Federal Ministry
of Finance

Principles of Good Corporate Governance and Active Management of Federal Holdings

# PRINCIPLES

# Principles of Good Corporate Governance and Active Management of Federal Holdings

Part I: The Federation's Public Corporate Governance Code
Part II: Guidelines for active management of companies in which the Federation has a holding

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On 16 September 2020, the German government adopted the new 2020 version of the Principles of Good Corporate Governance and Active Management of Federal Holdings. These replace the Principles of Good Corporate Governance for Indirect or Direct Holdings of the Federation of 1 July 2009 (Common Ministerial Journal 2011, p. 409 et seqq.).

# Overview

## Preamble

Companies that are owned or part-owned by the Federation – the top level of the German state – influence the lives of millions of people. Citizens use the services these companies offer and rely on the infrastructure they provide, as well as on the public goods (such as security) supplied by the state with their help. Companies in which the Federation has a holding also employ numerous people. Various private-sector companies maintain business relationships with them. As a result, federal enterprises and their corporate bodies, as well as the way in which the Federation manages its holdings, are matters of public interest.

The companies, their corporate bodies, and the management of federal holdings therefore have a special responsibility, and an obligation to set an example by performing their functions in line with the legal system and the principles of the social market economy.

This needs to be reflected in the corporate governance of these companies, and in the way in which the Federation manages its holdings. Alongside the applicable statutory provisions, especially those under company law and budget law, the Principles of Good Corporate Governance and Active Management of Federal Holdings (hereinafter referred to as "the principles") create a framework for this.

The principles are intended to contribute to the following aims:

- ensuring the ongoing optimisation of the corporate governance and holdings management of companies in which the Federation has a holding,
- enhancing the transparency of companies in which the Federation has a holding, and thus also increasing people's confidence in administrative and policy decisions, and
- defining standards for cooperation among shareholders, the supervisory body and management, as well as for how holdings management is performed by the government agencies responsible.

The fact that the Federation has holdings in companies is based on, and legitimated by, the Federation's responsibility to fulfil specific federal tasks that are conferred upon it by the public, based on the existence of a significant "federal interest" (*Bundesinteresse*). The significant policy-related federal interest on the part of the Federation is stipulated by the Federal Budget Code (*Bundeshaushaltsordnung*) and is reflected by the company's purpose and the business objective – or, depending on the company's legal form, the purpose of the entity responsible for the company. It acts as a guideline for members of the company's management and supervisory body, and must be met in a cost-effective way.

The Federation is permitted to use organisational forms that are governed by private law only if this enables it to perform its tasks better and more cost-effectively. This necessitates regular reviews as to whether the purpose behind the Federation's holding is actually being fulfilled, and whether it is being fulfilled in a cost-effective manner. To this end, the holdings management must precisely define the significant policy-related federal interest that is being pursued by means of the federal holding, review it on a regular basis, and adjust it if necessary. It must also regularly review the success of the

holding, actively exercise its rights as a shareholder, and work towards ensuring that the persons chosen or delegated as members of the supervisory body at the Federation's behest play an active part in the supervisory body's work. These principles provide guidance for this.

Companies in which the Federation has a holding are generally limited liability companies (*Gesellschaften mit beschränkter Haftung*, or GmbHs). As well as the meeting of shareholders, the supervisory body is the central company body through which the Federation exercises significant influence over the companies in which it has a holding. The Federation is required under the Federal Budget Code to secure appropriate influence in the supervisory body and to actually exercise this influence in a way that represents the Federation's interests. For this reason, the existence of a corporate body responsible for supervising and monitoring the management (e.g. a supervisory board) shall be stipulated in a binding way in the company's articles of association, if this is not already required by law.

Companies in which the Federation has a holding have an obligation to set an example. This goes beyond compliance with the law; it means they must act in a way that is responsible and ethically sound (in line with the "reputable businessperson" concept). It includes a constant awareness of the responsibility that comes with being entrusted with public assets, which gives rise to an obligation to utilise the company's resources economically and sustainably. This must also be reflected in the company's remuneration structure at all levels. The appropriateness and transparency of the management's remuneration are matters of particular public concern. The companies and their bodies must live up to the responsibilities this entails.

Companies in which the Federation has a holding must also set an example in their role as employers. This includes involving employees in decision-making processes within the company by giving them codetermination rights.

Good corporate governance also means focusing on qualifications and diversity when making appointments to management positions and supervisory bodies. In this context, diversity goes beyond equal representation of women and men in management positions; it means ensuring a culture that promotes equality within the company, with equal access and personal development opportunities irrespective of ethnic background, gender, religion or world view, disabilities, age and sexual identity.

Moreover, it is becoming increasingly important for companies to act sustainably, in line with the German Sustainable Development Strategy (*Deutsche Nachhaltigkeitsstrategie*) and the Sustainable Development Goals.

The design of the principles is primarily adapted to companies whose legal form is governed by private law, especially GmbHs. However, the principles also apply accordingly to companies with other legal forms, such as stock corporations (*Aktiengesellschaften*, or AGs). Moreover, they apply accordingly (sometimes with certain restrictions) to legal entities under public law and to private law foundations that were established by the Federation or over which the Federation exerts influence for other reasons, insofar as they wholly or predominantly pursue commercial or other economic activity.

The terminology used to refer to the various company bodies is formulated as broadly as possible so

as to avoid recurrent lists of terms that are specific to certain legal forms. The term “management” refers to the body generally responsible for representing the legal person or foundation.

In applying the principles, the special characteristics of companies that receive institutional assistance as set out in administrative regulation number 2.2 on section 23 of the Federal Budget Code should be taken into account. Section 7.1 sentence 3 of the PCGC remains unaffected.

The principles consist of two parts:

The **Public Corporate Governance Code (PCGC) of the Federation** is aimed at the companies and their corporate bodies. It complements the legal provisions governing the management and oversight of companies in which the Federation has a holding by defining additional standards of good and responsible corporate governance. Enshrining the PCGC’s recommendations in the articles of association (or, in the case of companies whose legal forms are governed by public law, in their by-laws) makes them part of the operational framework of the company and its bodies.

The **guidelines for active management of companies in which the Federation has a holding (“guidelines”)** are aimed at the government agencies responsible for managing holdings and preparing prospective members of supervisory bodies. As internal administrative regulations, they create the operational framework for the government agencies entrusted with the technical and corporate governance of companies in which the Federation has a holding. Section 5 of the guidelines also applies to other institutions of special political or financial significance for the Federation in which the Federation exerts an influence over the appointment of members of supervisory bodies or similar bodies and/or members of the management.

The Federal Ministry of Finance regularly reviews the contents and scope of the PCGC and the guidelines as part of its responsibility for general matters of holdings management and adjusts them if necessary in close consultation with other federal ministries.

# Part I:
# Public Corporate Governance Code of the Federation

## 1 Structure of the Federation's Public Corporate Governance Code

The Public Corporate Governance Code of the Federation (hereinafter referred to as "this Code") sets out recommendations and suggestions, along with rules that reflect applicable law.

The **recommendations** contained in this Code use the word "shall". The recommendations were developed on the basis of the legal relationships that apply to corporations. However, they are also to be applied, to the extent possible, to the structures and bodies of companies with other legal forms. By taking into account the needs that are specific to particular legal forms and businesses, the Code enables a greater degree of flexibility and self-regulation. Companies may deviate from the recommendations if they disclose and explain such deviations in their annual corporate governance reports.

In addition, this Code contains **suggestions**, which are formulated using the words "should" or "may". Companies may deviate from such suggestions without having to make a disclosure.

The other parts of this Code that are formulated differently set out either rules that, as applicable law, already require compliance by companies, or definitions of terms.

## 2 Scope

### 2.1 Definitions

"Company" as used in this Code means, in the first instance, corporations and partnerships, regardless of whether they pursue commercial or other economic activity. Associations, cooperatives, legal entities under public law, and private law foundations are also covered by this term insofar as they wholly or predominantly pursue commercial or other economic activity.

"Holdings" as used in this Code means any equity interest, membership (for example in a cooperative) or similar participation (for example in a foundation or a legal entity under public law) that serves as the basis for long-term ties to a company.

Under this Code, the Federation has a "majority holding" in a company established under private law if the Federation, by itself or together with one or more entities attributable to the Federation, holds over 50 percent of the equity shares or voting rights in that company.

Under this definition, "entities attributable to the Federation" are

- the Federation's special funds,
- majority holdings that the Federation has in corporations and

partnerships,

- majority holdings that the Federation has in other legal entities under private law, especially (a) associations and cooperatives of which the Federation is a member and (b) foundations under private law over which the Federation can exercise a dominant influence, regardless of whether they are companies as defined above, and

- public law entities directly owned by the Federation.

Under this Code, the Federation has a "minority holding" in a company established under private law if the Federation, by itself or together with one or more entities attributable to the Federation, holds 50 percent or less of the equity shares or voting rights in that company.

