Deutsches Aktieninstitut

# THE OECD PRINCIPLES OF CORPORATE GOVERNANCE – DRAFT

Comments of Deutsches Aktieninstitut e.V., 4 January 2015

# Introduction

Deutsches Aktieninstitut welcomes the opportunity to comment the OECD's consultation paper. Deutsches Aktieninstitut represents the entire German economy interested in the capital markets. Its about 200 members are listed corporations, banks, stock exchanges, investors and other important market participants. Deutsches Aktieninstitut keeps offices in Frankfurt am Main, Brussels and in Berlin. Deutsches Aktieninstitut would very much appreciate if you take into account the following remarks.

# Remarks

**I. Importance of Corporate Governance Codes and the "comply or explain"-principle**

Deutsches Aktieninstitut welcomes that the Draft OECD Principles of Corporate Governance (in the following "the Principles") emphasize the importance of the corporate governance codes and their flexibility.

"1. (…)The legislative and regulatory elements of the corporate governance framework can usefully be complemented by soft law elements based on the 'comply or explain' principle such as corporate governance codes in order to allow for flexibility and address specificities of individual companies. What works well in one company, for one investor or a particular stakeholder may not necessarily be generally applicable to corporations, investors and stakeholders that operate in another context and under different circumstances," p. 3.

The German Corporate Governance Code also only recently put an emphasis on that topic: The foreword to the German Code reads: "A well justified deviation from a Code recommendation may be in the interest of good corporate governance."[1]

Deutsches Aktieninstitut also welcomes the emphasis of private enforcement:

"5. In addition, enforcement can also be pursued through private action, and the effective balance between public and private enforcement will vary depending upon the specific features of each jurisdiction" p. 4.

It seems that the EU Commission – feeling that declarations of deviations from the codes are not material enough – would like to see more enforcement by authorities[2] forgetting about the shareholder's role in that context.

[1] http://dcgk.de//files/dcgk/usercontent/en/download/code/E-CorpGov_2014.pdf.

[2] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014H0208&from=EN.

## II. Independence

Deutsches Aktieninstitut is concerned with the evolution of the "independent director" especially if the Principles recommend a majority of independent directors for important decisions. There seems to develop a dogma which is problematic because there is no full consensus on the scope nor on the benefits of independence. Is the reason better monitoring of management in a dispersed ownership or is it to solve another quite different question: how to avoid conflicts of interest?[3] Are the benefits of a "disinterested" director really openly balanced against the disadvantages?

It seems that avoidance of conflicts of interest seems to be the concept of continental Europe, the Principles mention both. Now, "independence" is often estimated via a catalogue of criteria. **Such catalogue applies generally without regard to the special conflict of interest it is supposed to avoid**. Due to the catalogue one is regarded as either independent or not. This practice **excludes systematically persons** from important decisions even if no danger may arise from their participation. A good example is the remuneration committee: The Principles state:

"112. It is considered good practice ~~in an increasing number of countries~~ that remuneration policy and employment contracts for board members

[3] See for example Hansen's report on the evolution of independent directors: "When faced with the problem of self-serving directors and addressing problems of managerial overreach, the US courts thus found little help in legislation and jurisprudence. The key problem was, as correctly observed by Berle & Means, the <u>unchecked self-interest of directors</u>, and consequently the courts began to look for someone on the board who could be described as <u>disinterested</u>. This was how the chimera of the 'independent' director was created. (…)"The <u>solution was not perfect</u> of course, since the problem of unaccountable directors sprung from the fact that dispersed share ownership prevented the appointment procedure – the voting of shareholders in a general meeting to appoint and dismiss directors – to act as a credible instrument of discipline. Independent directors were appointed much in the same way as their non-independent colleagues on the board that they were supposed to monitor, i.e., without the direct involvement of shareholders. In fact, they often owed their position on the board to the directors already serving there; after all, a director does not appear on the board as a deus ex machina, but is contacted because of some shared connections and then approved by somebody influential to be put forward as a candidate on the ballot.(…) When the Cadbury Report put corporate governance on the European agenda, this penchant for independent directors jumped the Atlantic as it was now seen as a natural feature of a vibrant and sophisticated securities market and not just as a second-best solution to an insolvable problem", Hansen, p. 248.

and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors," p. 32.

