DSW NEWSLETTER

from Germany's No. 1 Shareholders' Association

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Editorial

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The Capital Markets Union – the next EU lighthouse project

A year now passed since the EU-Commission published the **Capital Markets Union (CMU) Action Plan.** The plan serves one common aim: to support growth and jobs in Europe. As it stands today, capital markets in the European Union remain fragmented with separate rules, regulations and business practices. In future, they could and should play a bigger role in providing financing to companies, especially for small and medium sized enterprises (SME) and start-ups. Current figures show, however, that the German equity market has seen a dramatic drop in the number of IPOs compared to other countries. So what needs to be done to improve this unsatisfying situation?

- **Remove equity-unfriendly taxation regimes**

  Tax regimes have a strong influence on investment decisions and can be a barrier to the free flow of capital. **Double taxation** can penalize dividend income, interest payments and capital gains on cross border investments. The process for reclaiming **withholding taxes** is part of DSW's daily business and turns out to be still complicated and often deterring. The estimated reimbursements which forego each year amount **to around 8 billion Euros**. There is definitely a strong need to make the whole process simpler. In a world of advanced IT this should be feasible. Also European taxation systems need to be **more equity friendy**. Europe needs tax systems which encourage risk capital. Tax regimes will have to move away from preferential tax treatment for debt and instead support investments in company equity.

- **Shares shall be an important part of pension plans**

  Retirement planning in times of financial repression is high up on the priority list of private investors. Over the past 50 years, returns on equity indices yielded 6 % annual return whereas the return on corporate debt averaged 4.9 %. Banks delivered 1.5 % on bank deposits. Without any doubt, this higher level of returns deriving from shares should also be accessible to investors as an important part of their pension plans.

Content

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Directors' Pay Survey 2016: The rise of shareholder opposition

In cooperation with the Technical University of Munich (TUM), DSW has surveyed the compensation of the 30 DAX companies' executives in its Directors' Pay Survey 2016.

How much does the CEO of XY group earn? Does he or she receive enough or rather too much? Are the performance benchmarks of his or her compensation set at sufficiently challenging levels? These and many other questions have been heavily discussed in public over recent years with a perceived overall public opinion that executives of large listed companies earn too much – far too much in some cases. Despite the ongoing debate in Germany, shareholders did not show any strong opposition about the pay of their executives – at least until this year. The average approval rate of the vote on the DAX 30 companies' pay systems ranged around 90 % since the introduction of this voting item in 2010. In 2016, however, Germany saw a rise in shareholders' opposition: the average approval rate significantly lowered to 76 %.

This phenomenon was not restricted to Germany but could be seen also in other European countries. At BP's shareholders' meeting 59 % of the attending shareholders rejected a pay increase for the CEO – they obviously could not agree with a 20 % increase in his compensation while the company suffered a record loss in 2015. And in France where companies had undergone the third "say on pay" season, shareholders of the car manufacturer Renault for the first time rejected the compensation of the Chairman-CEO. He received opposing votes of 54 % of shareholders attending the meeting.

Say on pay approval rates DAX 30

company	approval in %						
	2010	2011	2012	2013	2014	2015	2016
Adidas	89.96	–	89.50	–	–	77.47	–
Allianz	86.20	–	–	–	–	–	–
BASF	98.36	–	–	–	–	–	–
Bayer	95.25	–	–	–	–	–	81.10
Beiersdorf	99.07	97.87	99.22	94.75	–	–	–
BMW	97.66	95.83	95.45	–	96.56	–	–
Commerzbank	96.97	–	–	–	–	98.36	–
Continental	97.09	–	–	–	98.23	–	–
Daimler	95.97	97.38	–	–	96.82	–	–
Deutsche Bank	58.06	–	94.25	88.71	–	–	48.07
Deutsche Börse	52.77	–	–	–	–	–	84.19
Deutsche Lufthansa	97.30	98.41	–	–	–	–	89.95
Deutsche Post	98.27	–	–	–	–	–	–
Deutsche Telekom	95.91	–	–	–	–	–	–
E.ON	95.88	96.00	–	90.65	–	–	91.14
Fresenius	99.51	–	97.00	96.39	–	–	–
FMC	99.26	99.71	–	–	–	–	76.03
HeidelbergCement	45.82	96.04	–	–	97.59	–	–
Henkel	99.93	–	–	–	–	99.46	–
Infineon	–	93.25	–	76.98	–	–	–
Linde	98.56	–	96.45	–	–	–	–
Merck	–	70.30	86.73	–	–	–	–
Munich Re	98.33	89.79	89.81	95.41	92.43	90.19	84.75
ProSiebenSat.1	–	–	–	–	–	–	–
RWE	96.14	–		74.03	96.10	–	–
SAP	97.54	–	65.85	–	–	–	54.69
Siemens	89.65	96.70	–	–	93.89	92.79	–
ThyssenKrupp	99.55	94.91	–	–	–	98.79	–
Volkswagen	99.44	–	–	–	–	–	–
Vonovia	–	–	–	–	99.05	–	–
Ø DAX	**91.48**	**93.85**	**90.47**	**88.13**	**96.33**	**92.84**	**76.24**

Total directors' pay vs. labor costs in 2015

company	Ø pay in €'000	Ø labor costs per employee in €'000	Manager-to-employee pay ratio	Change in pay ratio
Adidas	2,397	39	61	▲
Allianz	3,736	87	43	▼
BASF	3,044	89	34	▼
Bayer	3,358	96	35	▼
Beiersdorf	2,301	66	35	▼
BMW	4,436	89	50	▼
Commerzbank	2,017	76	27	▲
Continental	3,079	44	70	▲
Daimler	4,241	74	57	▲
Deutsche Bank	2,958	131	22	▼
Deutsche Börse	2,860	121	24	▼
Deutsche Lufthansa	2,062	67	31	▲
Deutsche Post	2,757	40	69	▼
Deutsche Telekom	2,754	70	39	▲
E.ON	2,589	74	35	▼
Fresenius	3,545	44	81	▲
FMC	3,460	54	64	▲
HeidelbergCement	3,732	50	75	▲
Henkel	4,299	62	70	▼
Infineon	2,129	55	39	▲
Linde	2,508	61	41	▼
Merck	6,265	73	86	▲
Munich Re	2,475	83	30	▼
ProSiebenSat.1	2,611	98	27	►
RWE	2,713	80	34	▼
SAP	2,191	132	17	▼
Siemens	3,920	78	50	▼
ThyssenKrupp	3,052	55	55	▼
Volkswagen	6,969	61	114	▼
Vonovia	2,401	56	42	▼
Ø DAX	**3,341**	**67**	**50**	▼

The rise in shareholders' opposition at DAX 30 companies is even more surprising as the absolute pay figures of management board members decreased by 1.8 % and gross wages in Germany increased by 4 %. Consequently, the average manager-to-employee pay ratio decreased from 54 to 50.