The Federation (sometimes in combination with an entity attributable to the Federation), or a legal entity in which the Federation has a holding, may exercise a "dominant influence" over a legal entity under private law if

- it has the majority of the voting rights at the shareholders' meeting,
- it has the right to nominate or appoint the majority of the management's or supervisory body's members,
- based on (a) arrangements agreed under private law or (b) provisions contained in the articles of association or by-laws, it can exercise decisive influence on the central decisions taken by the legal entity under private law, or
- it bears, in economic terms, most of the risks and rewards of the legal entity, which serves the purpose of fulfilling a narrowly limited and precisely defined objective pursued by the Federation or by the legal entity (special purpose vehicle).

### 2.2 Direct majority holdings which the Federation has in companies established under private law

This Code applies to all companies established under private law in which the Federation has a direct[1] majority holding as defined in section 2.1. This excludes companies that, due to a stock exchange listing, fall under the scope of the German Corporate Governance Code (*Deutscher Corporate Governance Kodex*).

### 2.3 Application of this Code to other companies in which the Federation has a direct holding

It is suggested that this Code also be applied to companies in which the Federation has a direct minority holding. Here too, this excludes companies that, due to a stock exchange listing, fall under the scope of the German Corporate Governance Code.

It is suggested that this Code also be applied to private law foundations that wholly or predominantly pursue commercial or other economic activity, in cases where long-term ties have been established between the Federation and any such foundation.

[1] Section 2.4 sets out how this Code applies in cases of indirect government holdings.

It is suggested that companies established by the Federation as legal entities under public law observe this Code unless statutory provisions (such as legal requirements regarding the structure of various company bodies) stipulate otherwise.

**2.4 Application of this Code to group structures or in cases of indirect government holdings**

If the Federation has a majority holding – either (a) directly or (b) indirectly via an entity attributable to the Federation that is a legal entity in its own right – in a company that manages a group as described in section 290 of the Commercial Code, this Code applies to any such group as follows:

- In cases where the group consists of up to six companies (including the parent company), this Code applies to the parent company and to all domestic group companies in which the Federation has a majority holding.
- In cases where the group consists of more than six companies (including the parent company), this Code applies to
  - the parent company, which shall apply this Code in the same way that it manages the group,
  - all domestic first-tier group companies that are large corporations, insofar as the Federation has a majority holding in such companies, and
  - all domestic group companies in which the Federation has a majority holding and which generally have over 500 employees.

It is suggested that this Code also be applied to companies in which the Federation holds an indirect minority holding, insofar as such companies do not fall under the scope of the German Corporate Governance Code due to a stock exchange listing.

The rules set out in sections 2.2 and 2.3 and the first paragraph of section 2.4 apply accordingly to (a) holdings owned by public law entities that are directly owned by the Federation and (b) holdings owned by private law entities that are not companies as defined in this Code but that are subject to dominant influence by the Federation due to the Federation's holding in such companies or due to other reasons.

**2.5 Holdings for the purpose of investing funds or providing concessional financing**

If the statutory or commercial purpose of (a) an entity attributable to the Federation or (b) one of such entity's holdings (including indirect holdings) is (i) to invest funds to cover future liabilities/costs payable by the Federation or (ii) to provide concessional financing with the aim of strengthening corporate financing, and if such entity or holding owns a holding for this designated purpose, this latter holding does not fall under the scope of this Code.

This also applies to holdings that the Federation itself owns in the context of programmes to strengthen corporate financing and that the Federation owns solely for the purpose of granting concessional financing to relevant businesses.

In individual cases where a holding to invest funds as described above constitutes a majority holding or where, based on the company's shareholder structure, there is a possibility of exercising influence over such holding, it is suggested that the company's corporate

governance be conducted in line with this Code if the company does not fall under the scope of a different corporate governance code or similar framework.

## 3 Shareholders and shareholders' meeting

### 3.1 Tasks and responsibilities of the shareholders' meeting

The shareholders' meeting shall stipulate in the articles of association or the by-laws that the company must use the currently applicable version of the PCGC and that the management and supervisory body are obliged to submit on an annual basis a declaration of compliance with the recommendations of the PCGC and prepare an annual corporate governance report as described in section 7.1.

In particular, the shareholders' meeting makes resolutions on

- the articles of association/by-laws, including the company purpose, changes to the articles of association/by-laws, and significant business measures,
- unless otherwise prescribed by law or specified in the articles of association/by-laws, the appointment or removal from office of members of the management and of the supervisory body, the appointment of an auditor and the approval of the annual financial statements, and
- the discharge of the management and the supervisory body.

The shareholders' meeting shall also decide how any profits are used.

### 3.2 Preparation and implementation of the shareholders' meeting

The shareholders' meeting shall be convened at least once a year, with the agenda presented in the convening notice. The agenda shall set out, in terms as precise as possible, the items to be discussed. The shareholders shall be given sufficient time to prepare for the discussion and the votes.

Minutes of the shareholders' meeting shall be kept, if this is not already required by law. Likewise, any decisions made by shareholders outside of the meeting shall be recorded.

### 3.3 Exercising shareholder rights

The shareholders' meeting shall refrain from taking measures that restrict or prevent employee participation in accordance with the 1976 Co-determination Act (*Mitbestimmungsgesetz*) and the One-Third Participation Act (*Drittelbeteiligungsgesetz*).

## 4 Collaboration of the management and supervisory body

### 4.1 Principles

4.1.1 The management and the supervisory body collaborate on the basis of reciprocal trust in the best interests of the company.

Based on the company purpose, company objective and the impact objectives stipulated by the Federation as a shareholder and, if applicable, by other shareholders, the management shall develop the strategic direction of the company, coordinate with the supervisory body and discuss with it at regular intervals the progress made in implementing the strategy.

4.1.2 It shall be set out in the articles of association/by-laws that transactions and operations (*Geschäfte*) of fundamental importance are to be approved by the supervisory body. These include decisions or measures that may lead to a significant change in the company's business activities as defined in the articles of association, or to a substantial change in the company's asset situation, financial situation or earnings situation, or to the company's risk structure. This also applies to transactions and operations at the level of a group company without its own supervisory body, if these would require the approval of the supervisory body in the parent company.

The supervisory body can decide on additional transactions and operations that require approval.

The list of transactions and operations requiring approval shall be defined in such a way that the autonomy of the management and the level of supervision by the supervisory body are fairly balanced in consideration of the interests of the shareholder(s).

4.1.3 It is the responsibility of the management in particular to ensure that the supervisory body is provided with sufficient information.

The management shall inform the supervisory body regularly, in a timely manner and comprehensively about all issues relevant to the company in terms of strategy, planning, business development, efficiency, the company's risk situation, risk management and compliance, as well as about transactions and operations of particular significance for the performance or liquidity of the company, and about changes to the economic environment that might affect the company (regular reporting). The management shall address instances in which the course of business deviates from the established plans and targets and shall provide the reasons therefor. If the company concerned is a parent company, the reports shall also include details regarding the group companies, especially insofar as they could be of key significance for the parent company. Companies that have the legal form of a stock corporation are required by law to provide information about their risk situation and risk management, including reporting on their internal control systems.

The management shall inform the chair of the supervisory body without delay regarding any important events (special report). Important events also includes a business matter at a group company that has come to the attention of the management and which could have a significant impact on the situation of the company itself.

Regardless of the legal form of the company, the content of the regular reports and the intervals at which these reports are made shall comply with section 90 of the Stock Corporation Act (*Aktiengesetz*). Companies that receive institutional assistance may arrange to submit reports on a less regular basis, provided this does not affect the proper supervision

of the management.

It is the responsibility of the supervisory body to call on the management to provide it with information appropriately and without delay. To this end, the supervisory body shall specify the information and reporting obligations of the management in more detail and shall, when necessary, request to be briefed on company matters. The regular reports of the management to the supervisory body shall be submitted in written form. At least for the regular meetings of the supervisory body, all documents that are required as a basis for making decisions and for providing the supervisory body with the information it needs shall be submitted to the members of the supervisory body or its committees at the latest 14 days prior to the respective meeting. In particular, these should include the annual financial statement, the consolidated financial statement, the management report, the group management report and the auditor's report. For extraordinary meetings, too, the preparatory documents shall be provided to the members of the supervisory body in sufficient time for them to prepare for the meeting.

### 4.2 Confidentiality

4.2.1 Good corporate governance requires open discussions between the management and the supervisory body as well as within the management and the supervisory body. In this regard, ensuring complete confidentiality pursuant to section 52 of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*) in conjunction with section 116 sentence 2 and sections 394 and 395 of the Stock Corporation Act, is of paramount importance.

All bodies and members of these bodies must ensure that any third parties they may involve comply with the confidentiality obligations in the same way.

4.2.2 In supervisory bodies with co-determination, i.e. employee representation, the representatives of the shareholders and of the employees are to prepare the meetings of the supervisory body separately, if necessary in collaboration with members of the management.

The supervisory body should also meet without the management on a regular basis.