**This has to be questioned**. Hansen puts it in a nutshell which is not only true for the Nordic system to which he refers: "**Considering that remuneration of directors is literally taken out of the pockets of shareholders, it remains astonishing that** the Commission Recommendation (2005/162/EC) **requires a majority of the remuneration committee to be 'independent' of major shareholders**."[4] As the Principles do not restrict the independence criteria here, a general view on independence is taken which also includes independence from major shareholders, like the EU Commission does. But isn't the problem rather the independence from the addressees of the remuneration the topic here in the first place? If the idea is avoidance of linking executive pay and thus their behaviour to the will of major shareholders the existence of major shareholders is actually questioned and has to be discussed thoroughly: Should major shareholder not have the influence represented by their shareholding?

The dogma of independent directors also questions the principle that the supervisory board has responsibilities and is **accountable as a whole which means that generally members are not encouraged to sit back and leave decisions wholly to other members of the board. This would create a lack of monitoring and accountability which should be promoted by the Principles very carefully and in exceptional cases. This does not seem to be the case:**

"2. Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration," p. 35.

Deutsches Aktieninstitut would like to suggest a more elaborate approach on independence, clearly stating the Principle's concept of independence and the distinction to the problem of avoiding conflicts of interest. An example would be to state here:

[4] Hansen, p. 261.

"112. It is considered good practice that remuneration policy and employment contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of ~~independent~~ directors **which are independent from executive directors or the management board.**"

Also, the concept of ex post solutions should be acknowledged. An ex post approach has the benefit of flexibility. If Directors find that their objective judgment is disturbed because there is a conflict of interest they should excuse themselves and not participate in the decision making. So, they would not be excluded from certain decisions generally because they failed with regard to the independence list. "This is a flexible solution that has stood the test of time and, what is even more important, it does not go against the statutory emphasis that dominant shareholders are beneficial and should be able to monitor, control and discipline management,"[5] or as the Principles state: "the presence of a controlling shareholder can reduce the agency problem by closer monitoring of management," p. 13.

**III. Shareholder participation in important decisions**

There is a trend to grant more competences to the AGM. For example, the EU Commission has drafted a change to the Shareholders' Rights Directive[6] in which a binding ex ante vote it is foreseen on the remuneration of the members of the management board and supervisory board (executive and non-executive directors) as well as ex post on the remuneration report. Also, a vote is foreseen on related party transactions (RPT) representing 5 % of the company's assets or if a transaction can have a significant effect on return and turnover. This also includes normal business transactions e.g. in company groups.

Deutsches Aktieninstitut is sceptical on such binding votes and would like to explain why.

[5] Hansen, p. 256.

[6] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014PC0213&from=EN.

**1. Say on Pay**

Since 2010 there are advisory votes of shareholders on the remuneration systems with approval rates of more than 90 % of shareholders. This advisory vote is a good and important sign for the supervisory board that is in charge of creating the remuneration policy and negotiating contracts with the members of the management board. Due to the special checks and balances in the dualistic system the AGM has traditionally been in charge of the remuneration of supervisory board members. Their remuneration system is not very complicated. Some companies have also started to pay only fixed compensation in order to emphasize their monitoring role and separating the monetary interests from those of the management board. While an advisory vote works well in practice and a negative vote or low approval rate makes the supervisory board rethink and change the respective systems a legally binding vote brings more downsides than benefits. In Germany the supervisory board is by law liable if the remuneration of the management board is not "adequate". With a binding vote there would be a shared responsibility but no shared liability. Also, there would be a loss of flexibility, e.g. if new management board members are to be engaged.

Therefore we agree with the following analysis but believe that a binding vote is indeed "endangering contracts".

**"23. (…) The different forms of say-on-pay (binding or** ~~an~~ advisory vote, **ex-ante and/or ex-post, board members and/or key executives covered) play an important role in** ~~**which conveys**~~ **conveying** the strength and tone of shareholder sentiment to the board without endangering employment contracts" p. 10.

We are not aware that there is a trend to have a shareholder vote directly on the remuneration of board members and not on the remuneration system:

"Principle 4. Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members, should be facilitated. Shareholders should be able to make their views known, **including through votes at annual shareholder meetings**, on the remuneration ~~policy for~~**of** board members and key executives. The equity component of compensation schemes for board members and employees should be subject to shareholder approval," p. 9.

