CORPORATE GOVERNANCE REPORTING: COMPLIANCE WITH UPPER LIMITS FOR SEVERANCE PAYMENTS TO MEMBERS OF EXECUTIVE BOARDS IN GERMANY

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Abstract

We examine how corporate governance reporting corresponds to actual conduct regarding severance payment caps for prematurely departing members of executive boards in Germany. Firstly, we evaluate the declarations of conformity for all companies listed in the CDAX between 2010 and 2014, which we use to determine conformity and deviation rates, and analyse the reasons for deviation, contributing to current research on comparative corporate governance, which focuses on when, why and how companies deviate from legitimate corporate governance goals (Aguilera, Judge, & Terjesen, 2018). Secondly, we assess the compensation amounts of all severance payments made and published by DAX companies to compare the respective severance ratio with the cap recommended by the German Corporate Governance Code (GCGC). We find that more than 20% of companies listed in the CDAX declared deviation in the declaration of conformity. Moreover, in 57% of actual severance cases where DAX companies had previously declared their conformity, the cap was exceeded. Yet, none of the companies that had exceeded the cap disclosed this in the following declaration of conformity. In most cases, the corporate reports deviated from reality and therefore could not serve as a suitable basis for decisions by the capital market.

Keywords: Code, Corporate Governance, Executive Board, Germany, Reporting, Severance Payment

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1. INTRODUCTION

The increasing globalisation of economic activity, as well as the collapse of large companies, such as the US company Enron in 2001 due to massive falsification of financial statements and the Italian food group Parmalat in 2003 due to financial fraud, has led to an increasing number of demands worldwide for regulations on corporate governance and its corresponding reporting. As a result,

corporate governance regulations have been developed in numerous countries (Aguilera & Cuervo-Cazurra, 2009; Cuomo, Mallin, & Zattoni, 2016). Because corporate governance is strongly influenced by national laws, rules, and institutions, it is particularly promising to consider corporate governance issues at the national level (Elston, 2019, p. 148). That is why we concentrate on one example in Germany, where very high severance payments to prematurely departing board members have repeatedly attracted public attention and annoyance because the payments reduce the company's capital. For example, Metro AG paid its labour director, Zygmunt Mierdorf, responsible for human resources and technology, a severance payment of 13.336 million euros (Metro AG, 2011, p. 113) upon his premature departure in 2010. This corresponds to 5.5 times his annual remuneration in 2009 (Metro AG, 2010, pp. 103-105). As a general result, in these cases less money can be invested in the company, and/or the distributions to shareholders are lower. In 2008, regulators formulated caps for these cases. Severance payments to early terminated members of the executive board should not exceed twice their annual remuneration or the outstanding remuneration if the remaining regular time in the board were less than two years. These caps are not prescribed by law but were merely recommended by recommendation 4.2.3 (4) sentence 1 of the German Corporate Governance Code (GCGC) (Regierungskommission Deutscher Corporate Governance Kodex, 2017). The companies are, at least, legally obliged to make their behaviour on this subject public as part of their corporate governance reporting.

Corporate governance reporting contains information on the corporate governance of a company so that the company can be assessed externally (Ceschinski, Buhleier, & Freidank, 2018, p. 278). Thus, managers use corporate reports to give information about the company's status primarily to shareholders but also to other interested groups, such as employees, customers, suppliers, or other capital market participants. By making the extent of the company's compliance with corporate governance regulations transparent to the capital market, such reports are intended to influence the market's decision-makers. In Germany, this principle was formulated by Gerhard Cromme, former Chairman of the Government Commission on the GCGC, when the Code was introduced: "Those who do not comply with the Code will be punished by the capital market" (Sturbeck, 2001, p. 13)[1]. Thus, corporate reports give current and potential investors an idea about a company's compliance so they can base their investment decisions on that, among other things (Hommelhoff & Schwab, 2009, p. 80; Goette, 2013, § 161 AktG, recital 37). If a company has paid more than the recommended compensation, this money is no longer available for investments or dividend payments. This can violate investors' interest in an increase in shareholder value. Corporate governance reporting is intended to make this behaviour transparent to investors so that they can base their investment decisions on it and buy shares of the companies that serve their interests best. Conversely, if reports show that a company does not follow the recommendations or only does so to a limited extent, this could cause investors to sell their shares or to not buy any new ones, leading to price discounts (Ihrig & Wagner, 2002, p. 2514; Hoffmann-Becking, 2011, p. 1174). However, the authors mention a major caveat to these expected outcomes: They lack empirical evidence. To date, the assumption that good corporate governance has a positive impact on the success of a company has, at best, only been demonstrated in part but not in full (Werder, 2009, p. 24; Werder & Grundei, 2009, p. 630).

This article examines the following research questions for the German corporate governance system using the recommendation on severance payments as a relevant example: How is corporate governance reporting carried out regarding companies' compliance with the recommended cap for executive boards' severance payments? What content is reported? Does the reported content correspond to the reality of severance payments to executives? If not, how can corporate governance reporting be improved to make it transparent to investors whether or not the recommended limits are actually met in a company?

With this article, we want to create knowledge about the behaviour of the companies with regard to severance payments to members of the executive board and the reporting on this. Furthermore, we want to identify the reasons why companies deviate from the recommended upper limit.

This article is divided into eight sections. Following this introduction, Section 2 contains the state of research on various relevant topics of corporate governance and the description of the research gaps that this study aims to close. To assess the discrepancies between how companies should act regarding severance payments, based on whether they conform to the GCGC severance payment caps and how they actually carry out severance payments, we classify and analyse the regulations for severance payment caps in Germany in Section 3. In Section 4 we describe the theoretical framework. Section 5 contains the research methodology and Section 6 contains the empirical results of both the declarations of conformity and the actual severance cases, which is followed by an analysis of how well the reported content matches up with actual severance cases. Section 7 discusses the results and their limitations. Finally, Section 8 concludes and gives a perspective about the actual changes, both in terms of content and corporate governance reporting.

2. STATE OF RESEARCH

From the great wealth of corporate governance research, Sub-section 2.1 presents the results on the question of acceptance of recommendation 4.2.3 (4) GCGC regarding limits on severance payments. Sub-section 2.2 contains research and references in the literature on the relationship between the declaration of conformity and compliance with recommendations, and Sub-section 2.3 summarises research on severance payments to members of the executive board. Sub-section 2.4 identifies research gaps arising from the previous sections.

[1] These and all following citations from sources in German are translated by the authors of this article.