The pay decrease, however, followed the reduction in companies' earnings which was mainly influenced by VW. But even taking out VW from the calculation, companies earnings decreased by 5 % to 91.5bn EUR in 2015.

Executive remuneration packages should generally reward good corporate performance with remuneration geared to the achievement of stretching targets while it should not encourage imprudent risk-taking, excessive conservatism or continuation of strategies that are no longer appropriate. The remuneration structure should balance the legitimate interests of the director with the potential cost to shareholders. The examples of Vonovia and FMC show, however, that the development of executives' pay in Germany does not always follow these basic principles.

The highest paid CEO in 2015 was Dieter Zetsche from Daimler with a total pay of 8.5m EUR for 2015. A figure that is far behind the highest paid CEO of DSW's last year's survey: Martin Winterkorn from Volkswagen who received 15m EUR for 2014.

Development of directors' pay vs. EPS/TSR 2014-2015

company	change total pay (%)	change EPS (%)	TSR (%)	change STI (%)
Vonovia	95.4	-1.1	9.8	34.0
FMC	71.8	-2.0	26.9	73.5
Fresenius	33.7	26.5	53.9	21.1
Infineon	19.6	36.4	54.7	55.2
Adidas	17.6	34.0	58.6	116.9
Deutsche Lufthansa	17.0	649.0	5.3	95.4
HeidelbergCement	10.0	64.5	29.9	13.1
Commerzbank	9.3	282.6	-12.8	k.A.
Deutsche Telekom	9.0	66.7	29.7	18.3
Continental	8.4	5.6	29.8	19.1
Daimler	8.4	36.0	16.0	32.5
Deutsche Börse	6.1	14.0	41.0	12.1
Merck	5.6	5.9	15.5	k.A.
ProSiebenSat.1	3.5	11.7	38.9	-18.2
Munich Re	2.1	2.3	16.0	15.5
Siemens	1.8	1.9	-0.6	34.4
Bayer	0.9	13.5	4.5	8.2
Allianz	0.6	6.7	24.1	0.8
BMW	0.1	9.9	12.0	0.3
Henkel	-5.3	11.4	16.9	-22.0
Beiersdorf	-7.0	15.0	25.9	4.3
Volkswagen	-7.2	k.A.	-18.3	-48.5
E.ON	-9.0	1.2	-33.6	-17.1
BASF	-9.4	-8.1	5.2	k.A.
ThyssenKrupp	-12.0	332.4	-13.2	-42.9
Deutsche Post	-12.3	-25.6	-0.9	-65.0
Linde	-17.5	-3.0	-11.1	-20.4
RWE	-30.3	-12.4	-50.4	15.7
Deutsche Bank	-44.1	36.5	-6.8	k.A.
SAP	-44.3	7.7	27.8	-18.7
DAX performance 01.01.2015-31.12.2015			9.6%	
DAX performance 01.10.2014-30.09.2015			2.0%	

Highest paid CEOs 2015

rank	CEO	company	total pay 2015 in €'000	service cost in €'000
1	**Dr. Dieter Zetsche**	**Daimler**	8,541	1,044
2	**Dr. Karl-Ludwig Kley**	**Merck**	7,886	1,607
3	**Matthias Müller**	**Volkswagen**	7,347	296
4	**Dr. Bernd Scheifele**	**HeidelbergCement**	7,250	1,259
5	**Joe Kaeser**	**Siemens**	6,534	1,096
6	**Kasper Rorsted**	**Henkel**	6,436	798
7	**Harald Krüger**	**BMW**	6,219	175
8	**Rice Powell**	**FMC**	5,798	570
9	**Stefan Heidenreich**	**Beiersdorf**	5,753	NA
10	**Dr. Ulf M. Schneider**	**Fresenius**	5,707	342
11	**Dr. Marijn Dekkers**	**Bayer**	5,436	1,418
12	**Dr. Frank Appel**	**Deutsche Post**	5,033	1,094
13	**Timotheus Höttges**	**Deutsche Telekom**	5,006	1,097
14	**Dr. Kurt Bock**	**BASF**	4,999	605
15	**Dr. Elmar Degenhart**	**Continental**	4,984	764
16	**Oliver Bäte**	**Allianz**	4,789	483
17	**Dr. Heinrich Hiesinger**	**ThyssenKrupp**	4,788	1,699
18	**Herbert Hainer**	**Adidas**	4,616	429
19	**Bill McDermott**	**SAP**	4,445	682
20	**Dr. Johannes Teyssen**	**E.ON**	4,436	895
21	**Dr. Nikolaus von Bomhard**	**Munich Re**	4,263	1,224
22	**Thomas Ebeling**	**ProSiebenSat.1**	4,111	200
23	**Dr. Wolfgang Büchele**	**Linde**	4,044	651
24	**Peter Terium**	**RWE**	3,953	0
25	**Martin Blessing**	**Commerzbank**	3,055	-596
26	**Carsten Kengeter**	**Deutsche Börse**	2,988	436
27	**John Cryan, Jürgen Fitschen**	**Deutsche Bank**	2,916	439/624
28	**Rolf Buch**	**Vonovia**	2,895	356
29	**Carsten Spohr**	**Deutsche Lufthansa**	2,718	543
30	**Dr. Reinhard Ploss**	**Infineon**	2,651	220
	Ø DAX		**5,101**	**682**

Legal background: In Germany, shareholders may vote on the remuneration system for management board members, see para. 120 (4) AktG. The vote, however, is **non-binding and advisory**: There is no obligation for companies, to put forward a respective proposal and the outcome of the shareholders' vote has no legal consequence whatsoever. Nevertheless, as the vote outcome at the shareholders' meeting of Deutsche Bank in 2016 has shown a **vote with NO** is a strong signal to the supervisory board to check the pay system and review it for the next annual meeting.