With the deletion of “policy” the Principles seem to favour that, though. This is not promoted by the Principles’ later remarks on “say on pay” because there is no preference on a say on the remuneration itself or at the policy. Therefore we would suggest not to delete “policy” here. **If the deletion is only meant to give room to also a vote on the report we suggest to instead insert “policy and/or report”**.

**2. Related Party transactions (RPTs)**

Deutsches Aktieninstitut supports minority shareholder protection against abusive transactions with RPTs. But such protection can also be achieved by an specialized set of legal rules concerning de facto and contractual corporate groups and other procedures that prevent such an abuse, not only by shareholder votes. It should be noted that the company law regime has elaborated its own checks and balances that address not only the dangers for minority shareholders but also – not to be forgotten – for the creditors of the company.

There are a lot of downsides to a shareholder approval especially of business transactions. We have the impression that the Principles have seen the problem:

“14. As a practical matter, however, <u>the corporation cannot be managed by shareholder referendum</u>. The shareholding body is made up of individuals and institutions whose interests, goals, investment horizons and capabilities vary. Moreover, the corporation's management must be able to take business decisions rapidly. In light of these realities and the complexity of managing the corporation's affairs in <u>fast moving and ever changing</u> markets, shareholders are not expected to assume responsibility for managing corporate activities. The responsibility for corporate strategy and operations is typically placed in the hands of the board and a management team that is selected, motivated and, when necessary, replaced by the board,” p. 7.

Therefore, this should be also mentioned when dealing with RPTs in the Principles. **Deutsches Aktieninstitut suggests the Principles to at least recommend to take business transactions out of the scope of shareholders approval for RPTs.**

We agree on the Principle ‘F’ because we believe that the description is general enough not to interfere with different company law systems:

"F. Related-party transactions should be approved and conducted in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders," p. 12.

Deutsches Aktieninstitut would like to add that if it comes to business transactions confidentiality of trade secrets that protect the companies and also the shareholders against competitors cannot be kept. If the shareholders have to vote on a transaction they need proper information to make their own judgement. Systematically information would have to be disclosed that better ought to stay confidential. This can be to the detriment of the company and finally also to the shareholders. **The Principles should clearly warn about that downside.** Therefore shareholder votes should **not generally be seen as a remedy but the Principles should point out that there may be a whole set of rules** that take care of shareholder protection. This is especially the case as the Principles address a shareholder vote, here:

"Shareholders may also be given a say in approving certain transactions, with interested shareholders excluded."

While abstaining form vote or even discussion is a common procedure on boards for conflicted members of the boards, the exclusion of shareholders is economically and legally problematic. The exclusion of shareholders from the vote is a very strong limitation of the shareholder's right representing their investment in the company. **This should also be reminded by the Principles balancing that against the solution of board monitoring.**

"34. The potential abuse of related party transactions is an important policy issue in all markets, but particularly in those where corporate ownership is concentrated and corporate groups prevail. <u>Banning these transactions is normally not a solution as there is nothing wrong per se with entering into transactions with related parties</u>, provided that the conflicts of interest inherent in those transactions are adequately addressed, including through proper monitoring and disclosure. This is all the more important where significant portions of income and/or costs arise from transactions with related parties," p. 12.

Deutsches Aktieninstitut would like to state that not only there is nothing wrong per se with such transactions but forming e.g. of groups or intra group trading is generally to the benefit of all members of the group. **This seems not to be properly addressed by the Principles, here**.

As Germany is a market with such traditionally concentrated ownership (70 % of turnover of the economic sectors in Germany are generated by affiliated group companies which employ 53 % of all those in gainful employment) the law has evolved respectively so that the framework cares for concentrated ownership to be beneficial[7]. German law does not label such measures as "RPTs" but is considered to be effective as well:

„Our overview shows that all three countries provide a large array of doctrines and remedies against selfly broad array of opportunistic behavior to provide an accurate picture of how the laws constrain dominant shareholders' opportunism in the three sample countries [France, Germany and Italy] dealing. **Some of them are different from those familiar to English-speaking scholars and have received little attention in the comparative debate, such as the German prohibition against concealed distributions** or the role of minority shareholders in the prosecution of abus de biens sociaux in France."[8]

[7] Hansen, „The risk that the dominant shareholder will try to increase his return as well by taking private benefits remains real, but if company law legislation is in place to counter that risk, the existence of a dominant shareholder is beneficial. It is beneficial to the minority shareholders, because the dominant shareholder will be able to monitor and discipline management in a way they could not afford, and if private benefits are made illegal, the dominant shareholder will try to maximise the profitability of the company to increase dividends, which also benefits minority shareholders who receive their small part of any dividends paid. The profitable governance of a company is also beneficial to creditors, who are to be paid before dividends, and to society that prefers its companies to be profitable," p.252.

