

The role of the supervisory board in corporate communications

Interdisciplinary study

Executive Summary

In co-operation with:



fgs global

Prof Dr Axel v. Werder

Executive Summary

The key findings of the new study can be summarised as follows:

- Direct communication between investors or other stakeholders and supervisory board chairs has become established practice. There is a general willingness to communicate.
- The legal framework for doing so is more stable now. In legal literature, most authors consider it permissible for a supervisory board chair to talk with investors and stakeholders about matters related to the board. This circumstance is also reflected in the rules of procedure in place at DAX40 companies. Unlike in 2018, most of them now contain provisions on supervisory board communications.
- Specifically established processes and clearly defined responsibilities are still the exception. While companies' rules of procedure do contain provisions on communications, rules of procedure specifically for communication are rare. In addition, supervisory boards are not establishing committees to deal with communication.



- The topics that supervisory board chairs address vary. Viewing the topics in an ESG context, a clear focus is on governance (“G”) topics such as HR decisions or corporate strategy. Environmental and social aspects are sometimes addressed, but in general much less often. In the period examined, several supervisory board chairs expressed their views on Russia’s attack on Ukraine, and only a few commented on environmental topics. This finding is not surprising given the supervisory board’s responsibilities, which undoubtedly include governance topics. It is therefore not a surprise that of all topics these are the ones discussed most often. However, the reluctance to discuss other topics (at least in interviews with journalists) is striking. Apparently, supervisory board chairs do not consider communication with the media to be a suitable platform for publicly commenting on environmental (“E”) or social (“S”) topics. This seems to be different in communication with investors.
- Supervisory board chairs talk primarily with investors (as expected). While discussions in legal literature that focus solely on dialogue with investors imply otherwise, communication with other parties such as the media, NGOs, and representatives of public administration and politics also play a role in practice, although that role is still a minor one.
- It remains to be seen whether the discussions about sustainability, which are becoming more and more intense, and ever new EU regulations, directives and laws will lead to a change in the topics addressed by supervisory boards. Several aspects indicate a broadening of the range of topics and communication partners, including (i) the fact that various EU regulations and directives provide for stakeholder dialogue. For these purposes, “stakeholders” also include NGOs. Although it is management boards that initially conduct such dialogues, it is not inconceivable that supervisory boards, in their advisory and monitoring capacity, are also brought into such discussions. (ii) Supervisory board members seem to be willing to discuss ESG topics. At least that is what the results of our questionnaires suggest.



Editor

Noerr Partnerschaftsgesellschaft mbB
Brienner Str. 28
80333 München
noerr.com

FGS Global (Europe) GmbH
Berliner Allee 44
40212 Düsseldorf

Prof Dr Axel v. Werder
Universitätsprofessor a.D.
Straße des 17. Juni 135
10623 Berlin

Authors

Dr Ralph Schilha
Rechtsanwalt, Wirtschaftsjurist (Univ.
Bayreuth), Partner
+49 89 28628 167
ralph.schilha@noerr.com

Alina Lucia Kolenda
Rechtsanwältin
+49 211 49986 329
alinalucia.kolenda@noerr.com

Dirk von Manikowsky
Partner
T +49 211 43079 265
dirk.vonmanikowsky@fgsglobal.com

Dr Ingo Theusinger
Rechtsanwalt
Partner
+49 211 49986 154
ingo.theusinger@noerr.com

Tina Neugebauer
Rechtsanwältin
+49 211 49986 154
tina.neugebauer@noerr.com

Prof Dr Axel v. Werder
Technische Universität Berlin
T +49 30 314 22583