Special audit – a newly discovered tool for investors

In recent years, a long-standing tool for investors has been revived: the special audit. It forms an essential element of German securities law and has become tremendously important in the recent past.

The law gives shareholders in a listed company the right to propose a special audit to review decisions of management and supervisory board in case of alleged mismanagement or misconduct of business.

The "rise" of the special audit started with the spectacular case of the bank IKB where DSW made use of this tool to determine the extent to which former board members were responsible for IKB's plight and to investigate the role played by the supervisory board. IKB, a Düsseldorf-based lender to mid-caps, was the first German victim of the subprime crisis. The bank had to be rescued by the government after an off-balance sheet conduit ran into liquidity problems. 'Billions of Euros are gone and nobody will have noticed anything', criticised the DSW representative at the turbulent general meeting in 2008 and asked the meeting to support his demand for a special audit to examine the responsibilities of both management and supervisory board. DSW's proposal was supported by more than 82 % of the shareholders present, including the major shareholder KfW, the State-owned development bank – an unprecedented event at that time.

However, successfully requesting a special audit to review board decisions may require stamina from minority shareholders: **Shareholders have to hold at least 5 % of the company's shares or 500,000 EUR of its nominal value for at least three months prior to the general meeting.** A simple majority of shares attending the general meeting is necessary. If the proposal is voted down, shareholders may ask for a court decision, if they can base their demand on facts raising reasonable suspicion about improbities or gross violations of law or by-laws by the board(s). However, in such a case, shareholders are **required to hold the shares since at least three months prior to the general meeting until the court decision**. At IKB, the whole procedure took six years – it was not until 2014 that shareholders obtained the results of the special audit: an unsatisfactory situation for minority shareholders.

To accelerate the procedure, DSW in recent times successfully chose another way forward – the **voluntary special audit**. By using this tool, boards give a strong signal to their shareholders that they are interested in thoroughly investigating alleged mismanagement within a straightforward period of time in a constructive rather than a contentious manner. Both ThyssenKrupp and Deutsche Bank already agreed with DSW on such a voluntary special audit. The results at ThyssenKrupp were made available to shareholders within one year; a comparable time frame is expected at Deutsche Bank.

DSW's Stewardship Services

DSW offers broad stewardship services for institutional investors from all over the world!
Our services include:

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  - **Internationally:** MSCI Europe (for institutional investors abroad as German partner of ECGS – Expert Corporate Governance Service)
- Proxy representation
  - **Nationwide:** at all German general meetings
  - **Internationally:** EuroStoxx 50 and Stoxx 50 company meetings
- Electronic voting platform for German general meetings
- Engagement in key issues of corporate governance, such as pay and board independence
- Direct approach of the management
- Preparation and support by taking shareholder actions such as countermotions
- Post-AGM reporting
- Training programs for all Corporate Governance issues in Germany
- Class action claim filing and information service

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German boardroom insight: Who has the most influence?

The role of the supervisory board of German listed companies has undergone significant changes in recent years. Some of these are a direct result of laws and regulations, such as the German Corporate Governance Code or the implementing act of the EU audit reform. Other changes to the role result from advancing internationalization of the capital markets, the increasing influence of shareholders, the interest of broader stakeholders, and the increased public interest in good corporate governance. Overall, the responsibilities of supervisory board members of listed companies have become considerably heavier over the past few years. More than in the past, the emphasis is on board members' professionalism and expertise, their independence and on their availability of time, also during exceptional situations, such as takeovers or in a loss situation.

Consequently, boards need supervisory members with diverse skills and backgrounds that have sufficient time to devote to the work on the board to ensure its efficiency and professionalism. This applies in particular to the chair and those supervisory board members who are chairing the key committees such as presidential, personnel or audit committees. The influence of the members of these committees are considered stronger as that of an "ordinary" board member.

It is therefore worth taking a closer look at the composition of German supervisory boards: Who are the people that face up to these large responsibilities? How diverse are German boards de facto? And how has this been reflected in their remuneration?

In a recent board survey, DSW analyzed the supervisory boards of the 30 DAX companies. Based on a matrix taking the special functions into account, the DSW survey 2016 came to the following results:

- The ten most influential supervisory board members hold 29 board seats at 19 DAX companies.
- All DAX 30 companies now have at least one female member on their supervisory board but still there is no female board member among the 15 most influential German supervisory board members.
- Women account for 30.4 % of all board members but are still far less represented at influential positions (18.6 %).
- The average DAX 30 supervisory board member is 58 years old and holds its board seat for six years.
- 82 % of board members are acting within their first or second term of office.
- Total remuneration paid to all DAX 30 supervisory board members decreased by 8.6 % to 76.6m EUR in 2015, a development mainly due to the Volkswagen scandal.
- Excluding Volkswagen, overall supervisory board members' remuneration rose by 5.9 %.
- The average payment to a DAX 30 supervisory board chair was 344k EUR, which compares to three times the amount of an ordinary member.
- Highest paid board member was Paul Achleitner, chairman of Deutsche Bank.

The most important "networkers" among German board members are Ulrich Lehner, chair of Deutsche Telekom and ThyssenKrupp and board member of E.ON, as well as Werner Brandt (chair of ProSiebenSat.1 and RWE as well as board member of Deutsche Lufthansa) and Karl Ludwig Kley (chair of E.ON and board member of BMW and Deutsche Lufthansa).

Ulrich Lehner, who is further represented on the shareholders' committee of Henkel and the supervisory board of Porsche, chairs various committees at Deutsche Telekom and ThyssenKrupp. Based on DSW's matrix, he scored highest in the ranking (47 points). Werner Brandt and Karl Ludwig Kley share rank 2 with 43 points each.