[8] *Conac/Enriques/Gelter*, Constraining Dominant Shareholder' self-dealing: The Legal Framework in France, Germany, and Italy, http://www.law.harvard.edu/programs/olin_center/fellows_papers/pdf/Gelter_18.pdf. The authors also remark: "What little we know may also be distorted by an error of perspective that comparative corporate governance scholars risk making. It is in **fact tempting to compare corporate laws by taking one benchmark jurisdiction, typically the US, and to assess the quality of other countries' corporate law systems depending on how much they replicate some prominent features of US law**, such as for example Delaware Courts' emphasis on approval of self-dealing transactions by a majority of the minority shareholders. This approach may **provide a distorted picture of the effectiveness of other corporate laws**, because it might fail to account for legal strategies and enforcement tools that, while unknown to the US corporate governance re-

As the scholars say: One of the elements of German minority shareholder protection due to the principles of “no repayment of capital” and “equal treatment of shareholders” is the prohibition of so called “concealed” distributions which means that the company must not grant shareholders anything besides dividends. Even transactions with shareholders that are not on market terms are forbidden except they are allowed under the group law regime and e.g. compensated otherwise in case of *de facto* groups (see below). This is interpreted as including also any payment to a third party that can be referred or attributed economically to a shareholder[9]. There is a liability of shareholders for receipt of prohibited benefits which have to be returned.[10] This is not the case in other Jurisdictions so from their point of view an additional shareholder protection seems to make sense.

Due to German law dealing with *de facto* groups transactions even to the detriment of a subsidiary are allowed – but they have to be compensated during the fiscal year. This rule is not restricted to “transactions” but applicable to any measure of influence from the parent, so systematically covers a broader range of activities than the concept of RPTs. More elaborate rules apply if there is a corporate group based on a contract (Vertragskonzern) which include minority shareholder indemnification in cash when entering into the group.

In addition to corporate group law European law has introduced the transparency of RPTs. They have to be reported in the annual accounts which is controlled by auditors. This is an instrument that has a strong preventive effect as well as the competence of fiscal authorities. The latter will have a close look if transactions are not concluded on market terms.

Such regime that composes the minority shareholder protection of different components does not necessarily lable the protection rules as “Related Party Transactions”. This is why a quick look may give the impression that

---

gime, allow countries to tackle self-dealing differently, but no less effectively than the US, or, in other words, to achieve functional as opposed to formal convergence” p. 9.

[9] See Bayer in Münchener Kommentar, AktG § 57 Rn. 71. The World Bank study: http://www.doingbusiness.org/data/exploreeconomies/germany/#protecting-investors has probably overlooked that.

[10] See especillay articles 53a, 57, 62 Stock Corporation Act, http://www.gesetze-im-internet.de/aktg.

nothing is done for the minority. **So, we do not agree on the following remarks of the Principles**:

"35. Most jurisdictions have put in place rules for clearly flagging these transactions. They include broad definitions of what is understood to be a related party as well as rules to disregard some of these transactions when they are not material because they do not exceed ex ante thresholds, can be regarded as recurrent and taking place at verifiable market terms or taking place with subsidiaries where no specific interest of a related party is present. Once the related party transactions have been identified, jurisdictions set procedures for approving them in a manner that minimises their negative potential. In most jurisdictions, great emphasis is placed on board approval, often with a prominent role for independent board members, or a requirement for the board to justify the interest of the transaction for the company," p. 12.

The Principles also mention other measures:

"36. (…) Where a material interest has been declared, it is good practice for that person not to be involved in any decision involving the transaction or matter and for the decision of the board to be specifically motivated against the presence of such interests and/or to justify the interest of the transaction for the company, notably by mentioning the terms of the transaction."