2.1. Acceptance of recommendation 4.2.3 (4) sentence 1 GCGC

Both the acceptance of the recommendation 4.2.3 (4) sentence 1 GCGC and the acceptance of all code recommendations are of great interest to science and practice and have, therefore, frequently been investigated. The contents of the most important studies are described in more detail below. In the Corporate Governance Report of the Berlin Center of Corporate Governance, Axel von Werder examined both the general conformity rate of all recommendations and the conformity rate with recommendation 4.2.3 (4) sentence 1 GCGC. His findings were based on the evaluation of a sample of completed questionnaires to the CDAX companies and, starting from 2013, also to companies within the scope of the GCGC that were not listed on the Frankfurt Stock Exchange but other German stock exchanges. One result of the study for the year 2012 was that this recommendation was a "neuralgic" provision because it was not followed by more than 10% of the companies (Werder & Bartz, 2013, pp. 887-890). However, while the studies also came to the same conclusion for 2013 (Werder & Bartz, 2014, p. 909) and 2014 (Werder & Turkali, 2015, p. 1360), they do not contain an analysis of the reasons for this deviation.

The Center for Corporate Governance of the Leipzig Graduate School of Management also annually examined the acceptance of the Code in general as well as at the level of individual recommendations and the connection with other corporate characteristics. In terms of methodology, this was done by evaluating the declarations of conformity published by DAX and MDAX companies. The studies came to the following conclusions. In 2013 (2014), 30.0% (26.9%) of all DAX companies and 15.6% (12.5%) of all MDAX companies deviated from recommendation 4.2.3 (4) sentence 1 GCGC. The recommendation was therefore classified as "critical" (Kohl, Rapp, & Wolff, 2014, pp. 7-9; Kohl, Rapp, & Wolff, 2015, pp. 7-9). For the years 2010, 2011 (Kohl, Rapp, & Wolff, 2012, p. 17) and 2012 (Kohl, Rapp, & Wolff, 2013, p. 20), recommendation 4.2.3 (4) sentence 1 GCGC was also classified as "critical"; however, these studies only looked at DAX and MDAX companies located in Germany, representing only 77 of the 478 CDAX companies in 2014 for example, and they did not distinguish between statistically significant changes and coincidental developments over the years. While Kohl, Rapp, and Wolff (2012, 2013, 2014, 2015) did perform a correlation analysis that examined the relationship between company characteristics and the correspondence rate across all critical figures, an analysis of the reasons for the declared deviation was not carried out.

In summary, the acceptance of recommendation 4.2.3 (4) sentence 1 GCGC in both the studies by Werder and Bartz (2013, pp. 887-890; 2014, p. 909), Werder and Turkali (2015, p. 1360), and those by Kohl, Rapp, and Wolff (2012, 2013, 2014, 2015), is regularly remarkably low. Böcking, Böhme, and Gros (2012) recognised the necessity of a qualitative analysis of reasons for deviations and examined these for recommendation 4.2.3 (4) sentence 1 GCGC among the 30 DAX companies in 2011. The conclusion of their study was that due to the legal difficulties, a deviation from this recommendation cannot easily be regarded as a sign of poor corporate governance (Böcking, Böhme, & Gros, 2012, p. 621). Werder, Pissarcyk, and Böhme (2011, p. 493) examined both the questions of what connection exists between corporate characteristics such as the transparency standard and the acceptance of the Code and what reasons explain a deviation from section 4.2.3 (4) sentence 1 GCGC for 2010. According to this study, 96.3% of all DAX companies declared that they followed all recommendations of the GCGC, while only 78.3% of all CDAX companies declared that they followed all recommendations. According to this study (Werder, Pissarcyk, & Böhme, 2011, p. 499), the deviation from section 4.2.3 (4) sentence 1 GCGC was justified at most companies by general considerations and not by the individual company's situation.

2.2. Relationship between the declaration of conformity and compliance

In the literature, relatively few studies address both the question of actual compliance with the severance payment caps and the question of the connection between the declaration of conformity and actual compliance. Regarding the second question, this relationship can be investigated in two directions. On the one hand, a declaration of conformity may affect actual compliance. On the other hand, exceeding the recommended upper limits may also affect the historical part of the following declaration of conformity. On the connection between declarations of conformity and actual compliance, Theisen and Raßhofer (2007, p. 1320) compared actual compliance with recommendation 3.4 (1) sentence 3 GCGC with the declared conformity. They interviewed 30 DAX companies and selected MDAX and SDAX companies online to determine whether they actually complied with recommendation 3.4 (1) sentence 3 GCGC, according to which the supervisory board should specify the information and reporting duties of the executive board in more detail, and compared these figures with those of the declared conformity. As a result, they found almost no agreement between the declared conformity and the actual compliance by the companies surveyed, although the recommendation was universally accepted.

Although there are hardly any empirical studies in the literature, there are numerous hints and suppositions on the problem of the incongruence of the declaration of conformity and actual compliance. As Bassen, Kleinschmidt, Prigge, and Zöllner (2006) put it: "From these declarations of conformity it cannot be concluded beyond doubt that action will be implemented in reality" (p. 396). Werder and Talaulicar (2008) draw the following conclusion: "In this sense, tensions between the statement of conformity and the conformity with this statement cannot theoretically be excluded" (p. 825). Werder (2009) therefore calls for an examination of the "discrepancies between the corporate governance statements of companies and their real management modalities" (p. 27). Hoffmann-Becking (2010, p. 353) also notes that high conformity rates do not necessarily indicate a high level of acceptance of the content. Theisen (2014) points out that "not deviant behaviour but 'only' incorrect explanation is indirectly sanctioned" (p. 2059). For him, separating the declaration of conformity from the actual compliance is "the central dilemma of the code regulation approach." In summary, only a few empirical studies

have so far investigated the relationship between declarations of conformity and actual compliance, but there are clear indications that even a high rate of declared conformity does not necessarily result in a high rate of factual compliance.

2.3. Severance payments

Economic theories about severance payments are presented in Section 4. So far, the only empirical study of severance payments to German executive board members was carried out by Bayer and Meier-Wehrsdorfer (2013). However, the respective payments were not related to the corresponding total compensation of the past fiscal year or, when applicable, to the expected total compensation for the current fiscal year, meaning that it is unknown whether these payments actually complied with the upper limits of recommendation 4.2.3 (4) sentence 1 GCGC.

2.4. Research gaps

In the field of code acceptance studies, to date, there has been no complete survey of the declarations of conformity of all CDAX companies to determine whether, regarding more than one selection index, these companies accept the recommendation. Also, no studies have collected or analysed the reasons for deviation to understand the effect of a single recommendation. Further, no studies have investigated whether companies within the scope of the GCGC adhere to their declared conformity regarding severance payments or whether, in the event that companies exceeded the recommended upper limits, they make this transparent in the past-related part of the declaration pursuant to §161 AktG (German Stock Companies Act). The purpose of this article is to fill these gaps. Additionally, as we use an investigation period of several years, the current study can also consider the development of acceptance over time.

3. CLASSIFICATION AND ANALYSIS OF THE REGULATIONS FOR SEVERANCE PAYMENT CAPS IN GERMANY

Sub-section 3.1 describes the declaration of conformity as part of the Corporate Governance Reporting and Sub-section 3.2 describes how severance payments are handled in the CGCG.