Most important networkers 2016

rank	board member	mandates, committees (C=chair)	chair + committee chair (x10)	additional committee chairs (x4)	board member and committee chair (x 8)	board member and committee member (x 6)	additional committee chairs (x3)	board member-ship (x4)	total	ex-CEO
1	Ulrich Lehner	**Deutsche Telekom AG (C)**: presidential (C), personnel, nomination (C); **E.ON SE**: presidential, nomination; **ThyssenKrupp AG (C)**: presidential (C), audit, personnel (C), nomination (C)	2	3	0	1	3	0	47	Henkel AG & Co. KGaA
		Henkel AG & Co. KGaA (shareholders' committee); Porsche Automobil Holding SE								
2	Werner Brandt	**Deutsche Lufthansa AG**: audit (C), nomination **ProSiebenSat.1 Media SE (C)**: presidential (C), personnel (C); **RWE AG (C)**: presidential (C), personnel (C), nomination (C)	2	3	1	0	1	0	43	–
		Innogy SE (C); Osram Licht AG								
2	Karl-Ludwig Kley	**BWM AG**: presidential, audit (C), personnel, nomination; **Deutsche Lufthansa AG**: presidential, nomination; **E.ON SE (C)**: presidential (C), audit, nomination (C)	1	1	1	1	5	0	43	Merck KGaA
		Verizon Communications Inc.								

Board diversity

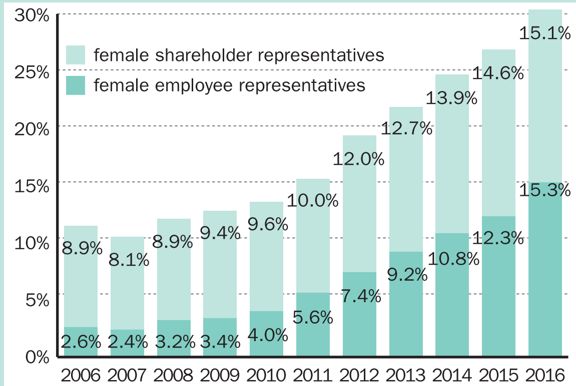
Board diversity aims to cultivate a broad spectrum of demographic attributes and characteristics in the boardroom in order to make decisions more effectively by reducing the risk of 'groupthink', fostering creativity in delivering solutions to problems, or paying more attention to controlling risks.

Consequently, DSW's board survey 2016 also analyzed the diversity of German boardrooms, especially with regard to gender, age and seniority.

First finding: There is no female board member among the Top 15 supervisory board members. The first woman ranks no. 16 on our list: Ann-Kristin Achleitner, professor at Technical University of Munich is member of the boards of DAX 30 companies Deutsche Börse, Linde and Munich Re.

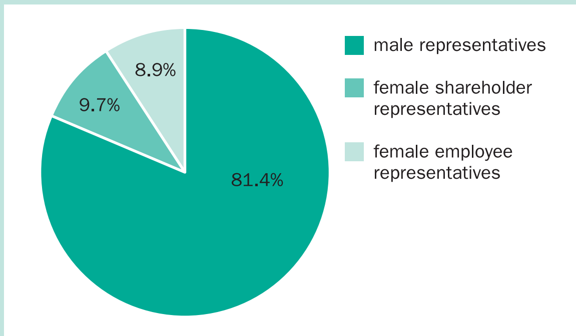
Overall, 30.4 % of the DAX 30 supervisory board members are female, which is an increase of 3.5 %-points compared to 2015. This means that despite the long-term positive development, German boardrooms are still far apart from the 40 % quota discussed at EU level.

Development of female representation in DAX 30 supervisory boards between 2006 and 2016



And digging deeper into the figures the following picture modifies the positive trend even more:

Diversity in DAX 30 committees 2016



Looking at the membership of women at committees of the 30 DAX companies, the ratio reduces significantly to 18.6 % only. Taking further into account that only the supervisory board of Henkel is chaired by a female representative, Germany still has some catching up to do when it comes to gender diversity.

When addressing age as an element of diversity, there are many facets to consider. One may believe that older board members bring more experience to the table whereas younger members bring more energy and a new outlook to the board. DSW's board survey thus shows a mixed age picture among German boardrooms. While the average age of ProSiebenSat.1 board members stands at 53 years, board members of FMC on average are 66 years old – a wide range between the oldest and the youngest DAX 30 boardroom. Across the 30 DAX companies' boardrooms, the average members' age is 58 years, with on average younger women (55 years) than men (59 years). The self-set age limit which is recommended by the German Corporate Governance Code ranges between 70 and 79 years. This leaves still a lot of leeway for companies to keep experienced board members.

The average term of office of a board member is six years. Women are holding their office on average four years against men with a six year average term. 55 % of all DAX board members are in their first term of office, another 27 % in their second term. This comes quite as a surprise as it counters the picture of the elderly gentleman, active on the board already for decades.

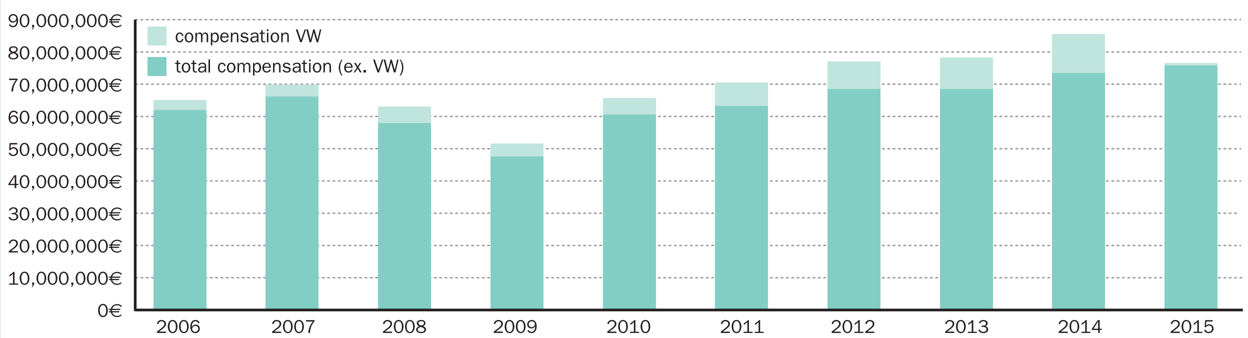
Board compensation

After public discussions which ended in a revision of the German Corporate Governance Code in 2012, a large number of DAX 30 companies amended their remuneration systems in line with the Code and international best practice standards. Now a clear majority only pays a fix fee to their supervisory board members. This development is, explicitly welcomed by DSW. Experience shows that especially in economically difficult times supervisory board members' tasks are challenging. A significant proportion of variable remuneration would give the wrong incentive in such times. Furthermore, a purely fixed fee guards against an alignment of interests with those of the management board.

