

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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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 über Sachverstand auf den Gebieten Rechnungslegung oder Abschlussprüfung verfügen.’*

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 über Sachverstand im Bereich der Rechnungslegung und/oder der Abschlussprüfung verfügen, sondern die Ausschussmitglieder in ihrer Gesamtheit müssen auch mit dem Sektor, in welchem das geprüfte 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,

A handwritten signature in blue ink, appearing to read 'C. Kruse', is written over a faint, light blue circular watermark.

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