### 4.3 Accountability

4.3.1 The management and supervisory body shall ensure that the actions of their members are conducted with due care and are consistent with those of a prudent and conscientious member of management or of a supervisory body. If they violate this obligation culpably, they are liable to the company for compensation. In the case of business decisions, a breach of duty is not deemed to have occurred if the member of the management or of the supervisory body could reasonably assume that they were acting on the basis of adequate information and in the company's best interests. When assessing the company's interests, they shall bear in mind that these are influenced by the significant federal interest which is enshrined in the company objective and purpose.

4.3.2 Companies whose company bodies are subject to increased liability risks may – to the extent permitted by statutory provisions governing budgetary procedure – take out directors and officers (D&O) liability insurance for the members of the management and the supervisory body. In the event that a company takes out an insurance policy to protect members of the management against risks arising from their professional activities, a deductible of at least 10% of the damage and up to at least 1.5 times the fixed annual remuneration of the respective board member shall be agreed upon, if this is not already required by law. An appropriate deductible shall be agreed with those members of supervisory bodies who are remunerated for their work, if such an insurance policy is taken out on their behalf.

The decision to take out D&O liability insurance and the reasons for doing so, in particular regarding the usefulness and cost-effectiveness of such insurance and regarding the agreement on a deductible, shall be documented.

### 4.4 Granting of loans

The company shall not grant any loans to members of the management or the supervisory body, or to their relatives, or to employees of the company, unless the granting of loans is part of the company purpose and section 15 of the Banking Act (*Kreditwesengesetz*) is complied with. Also exempted are loans to employees of the company which are granted as part of the employer's duty of care or to ensure that work is performed, for example in the form of an advance on salary.

## 5 Management

### 5.1 Tasks and competences

5.1.1 The management has the primary responsibility for managing the company, and in so doing is bound to the company purpose or objective.

5.1.2 The management shall ensure compliance with statutory provisions and the company's internal guidelines and must promote compliance with these guidelines on the part of the group's affiliated companies. The management shall ensure that appropriate measures are put in place in line with the company's risk situation (compliance management system). This also includes measures to prevent corruption.

The unit that is responsible for compliance shall report directly to the management.

5.1.3 The management shall ensure appropriate risk management and risk control within the company.

5.1.4 The management of parent companies as referred to in section 290 of the Commercial Code shall ensure that the managements of the group companies safeguard the legally required competences and rights of the group companies' company bodies.

## 5.2 Composition

5.2.1 The management shall consist of at least two persons.

5.2.2 The members of the management shall be recruited by means of a transparent selection process with the goal of selecting individuals who have the necessary knowledge, skills and experience to properly exercise their duties as members of the management. The company bodies that are responsible for appointing the management shall, when it comes to the composition of the management, ensure diversity, in particular with regard to reaching any existing statutory quotas or voluntary or obligatory internal company targets (including targets based on legal obligations) regarding the composition of management in terms of the equal participation of different genders. The selection decision shall be documented, together with the key considerations that influenced the decision, in a transparent and comprehensible way.

5.2.3 Former members of the supervisory body shall not move to the management before the expiry of one year following the end of their mandate.

5.2.4 The members of the management shall be appointed by the competent company body for a period of a maximum of five years per appointment period. When a member of the management is appointed for the first time, their appointment shall be limited to a maximum of three years. A reappointment or a change in the employment contract at the same time as a termination of the current appointment or the current employment contract before the expiry of one year before the end of the appointment period or the current employment contract, shall only take place for compelling reasons.

5.2.5 An age limit for the members of the management shall be specified in the rules of procedure in line with the statutory requirements. The period for which a member of the management is appointed shall be calculated in such a way that this age limit is not exceeded.

5.2.6 The management's rules of procedure shall regulate the allocation of duties and the cooperation within the management. The company body that is responsible for appointments may appoint a spokesperson for the management.

## 5.3 Remuneration

5.3.1 The company body that is responsible for appointing the members of the management shall adopt clear and comprehensible criteria for the remuneration of the members of the management, including the key contractual elements; it shall review these criteria on a regular basis and adjust them when necessary. In the process, the following aspects shall be taken into particular consideration:

- the reference group of other companies which can be included for the purpose of an appropriateness test for the remuneration and the remuneration range, where necessary broken down by individual positions within the management,
- the composition of fixed remuneration (fixed salary including or excluding contributions for retirement provision and other pension-related supplements etc.),

- whether and if so which additional benefits are provided,
- whether variable remuneration components are offered as an incentive for the purpose of promoting in particular the sustainable and cost-effective pursuit of the significant federal interest,
- how the target compensation (i.e. the compensation if the objectives are achieved 100%) for the individual positions within the management is calculated and which target range (i.e. the lowest and highest possible variable remuneration) should be applied,
- what the upper limit on the overall remuneration is,
- which share the short- and long-term remuneration components have in the total target compensation, and
- when the members are able to access the variable remuneration components.

The criteria that have been specified for remuneration shall be documented, as shall the key considerations that influenced the decisions on the criteria.

5.3.2 The company body that is responsible for appointing the members of the management shall, irrespective of the type of employment contract (managing director contracts, board contracts, group employment contracts etc.), agree on a suitable amount for the remuneration of the members of the management, including the maximum remuneration, on the basis of the criteria that have been specified for the remuneration.

The total remuneration as referred to in this section includes,

- in addition to the (regular) monetary, fixed and, where applicable, variable remuneration components,
- benefits relating to retirement provision and also, if still provided, pension commitments,
- monetary and non-monetary additional benefits,
- other benefits, in particular for the case that the appointment and employment is terminated, and
- third-party benefits which have been committed to with regard to the management activity or which have been provided in the business year (e.g. remuneration paid by the group).

The remuneration shall be unambiguously specified in the employment contract. The remuneration shall be appropriately proportionate to the tasks and activities of the member of the management as well as to the company's situation and shall not exceed the usual remuneration in the reference group without special reasons. All remuneration components in themselves and the total remuneration shall be appropriate.

If variable compensation is provided, this shall also be oriented to the continual and cost-effective pursuit of the significant federal interest and shall take into consideration the personal performance of the respective member of the management. To this end, the variable compensation shall consist of

- one-off or regularly occurring (e.g. annual) components that are connected to personal performance and to the sustainable success of the company, in particular

the fulfilment of the significant federal interest, and

- components that combine long-term incentives (multi-year and future-related calculation basis) with a risk factor (e.g. a system of bonuses for good performance and deductions for poor performance).

The share of the components of the variable compensation that is linked to personal performance shall be appropriately proportionate to the other variable remuneration components. The share of the total remuneration made up of variable remuneration components shall be appropriately proportionate to the fixed remuneration.

The possibility of reducing or recovering parts of the remuneration shall be regulated or agreed in the employment contract of each member of the management, for the event that continuing to provide the agreed remuneration would be unreasonable for the company as a result of its economic situation having deteriorated, and for the event of a significant breach of duty by the member of the management.

Payments to a member of the management in the event of an early termination of their employment as a member of the management shall, including additional benefits, not amount to more than the value of the remuneration for the remaining period of the employment contract; as a maximum, however, it shall not exceed the value of two annual remunerations. When calculating the (annual) remuneration, the remuneration of the previous business year and the expected remuneration for the current business year shall be used as a basis. In the event of a post-contractual non-compete clause becoming effective, the severance payment shall be credited against the compensation payment for the restraint on competition. In the event of the employee leaving the company of their own accord, then no severance payment shall be made; instead, only the compensation payment that has been agreed for the post-contractual non-compete clause (if any) shall be paid.

If members of the management hold positions in supervisory bodies of companies within the group, any remuneration provided for this purpose shall be credited against the executive remuneration. If members of the management accept positions in supervisory bodies for companies outside the group, the company body that is responsible for the appointment shall decide whether and to what extent the remuneration that is provided for the position is to be credited against the executive remuneration.

If the Federation provides grants to the company, the relevant statutory provisions governing budgetary procedure shall be observed when calculating the remuneration (especially the provisions relating to the ban on more favourable treatment (*Besserstellungsverbot*) in the case of companies whose overall expenditures are mainly financed by grants).

5.3.3 The company body that is responsible for the appointment shall stipulate the preconditions for the occurrence and payment of variable remuneration components in an objectives agreement for the respective member of the management before the beginning of the respective calculation period, i.e. before the beginning of the business year or, in the case of multi-year calculation periods, before the beginning of the first business year of the calculation period.

The objectives shall be sufficiently ambitious, have deadlines and be as a rule unambiguously measurable; only in justified exceptional cases may, in addition to measurable objectives, an objective also be agreed whose achievement can only be determined using a margin of discretion. To ensure measurability, the individual weighting and the specific calculation basis, including the relevant levels of objective achievement, shall also be specified for every objective, at the latest in the objectives agreement.

The retroactive amendment of the performance objectives or the comparison parameters, and the retroactive adjustment of metrics without an unambiguous basis in the objectives agreement, shall generally not be permitted. Components which have a multi-year calculation basis shall only be adjusted in special exceptional cases and only with reference to the future, by means of subsequent objectives agreements. The possibility of reducing the remuneration shall be agreed, at the latest in the objectives agreement, for the event of exceptional and unforeseeable developments.

