	Stock Corporation	two-tier (non-parity)	10/0	Medical Equipment
		2021	https://www.siemens-healthineers.com/investor-relations/presentations-financial-publication				
		2022	https://www.siemens-healthineers.com/investor-relations/presentations-financial-publication				

		2023	https://www.siemens-healthineers.com/investor-relations/presentations-financial-publication				
Symrise AG	SYM999	**2020**	https://www.symrise.com/investors/financial-results	Stock Corporation	two-tier (parity)	6/6	Chemicals
		2021	https://www.symrise.com/investors/financial-results				
		2022	https://www.symrise.com/investors/financial-results				
Volkswagen AG	766403	**2020**	https://www.volkswagen-group.com/en/financial-reports-volkswagen-group-15928	Stock Corporation	two-tier (parity)	10/10	Automotive
		2021	https://www.volkswagen-group.com/en/financial-reports-volkswagen-group-15928				
		2022	https://www.volkswagen-group.com/en/financial-reports-volkswagen-group-15928				
Vonovia SE	A1ML7J	**2020**	https://www.vonovia.com/en/investors/news-and-publications/reports-publications	Societas Europaea	two-tier (non-parity)	10/0	Real Estate
		2021	https://www.vonovia.com/en/investors/news-and-publications/reports-publications				
		2022	https://www.vonovia.com/en/investors/news-and-publications/reports-publications				
Zalando SE	ZAL111	**2020**	https://corporate.zalando.com/en/investor-relations/financial-reporting	Societas Europaea	two-tier (non-parity)	6/3	E-Commerce
		2021	https://corporate.zalando.com/en/investor-relations/financial-reporting				
		2022	https://corporate.zalando.com/en/investor-relations/financial-reporting				

Non-German Companies out of DAX 40:
Airbus SE - statutory seat in the Netherlands
Qiagen N.V. - statutory seat in the Netherlands

Additional Remarks:
Daimler Truck Holding has been listed in the DAX 40 segment since December 10, 2021
Porsche AG has been listed in the DAX 40 segment since December 19, 2022

Appendix F

Interview guide: conflicts of interest

Name:

Date:

Information about mandate/s:

Question 1: Definition of Conflicts of Interest

Is there a definition of conflict of interest in place?	
☐ Yes	☐ No
Does the definition list the conflicts of interest by giving examples?	Has the supervisory board ever discussed the necessity of a definition?
☐ Yes ☐ No	☐ Yes ☐ No
Please give information about the main content of the definition	What is the reason for not defining it? In your view: why has it never been discussed?
(Answer)	*(Answer)*

Question 2: Disclosure of Conflicts of Interest

How does the supervisory board learn about conflicts of interest?
(Answer)

Which instrument is used to ensure that supervisory board members disclose any existing or anticipated conflicts of interest to the Chairperson or the Supervisory Board as a whole?
(Answer)

Is it required to report about conflicts of interest? To whom and when?
(Answer)

What will happen if an undisclosed conflict of interest is revealed?
(Answer)

Question 3: Actions

How is it ensured that the supervisory board would take appropriate actions if a conflict of interest arises?
(Answer)

Which actions do you deem appropriate if a conflict of interest arises?

- ☐ Exclusion from participation in the meeting
- ☐ Exclusion from getting any information (presentations, meeting minutes)
- ☐ Limited withdrawal of the mandate
- ☐ Final withdrawal of the mandate
- ☐ Others: ____________________

Question 4: Avoidance of conflicts of interest in the nomination / (re-)election process

Do you check and consider existing or anticipated conflicts of interest during the nomination process for the election of new supervisory board members or the re-election of current supervisory board members?	
☐ Yes	☐ No

If yes, please describe how that check works during the nomination process.
(Answer)

Question 5: Importance of conflicts of interest

Do you think that conflicts of interest are important problems in German cooperation?
(Answer / Yes? No? Why?)

How and by whom can this problem be solved?
(Answer)

Question 6: Importance of independence of supervisory board members

The German Corporate Governance Code stipulates criteria for the independence of supervisory board members; do you believe that these criteria are sufficient to prevent the majority of conflicts of interest?

Criteria: The Supervisory Board member or a close family member:	*Prevention of conflicts of interest (1-4)*:*
(1) was a member of the company's management board in the two years prior to appointment	
(2) is currently maintaining (or has maintained) a material business relationship with the company or one of the entities in the year up to the appointment, directly or as a shareholder, or in a leading position of a non-group entity;	
(3) is a close family member of a management board member	
(4) has been a member of the supervisory board for more than twelve years	
(5) is neither a controlling shareholder nor a member of the executive governing body of the controlling shareholder, and does not have a personal or business relationship with the controlling shareholder that may cause a substantial – and not merely temporary – conflict of interest.	

* 1: very good criterion to prevent conflicts of interests until 4: criterion is not suitable to prevent conflicts of interest

Question 7: Own experience with conflicts of interest

If, during your career as a member of the Supervisory Board, you or any other member experienced a conflict of interest? How was it dealt with, how was it solved? Could you please give insights into the nature of the conflict?
(Answer)

Thanks for your help!

Supplementary questions for employee representatives

Question S1: Role interpretation

How do you interpret your role as an employee representative on the supervisory board, especially concerning conflicts of interest?
(Answer)

How do you balance the interest of the employees and the interest of the company, especially when they may not align?
(Answer)

In times with labor disputes, is your role interpretation still valid or are there any changes to your role?
(Answer)

Question S2: Actions in case of conflicts of interest

How do you identify own potential conflicts of interest?
(Answer)

How do you handle situations where there may be conflicting interest? Which considerations should guide the actions in case of conflicting interest?
(Answer)

How does the supervisory board learn about conflicts of interest?
(Answer)

Question S3: Examples

Can you give me examples where a conflict of interest arose, and can you explain how you reacted?
(Answer)

Question S4: Evolvement of the role of employee representatives

Based on your experience, how has the role of employee representatives evolved and what changes do you foresee or expect in the future?
(Answer)