3.1. Declarations of conformity as part of corporate governance reporting

While corporate law in Germany consists of a large number of laws and rules, the majority of corporate governance regulations are contained in the GCGC first developed by an independent government commission in 2002. It contains three different types of rules. First, to improve communication with investors, it includes already existing essential legal regulations from different laws (descriptive function). Second, it provides recommendations, and third, it gives suggestions without commitment (constitutive function). This distinction is relevant for determining whether companies are obliged to submit a declaration of conformity pursuant to §161 (1) AktG. The recommendations apply to all German listed companies, i.e., to listed German stock corporations and partnerships limited by shares as well as to European stock corporations located in Germany (Strieder, 2005, p. 165). Since 2012 the preamble to the CGCG also includes the concept of a deviation culture, whereby a well founded deviation from a code recommendation can be in the interest of good corporate governance. This is intended to prevent deviations from being categorised as negative and to legitimise them. Accordingly, the government commission on the GCGC regularly reviews whether the recommendations continue to comply with "best practice" in good corporate governance or whether they need to be adjusted.

To provide the capital market and other interested parties with a higher degree of transparency regarding companies' compliance with the recommendations, corporate governance reporting in Germany was further developed in parallel with the GCGC. With the introduction of §161 (1) sentence 1 AktG in 2002, companies' reporting obligations were legally anchored. Pursuant to §161 (1) sentence 1 AktG, the annual declaration of conformity must be issued uniformly by the executive board and the supervisory board. If one of the two boards deviates, or even if just one member of one of the two boards deviates, a total deviation from the recommendation must be declared (Bayer & Scholz, 2019, recital 45). Pursuant to §161 (2) AktG, companies must make the declaration of conformity permanently available to the public on their websites. The declaration of conformity contains two parts: one about the past, regarding how the company has previously complied with the GCGC's recommendations, and one about the future, where the company must declare their intention to comply with the Code's recommendations in the future. Although the recommendations are not legally binding and companies may deviate from them, companies are legally obliged to issue this declaration of conformity. If the recommendations are not complied with, companies must also disclose which recommendations they disobeyed and why (Hüffer & Koch, 2016, §161 AktG, recital 18). This comply-or-explain principle is intended to make internal corporate governance decisions – such as the level of severance pay executive members will receive upon termination – transparent for the capital market and the general public.

The legal obligation to submit an annual declaration of conformity has subsequently led companies to publish the declaration of conformity through a large number of communication instruments. For example, the document could be published either as a single document on the company's website, or as part of the corporate governance statement pursuant to §289f HGB (German Commercial Code) as part of the management report, or as an independent part of the annual report. To reduce the lack of transparency introduced by the various communication instruments, since mid-2018 §289f (2) No. 1 HGB stipulates that the declaration of conformity must be included in the corporate governance statement as part of the management report in accordance with §161 AktG. Furthermore, the notes to the annual financial statements must contain the information required under §285 No. 16 HGB, stating that the declaration of conformity has been submitted and made publicly available.

The declaration of conformity is only part of what is required for corporate governance reporting, as further components are regulated in §289f (2) No. 1a to 6 HGB. Nonetheless, the focus of this article is on the part of corporate governance reporting dealing with declarations of conformity. Integrating the content of these declarations into the corporate governance statement, as described above, raises the question of what duty the supervisory board has in making the declaration. While the declarations of conformity pursuant to §161 (1) sentence 1 AktG must be submitted jointly by the executive board and the supervisory board, the obligation to prepare a management report pursuant to §264 HGB is incumbent on the legal representatives of a corporation, which is pursuant to §78 (1) sentence 1 AktG the executive board (Buhleier et al., 2018, p. 2126). Moreover, pursuant to §217 (2) sentence 1 HGB, a management report may also be under the purview of an external auditor tasked with performing an audit. For the purpose of the declaration of conformity pursuant to §217 (2) sentence 6 HGB, however, the audit is limited to determining whether the disclosures have been made (Buhleier et al., 2018, p. 2126). Thus, auditors do not carry out a substantive audit in this regard.

The issuing and publication of declarations of conformity are monitored by the Federal Office of Justice. The office administers different fines in two different cases: one when a company fails to submit a declaration of conformity at all and the other when a company fails to mention in their financial statements that they have submitted the declaration. In the first case, namely when a company's legal representatives have not disclosed the declaration of conformity or have not submitted it to the operator of the Federal Gazette, the Federal Office of Justice carries out an administrative fine procedure according to §335 HGB. In this case, both the operator of the Federal Gazette and third parties may file a complaint, and the administrative fine is given repeatedly until the company has fulfilled its disclosure obligation. The goal here is to force the company to catch up with the reporting laws. In the second case, a fine is administered pursuant to §334 (1) No. 1 d HGB in conjunction with section 285 No. 16 HGB when a company's executive board or supervisory board have failed to state in the notes to their annual financial statements that they have issued the declaration required by §161 AktG and where it has been made publicly accessible. Failure to provide this information constitutes a breach of duty (Goette, 2013, §161 AktG, recital 82) and the omission is sanctioned (Schaal, 2013, §161 AktG, recital 113).

3.2. Severance payment caps in the GCGC

Severance payment caps were regulated in recommendation 4.2.3 (4) sentence 1 GCGC as follows (Regierungskommission Deutscher Corporate Governance Kodex, 2017)[2]: "When contracts are entered into with management board members, it shall be ensured that payments, including fringe benefits, made to a management board member due to early termination of their contract do not exceed twice the annual remuneration (Severance Cap) and do not constitute remuneration for more than the remaining term of the employment contract". If an executive board member is prematurely terminated when the remaining term of his or her contract is less than two years, the member's severance pay shall not exceed the remaining term of their employment contract. In this situation, the payment for the remaining term of the contract is the upper limit. In the case of contract terms of two years and up to five years, no more than two annual remunerations are to be paid. This regulation of severance payment caps was adopted in the GCGC as a suggestion in 2007 and upgraded to a recommendation in 2008 (Lutter, 2009, p. 1874). The Code in general was intended to introduce shareholder-oriented elements into a stakeholder-oriented system to achieve greater capital market orientation (Bottenberg, Tuschke, & Flickinger, 2017, p. 174).

There are three points in time when a company, more exactly the supervisory board, makes decisions on this issue. First, when the employment contract is concluded, the company decides whether to include the recommended upper limits in the employment contract. Second, at the submission of the annual declaration of conformity, the company decides what to declare. Third, if and when any actual severance payment is to be made, the supervisory board negotiates it with the outgoing executive. In the following we analyse these three situations:

Despite the recommendation, under German law, a severance payment cap cannot be effectively agreed in the employment contract. To better understand the legal basis of the recommendation, we must consider the two separate legal relationships that are at play between the stock corporation and a member of the executive board (Hüffer & Koch, 2016, §84 AktG, para. 2). The first legal relationship involves the establishment of an employment contract. At the level of the law of obligations, the supervisory board, as the representative of the stock corporation pursuant to §112 AktG, agrees to an employment contract with the future executive board member, whereby this contract is limited to a maximum of five years pursuant to §84 (1) sentences 1 and 5 AktG in conjunction with §611 BGB (German Civil Code). This agreement may be extended beyond the initial five years to a maximum of another five years and so on, pursuant to §84 (1) sentences 2 and 5 AktG. The second legal relationship at play is that of a corporate appointment. In addition to agreeing on the employment contract, the supervisory board also appoints the future member of the executive board to be part of this board for a maximum term of five years, in accordance with §84 (1) sentence 1 AktG. The supervisory board can again repeat the appointment or extend the term of office beyond the initial appointment to a maximum of another five years and so on, pursuant to §84 (1) sentence 2 AktG.