5.3.4 After the expiry of the calculation period, the competent company body shall calculate, depending on whether the objectives have been achieved, the amount of the individual variable remuneration components that are to be granted overall for this calculation period.

5.3.5 Multi-year remuneration components shall not be paid out ahead of time, not shall advance payments be made on these components: an exception is made only for a lump-sum payment for claims in the event of an early termination of the appointment and employment as a member of the management.

5.3.6 With regard to structuring the remuneration for members of the management, sector-specific legal provisions and relevant ordinances on structuring remuneration for members of the management shall also be adequately taken into account even if they are not directly applicable.

## 5.4 Conflicts of interest

5.4.1 Members of the management are obliged to follow the company purpose and the company objective that reflect the significant federal interest, as well as the company interest that is based thereupon.

5.4.2 The members of the management shall be subject to a comprehensive non-competition obligation for the duration of their work for the company.

No member of the management may pursue personal interests when taking decisions, nor may any member exploit for themselves business opportunities that the company is entitled to.

Members of the management may not demand, obtain the promise of, or accept from third parties any gratuities or other benefits in connection with their activities, neither for themselves nor for other persons, nor may they offer, promise or grant unjustified benefits to third parties.

5.4.3 Each member of the management shall disclose without delay conflicts of interest to the company body responsible for the appointment and – if the latter is a different body – to the supervisory body and shall inform the other members of the management of this.

All transactions between, on the one hand, the company and, on the other hand, the members of the management, close associates of members of the management, or companies or ventures with which members of the management are personally affiliated, shall comply with the usual standards for the sector. Significant transactions with the above-mentioned persons shall therefore be made contingent on the approval of the supervisory body, unless this body must in any case represent the company with regard to concluding the transaction.

5.4.4 Members of the management shall only engage in ancillary activities, in particular positions in supervisory bodies, with the approval of the company body responsible for the appointment and – if the latter is different – of the supervisory body. This does not apply in the case of internal positions in supervisory bodies of group companies.

5.4.5 No contracts shall be concluded with former members of the management for a period of 24 months after their departure under which these individuals provide consulting services, act as a broker or provide other services to the company or make their know-how available to the company in a different way. An exception is made for contracts with former members of the management of institutions in the sectors of science and art/culture in exceptional cases, to the extent that the aim of the contract is the continued participation of the individuals in question in scientific or artistic projects which were initiated before their departure[2].

## 5.5 Sustainable governance

5.5.1 The management shall take steps to ensure sustainable governance as set out in the German Sustainable Development Strategy and the Sustainable Development Goals.

5.5.2 The management shall ensure a gender-equal, tolerant and discrimination-free culture within the company, with equal opportunities for personal development irrespective of ethnic origin, gender, religion or worldview, disabilities, age or sexual identity. In particular, it shall

- ensure a balanced ratio of women and men at all management levels below senior management, in particular with regard to reaching any voluntary or obligatory internal targets (including targets based on legal obligations) for the ratio of women and men in the respective management levels, and
- ensure an equal participation of people with disabilities within the company, and
- make sure that people from migrant backgrounds are included on an equal basis in

[2] Please note the applicability of section 112 of the Stock Corporation Act (*Aktiengesetz*) which also applies to GmbH companies pursuant to the laws on employee participation and section 52 of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*).

selection and appointment procedures for all the positions and apprenticeship places to be filled in the company.

Apart from this, it shall ensure that a discrimination-free working culture exists at all levels, including a non-discriminatory use of language and protection against sexual harassment. Employees and managers shall be supported in this respect in the form of opportunities for training and for receiving information.

5.5.3 The management shall

- promote a working culture that enables employees to combine personal obligations, such as childcare or caring for individuals in need of assistance or care, with their professional obligations, and
- create, as far as possible, reliable working conditions such as remote working, a flexibilisation of working time and opportunities for childcare etc.

5.5.4 The management shall

- ensure the payment of remuneration for employees that corresponds to the relevant applicable collective agreements and legal provisions, and ensure that women and men receive equal pay for equal work in the company, and
- also ensure, when awarding contracts to provide services, that the respective service provider complies with the relevant applicable collective agreements and legal provisions on the remuneration of employees, by means of appropriate measures, in particular through contractual arrangements.

5.5.5 If the company operates in various European Union member states or if it belongs to a group which has companies in various member states and the conditions of the Act on European Works Councils (*Gesetz über Europäische Betriebsräte*) are fulfilled with regard to the establishment of a European works council, the management shall actively support the establishment of a European works council and shall swiftly conclude an agreement on informing and consulting employees on a cross-border basis with the workforce's special negotiating body.

If the group's employees do not request the creation of the special negotiating body at their own initiative, the management shall expressly inform

- the works council of the management's own company in every case and
- in cases where the management is also the central management as defined in the Act on European Works Councils, also the employee participation bodies of the other companies that belong to the group

regarding the possibility of establishing a European works council.

5.5.6 The management shall ensure that the company refrains from engaging in aggressive tax avoidance or tax reduction measures and strategies as described in the recitals of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market and in point 5 of the explanatory memorandum to the Commission's draft of this directive.

## 6 Supervisory body

### 6.1 Tasks and competences

6.1.1 The company's articles of association shall set out the requirement to have a supervisory body, if this is not already required by law. Based on the model of the supervisory board of a stock corporation (*Aktiengesellschaft*), the primary task of this company body shall be the supervision of, and regular provision of advice to, the management with regard to conducting the company's business.

The supervision shall focus on whether the management's decisions are legal, proper and cost-effective. This includes, in particular, reviewing whether the company is operating within the framework of the tasks set out in its articles of association. In addition, advice is provided to the management also from the point of view of whether activities fulfil their objectives.

The supervisory body shall be involved in decisions by the management that are of fundamental importance to the company.

The supervisory body has a particular responsibility with regard to matters connected to the remuneration of the members of the management in accordance with the recommendations in sections 5.3.1 to 5.3.5, to the extent that these fall within the remit of the supervisory body.

The supervisory body shall ensure that it receives regular reports on the management's measures for the purpose of sustainable governance (as referred to in section 5.5), as well as on the implementation of these measures and the results achieved.

6.1.2 The supervisory body shall issue itself with rules of procedure.

6.1.3 The chair of the supervisory body shall coordinate the work of the supervisory body and lead its meetings.

The chair and other individual members who have been given the power to issue or receive statements on behalf of the supervisory body shall not be granted the right to make decisions alone on behalf of the supervisory body.

The chair of the supervisory body shall be a member of the committee that deals with contracts with the members of the management, if such a committee has been established.

6.1.4 The chair of the supervisory body shall maintain regular contact with the management and discuss with it the company's strategy, business development, risk situation, risk management and compliance. If the supervisory body has set up committees, the same applies also to the chairs of these committees with regard to the committees' respective tasks. The supervisory body's advice regarding risk management shall cover, in particular, the findings from the company's risk management system and its internal control system, if the company is obliged to establish one.

The management shall inform the chair of the supervisory body without delay of important

events that are of key significance for assessing the company's situation and development and for managing the company. The chair of the supervisory body shall then inform the supervisory body and convene an extraordinary meeting of the supervisory body if necessary.

6.1.5 Depending on the number of its members and on the specific economic circumstances of the company, the supervisory body may establish expert committees with specific expertise to deal with specific technical issues.

The committees are intended to increase the efficiency of the supervisory body's work and to deal with complex issues. The chairs of the respective committees shall report to the supervisory body at regular intervals on the work done by the committees.

6.1.6 Depending on the number of its members and on the specific economic circumstances of the company, the supervisory body shall establish an audit committee. The audit committee shall in particular deal with the supervision of the accounting process, the effectiveness of the internal control system, the risk management system, and the internal audit system, and the audit of the financial statements, including in this regard the selection of the auditor, the necessary independence of the auditor, the awarding of the auditing contract to the auditor, the definition of the audit's priorities, additional benefits and the fee agreement.

The members of the audit committee shall meet particularly high standards in terms of their technical expertise.

The chair of the supervisory body shall not simultaneously hold the position of chair of the audit committee. To the extent legally permissible, a member of the audit committee shall not have been a member of the company management during the five years preceding their appointment to the audit committee.

6.1.7 No tasks of the supervisory body shall be transferred to the supervisory body's individual committees for the purpose of definitively completing these tasks. Instead, decisions shall remain the preserve of the plenary session of the supervisory body. The committee may issue a recommendation for a decision in this respect.

6.1.8 To the extent that this does not violate shareholders' justified interests or any legal provisions, committees in supervisory bodies that are subject to statutory codetermination shall be composed in such a way that the composition of the supervisory board's plenary, in terms of the power relations between shareholders' representatives and employees' representatives, is also reflected in the respective committees as well.