Analysing the remuneration structure, the DSW study finds that a major proportion of the overall DAX 30 supervisory board remuneration in 2015 was paid in fixed elements.

58 % of total remuneration was paid as base salary. Together with attendance fees and (fixed) committee fees, the fixed components accounted for 83 % of total remuneration. The variable (short- and long-term) incentives play no longer a signifi-

Total DAX 30 supervisory board's remuneration 2006-2015



	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
compensation VW	2,843,066€	4,276,360€	4,574,663€	3,840,514€	5,348,560€	7,376,150€	8,777,514€	9,774,529€	12,149,450€	696,955€
total compensation (ex. VW)	61,926,601€	65,947,445€	58,090,601€	47,488,509€	60,265,682€	63,116,087€	68,405,554€	68,376,606€	73,556,561€	75,933,638€

cant role for German supervisory board members (16 %).

Overall, remuneration paid to all DAX 30 supervisory board members decreased by 8.6 % to 76.6m EUR in 2015, a development mainly due to the Volkswagen scandal: The remuneration of Volkswagen's supervisory board which is predominantly dividend-linked was cut from 12.1m EUR to 0.7m EUR. Excluding Volkswagen, overall DAX 30 supervisory board members' remuneration rose by 5.9 %.

Siemens paid the highest remuneration to its board: 5.1m EUR were transferred to the 20 members. Second-best payer was BMW with overall payments of 5.1m EUR for its 20 board members.

company	board seats	2015 (in € '000)	change
Siemens	20	5,119	-0.3 %
BMW	20	5,053	6.1 %
Deutsche Bank	20	4,850	5.7 %
Continental	20	4,529	6.8 %
SAP	18	3,728	15.5 %
Daimler	20	3,518	-1.2 %
Bayer	20	3,291	0.2 %
E.ON	12	3,155	2.1 %
Fresenius	12	3,071	23.2 %
BASF	12	2,993	-2.1 %
RWE	20	2,985	1.4 %
Deutsche Telekom	20	2,766	2.4 %
Munich Re	20	2,727	-2.3 %
Deutsche Post	20	2,682	0.4 %
Linde	12	2,512	0.1 %
Henkel	10	2,350	0.0 %
Deutsche Lufthansa	20	2,321	2.7 %
Allianz	12	2,021	-0.7 %
Commerzbank	20	2,019	21.9 %
Deutsche Börse	18/12	1,960	-15.5 %
ThyssenKrupp	20	1,736	-1.2 %
Vonovia	9/12	1,588	40.6 %
Infineon Technologies	12/16	1,518	26.9 %
HeidelbergCement	12	1,471	58.8 %
ProSiebenSat.1	9	1,435	46.6 %
Beiersdorf	12	1,414	0.1 %
Adidas	12	1,223	32.9 %
FMC	6	1,017	19.8 %
Merck	16	881	-0.1 %
Volkswagen	20	697	-94.3 %
total	**474/475**	**76,631**	**-8.6 %**
total ex VW	**454/455**	**75,934**	**5.9 %**

In its board survey, DSW also analysed the remuneration paid to the different positions within the board. On average, a chair of a DAX 30 company received three times the amount of an ordinary member which reflects the additional workload and responsibilities immanent to this position.

position	2015 (in € '000)	2014 (in € '000)	change
chair	344	365	-5.7 %
vice chair	223	234	-4.4 %
audit committee chair	202	220	-7.9 %
committee member	139	150	-7.6 %
ordinary member	107	114	-5.7 %

Performing special functions within the board, e.g. board or committee chair goes along with a greater workload than that of an ordinary board member and this consequently is also reflected in a higher pay.

The full DSW board survey 2016 is available at **www.dsw-info.de** (German only).

EuroVote

EuroVote is a joint project of shareholder associations in Europe to support individual shareholders in exercising their voting rights at general meetings of listed companies in Europe. Shareholders can make use of the expertise and the network of the national BetterFinance member associations in the country where the respective general meeting takes place.

The objective of this cross-border voting platform is to make the still cumbersome proxy process easy. The EuroVote service is free of charge for individual shareholders.

The web-based EuroVote platform provides a list of companies (min. EuroStoxx 50) selected for the respective general meeting season as well as links to the necessary proxy forms in English. Shareholders find straight-forward instructions on how to pass the proxy but also additional information on the technical procedure to pass a proxy for each Member State. The expertise of the local shareholder associations ensures a responsible execution of votes taking into account local market standards.

The EuroVote Voting Guidelines which are annually reviewed are disclosed on the platform to provide a clear and transparent guidance to shareholders throughout Europe if they intend to transfer their voting rights without distinct instructions.