The second point of interest is the annual issuing of the declaration of conformity. The company declares whether it has complied with the recommendation by including the recommended upper limit in the employment contract or whether it has not. In the case that the recommendation has not been complied with, the company is obliged to explain its deviation. Most companies are well-advised in legal terms and are aware that at the beginning of an employment contract, any agreement that includes an upper limit of severance pay is invalid. As a result, companies usually also

[2] For the newest version that came in force just this year after our periods of investigation, see Section 8.

know that they can declare their conformity with the recommendation without the upper limits being effective in any compensation negotiations.

The third interesting point in time is during the negotiations about a premature termination of the employment contract at the request of the stock corporation. The two legal relationships – the employment contract and the corporate appointment – are particularly important in this event. If no important reason pursuant to §626 (1) BGB is found or its existence is uncertain, the employment contract remains enforced, because in this case, the supervisory board cannot unilaterally terminate the employment relationship prematurely (Bayer & Meier-Wehrsdorfer, 2013, p. 483). A contractual agreement of the right to premature termination upon conclusion of the executive board employment contract would constitute an inadmissible circumvention of §84 (3) sentence 1 AktG because the executive board member would have to resign from this board without important cause after the termination of the employment contract by the stock corporation (Hoffmann-Becking, 2007, p. 2106). Therefore, *pacta sunt servanda* applies, meaning the employment contract remains intact. The executive board member remains entitled to remuneration until his or her employment contract is terminated normally, as long as he or she continues to work or offers his or her work to the company that must accept it by default. In this case, the supervisory board may only enter into a termination agreement with the executive board member if both parties agree on the terms, including the amount of severance payment. In this respect, earlier agreements made in the employment contract are not binding (Bauer & Arnold, 2008, p. 1694) even if they implement the recommendation. Section 4.2.3 (4) sentence 2 GCGC stipulates that in the event of termination with an important reason in accordance with §626 (1) BGB, no severance payment is paid at all (Hoffmann-Becking, 2007, p. 2105). This is according to the law. However, if there is no important reason for termination, the GCGC recommends limiting the severance payment, although the company cannot do this unilaterally. Moreover, a severance payment cap cannot be effectively agreed on at the beginning when an executive board member's contract is created.

The recommendation is also in conflict with the German Stock Corporation Act (AktG), whereby, pursuant to §84 (3) sentence 1 AktG, the corporate appointment of an executive board member can be revoked only for an important reason to protect the statutory independence of the executive board member pursuant to §76 AktG for the duration of the appointment. Under this protection, which is mandatory (Lutter, 2009, p. 1874; Bauer & Medem, 2014, p. 238), the executive board member has the freedom to make medium- or long-term decisions. However, the recommendation presupposes the possibility that an executive board member can be prematurely terminated (Bauer & Arnold, 2008, p. 1694; Lutter, 2009, p. 1874; Hüffer & Koch, 2016, §84 AktG, recital 34), which is only possible with his or her consent that could cost more than the recommended severance payment. This dilemma is solved by fudge. The current recommendation is already complied with when a corresponding clause is included in the contract of employment of the executive board member, irrespective of whether a severance payment actually paid complies with the upper limits (Bauer & Arnold, 2008, p. 1693).

4. THEORETICAL FRAMEWORK

In Sub-section 4.1 the principal-agent theory is used to explain the conflict regarding severance payments and how a payment cap as well as reporting can help to mitigate this conflict. In Sub-section 4.2 the managerial power approach is introduced that is much more critical about executives including their severance payments.

4.1. Principal-agent theory

New Institutional Economics is often used as the explanatory framework for the effectiveness of corporate governance instruments. For it does not regard institutional framework conditions as given but as formable. The separation of ownership and control was already investigated by Berle and Means (1932) and identified as a cause of conflicts of interest between shareholders and management. The delegation of tasks to management creates a discretionary scope of action for management (Shleifer & Vishny, 1997, p. 741). The principal-agent theory makes the assumption that the actors of a company act opportunistically by maximising their own utility and that there is an information asymmetry in favour of the agent. The principal cannot obtain the information available to the agent, or only at an extremely high cost (Richter & Furubotn, 2010, p. 173). Due to this asymmetry, the principal incurs agency costs (Jensen & Meckling, 1976, p. 308). In our case, shareholders incur agency costs as principals in controlling the executive and supervisory boards as agents. The efficiency-enhancing effect of the recommendation examined can result from the fact that compliance with the recommended upper limits as "best practice" can ensure an efficient allocation of resources and reduces the effort required to monitor the supervisory board. Moreover, corporate governance reporting could reduce the principal-agent conflict between shareholders and management by reducing information asymmetry (Leyens & Arbeitskreis Corporate Governance Reporting der Schmalenbach-Gesellschaft für Betriebswirtschaft e.V., 2016, p. 2131). Corporate governance reporting increases the transparency regarding the actions of both boards and thus reduces agency costs for the agents, by avoiding redundant information in various publication instruments (Buhleier et al., 2018, p. 2125), as well as for the principals, by reducing the effort needed to obtain the information (Kuhner, 2005, p. 151; Bassen, Kleinschmidt, Prigge, & Zöllner, 2006; Zöllner, 2007, p. 3; Buhleier et al., 2018, p. 2125). With existing information asymmetry, investors will probably prefer companies with a high level of corporate governance (Kaspereit, Lopatta, & Onnen, 2017, p. 166). However, Nowak, Rott, and Mahr (2005, p. 259) noted that this positive view of corporate governance reporting requires that the participants in the capital market access the information in these reports and also react to it.

The principal-agent theory can also at least partially explain the conflict of interest in negotiations on severance payments in the event of premature termination of the contract at the request of the company. A three-tier principal-agent relationship exists here. The shareholders as principals instruct the supervisory board as supervisor to select and control the executive board

as agents. The longer the collaboration lasts, the greater become the incentives for the agents and supervisor to gain mutual benefits either simultaneously or with a time lag. What may initially begin with a desire to avoid anger can lead to a reciprocal threat potential to betray the past misconduct of the other side (Tirole, 1986, pp. 186-202). It is often impossible for the principals to prove collusion that probably takes place more often than it can be observed (Tirole, 1986, pp. 186). A soft cap of severance payments with the obligation to explain higher payments could help to reduce the collusion and the principal-agent conflict in general. A soft cap could be better than a hard one because high severance payments can be advantageous also for companies, especially their shareholders, and not only the executives receiving these payments mainly for two reasons. First, they can be seen as a form of insurance for managers, whose activities involve taking necessary risks in the interests of the shareholders. The insurance premium goes to the shareholders who would have to pay even higher salaries otherwise. Second, they can ensure that a member of the executive board leaves the company at the appropriate time (Taylor, 2012). If he or she stays this could be much more expensive.