6.1.9 The supervisory body, including its committees, shall regularly review the overall quality and efficiency of the supervisory body's activities. The supervisory body shall monitor the implementation of the measures it has adopted in this respect.

### 6.2 Composition

6.2.1 The supervisory body shall be composed in such a way that

- the members of the supervisory body as a whole possess the necessary knowledge, skills and specialist experience (including, in particular, sufficient commercial and financial know-how as well as sufficient know-how in the areas of law, compliance and corporate governance) that are required for the proper performance of the tasks of the respective supervisory body, and
- any existing statutory quotas and voluntary or obligatory internal targets (including targets based on legal obligations) regarding the composition, in particular in terms of qualifications and the equal participation of different genders, are reached.

The supervisory body shall only have as its members individuals who

- possess the necessary knowledge, skills and specialist experience that are required for the proper performance of the tasks of a member of the supervisory body and
- have sufficient time to perform the duties of a member of the supervisory body. As a general rule, members of the supervisory body who have been chosen or delegated at the Federation's behest shall therefore not be members of more than three supervisory bodies at the same time. In this respect, for one of the three positions referred to in the previous sentence, a position in the supervisory body of a company whose purpose is limited to functioning as a holding company for a group, and a position in the supervisory body of a subsidiary of the same company, may be counted together as one position.

No-one shall be a member of a supervisory body who has a business or personal relationship with the company or its management that constitutes a substantial and not merely temporary conflict of interests.

The members of a supervisory body shall not hold any representative supervisory positions at key competitors of the company, nor shall they provide consultancy services to such competitors.

6.2.2 An appropriate age limit which complies with the statutory requirements shall be defined for members of the supervisory body, which shall be taken into account when proposing candidates to be elected to the supervisory body.

6.2.3 The members of a supervisory body shall carry out their duties in person; they may not have others perform their tasks for them. It should be made possible for absent members to participate in the decision-making process by voting instructions, where this is not already provided for by law.

Each member of a supervisory body shall ensure that they have sufficient time available to perform their duties. Should a member of a supervisory body who is not an employee representative within the supervisory body have taken part in fewer than half of the supervisory body's meetings within one business year, this fact shall be noted in the supervisory body's report to the shareholders' meeting.

6.2.4 Former members of the management shall not move to the supervisory body before the expiry of five years since their management duties ended.

6.2.5 Employee representatives may also belong to the supervisory body if it consists of more than three members, even if the company does not meet the threshold for the obligation of codetermination pursuant to the legal provisions on employees' participation and codetermination rights.

### 6.3 Remuneration

The remuneration paid to the members of the supervisory body shall be determined in the company's articles of association/by-laws or by a resolution of the shareholders' meeting.

### 6.4 Conflicts of interest

6.4.1 Every member of the supervisory body is obliged to act in the company's interest, which is in particular determined by the company purpose and the company objective. No member of the supervisory body may pursue personal interests when taking decisions, nor may any member exploit for themselves business opportunities that the company is entitled to.

Each member of a supervisory body shall disclose to the supervisory body without delay any conflicts of interest, in particular conflicts that may arise due to the member providing consultancy services to, or holding a representative supervisory position at, a customer, supplier, lender or other business partner of the company.

In its report to the shareholders' meeting, the supervisory body shall report any conflicts of interest that have arisen and describe how they were dealt with. Any significant, non-temporary conflicts of interest relating to a member of a supervisory body shall lead to their mandate being terminated.

6.4.2 The company shall not conclude consultancy agreements or other service agreements or work contracts with a member of the supervisory body during the period that the member holds the position or for a period of 24 months after their mandate has ended.

### 6.5 Meetings of the supervisory body

The supervisory body shall meet regularly, once every calendar quarter. In the case of companies that receive institutional assistance, the supervisory body can agree to meet on a less regular basis, with two or three meetings per business year, provided this does not affect the proper supervision of the management.

Minutes of the meeting of the supervisory body shall be kept. The minutes shall include, as a minimum, the location and date of the meeting, the participants, the items on the agenda, the key details of how negotiations proceeded, and the supervisory body's decisions. Decisions that the supervisory body makes outside a meeting shall be recorded in the minutes of the supervisory body's next meeting.

## 7 Transparency

## 7.1 Declaration of compliance and corporate governance report

The management and the supervisory body shall submit an annual report on the corporate governance of the company (corporate governance report). In particular, the report shall state that the recommendations of the PCGC, as amended, were and are being complied with, and indicate which recommendations were or are not being complied with and why. Any deviations from the recommendations shall be explained and justified in the corporate governance report. The declaration and the corporate governance report shall be made publicly accessible on the company's website for at least five business years following their submission.

The corporate governance report shall also include

- a brief description of the measures outlined in sections 5.5.1 to 5.5.3, including a statement on the company's sustainability activities and
- a description of the trend in the proportion of women in management positions in the management and in the two management levels below this, as well as in the supervisory body.

Statements on the recommendations in the PCGC may also be made in the corporate governance report.

For groups managed on a unified basis, the bodies of the parent company shall submit together the declaration of compliance for the parent company and for those group companies under its unified management that are obliged to comply with the PCGC. If group companies deviate from the recommendations of the PCGC, the parent company shall explain and justify this in the corporate governance report.

## 7.2 Information on the remuneration of members of the management and the supervisory body

7.2.1 The corporate governance report shall set out the remuneration of each individual member of the management for the respective reporting year (including monetary and non-monetary benefits, allowances and similar payments; remuneration and/or allowances for positions on the supervisory bodies of other companies that are exercised in the interests of the company; and fees and similar payments from third parties earned from work as a member of the management). The remuneration of each member, who shall be specified by name, shall be presented clearly and comprehensibly, broken down into the different remuneration components. This also applies to benefits promised to a member or a former member of the management for the event of their employment being terminated, or which were granted to them in the course of the business year.

To this end, when appointing or re-appointing members of the management, the responsible company body shall obtain a contractual declaration of consent from these members that their remuneration may be disclosed in accordance with the requirements of the PCGC and any other applicable provisions, without recourse to section 286 (4) of the Commercial Code.

7.2.2 The remuneration for each individual member of the supervisory body shall be set out in

the corporate governance report clearly and comprehensibly, broken down into the different remuneration components.

As part of this, the remuneration paid by the company to the members of the supervisory body, or benefits granted to them, shall be listed separately.

To this end, when appointing the members of the supervisory body, the responsible company body shall obtain a contractual declaration of consent from these members that their remuneration may be disclosed in accordance with the requirements of the PCGC and any other applicable provisions.

### 7.3 Publications

Company information published by the company shall also be accessible on the company's website for at least five business years following publication. This includes the corporate governance report and the annual financial statement with its annex as well as the management report.

## 8 Financial reporting and auditing

### 8.1 Financial reporting

8.1.1 Annual financial statements and consolidated financial statements, management reports and group management reports are to be prepared in accordance with the provisions of Book Three of the Commercial Code for large corporations and shall be audited in line with these provisions, provided other, more extensive, legal provisions do not apply and there is no conflict with other legal provisions.

8.1.2 The annual financial statement and consolidated financial statement as well as the management report and the group management report are drawn up by the management and checked by the supervisory body with the auditor's report.

8.1.3 Companies in which the government has a majority holding which generally have more than 500 employees and which achieve an annual turnover of over €500 million shall – irrespective of the provisions set out in section 289b et seqq. of the Commercial Code – submit a non-financial statement pursuant to section 289b et seqq. of the Commercial Code and thereby apply either the German Sustainability Code, including reporting obligations relating to human rights, or a comparable framework for non-financial reporting with reporting obligations that include human rights aspects, particularly with regard to the requirements of the National Action Plan for Business and Human Rights.

Other companies should

- either – irrespective of whether the conditions set out in section 289b et seqq. of the Commercial Code have been met – submit a non-financial statement pursuant to section 289b et seqq. of the Commercial Code, applying either the German Sustainability Code, including reporting obligations relating to human rights, or a comparable framework for non-financial reporting with reporting

obligations that include human rights aspects, particularly with regard to the requirements of the National Action Plan for Business and Human Rights,

- or, if they do not submit a non-financial statement pursuant to section 289b et seqq. of the Commercial Code, at least apply either the German Sustainability Code, including reporting obligations relating to human rights, or a comparable framework for non-financial reporting with reporting obligations that include human rights aspects, particularly with regard to the requirements of the National Action Plan for Business and Human Rights.

For groups managed on a unified basis, the parent company may submit the relevant reports and statements on behalf of the entire group, unless there are legal requirements to the contrary.

**Audit of the annual financial statement**

8.2.1 The shareholders' meeting shall decide on the selection and appointment of the auditor, if it is not already required to do so by law. The selection and appointment of the auditor of the consolidated financial statement shall be decided by the shareholders' meeting of the parent company. The supervisory body shall propose one auditor in each case to the shareholders' meeting. This proposal may be based on the recommendation of the audit committee.