More information on EuroVote can be found at

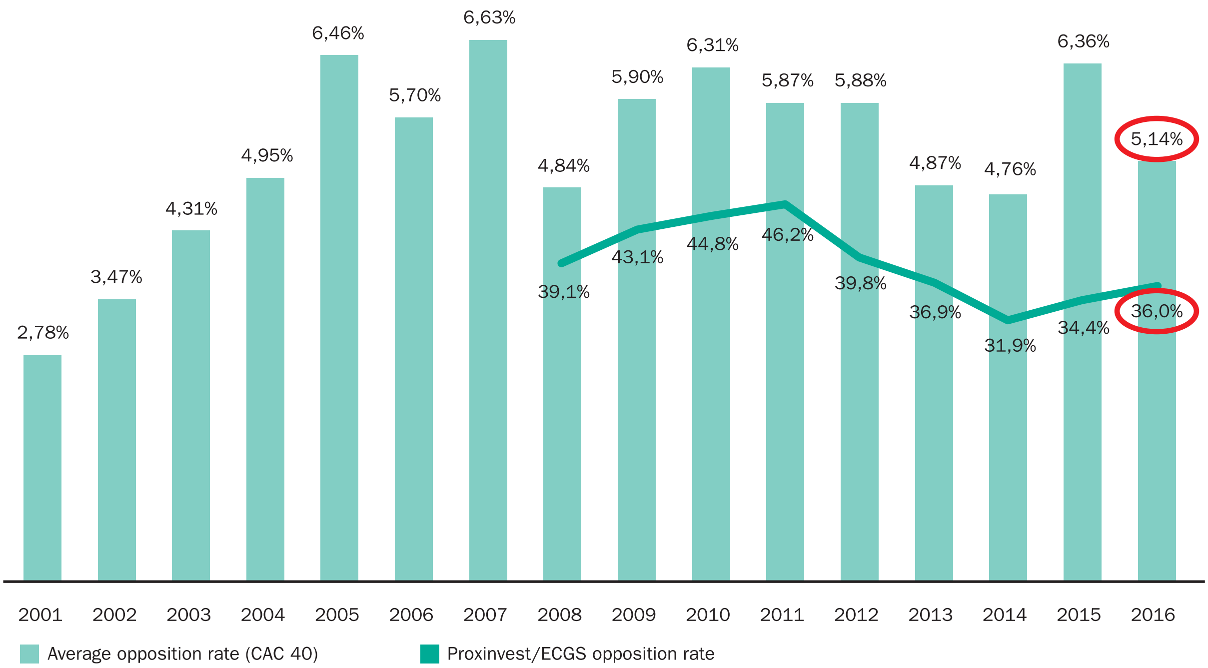
http://www.betterfinance.eu

ECGS - What is new?

ECGS' mission is to provide fully independent corporate governance research to institutional investors and to improve governance standards amongst companies in Europe and the rest of the world. ECGS provides harmonised research and advice that reflects local circumstances. All research is undertaken by experts with in-depth knowledge of the local norms and conditions. ECGS covers more than 85 % of the European free-float market capitalization.

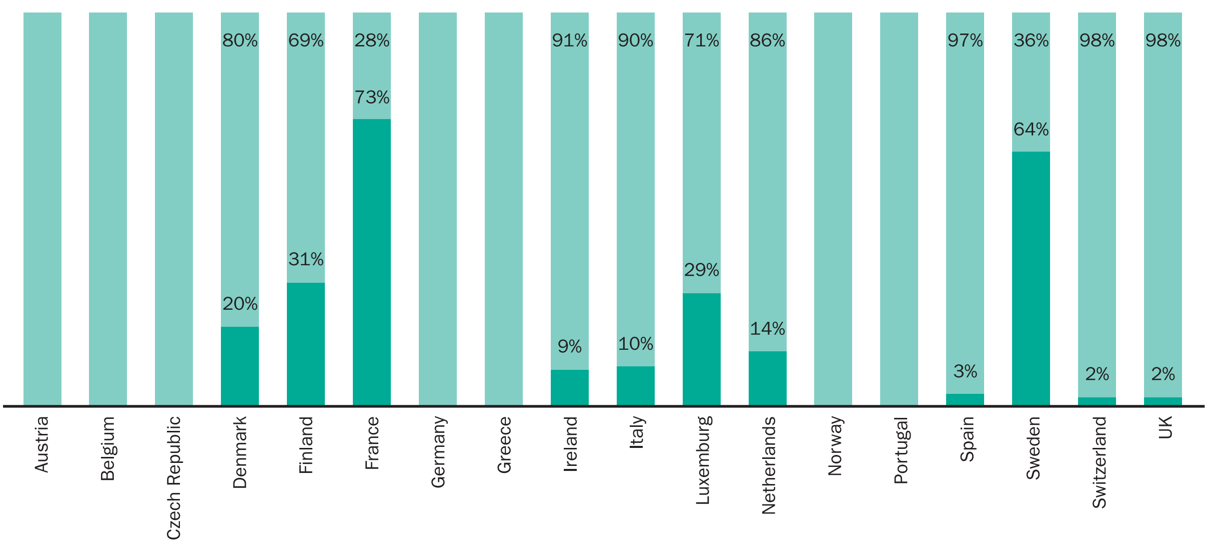
Proxinvest is the French partner of DSW within **Expert Corporate Governance Service** (ECGS), a partnership of local corporate governance experts created in 2001.

Are international investors watchful enough when voting at French general meetings?



The French market is characterized by multiple forms of capital increase, a vote on related-party transactions, a yearly consultative Say On Pay vote and many CEOs chairing the board of directors. French asset management firms are obliged to define their own voting policy and most of them subscribe to Proxinvest research.

Breach of the "one share – one vote" principle : multiple voting rights in Europe (Stoxx Europe 600)



France is the European market with the highest occurrence of multiple voting rights. International investors were diluted in voting rights in April 2016, two years after the adoption of the Florange Act.

More about Proxinvest and Expert Corporate Governance Service: **ldessaint@proxinvest.fr** – **www.ecgs.com** – **www.proxinvest.com**

Tracking the process – the CMU Barometer©

Better Finance's Managing Director, Guillaume Prache, explains how the CMU Barometer© works and why it has been put in place.

At the end of September this year, roughly a year after the launch by the European Commission of its action plan for the development of a Capital Markets Union (CMU), Better Finance announced the EU CITIZEN'S CMU BAROMETER© tracking the progress of the CMU Action Plan. It looks how the CMU is evolving, in which areas it seeks to respond to the needs of individual investors and savers across Europe and in which areas it fails.

DSW: *What is hampering the participation of European citizens in capital markets?*

Guillaume Prache: The truth is that individual investors and savers have been crowded out of equity markets and pushed into under-performing packaged products. The fragmentation of equity markets has meant that they have, for all intents and purposes, been limited to data on, and transactions in, regulated venues, while the larger part of transactions are now being executed in the 'dark' by 'professional' players.

We are at a crossroads where we must choose between leaving capital markets in the sole hands of a few financial institutions or seize this unique opportunity we are presented with, to rethink how capital markets work, bring the different market participants together and restore much-needed trust.

To ensure long-term growth it will be crucial to rehabilitate equity investment across the board and ensure a level playing field for all market participants.