4.2. Managerial power approach

While some see the supervisory board or the non-executive directors as a group that negotiates remuneration and severance payments on an equal footing with the executives (Easterbrook & Fischel, 1984, p. 542), the managerial power approach of the economist and lawyer Lucian Bebchuk describes the non-executive directors as a group whose decisions are influenced by their own interests, such as re-election or increasing their own remuneration. This self-interested behaviour of non-executive directors is only kept in check because they are also trying to avoid public scandals. This means that members of such boards have an incentive to disguise remuneration and severance pay regulations by asking the advice of remuneration consultants, by intransparency of seemingly independent services and remuneration payments, and by offering groundless severance payments. These excessive payments damage the shareholders (Bebchuk & Fried, 2003, pp. 75-77; Bebchuk & Fried, 2006, p. 14). To reduce the structural deficiencies in the corporate governance system, Bebchuk developed proposals for the US system such as increasing the transparency for shareholders and developing a consistent way to ensure remuneration including severance payments is related to performance (Bebchuk & Fried, 2006, p. 19).

5. RESEARCH METHODOLOGY

Sub-section 5.1 describes how the declarations of conformity are examined, and Sub-section 5.2 explains how the severance payments have been found and the relevant ratios are calculated.

5.1. Research of the declarations of conformity

We examine the annual declarations of the conformity of all CDAX companies. The CDAX includes all securities of German companies registered in General Standard or Prime Standard of the Frankfurt Stock Exchange (Deutsche Börse AG, 2018, p. 20). We examine the declarations of conformity of all companies listed on the CDAX in 2010 to 2014 by searching and evaluating the declarations of conformity either as a single document on the company's website, in the corporate governance statement as part of the management report, or as an independent part of the annual report. The latter two documents are either published on the internet or were sent by the companies on request in printed form. We examine the declarations of conformity to determine whether each company declared conformity or non-conformity with the recommendation. If a deviation is explained, we also research and document the reasons for the deviation. To avoid any insinuations or interpretations, we only classify the reasons according to the reasons explicitly given. Nevertheless, a certain subjective assessment cannot always be avoided. If the interpretation is more far-reaching, sometimes a different classification could be possible. To better understand the reasons for the deviation, we determine how many companies generally reject the caps and how many accept them in principle but consider them to be poorly implemented. This information is important to give a recommendation on how to improve the regulation in the future. A high rate of companies rejecting the caps, in general, could be a hint that such caps are not "best practice" for these companies. However, a high rate of companies accepting the cap rules in general but considering them poorly implemented could suggest a need to improve the rule such that it better fits the legal situation.

5.2. Research of actual cases of severance payments

We also look at actual cases of premature contract termination. To determine these cases, we compare the composition of the executive board on the basis of the annual report year by year. If there is a personnel change, we determine whether it was caused by premature termination of the contract at the request of the company or for other reasons. As this is very extensive research, we limit it to DAX companies. The DAX companies represent a subset of the CDAX with the 30 largest (in terms of turnover) and most liquid (in terms of free-float market capitalisation) companies in the German stock market. Subsequently, for these cases, we compare the actual ratio between severance pay and annual compensation with the recommended ratio. Therefore, we identify the severance payment and the annual compensation in the annual reports. Pursuant to §285 No. 9 a sentence 5 HGB, listed stock corporations must disclose the remuneration of the executive board members individually and by name in the notes to the annual financial statements, which are part of the annual report. Pursuant to §285 No. 9 a sentence 6 HGB, benefits promised and granted to a member of the executive board in the event of premature termination of his or her employment must also be published by name. We also match the content of the previous and subsequent declarations of conformity.

The aim of the analysis is to gain insights into the actual internal impact of the regulatory instruments in two directions. For the first direction, we examine whether companies that declared their conformity with the recommendation actually comply with the caps in the event of premature

termination of the contract. For the second direction, we examine what is declared in the next declaration made by companies that had previously exceeded the severance cap described in the recommendation.

6. RESEARCH FINDINGS

In Sub-section 6.1 we present the results regarding the declarations of conformity. In Sub-section 6.2 we report the severance ratios as well as the relations with the previous and following declarations of conformity.

6.1. Declarations of conformity of the CDAX companies

Table 1 shows the number of companies that are listed in the CDAX on the reporting date. After removing the 7 companies in 2014 that left the CDAX during the year, we calculate the number of companies subject to disclosure requirements. We then deduct from this the number of companies that did not issue a declaration of conformity. This gives the adjusted population of all CDAX companies with declarations of conformity.

Table 1. Adjustment of the CDAX companies

	2010	***2011***	***2012***	***2013***	***2014***
Reference date	30/12/2009	03/01/2011	02/01/2012	02/01/2013	02/01/2014
Total share classes in the CDAX	624	595	571	530	497
– Number of companies with multiple quotations of different share classes	24	24	23	21	19
= Number of companies in the CDAX	**600**	**571**	**548**	**509**	**478**
Companies with declaration obligation	600	571	548	509	471
– Number of companies that did not make a declaration or whose declaration was not found	160	132	122	97	81
= Adjusted population	**440**	**439**	**426**	**412**	**390**

Using the number of companies in the adjusted basic population, Table 2 shows the percentages of companies that declared conformity, declared grandfathering or declared deviations regarding severance payments caps to members of the executive board. The rate of conformity rises slowly from 64.5% in 2010 to 69.2% in 2014.

Table 2. CDAX companies declaring conformity, grandfathering, or deviation

	2010	***2011***	***2012***	***2013***	***2014***
Number of CDAX companies declaring conformity	284	287	286	278	270
Rate of CDAX companies declaring conformity/adjusted population	64.5%	65.4%	67.1%	67.5%	69.2%
Number of CDAX companies declaring grandfathering	22	16	10	10	6
Rate of CDAX companies declaring grandfathering/adjusted population	5.0%	3.6 %	2.3%	2.4%	1.5%
Number of CDAX companies declaring deviation from the severance payment cap	119	120	114	109	96
Rate of deviation 1: Number of CDAX companies declaring deviation from the severance payment cap/adjusted population	27.0%	27.3%	26.8%	26.5%	24.6%
Number of CDAX companies declaring deviation from all recommendations	15	16	16	15	18
Rate of deviation 2: Declaring deviation from all recommendations/adjusted population	3.4%	3.6%	3.8%	3.6%	4.6%
Rate of deviation 3: Rate of deviation 1 + rate of deviation 2	30.4%	30.9%	30.6%	30.1%	29.2%

In principle, these declarations of conformity could be explained by the actors' expectation of an increase in corporate efficiency. However, most actors are probably aware of the systemic inconsistency and thus the lack of enforceability of the upper limits. If they got comprehensive legal advice, the executive board and the supervisory board declare conformity in the knowledge that this declared conformity will not have any binding effect in the event of a severance payment. As expected, the rate of grandfathering falls slowly from 5% in 2010 to 1.5% in 2014. The rate of deviation 1, which is the rate of those CDAX companies that deviate from recommendation 4.2.3 (4) sentence 1 GCGC in relation to all CDAX companies with a declaration of conformity, is well over 20% in the period under review.