Companies may also find the solution to hand over closer monitoring of conflicts of interests that may constantly arise due to e.g. a special shareholder structure outside of corporate groups over to a special committee of the supervisory board.

"39. In addition to disclosure, a key to protecting minority shareholders is a clearly articulated duty of loyalty by board members to the company and to all shareholders. Indeed, abuse of minority shareholders is most pronounced in those countries where the legal and regulatory framework is weak in this regard. A particular issue arises in some jurisdictions where groups of companies are prevalent and where the duty of loyalty of a board member might be ambiguous and even interpreted as to the group. In these cases, some countries ~~are now moving~~ **strive** to control negative effects by specifying that a transaction in favour of another group company must be offset by receiving a corresponding benefit from other companies of the group," p. 14

**Deutsches Aktieninstitut wonders that a group law regime is not mentioned as possible part of the solution but rather that jurisdictions where groups of companies are prevalent are a problem. It seems that the Principles do not acknowledge the frameork such jurisdictions have developed. “Strive to control” has rather a negative connotation. Maybe this is not intended by the principles.** We suggest the following:

“A particular issue arises in some jurisdictions where groups of companies are prevalent and where the duty of loyalty of a board member might be ambiguous and even interpreted as to the group. **Some jurisdictions have developed a whole set of rules including** ~~In these cases, some countries are now moving strive to control negative effects by~~ specifying that a transaction in favour of another group company must be offset by receiving a corresponding benefit from other companies of the group. **Such set of rules can contribute to effective shareholder protection.**”

**IV. Elimination of impediments to cross border voting**

Shareholders rights remain theoretical if there are impediments to cross border voting. This is the case especially cross-border. Deutsches Aktieninstitut believes that vis à vis the meaning of the issue the Principles are a little short, here.

For example, a recommendation is missing concerning the intermediary chain, while there are recommendations concerning “corporate practices”:

“25. Foreign investors often hold their shares through chains of intermediaries. Shares are typically held in accounts with securities intermediaries, that in turn hold accounts with other intermediaries and central securities depositories in other jurisdictions, while the listed company resides in a third country. Such cross-border chains cause special challenges with respect to determining the entitlement of foreign investors to use their voting rights, and the process of communicating with such investors. In combination with business practices of intermediaries which provide only a very short notice period, shareholders are often left with only very limited time to react to a convening notice by the company and to make informed decisions concerning items for decision. This makes cross border voting difficult. The legal and regulatory framework should clarify who is entitled to control the voting rights in cross border situations and where necessary to simplify the depository chain. Moreover, notice periods should ensure that foreign investors in effect have similar opportunities to exercise their ownership functions as domestic investors. To further facilitate voting by foreign investors, laws, regulations and corporate practices should allow participation through **electronic** means ~~which make use of modern technology~~ **in a non-discriminatory way**."

**The Principles should clearly also contain recommendations concerning intermediaries, depositories and other service providers involved here**.

We also concerned regarding omnibus accounts which make it difficult to identify the owner of the security and touches upon the most basic rigts of shareholders: ownership. The EU Commission has addressed this topic: "The two main account holding structures found in the holding chain that intermediates between issuers and investors are omnibus and individually segregated accounts. Omnibus accounts pool assets so that individual securities cannot be identified against specific owners. As a result, the holding chain is complex and opaque – especially in cross-border scenarios. The rights of account holders are unclear and may even be exercised more than once over the same security.(…) The number of account providers in the chain, who they are, or if the same account structure is employed throughout the chain, is unknown. Where the chain crosses borders, different laws apply to each individual relationship. Importantly, these laws can differ significantly about who is recognised as the owner of the securities and what rights account holders have to them."[11]

Segregated accounts address far better the question "who owns what". Therefore shareholders should have the possibility to deposit their shares in their own accounts. Deutsches Aktieninstitut suggests to add the following:

"25. (…) In combination with business practices **of intermediaries** which provide only a very short notice period, shareholders are often left with only very limited time to react to a convening notice by the company and to make informed decisions concerning items for decision. (…)To further facilitate voting by foreign investors, laws, regulations and corporate practices should **require all intermediaries to establish segregated accounts for each**

[11] 10th Discussion Paper of the Services of the Directorate-General Internal market and Services Legislation on legal certainty of securities holding and dispositions, Sixth Meeting of the Member States Working Group, 16 October 2012.