DSW: *Why is it so important to reestablish an equity culture and why did it decline in the first place?*

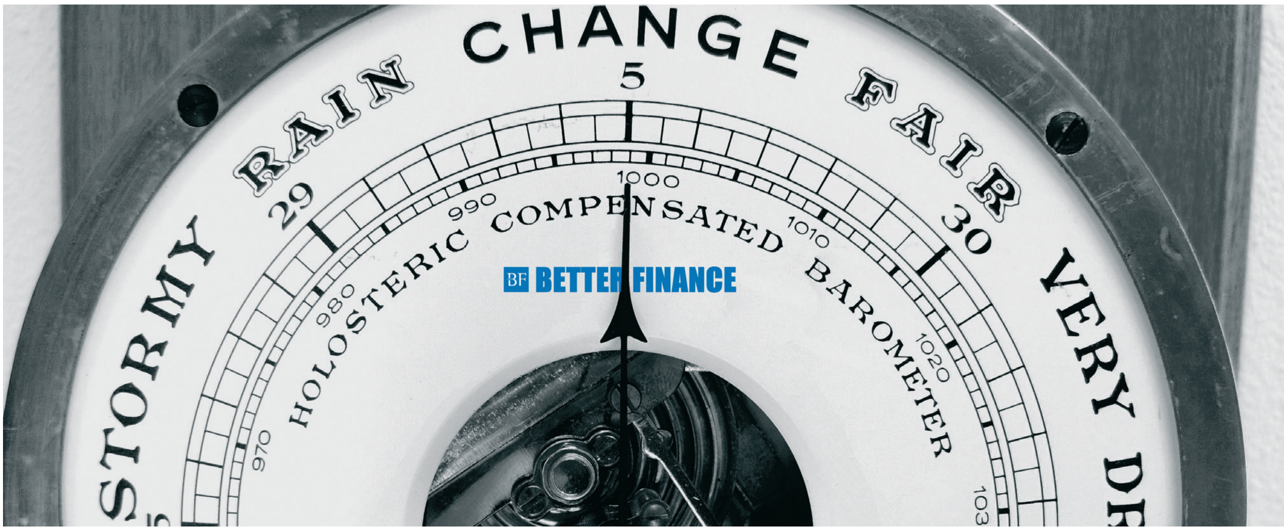
Guillaume Prache: European individual investors no longer invest directly into capital markets the way they did a few decades ago. There has been a steady decline of direct individual ownership of securities (shares and bonds) in Europe, yet there is an abundance of investable private capital in Europe, with households desperately looking for positive real returns on their savings in an ongoing climate of low interest rates, excessive fees, high complexity of investment products and financial repression.

As stated by the European Commission (EC) itself, the CMU aims to "strengthen the link between savings and growth" and since "households are the principal net savers in the economy" the CMU project looks to "boost retail investments into capital markets and enhance individual confidence". So in order for the CMU initiative to work for individual savers and investors and attract them back into capital markets, the EC rightly wants to "provide … better returns for savers and investors".

In today's environment of very low interest rates and of financial repression, direct investments into equities, bonds and index ETFs would provide EU households with better possibilities of getting a decent return on their long-term savings, i.e. to at least protect their real value after inflation.

Direct individual ownership of securities should be encouraged again rather than discouraged in order to better align the interests of capital markets with those of the real economy and to boost growth and jobs.

DSW: *So Better Finance looks at the Capital Markets Union not only as a means to finance the real economy but also as a way to attract individual investors back into capital markets. But the situation was not*



always this bleak... In your opinion, what needs to be done to change the status quo?

Guillaume Prache: Almost sixty years after the Treaty of Rome a “common market” for capital and for financial services is still nowhere in sight except for few exceptions like the UCITS funds. The high fragmentation of capital and financial services markets, and the fact that they remain increasingly complex and opaque, is causing a lot of detriment to the real economy users.

A few decades ago, EU citizens as individual investors directly held close to 40 % of the shares of EU domiciled listed companies. From the 1970s on though, financial intermediaries gradually stopped promoting shares (and bonds) to individual investors, and stopped educating them about equities, bonds and capital markets, switching to the advertising and promotion of “packaged” investment products.

The key cause for this switch from direct equity and bond ownership to indirect ownership via “packaged” investment products is the relative profitability of these investment products for the financial industry and its distributors. Hereby considering, that direct ownership of shares and bonds does not generate any of annual asset-based fees. This urgently needs to be addressed.

DSW: *What are the indicators that Better Finance’s CMU Barometer© is tracking and what needs to change to achieve greater participation and trust in capital markets?*

Guillaume Prache: The CMU Barometer© is based on a series of key indicators that track the performance of the CMU Action Plan. As it stands, some of these show some progress, but so far, any real “boost” of retail investments into capital markets has failed to materialize.

The indicators point in particular to the lack of improvement in the transparency of the performance and fees of “packaged” retail investment products as well as the lack of a level-playing field for equities, non-financial bonds and low-cost exchange-traded funds (ETFs) when compared to more “packaged” and fee-laden investment products.

It is crucial to rehabilitate equity investing as the simplest, most effective and most liquid long-term investment product as well as stimulating individual share ownership by ensuring a level-playing field for such simple securities at the retail point of sale.

Naturally, restoring access to equity markets for individual investors in Europe will not eliminate the need to improve the long-term net returns of intermediated “packaged” investment products. With a view on diversifying risk and benefitting from asset management expertise, such products will – and should – remain the main vehicles for individual long-term investments. In this light, it will be indispensable to address the acute lack of adequate, clear and reliable performance information on “packaged” investments.

Further information on the CMU Barometer© can be found at **www.betterfinance.eu.**

German Corporate Governance Code – new proposals

After two years without change, the German Corporate Governance Commission (the Code Commission) on November 2nd, 2016 published proposed amendments to the German Corporate Governance Code for 2017.