Therefore, the recommendation under review is an "extremely critical" recommendation because significantly more than 20% of all CDAX companies state in their declaration of conformity that they do not comply with it. More than 85% of the companies that declare deviations are identical to those of the previous year, i.e., companies very often adopt the contents of the declaration of conformity even verbatim from the previous year. Due to the complex legal situation of the recommendation, the content of the declaration probably emerged as the result of intensive legal advice that companies do not renew annually.

Considering just the 30 DAX companies as a subset of all CDAX companies, Table 3 shows the percentages of these companies that declared conformity, grandfathering, or deviation. Interestingly, there are no DAX companies declaring total deviation from all recommendations. However, between 16.7% and 20% declare deviation from the recommendation regarding the severance payment cap.

Table 3. DAX companies declaring conformity, grandfathering, or deviation

	2010	2011	2012	2013	2014
Declaring conformity/30[a]	70.0%	73.3%	76.7%	73.3%	80.0%
Declaring grandfathering/30	10.0%	10.0%	6.7%	6.7%	3.3%
Deviation rate 1: Declaring deviation from the severance payment cap/30	20.0%	16.7%	16.7%	20.0%	16.7%
Deviation rate 2: Declaring deviation from all recommendations/30	0.0%	0.0%	0.0%	0.0%	0.0%
Deviation rate 3: Rate of deviation 1 + rate of deviation 2	20.0%	16.7%	16.7%	20.0%	16.7%

Note: [a] since the declarations of conformity of all 30 DAX companies are available, adjusted and unadjusted quotas are identical for this group.

For the CDAX companies that declared deviations to the recommendation, their reasons for deviation are shown in Table 4. As can be seen, the most frequently cited reason in 2010 is "maximum scope for negotiation by the supervisory board and confidence in the supervisory board's decision in individual cases". In the years 2011 to 2014, the most frequently given reason is that the "legal validity of the provisions in the employment contract is questionable". Taken together, legal concerns represent one-quarter of all responses. More infrequent responses include the claims that existing contractual arrangements are sufficient without time limits and that a short contractual period between two and three years provides sufficient protection. Unspecified "other reasons" were also cited. Interestingly, between 4% and 8% of the deviating companies do not justify their deviation at all, despite their obligation to do so.

Table 4. Reasons given for deviating from the recommendation

Content	2010	2011	2012	2013	2014
Number of CDAX companies declaring deviation from the severance payment cap	119	120	114	109	96
Legal validity of the provisions in the employment contract are questionable	15.8%	18.1%	18.1%	17.3%	17.5%
Regulations contrary to the legal nature of a fixed-term contract	9.9%	8.5%	8.0%	9.0%	11.3%
Regulations do not suit the partnership limited by shares	1.7%	1.7%	1.8%	0.9%	1.0%
Regulations inappropriate	4.2%	4.2%	4.4%	3.7%	2.1%
GCGC regulation restricting severance pay to two years is inappropriate	4.6%	6.3%	5.7%	5.5%	6.3%
GCGC regulation on limiting severance payment to remaining term is inappropriate	2.1%	1.7%	1.8%	1.8%	2.1%
Legal regulations offer sufficient protection	1.7%	1.7%	4.4%	2.8%	4.2%
Existing contractual arrangements offer sufficient protection	10.5%	8.5%	9.5%	14.5%	14.4%
Short contract term of a maximum of two years offers sufficient protection	4.2%	2.9%	2.6%	1.8%	2.1%
Short contract term of two to three years offers sufficient protection	8.0%	9.6%	8.8%	8.7%	6.8%
Maximum scope for negotiation by the supervisory board and confidence in the supervisory board's decision in individual cases	17.1%	17.7%	16.1%	16.5%	16.1%
Competition considerations regarding the labour market for board members	3.4%	2.5%	3.1%	0.9%	1.6%
Other	10.1%	8.3%	9.6%	10.1%	10.4%
No reason given	6.7%	8.3%	6.1%	6.4%	4.2%

Overall, the types and number of reasons given show that the companies examined the recommendation in a very detailed and differentiated way. During the investigation period, the percentages in each category were relatively constant. In 2010, the most frequently cited reason was "maximum scope for negotiation by the supervisory board and confidence in the supervisory board's decision in individual cases". In the years 2011 to 2014, "Legal objections to the validity of the agreement in the employment contract" were most frequently mentioned. If the two legal objections are regarded as one group, because they are only legally and technically different, but in the end, they concern the legal invalidity of the recommendation, then legal objections are the most frequently mentioned reason for deviation throughout the entire period under review. One limitation in finding the reasons for deviation is that we can only base the analysis on the annual declarations of conformity. If the declaration content does not correspond to the actual reason for the deviation, the actual reason remains hidden.

6.2. Severance ratios of DAX companies

We find 117 cases where executive board members left DAX companies between 1 January 2010 and 31 December 2014. The numbers of cases sorted by the reasons for termination as identified in the annual reports are shown in Table 5.

Table 5. Reasons for termination of executive appointments in the DAX 2010 to 2014

Reasons for termination of executive board appointment	*Cases*	*Ratio*
Early departure at the request of the company with severance payment	25	21.4%
Early departure at own request	43	36.8%
Regular end of the executive board appointment	12	10.3%
Age-related retirement	26	22.2%
Other	2	1.7%
Data incomplete (severance payment amount)	9	7.6%
Total	**117**	**100%**

There are 25 cases in which executive board members were terminated prematurely with (known) severance pay at the request of the company. These are used to compare the company's declarations with its actual behaviour. Descriptive statistics for these cases are shown in Table 6.

Table 6. Descriptive statistics for premature terminations with severance payments

	Number of cases	*Minimum*	*Maximum*	*Mean*	*Standard deviation*
Annual remuneration in millions of euros	25	1.161	10.443	3.415	2.211
Severance payment in millions of euros	25	0.980	30.043	6.662	6.250
Remaining term of the employment contract in years	23[a]	0.250	4.750	2.344	1.328

Note: [a] in two cases, information about the regular duration of the contract was missing.

In the group of 25 severance cases involving premature departure of an executive board member at the request of the company, the average severance payment was 6.7 million EUR, the average annual remuneration was 3.4 million EUR and the average remaining contract term would have been 2.3 years.
For the 23 transparent cases, the severance ratios are determined and compared with the upper limits of the recommendation. The severance payment ratio is calculated as the sum of severance payments and pension payments for the period after the end of the appointment divided by the sum of annual remuneration and pension contributions. Only pension contributions paid are taken into account but not provisions. The number of companies that actually complied with or deviated from the recommendation is shown in Table 7.

