

Along with a number of global investors and asset owners, Standard Life Investments co-signed a letter to the German Bundestag regarding proposed amendments to German corporate law. These amendments were introduced as part of Germany's implementation of an EU Directive requiring boards to have a certain level of financial and industry expertise. However, at the same time, the requirement that there be a minimum of one independent director on the board is to be removed. We believe that this is a weakening of governance standards and wrote to the Bundestag to ask that they re-consider this change.

CONFIDENTIAL

Deutscher Bundestag
Prof. Dr. iur. Heribert Hirte
Member of the Committee on Legal Affairs and Consumer Protection
Platz der Republik 1
11011 Berlin
Deutschland

By email to: heribert.hirte@bundestag.de

APG Asset Management

Amsterdam
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Postal Address
PO Box 75283
1070 AG Amsterdam
The Netherlands

Phone
+31 20 60 48144

Internet
www.apg.nl

E-mail
claudia.kruse@apg-am.nl

Subject: **Proposed amendment of § 100 (5) Aktiengesetz**

Dear Mr. Hirte,

We, the undersigned institutional investors, manage assets globally for our clients and beneficiaries worth over EUR 3 trillion. We are long-term shareholders in German companies. We firmly believe that addressing corporate governance and independent oversight is very important to the long-term success and economic value of the companies we invest in. In that regard, we took notice of the proposed amendments to the German Aktiengesetz (AktG) for the implementation of Directive 2014/56/EU¹, one of which constitutes a reduction of the independence requirements for the Supervisory Board of German listed companies.² We fear this proposal could severely weaken an important pillar of German corporate governance and therefore address our concerns about the proposed amendment of § 100 (5) of the AktG to you.

§ 100 (5) of the AktG about the Personal Qualifications of Members of the Supervisory Board currently states that:

'Bei Gesellschaften im Sinn des § 264d des Handelsgesetzbuchs muss mindestens ein unabhängiges Mitglied des Aufsichtsrats Ober Sachverstand auf den Gebieten Rechnungslegung oder Abschlussprüfung verfahren.'

The Bundestag is now proposing to implement Directive 2014/56/EU and amend § 100 (5) AktG to state that at least one member of the Supervisory Board has to have expertise knowledge in the fields of accounting or annual auditing and the members of the Supervisory Board in their entirety have to be familiar with the sector in which the company operates³:

'Nicht nur muss (wie bisher) mindestens ein Mitglied des Prüfungsausschusses Ober Sachverstand im Bereich der Rechnungslegung und/oder der Abschlussprüfung verfahren, sondern die Ausschussmitglieder in ihrer Gesamtheit müssen auch mit dem Sektor, in welchem das geöffnete Unternehmen tätig ist, vertraut sein.'

¹ Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts. See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0056>

² Entwurf eines Gesetzes zur Umsetzung der prüfungsbezogenen Regelungen der Richtlinie 2014/56/EU sowie zur Ausführung der entsprechenden Vorgaben der Verordnung (EU) Nr. 537/2014 im Hinblick auf die Abschlussprüfung bei Unternehmen von öffentlichem Interesse - Abschlussprüfungsreformgesetz - AReG; Referentenentwurf BMJV, dated March 27th, 2015.

³ 'In § 100 Absatz 5 (...) wird das Wort „unabhängiges“ gestrichen und werden vor dem Punkt am Ende ein Semikolon und die Wörter „die Mitglieder müssen in ihrer Gesamtheit mit dem Sektor, in dem die Gesellschaft tätig ist, vertraut sein“ eingefügt.'

See: <http://dip21.bundestag.de/dip21/btd/18/072/1807219.pdf> p. 17.

Independence of the Supervisory Board is a key quality element of the right checks and balances and efficient supervision at listed companies. It is the role of the Supervisory Board to supervise and evaluate the activities and performance of management and to form a balanced judgment. This role can only be performed optimally if the composition of the Supervisory Board allows it to function independently and effectively, to conduct efficient oversight and ensure sufficient safeguarding of the company's long-term success and value creation. The recent diesel-emissions scandal at Volkswagen demonstrated how insufficient Supervisory Board independence and poor corporate governance can lead to weak culture, ineffective management and significant value destruction

With this in mind, we are very concerned about the proposal by the Bundestag to delete the independence requirement for at least one member of the Supervisory Board from § 100 (5) AktG. In addition, we fail to understand why the Bundestag is proposing this change, especially since the EU-Directive does not require Member States to decrease the level of independence of the Supervisory Board. In our view, reducing the independence requirement constitutes a deterioration of German corporate governance standards in relation to board oversight, a key function of listed company boards. Therefore, and to avoid creating the impression that the national lawmakers of EU Member States are weakening their approach on independent and efficient supervision, we strongly urge the Bundestag not to implement the proposed amendment. By doing so, the Bundestag will signal to the market that it recognises and adheres to good corporate governance standards.

If this is of interest, we would welcome an opportunity to exchange views and to discuss the proposed amendment to the AktG in the context of good governance further with you.

For any questions about this letter or to arrange a follow up, please contact Claudia Kruse on claudia.kruse@apg-am.nl or +31 (0)20 604 8144.

Yours sincerely,



Claudia Kruse
Managing Director Sustainability & Governance
APG Asset Management
The Netherlands

Matt Christensen
Global Head of Responsible Investment
AXA Investment Managers
United Kingdom

Vicki Bakhshi
Head of Governance and Sustainable Investment
BMO Global Asset Management (EMEA)
United Kingdom

Anne Sheehan
Director of Corporate Governance
California State Teachers' Retirement System (CaiSTRS)
United States

Iain Richards
Head of Responsible Investment
Columbia Threadneedle Investments
(EMEA)
United Kingdom

Henning Gebhardt- Global Head of Equity & CIO
EMEA Nicolas Huber- Head of Corporate Governance
Deutsche Asset Management
Germany

Michael McCauley
Senior Officer Investment Programs & Governance
Florida State Board of Administration
(SBA)
United States

Dr. Hans-Christoph Hirt
Co-Head and Executive Director
Hermes Equity Ownership
Services
United Kingdom

Deborah Gilshan
Head of Sustainable Ownership
Railpen Investments
United Kingdom

Alison Kennedy
Governance & Stewardship Director
Standard Life Investments
United Kingdom

Dr. Daniel Summerfield
Co-Head of Responsible
Investment USS Investment
Management Ltd
United Kingdom