8.2.2 The auditor shall be selected on the basis of a tender process. At least three tenders should be obtained, unless stricter requirements for the awarding of contracts apply on the basis of statutory provisions, the articles of association or other relevant rules.

8.2.3 Before proposing an auditor, the supervisory body or the audit committee shall procure a declaration from the proposed auditor in which the auditor discloses whether, and if so which, business, financial, personal or other relations exist between themselves and their representative bodies on the one hand, and the company and the members of its bodies on the other, which could justify concerns regarding the auditor's impartiality. The declaration shall also describe the scope of any other services – particularly services which, pursuant to section 319 (3) and (4) and section 319a (1) of the Commercial Code, could lead to the auditor being barred from conducting the audit of annual accounts – that were provided to the company in the preceding business year or that have been agreed for the following year. This declaration by the proposed auditor shall be filed with the business records.

8.2.4 Insofar as it is not already legally required to do so by law, the supervisory body shall be responsible for awarding the auditing contract to the auditor. As part of this, the supervisory body shall arrange with the auditor that the auditor will inform the chair of the supervisory body or the audit committee without delay regarding

- any reasons why they might have to withdraw from the audit contract, or might not be able to act impartially, that arise during the audit, unless such reasons are remedied without delay,
- any findings or events that arise during the audit of the annual financial statement that are particularly relevant to the tasks of the supervisory

body, and

- any facts that reveal inaccuracies in the management's and the supervisory body's declaration of compliance with the PCGC.

Regarding findings of the kind described in the second bullet point, it shall also be agreed with the auditor that these are mentioned in the audit report.
For companies without a supervisory body, the relevant reporting and information obligations vis-à-vis the shareholders' meeting shall be agreed with the auditor.

8.2.5 The audit contract awarded to the auditor shall also cover the audit pursuant to section 53 of the Budgetary Principles Act (*Haushaltsgrundsätzegesetz*) (including an inspection of the remuneration report) and an inspection of whether the PCGC compliance declaration has been submitted and whether the corporate governance reports from the past five business years have been published on the company's website. In addition, the contract shall specify particular areas of focus for the audit.

8.2.6 If not already required to do so by law, the auditor shall attend the discussions of the supervisory body or the audit committee (if such a committee has been established) regarding the annual financial statement and the consolidated financial statement and report on the significant findings of their audit.

# Part II
# Guidelines for active management of companies in which the Federation has a holding

## 1 Preliminary remarks and definitions

1 The guidelines for active management of companies in which the Federation has a holding (guidelines) and their annexes shall ensure good management of federal holdings in accordance with uniform criteria as well as the active management of holdings. The objective is to ensure that the Federation's interests as a shareholder are properly exercised, in order to fulfil the respective purposes of the holdings.

"Federal holdings" as used in these guidelines means all companies established under private law in which the Federation has a direct or indirect holding; companies that have the form of legal entities under public law; their holdings as referred to in section 65 et seqq. of the Federal Budget Code (*Bundeshaushaltsordnung*); and holdings which are held by third parties on a fiduciary basis on behalf of the Federation.

"Holdings" as used in these guidelines means any equity interest, membership (for example in a cooperative) or similar federal participation (for example in a foundation or a legal entity under public law) that serves as the basis for long-term ties to a company. No minimum stake is required in this respect.

"Company" as used in these guidelines means corporations and partnerships, regardless of whether they pursue commercial or other economic activities. In addition, associations, cooperatives, public-law entities established and controlled under federal law, and private-law foundations are also covered by this term insofar as they wholly or predominantly pursue commercial or other economic activities. It is not necessary for the entity to have its own legal personality, meaning that other forms of association (e.g. civil-law partnerships (*Gesellschaften bürgerlichen Rechts*)) are also covered by the term.

2 The guidelines are intended primarily for the government agencies responsible for managing federal holdings. Government agencies responsible for managing federal holdings include any agencies within the federal administration that perform an ownership function in relation to companies under private law and which represent the Federation as shareholder in relation to the company and its joint owners as well as in relation to parliament and the general public, and agencies that are responsible for performing government supervision of companies that have the legal form of a public-law entity directly owned by the Federation. In general, this is the federal ministry that has political responsibility for the objective that is being pursued with the holding. Therefore, the relevant federal ministry will be referred to below as "the federal ministry responsible for managing the federal holding", even before a holding has been established.

In individual cases, another federal ministry may also be assigned responsibility for managing the federal holding. Hence, as a rule, the holdings management tasks are

transferred, by means of an inter-ministerial agreement, from the federal ministry that originally had specialist political responsibility to the Federal Ministry of Finance as the ministry that is responsible for the Federation's assets, if, for example, the Federation's interests in the holding as an asset outweigh the significant policy-related federal interest, or if the significant federal interest no longer exists and the holding is to be sold.

If a company under private law has been assigned statutory tasks by the Federation, then the government agency responsible for managing the holding in question shall also be responsible for government supervision of these statutory tasks in addition to its ownership function. Companies that have the legal form of a public-law entity directly owned by the Federation are also subject to government supervision. The authority that is specified by law in the individual case is responsible for the government supervision of these companies. The competent authority shall use these guidelines as a basis when exercising government supervision, to the extent that the legal framework does not prevent this.

Certain parts of the guidelines are also aimed at members of supervisory bodies of companies in which the Federation has a holding who have been chosen or delegated at the Federation's behest, and at those units in the federal ministries which prepare members of the supervisory bodies for meetings but which do not perform holdings management tasks themselves.

The guidelines are also aimed, as appropriate, at those authorities and institutions that maintain holdings in companies on behalf of the Federation, as well as at units that are responsible for the government supervision of companies that have the legal form of a public-law entity directly owned by the Federation.

Section 5 of the guidelines is aimed at all units in federal ministries that exert an influence on the appointment of members of supervisory bodies or similar bodies and members of the management of companies in which the Federation has a holding (including special funds) as well as units in federal ministries that make decisions with regard to other institutions with special political or financial significance for the Federation where the Federation can exert an influence on the appointment of members of the bodies of these institutions.

The guidelines take into account important legal provisions, the Public Corporate Governance Code of the Federation (PCGC), resolutions adopted by the German Bundestag, resolutions passed by the Bundestag's Budget Committee and its Auditing Committee, recommendations and comments of the Bundesrechnungshof (Germany's supreme audit institution), as well as experience gained by the Federation in its holdings management.

3 The guidelines are internal administrative provisions that must be observed by the relevant authorities. If a deviation from the rules is necessary in an individual case or a specifically described group of similar cases, the reasons for this shall be documented in a comprehensible manner in the records.

4 If federal employees are expressly mentioned in the guidelines, these rules also apply accordingly to federal ministers and parliamentary state secretaries, provided this does not

violate the special statutory provisions on their legal status (the Federal Ministers Act (*Bundesministergesetz*) and the Act Governing the Legal Status of Parliamentary State Secretaries (*Gesetz über die Rechtsverhältnisse der Parlamentarischen Staatssekretäre*)).

5 Annexes to the guidelines for active holdings management:

- template of articles of association for limited liability companies (GmbHs) (Annex 1)
- template of rules of procedure for supervisory boards of limited liability companies (GmbHs) (Annex 2)
- template of rules of procedure for the management (Annex 3)
- suggested wording for an employment contract for members of the management (Annex 4)
- template of an agreement between the federal ministry responsible for managing the holding and a member of the supervisory body who is not a public sector employee (Annex 5)
- template of an agreement between the federal ministry responsible for managing the holding and a member of the supervisory body belonging to the public service (Annex 6)
- template of an agreement between the federal ministry responsible for preparing the mandate and a member of the supervisory body (Annex 7)
- Annex 8 to section 5 – direct federal holdings where the Federation owns a stake of at least 25%
- Annex 9 to section 5 – indirect federal holdings with an annual turnover of at least €500 million
- Annex 10 to section 5 – institutions of special political or financial significance for the Federation in which the Federation exerts an influence over the appointment of members of supervisory bodies or similar bodies and/or members of the management
- information on data protection in accordance with Article 13 of the EU General Data Protection Regulation (GDPR) (Annex 11)

## 2 Acquisition and modification of federal holdings in companies

### 2.1 Prerequisites for the Federation to acquire a holding in a company

#### 2.1.1 Direct holdings

6 The prerequisites for the Federation to acquire a direct holding in companies established under private law, provided that the holding is not acquired on the basis of special legal provisions (e.g. the Stabilisation Fund Act (*Stabilisierungsfondsgesetz*)), are contained in section 65 (1) of the Federal Budget Code (*Bundeshaushaltsordnung*) and the administrative provisions issued in connection with the Federal Budget Code.

7 For companies that have the legal form of a public-law entity directly owned by the Federation, section 112 (2) of the Federal Budget Code sets out which provisions of the Federal Budget Code apply accordingly or directly. The following numbers apply accordingly,

taking into consideration the special aspects resulting from section 112 (2) of the Federal Budget Code.