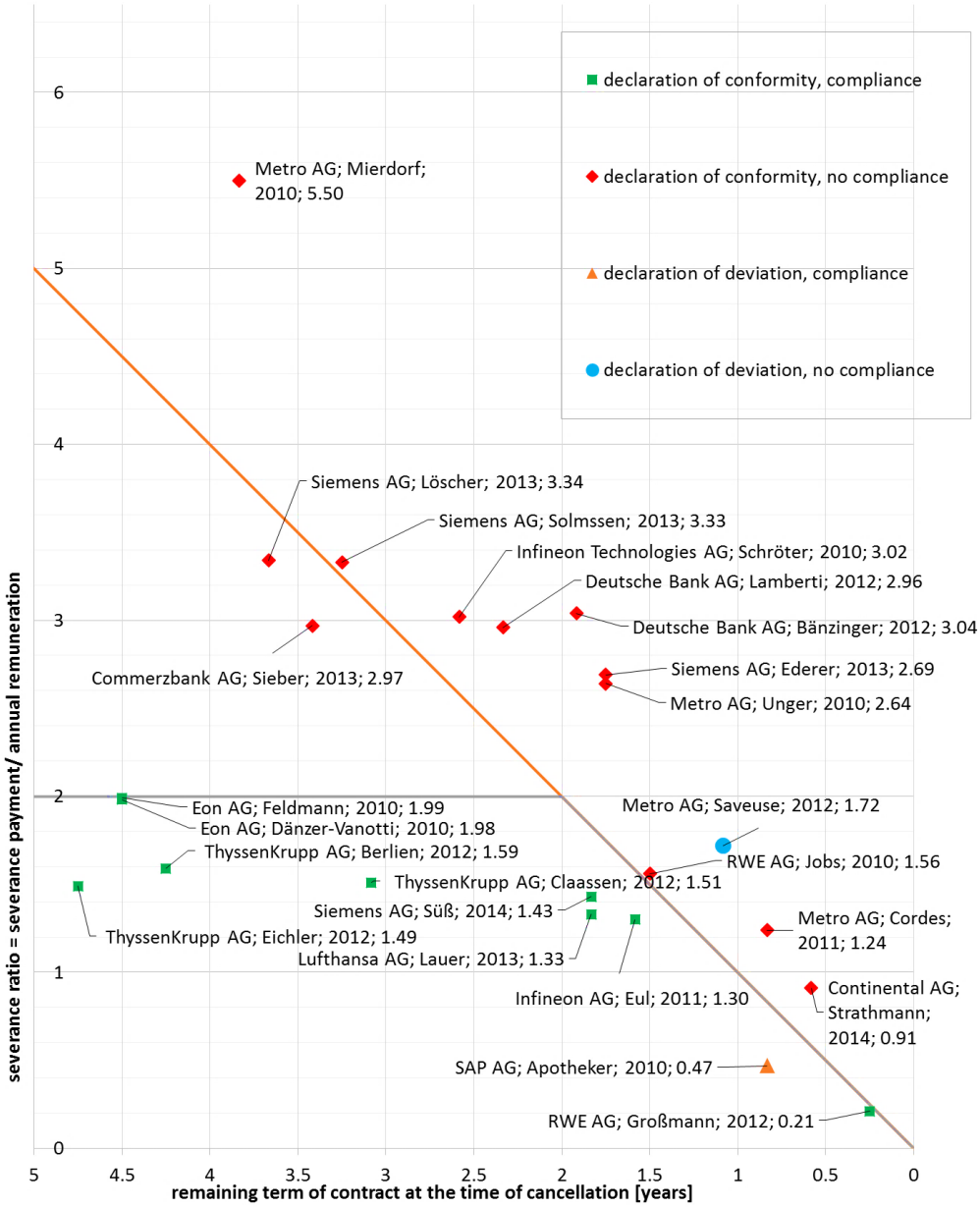
Table 7. Actual compliance and deviation of severance cases from 2010 to 2014

	Declared conformity	*Declared deviation*
Actual compliance	9	1
Actual deviation	12	1

Thus, in 12 of the 21 severance cases – amounting to 57% – the cap was exceeded even when the companies had declared that they complied with the recommendation. Figure 1 shows the caps recommended in the GCGC and the severance ratios of the 23 cases with complete data. The text for each data point contains the company name, the name of the departing member of the executive board, the year of departure, and the severance payment ratio. Severance cases where conformity was declared and the upper limit was actually complied with are marked with a square, and the one where deviation was declared but the upper limit was complied with is marked with a triangle. Severance cases in which the upper limit was exceeded despite the declaration of conformity are marked with a diamond, and the one which exceeded the upper limit after the declared deviation is marked with a circle. It is also noteworthy that, in addition to the 23 cases shown, eleven cases could not be evaluated due to incomplete data: In two cases the regular remaining period for determining the abscissa value is missing, in nine cases the actual amount of compensation for determining the ordinate value is unknown.

Even an analysis of the results of several severance cases of the same company does not always give a uniform picture: There are companies that consistently comply with or exceed the upper limit but there are also companies that vary in this respect. The first group includes both ThyssenKrupp AG and E.ON SE, which in several cases complied with the limits, and Metro AG, which always exceeded the limit in the four cases examined. In the case of the severance payment to Zygmunt Mierdorf mentioned at the beginning, Metro AG exceeded the upper limit by a factor of 2.75. In contrast, Siemens AG complied with the upper limit in the case of severance pay for executive board member Michael Süß but exceeded it in the cases of severance pay for Peter Löscher, Peter Solmssen, and Brigitte Ederer. The data do not indicate that companies changed their severance payment amounts over time in the period under review to more closely approximate compliance. Since some companies nevertheless complied with the cap, this may be because of other factors related to low opportunistic behaviour, previously systematized by Werder (Werder, 2009, p. 11), such as general factors related to a company's governance atmosphere and culture or individual factors related to the personality and values of the departing executive board member. Such factors may strongly affect whether requirements are voluntarily met.

Figure 1. Results of the case studies



While some companies met the cap recommendation, others did not. Specifically, the 57% that exceeded the recommended cap but then declared conformity should be analysed in detail. Looking at the deviant companies' behaviour patterns, all 13 companies that exceeded the caps in their severance cases (12 declared conformity and one declared deviation) declared conformity in the following year. In these next year declarations of conformity, all but one failed to mention the severance cases at all in the part of the declaration for describing past activities. The one exception, Siemens AG (2013) declared for the year 2013: "The agreements concluded with Mr. Löscher and Ms. Ederer on the occasion of the premature termination of their executive board activities provide for severance payments that do not exceed the value of two years' compensation. In addition, further benefits were agreed with Mr. Löscher and Ms. Ederer that are not to be regarded as severance pay within the meaning of section 4.2.3 (4) sentence 1 of the Code. In particular, Mr. Löscher has committed himself to a two-year post-contractual non-competition clause. Details of the agreements will be set out in the Remuneration Report, which is part of the Annual Report 2013" (p. 124). Although further payments are mentioned here, they are definitively distinguished from severance payments.