The following main changes have been proposed to the Code:

- The Code's foreword shall be supplemented by a statement that good corporate governance, oriented towards sustainable creation of value, also ethically follows the principles of the social market economy.
- The Code Commission proactively picks up the responsibilities of institutional investors currently discussed in the review of the Shareholder Rights Directive and requires institutional investors to actively and responsibly exercise their ownership rights within the scope of a consistent and transparent framework geared towards sustainability.
- Companies shall in future make the fundamental principles of their compliance management systems transparent to enable investors and the interested public to form their own opinion on the compliance efforts of the respective company and strengthen trust in a responsible corporate governance.
- In future, companies shall provide information about the appropriate number of independent supervisory board members representing shareholders – as assessed by the supervisory board –, and the names of these members in the Corporate Governance Report.
- When developing requirement profiles for the supervisory board, the shareholder structure shall also be taken into account when discussing the composition of the supervisory board.
- To enhance the information provided, shareholders shall in future be able to obtain CVs and an overview of the main activities of supervisory board members nominated for election.
- Furthermore, the Code Commission intends to recommend that the chairman of the supervisory board be prepared (within an appropriate framework) to discuss topics relevant to the supervisory board with investors. This information shall be updated on an annual basis and published in the internet.
- Taking into account the abolishment of the requirement to publish quarterly reports, the Code proposes that interim information to shareholders about changes in business prospects and the risk situation that the company is exposed to in addition to annual and semi-annual reports shall be considered as best practice.
- Despite new statutory regulations in the course of the reform of the EU Statutory Audit Market and the respective German implementing act, the Code Commission will continue to value it as best practice when the chairman of the audit committee is independent, and has not been a member of the company's management board within the past two years. As before, the chairman of the supervisory board shall not additionally chair the audit committee.

The full proposals from the Code Commission can be downloaded at http://www.dcgk.de/en/. Stakeholders are invited to **send their comments until December 15th, 2016**. For the first time, all statements tendered by companies, associations and from the field of science are to be published on the Commission's website, unless participants object to a publication.

DSW welcomes the proposals which in our view adequately take into account both feedback from investors and (anticipated) legal or regulatory changes. Furthermore, DSW fully supports the Code Commission's decision to increase transparency in the consultation process and to publish responses to the consultation on its website.

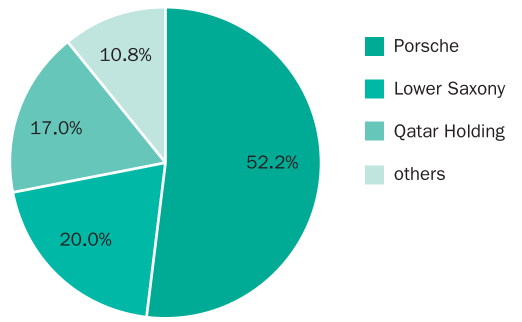
The Volkswagen case

In September 2015, Volkswagen revealed that it had programmed its diesel cars to defeat emissions' tests. Roughly 11 million cars were affected. Until now, it remains unclear how and why VW came to do this. Volkswagen's official line is that this was the result of the actions of a few technicians – their 'rogue technicians' theory. However, with such a large number of vehicles, over a period of about seven years, it seems more plausible that senior management might have been aware of the scheme (or warning signs of it) at some point prior to its revelation – or at least should have been aware of it. The revelation was disastrous for Volkswagen's shareholders. The stock price fell rapidly by 40 % from its pre-scandal position within just a few days and shareholders all over the world soon started entering law suits. Overall, the shareholders worldwide are estimated to claim around several billions of Euros – car owner claims and penalties especially from US authorities not included! Volkswagen consequently in its 2015 Annual Report announced provisions totaling 16.4 bn EUR for the clean-up and legal costs.

Shareholders' meeting: DSW requests a special audit

The general meeting of Volkswagen 2016 seemed to be the right place for shareholders to ask the right questions and get satisfactory answers to them. This was also expressed by four shareholder resolutions that had to be added to the agenda by Volkswagen. Among others, DSW requested a special audit to clear up the sequence of events surrounding the Diesel scandal and the role of Volkswagen's boards in that respect as well as to examine whether the company's risk management and compliance system has been reviewed and adequately adjusted in the meantime. At the general meeting, shareholders required substantial further discussion which led to a general meeting with the highest presence of shareholders ever of almost 94 % of voting capital and a duration of almost until midnight. However, the special governance structure at Volkswagen made it impossible for minority shareholders to succeed with their motions, as the voting shares at Volkswagen are predominantly in the hand of its major shareholders which together hold around 89 % of the company's voting capital.

Voting right structure of Volkswagen AG 2016



The voting outcome at the general meeting therefore was easy to predict. All shareholder motions, including DSW's special audit requests were voted down, **all board proposals were approved**. Nevertheless, minority investors attending the general meeting obviously shared DSW's view: more than 50 % of the share capital present or represented **independent** of the majority shareholders supported DSW's special audit resolutions.

DSW requests special audit at the court

To ensure a level playing field for all shareholders, also for those who are not represented on the supervisory board or have direct contact with management, DSW quickly after the general meeting went to the court and requested the legal enforcement of the special audit.

Is the German law KapMuG a solution for VW investors?

Unlike the US, the German legal system does not offer the possibility for shareholders to enter into a class action. In principle, this means that every shareholder has to pursue his/her own compensation claim individually based on German law. Shareholders can, however, apply for a so-called model case proceeding (KapMuG). The model case proceeding gives shareholders claiming compensation for damages in general two options:

- Shareholders can file directly an individual claim at court and apply for the model case proceeding or
- Shareholders can join in a model case proceeding by registering their claim and applying for a model case treatment.

DSW has always favored the second option, a simple registration of claims, as the most cost-efficient way for investors. However, this possibility is only open once the competent court will have opened the model case proceedings.

Unclear rules for the statute of limitations

Following the principle of a prudent lawyer, it is possible that compensation claims vs. VW by investors fall under the short statute of limitations which could possibly have run out September 18, 2016. DSW therefore recommended to those investors who wanted to secure their claims in Germany to file an individual claim and apply for a model case proceeding themselves. Alternative measures to interrupt the statute of limitations e.g. by way of entering into conciliation proceedings (Schlichtungsstelle) are possible, but could be considered as abusive since VW so far has not been willing to settle cases in Germany.

Applying for a model case proceeding was explicitly also advised to those shareholders who registered with the Dutch "Stichting Volkswagen Investors Claim" as the Dutch settlement proceedings do not interrupt

the statute of limitations in Germany. Therefore, DSW recommended to pursue a two-fold strategy. Enter legal actions in Germany to ensure that the statute of limitations does not expire and register/keep registered with the Stichting as this possibility is free of charge and non-binding for investors.

Further information on the Stichting can be found at **www.stichtingvolkswageninvestorsclaim.com**

Volkswagen shareholders who want to be kept informed about DSW's actions regarding Volkswagen are invited to register for our **Volkswagen newsletter** via **volkswagen@dsw-info.de**.

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