**Significant interest of the Federation**

8 According to section 65 (1) no 1 of the Federal Budget Code, one prerequisite for the Federation to establish or acquire a holding in a company established under private law is that it must have a significant federal interest in doing so. The significant federal interest is generally a specific policy interest. It is deemed to exist if the company is supposed to fulfil important federal tasks as defined in the allocation of competencies under the Basic Law (*Grundgesetz*). This prerequisite is not deemed to be fulfilled if, for example, (a) the task in question is exclusively the responsibility of the *Länder* or local authorities, (b) the sole purpose is to generate revenue, or (c) the purpose of the holding relates solely to a need for information on the part of the public administration. If the intention is for the company to fulfil both federal tasks as well as tasks that are the responsibility of one or more *Länder* or local authorities, then section 6 of the Federal Budget Code shall be observed in particular.

9 When establishing or acquiring a holding, the objectives that are supposed to be achieved with the holding shall be identified as precisely as possible and shall be incorporated into the company's internal rules and regulations, such as in the articles of association (Annex 1), or the by-laws or, where appropriate, also in the rules of procedure for the management (Annex 3). The company purpose defined in the articles of association or the by-laws shall be described as clearly as possible and shall adequately address the purpose that is being pursued with the holding and the Federation's administrative and financial responsibilities.

10 An additional prerequisite pursuant to section 65 (1) no 1 of the Federal Budget Code is that the objective pursued by the Federation cannot be better and more cost-effectively achieved by other means. This necessitates a review of whether it would not be sufficient for the Federation to take action in a less-binding manner than acquiring a holding in a company. Options in this regard include, in addition to actions carried out by authorities, public-law agencies and entities, in particular the issuance of different types of guarantees, the granting of loans, the provision of grants, or cooperations in the form of promissory contracts (economic feasibility study pursuant to section 7 of the Federal Budget Code; in this respect, see also the instructions for conducting economic feasibility studies included as an annex to the administrative provisions on the Federal Budget Code).

In suitable cases, before the Federation acquires a holding, private-sector providers shall be given the opportunity to demonstrate whether and to what extent they are able to perform government tasks or economic activities serving public purposes just as well or better (expression of interest procedure, section 7 of the Federal Budget Code).

11 The amount or scope and the duration of the holding shall be commensurate with the objective pursued by it.

12 When assessing the question of whether a direct federal holding continues to be required, or if the holding should be sold, or the company wound up or merged with other companies, or the company's purposes redefined, the prerequisites set out in section 65 (1) no 1 of the

Federal Budget Code are also relevant, taking into account section 7 of the Federal Budget Code.

**Limitation of the obligation to pay contributions**

13 Section 65 (1) no 2 of the Federal Budget Code stipulates that the Federation's obligation to make contributions must be limited. Therefore, as a matter of principle, it is not permissible for the Federation to be a shareholder of a general partnership (*offene Handelsgesellschaft*, OHG), to be a shareholder of a partnership under the Civil Code (*Gesellschaft bürgerlichen Rechts*, GbR), to act as a personally liable partner in a limited partnership (*Kommanditgesellschaft*, KG), to be a shareholder of a partnership limited by shares (*Kommanditgesellschaft auf Aktien*, KGaA) or to be the member of an association without legal capacity or comparable entities governed by the laws of foreign countries or supranational law (such as European Economic Interest Groupings (EEIGs)). Pursuant to section 65 (5) of the Federal Budget Code, the Federation shall only acquire a holding in a cooperative (*Genossenschaft*) if the liability of the members towards the cooperative for the latter's debts is limited to a specific amount from the outset.

**Appropriate influence of the Federation**

14 Section 65 (1) no 3 of the Federal Budget Code requires that the Federation has an appropriate degree of influence as a precondition for the Federation acquiring a holding. This is deemed to exist if the degree of the Federation's influence corresponds with the objective pursued with the holding and the amount and significance of the holding.

15 In addition to the Federation's voting share in the shareholders' meeting, which corresponds to the size of its holding, it is, in particular, necessary to establish a supervisory body and fill the positions in the supervisory body appropriately with members who are chosen or delegated at the Federation's suggestion (in this respect, see the requirements in nos 38–41 and 60–63).

This also applies to companies in which the Federation has an indirect holding if the holding is of particular political or financial significance for the Federation. These include, in particular, the companies that are or must be included in Annex 9. In the case of other indirect holdings, the special political or financial significance of the holding may be determined within the group of federal ministries that are affected due to their remits and the federal government, under the direction of the federal ministry managing the holding; the Federal Ministry of Finance, as the federal ministry responsible for the federal budget, shall be involved with regard to the evaluation of the special financial significance.

16 A key instrument for guaranteeing that the Federation has an appropriate influence is in each case an adequate list of transactions and operations (*Geschäfte*) requiring consent, which ensures that the Federation has this appropriate influence in relation to the company in question (in this respect, see also the requirements in nos 42–44).

17 In addition, the significant federal interest may in individual cases require that the Federation – to the extent legally permissible – ensures that it is granted a greater degree

of influence in the articles of association/by-laws, or that other special rules that are desirable from the point of view of the Federation are also included in the articles of association, in order to achieve the purpose being pursued with the holding and to guarantee that the Federation has the necessary influence.

**Preparation and audit of the annual financial statement**

18 Pursuant to section 65 (1) no 4 of the Federal Budget Code, annual financial statements and management reports must, provided other, more extensive, legal provisions do not apply and there is no conflict with other legal provisions, be prepared in accordance with the provisions of Book Three of the Commercial Code relating to large corporations and must be audited in line with these provisions. This also applies to consolidated financial statements and group management reports.

### 2.1.2 Indirect holdings

19 If a company in which the Federation directly or indirectly has a majority holding has a holding in another company (indirect holding), the following principles apply (in accordance with section 65 (3) of the Federal Budget Code) if this indirect holding exceeds 25% of the shares: section 65 (1) no 3 of the Federal Budget Code (appropriate influence of the Federation) and section 65 (1) no 4 of the Federal Budget Code (preparation and audit of the annual financial statements and the management report) as well as section 65 (2) sentence 2 of the Federal Budget Code.

20 The business objective and thereby also the company purpose of indirect holdings must either be directly underpinned by a significant (policy-related) federal interest or at least contribute to the significant federal interest being pursued by the Federation through its holding in the parent company. A purely financial contribution is not sufficient for this purpose. The federal ministry managing the federal holding shall work towards ensuring that the interests of the Federation are ensured also in the case of an indirect holding. By means of appropriate rules and controls, indirect holdings shall be prevented from jeopardising the interests of the Federation and the objectives it pursues with its holdings, or from unduly diminishing the Federation's influence on the holding companies.

## 2.2 Consent procedure pursuant to section 65 of the Federal Budget Code

### 2.2.1 Procedure with direct holdings

21 The right of the Federal Ministry of Finance and of the federal ministry responsible for federal assets (*Bundesvermögen*)[3] to be respectively involved in direct holdings are set out in section 65 (2) and (4) of the Federal Budget Code and the relevant administrative provisions.

**Transactions and operations requiring consent**

22 In addition to the transactions and operations explicitly set out in section 65 (2) of the Federal Budget Code and in the administrative provision number 2.1 on section 65 of the

[3] The federal ministry responsible for federal assets is the Federal Ministry of Finance.

Federal Budget Code, the following also require consent: the acquisition or agreement and the sale of options to buy or sell shares, and of instruments containing such options, as well the creation of an equitable lien on shares in the company.

23 A change in the Federation's influence as referred to in section 65 (2) of the Federal Budget Code occurs, for example,

- if the nominal capital of a company changes,
- if, in the case of a capital increase, the Federation, or a company in which the Federation has a holding and which has a holding in the company concerned, does not acquire new shares or does not maintain the same proportion of shares as was previously held in the company (dilution of the Federation's stake),
- if resolutions are passed on the issuance of convertible bonds,
- if provisions of the articles of association are modified, entitling the Federation to delegate members to supervisory bodies, or that influence the voting rights in the shareholders' meeting, or
- if the provisions of the articles of association are modified with regard to transactions and operations requiring approval or the majority requirements for resolutions passed by the supervisory body or the shareholders' meeting.

**Sale of shares**

24 The provisions of section 63 (2) and (3) of the Federal Budget Code shall be observed with regard to the sale of shares. Shares may be sold only at their full value. In accordance with administrative provision number 2 on section 63 of the Federal Budget Code, the full value is determined in particular by the price that would be achieved in a sale in the ordinary course of business. In addition, EU legislation governing state aid shall be observed.

25 If shares are to be sold at less than their full value, this must be authorised in advance in the federal budget. If their value is low, or if the Federation has an urgent interest in the sale, the Federal Ministry of Finance may grant an exception (section 63 (3) of the Federal Budget Code).

**Involvement of legislative bodies in certain sales of shares**

26 If the Federation intends to sell shares in companies which are of special significance and in which it has a direct holding, and if selling these shares is not provided for in the federal budget, these shares may generally only be sold with the consent of the Bundestag and of the Bundesrat (cf. section 65 (7) of the Federal Budget Code and administrative provision number 4 on section 65 of the Federal Budget Code).