From these results, it can be concluded that exceeding the recommended caps has no effect on the following declaration. The declarations of conformity we examined deliberately signal that companies are declaring conformity with the recommendation but are not actually complying with it. The exceedances we found can be explained with the model of Tirole described in Section 4 within the framework of the principal-agent theory as a result of a collusive interaction between the supervisory Board and the departing member of the executive board (Tirole, 1986, p. 207). Such a high severance payment is then like a link in a chain of mutual advantages that both boards have already obtained or expect in the future.

7. DISCUSSION OF THE RESULTS

The adjusted ratio of all CDAX companies declaring conformity rose from 64.5% to 69.2% between 2010 and 2014. These numbers and their development raise the question of whether these values are not high enough such that researching this particular recommendation is unnecessary. One way to answer this question is to compare companies' conformity rates for this specific recommendation with companies' general conformity rates for all recommendations mentioned in the literature. Thus, in Table 8 we show the average percentage of recommendations that DAX companies declared conformity for over the years 2011 to 2015, which was determined by the Center for Corporate Governance of the Leipzig Graduate School of Management. Table 8 shows that the DAX companies have declared that they comply with more than 97% of all recommendations. However, only 70% to 80% of all DAX companies declare their conformity with this particular recommendation (see Table 3). Thus, the recommendation is one of the least followed recommendations of the Code, and it seems relevant to discuss its relatively low acceptance by companies.

Table 8. Percentages of Declared Conformity by DAX Companies 2011 to 2015

Year	*Percentage of declared conformity to recommendations by DAX companies*	*Reference*
2011	98.1%	Kohl et al. (2012, p. 4)
2012	97.7%	Kohl et al. (2013, p. 4)
2013	97.4%	Kohl et al. (2014, p. 4)
2014	97.4%	Kohl et al. (2015, p. 4)
2015	97.5%	Beyenbach et al. (2016, p. 4)

Only 43% of the companies that declared conformity and had an actual severance case respected the cap. In the majority of cases, therefore, issuing the declaration of conformity did not limit the actual amount of the severance payment to be within the cap. During the period under review, the regulations on upper limits were not voluntarily complied with within the majority of severance cases. Because this large discrepancy exists between corporate governance reporting and actual behaviour, the relevance of reporting as a decision-making aid for capital market participants is questionable in the case of limiting severance payments.

It is also worth mentioning the 9.4% of cases where executive board members left companies but the data were incomplete, such that compliance with the cap could not be determined. In 9 of these 11 cases, the severance amount is not known, which can occur for two possible reasons: Either the companies consciously or unconsciously prepared the annual report in an imprecise way or they made use of their right to opt-out. Pursuant to §286 (5) HGB, shareholders can agree to the opt-out with a majority of at least three quarters in the annual general meeting. Other information missing in two cases is about the regular duration of the contract.

One limitation of this study lies in the fact that only the corresponding behaviour with regard to one recommendation has been investigated. A generalisation of the results to other GCGC recommendations is therefore inadmissible. Only assumptions can be made about the intentions and strategies of the actors that led to the respective explanations. Another restriction regarding the premature termination of employment contracts for executive board members is to the DAX companies. Knowing the severance ratios of executive board members in companies not listed in the DAX but in the TecDAX, MDAX or SDAX would also be of great interest, especially since a higher number of cases would allow the use of quantitative empirical methods, but collecting the relevant data is very difficult and time-consuming. With more time, the investigation period could be widened, too, and the norms and practices in other countries could be analysed and compared.

8. CONCLUSION AND OUTLOOK

Overall we contributed the following findings. We have shown a deviation rate of significantly more than 20% of all companies listed in the CDAX during the investigation period for the recommendation regarding severance payments caps. These deviations are most often explained by legal concerns. We have also shown that the majority of severance payments in DAX-companies exceeded the upper limits despite declarations of conformity to the contrary and we have given possible explanations for both empirical results. For the recommendation examined, this deficit has been described before. For example, the recommendation was described as "imperfect" (Lutter, 2009, p. 1875; Bachmann, 2018, recital 1025), as a "non-binding declaration of intent" (Mayer-Uellner, 2011, p. 2; Bayer & Meier-Wehrsdorfer, 2013, p. 483), as "not very effective" (Evers, 2009, p. 373), and as a "pure marketing instrument" (Weiß, 2011, p. 90). These difficulties associated with the recommendation also render corporate governance reporting with the aim of influencing the decisions of capital market participants ineffective. In summary, we conclude that during the period under review the recommendation was frequently not complied with and that this reality was not presented in the reports.

The Government Commission on the German Corporate Governance Code adopted a new version of the GCGC on 9 May 2019 (Regierungskommission Deutscher Corporate Governance Kodex, 2019), amending the recommendation under review as follows (now G.13, first sentence): "Any payments made to a Management Board member due to early termination of their Management Board activity shall not exceed twice the annual remuneration (severance cap) and shall not constitute remuneration for more than the remaining term of the employment contract" (p. 17). This new Code came into force with the publication by the Ministry in the German Federal Gazette on 20 March 2020, thus superseding the hitherto valid Code in its version from 7 February 2017 (Regierungskommission Deutscher Corporate Governance Kodex, 2017).

This change provides companies with a more effective regime that has a high degree of flexibility. Companies still have the possibility to deviate from

the recommendation and give higher severance payments in cases where they are legitimate. In this way, the supervisory board can change the balance of interests generally regulated in the recommendation in individual cases, but it will have to state this in the following declaration. The change is going to enhance the formerly worthless reporting on the recommendation, as a statement on this recommendation would only be made in the event of severance pay and would contain information on the actual severance ratio. This amendment to the Code should be followed by a definition of severance pay and a distinction between severance pay and other payments in the GCGC or the AktG. This would bring more clarity to all participants because in practice there are many kinds of compensations that are not described as severance (Steltzner, 2007, p. 11).

Another important aspect of corporate governance reporting on the recommendation is that it must enable the capital market to monitor compliance with the caps. To this end, companies should be required by law to publish the executive board members' terms of appointment in the annual report. In addition, both the individualised compensation and the individualised severance payments should be presented in a standardised manner in the annual report to make increasingly complex compensation and severance payment systems comprehensible (Bayer & Meier-Wehrsdorfer, 2013, p. 487). This would make the comply-or-explain mechanism even more effective for this recommendation by making the actual behaviour transparent in the declaration, at least within the following year. Even knowledge of the mandatory transparency would presumably have a disciplining effect on the supervisory board. The inefficient declarations of conformity with the former recommendation will become important with the new version of the recommendation because companies now have to explain whether the recommended caps have actually been complied with. Corporate reporting will also correspond to the reality of the issue under investigation and could therefore better fulfil its function as an information and decision-making basis for capital market participants. What really happens remains to be seen and can be researched in the future.

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