**investor and to forward the names of end investors to the company, esp. for maintaining the share register, and** allow participation of **known end investors** through electronic means in a non-discriminatory way."

There could also be a strong conjunction to the section "II. THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS". At least for registered shares direct ownership registration promotes that rights can be made use of. So, legal and practical impediments should be banned. **Deutsches Aktieninstitut suggests that the Principles not only state that**:

"A. Basic shareholder rights should include the right to: 1) secure methods of ownership registration; (…)", p. 8.

They should state that:

"A. Basic shareholder rights should include the right to: 1) secure methods of **direct** ownership registration."

**Also, Deutsches Aktieninstitut suggests to add the following sentence to no. 19:**

"19. The ability of companies to form partnerships and related companies and to transfer operational assets, cash flow rights and other rights and obligations to them is important for business flexibility and for delegating accountability in complex organisations. It also allows a company to divest itself of operational assets and to become only a holding company. However, without appropriate checks and balances such possibilities may also be abused." **Direct contacts can best be established if end investors in registered shares are entered into the share register of a company under their own name.**

Always, there should be a direction of the proxy holder when it comes to voting. The Principles recommend in no. 24 now more clearly that

"(…)The corporate governance framework should ensure that proxies are voted in accordance with the direction of the proxy holder" (p. 10) as the sentence "and that disclosure is provided in relation to how undirected proxies will be voted" is deleted. **As this is very important Deutsches Aktieninstitut suggests that the word "only" is added**:

“The corporate governance framework should ensure that proxies are voted in accordance with the direction of the proxy holder **only**”.

Also, in the section “Major share ownership, including ultimate beneficial owners, and voting rights” the registration of end investors should be added:

“78. One of the basic rights of investors is to be informed about the ownership structure of the enterprise and their rights vis-à-vis the rights of other owners. (…) ~~Countries often require d~~Disclosure of ownership data should be provided once certain thresholds of ownership are passed.” **It should be accompanied by an entry into the share register under the name of the end investor(s) if such disclosure is made.**

**<u>V. Company objectives and non-financial information</u>**

Deutsche Aktieninstitut would like to indicate problems with the insertion of “supply chain”. On the one hand the Principles are rather sceptic about corporate groups and do not seem to acknowledge the legal framework jurisdictions have developed to deal with minority shareholder protection in subsidiaries (see our comments on RPTs). On the other hand they encourage policies and reporting for the supply chain and seem to assume that corporates have the right to receive timely and accurate information from subsidiaries and third parties (“77. In many countries, such disclosures are required for large companies, <u>typically as part of their management reports</u>”):

“76. In addition to their commercial objectives, companies are encouraged to disclose policies relating to business ethics, the environment**, human rights, including where relevant within their supply chain**, and other public policy commitments. Such information may be important for investors and other users of information to better evaluate the relationship between companies and the communities in which they operate and the steps that companies have taken to implement their objectives.”

**Deutsches Aktieninstitut proposes rather to refer to the MNE Guidelines** here or in the introductory section and delete the insertion.

## VI. Codetermination

Deutsches Aktieninstitut suggests not to recommend reporting of employee representatives to employees:

"133. Procedures should be established to facilitate access to information, training and expertise, and the independence of employee board members from the CEO and management. These procedures should also include adequate, transparent appointment procedures, <u>rights to report to employees on a regular basis – provided that board confidentiality requirements are duly respected</u> – training, and clear procedures for managing conflicts of interest. A positive contribution to the board's work will also require acceptance and constructive collaboration by other members of the board as well as by management."

Although the Principles address the problem of confidentiality requirements, a right to report may easily become a **practical duty**. Even when referring to publicly available information there is always the danger of giving additional information on board discussions, etc. **The Principles should neither encourage to put employee representatives nor other members of the board in that dilemma**.

## Contact

Dr. Cordula Heldt
Head of Corporate Governance and Company Law
Deutsches Aktieninstitut e.V.
Niedenau 13-19
60325 Frankfurt am Main
Phone + 49 69 92915 - 22
Fax + 49 69 92915 - 12
heldt@dai.de
www.dai.de