**Applying for consent**

27 The federal ministry managing the holding shall procure the consent (prior approval within the meaning of section 36 of the Federal Budget Code) of the Federal Ministry of Finance and shall involve the federal ministry responsible for federal assets[4] before it makes a factual

[4] See footnote 3.

or legal decision that is binding for the Federation regarding one of the measures set out in section 65 (2) of the Federal Budget Code (cf. also administrative provision number 2.1 on section 65 of the Federal Budget Code).

The consent of the Federal Ministry of Finance and the involvement of the federal ministry responsible for federal assets[5] are obtained by means of a written request submitted by the federal ministry managing the holding to the Federal Ministry of Finance. The request shall be substantiated and must also provide an assessment of the cost-effectiveness of the measure. All of the documents required for the assessment of the measure shall be enclosed with the request. As a rule, this will include the letter of request from the company concerned, its articles of association and business records such as annual financial statements, the management and auditors' reports, evaluation reports and legal opinions, business plans (in particular financial planning, investment planning and human resources planning) as well as the corresponding documents for any important associated companies.

28 The Federal Ministry of Finance and the federal ministry responsible for federal assets[6] may waive their right to exercise the powers conferred on them by section 65 (2) and (3) of the Federal Budget Code (cf. section 65 (4) of the Federal Budget Code) for the purpose of simplifying the process. The federal ministry managing the holding may not waive the exercising of its powers.

**Provision of federal budget funds**

29 If federal budget funds are needed for the acquisition or modification of a holding, a request shall be made to the budget officer of the ministry responsible for managing the holding, and the provision of these funds shall be explained in a request for consent from the ministry responsible for the budget, in accordance with section 65 of the Federal Budget Code. Pursuant to section 65 of the Federal Budget Code, the consent does not include a decision regarding the granting of federal funds.

30 In relation to the formation of companies and resolutions on capital increases, efforts shall be made to ensure that federal budget funds exceeding the statutory minimum payments (section 36 (2) of the Stock Corporation Act, section 7 (2) of the Limited Liability Companies Act) are not requested at an earlier date, and are requested in each case only insofar as they are required for the intended purpose, in keeping with the principles of efficiency and economy set out in section 7 (1) of the Federal Budget Code.

31 The earmarking of funds in the federal budget for companies in which the Federation has a holding may represent a preliminary decision in favour of a capital contribution requiring consent. Therefore, the federal ministry managing the holding shall already review when the federal budget is being prepared whether the prerequisites set out in section 65 of the Federal Budget Code have been met and shall involve its budget officer (section 9 of the Federal Budget Code).

**Informing the Bundesrechnungshof**

[5] See footnote 3.
[6] See footnote 3.

32 The Bundesrechnungshof (Germany's supreme audit institution) shall be informed without delay of any measures that require the consent of the Federal Ministry of Finance in accordance with section 65 of the Federal Budget Code (cf. section 102 (1) no 3 of the Federal Budget Code and the administrative provision on section 102 of the Federal Budget Code).

### 2.2.2 Procedure with indirect holdings

33 The rights of the Federal Ministry of Finance and of the federal ministry responsible for federal assets[7] to be involved when indirect shareholdings are acquired or modified are set out in section 65 (3) of the Federal Budget Code (cf. also administrative provisions number 2.2 and 2.3 on section 65 of the Federal Budget Code).

34 The guidelines under nos 16, 22–23, 27, 28, 32, 46 and 47 shall apply accordingly. See no 102.

35 For indirect holdings that are of particular political or financial significance for the Federation (no 15, second paragraph), the federal ministry managing the holding shall make efforts to ensure that the Federation is granted the rights to propose or delegate an appropriate number of members to the supervisory body.

## 2.3 Requirements for the organisation of the company

### 2.3.1 Use of documentation templates

36 The documentation templates contained in Annexes 1, 2 and 3 shall be used for the design of the articles of association and of the rules of procedure for the management and the supervisory body that are to be issued on the basis of the articles of association. In individual cases, any adjustments that are necessary may be made.

### 2.3.2 Company purpose

37 The federal ministry managing the holding must ensure that the company purpose which is incorporated into the articles of association is worded in such a way that it only covers transactions and operations that serve the purpose that is being pursued with the holding in accordance with section 65 (1) of the Federal Budget Code.

### 2.3.3 Establishment of a supervisory body

38 The appointment of persons to the supervisory body (secondment or proposal for selection) is a key means for the holdings management to obtain information about the company and its business activities; it also facilitates indirect influence on the company, taking into consideration the special characteristics of companies that receive institutional assistance. Within the scope of the company's interest, which is also influenced by the significant federal interest which is incorporated into the articles of association and which is specified in more detail in the stipulated goals (see no 53), these persons shall also represent the

[7] See footnote 3.

Federation's interests as a shareholder and the Federation's asset-related interests.

The articles of association shall therefore set out a requirement to have a supervisory body even in cases in which there is no statutory obligation to establish a supervisory board; the supervisory body's primary task shall be the supervision of the management, including the provision of advice to the management, with regard to the tasks within the management's remit. The provision of advice also includes involving the supervisory body in business planning activities (including strategy, finances, investments and human resources). In addition, the supervisory body shall be involved in advance in all fundamental personnel issues that affect the members of the management, in particular when drafting contracts with regard to the remuneration of members of the management and the objectives agreements that are to be concluded with members of the management.

39 The number of members of the supervisory body shall be limited to the necessary minimum. Provided that a different number of members is not required by law, the supervisory body shall consist of at least three members.

40 If the public sector is the sole shareholder in the equity of a company, either directly or indirectly, and the company's expenditures are borne wholly or to a significant extent by the public sector, the members of the supervisory body shall be granted, in addition to the reimbursement of their expenses, at most an appropriate allowance to compensate them for their time.

41 A supervisory body may only be dispensed with in very special exceptional circumstances, which must be justified in detail. In these cases, the shareholders' meeting shall adopt the measures that are necessary to supervise the management (section 46 (6) of the Limited Liability Companies Act). The articles of association shall then require

- reporting to the shareholders' meeting on the basis of reporting guidelines corresponding to the principles that apply to reporting to the supervisory body, and
- the prior consent of the shareholders' meeting for important transactions and operations.

Nos 16, 42–44, 65 and 101 are applicable in this case with the proviso that the term "supervisory body" is replaced by "shareholders' meeting".

The appointment of a supervisory body does not release the Federation as shareholder from its own obligation to monitor the management.

### 2.3.4 Definition of rights to reserve approval on the part of the supervisory body

42 It shall be set out in the articles of association that transactions and operations (*Geschäfte*) of fundamental importance are subject to approval by the supervisory body. To the extent that this is expedient for ensuring that the Federation has an appropriate influence, the transactions and operations included in the list in the template for articles of association (Annex 1) shall be made contingent on the approval of the supervisory body. The list of transactions and operations requiring approval depends on the respective individual case.

Additional types of transactions and operations may be included in the approval list.

To the extent that, with a view to the company's business activities, it is not appropriate to rule out the granting of loans, the issuance of different types of guarantees, or similar transactions and operations that lead to liability, these types of transactions and operations shall be made contingent, if a certain threshold (which must be defined) is exceeded, on the supervisory body's prior approval (cf. Annex 1); in a similar fashion, parent companies shall establish corresponding guidelines for these financial and liability instruments for their companies within the group.

The supervisory body may make additional transactions and operations dependent on its approval by taking a decision to this effect. The supervisory body shall review these rights to reserve approval on a regular basis to check whether they are useful and practical.

43 Where members of the supervisory body who were chosen or delegated at the Federation's suggestion and who are also federal employees approve a transaction or operation that requires consent pursuant to section 65 of the Federal Budget Code, this does not replace the need for the approval of the relevant federal ministry.

44 A committee shall not be given the power to conclusively deal with matters that fall within the remit of the supervisory body. If, in an justified exceptional case, a committee is nevertheless given this power, the chair of the supervisory body and a member chosen or delegated at the Federation's suggestion shall belong to this committee.

### 2.3.5 Enshrining of the Federation's Public Corporate Governance Code

45 If a direct or indirect federal holding falls within the scope of the PCGC, or if the application of the PCGC is encouraged, the federal ministry managing the holding must make efforts to ensure that compliance with the PCGC, which has been adopted by the federal government, is enshrined within the internal rules of the company in question, and that the company applies the PCGC.

In this case, the internal rules of the company shall be formulated as extensively as possible, if the company falls within the scope of the PCGC, and as far-reaching as possible in line with the PCGC's recommendations, if the application of the PCGC is encouraged.

The possibility of deviating from the recommendations of the PCGC in justified cases remains in both cases unaffected by the above.

The PCGC represents a benchmark for good corporate governance for the holdings management; it shall therefore be taken into account as a model by the government agencies responsible for managing the holding when taking decisions relating to the company, even if the company in question in which the Federation has a holding does not apply the PCGC itself (unless the company applies the German Corporate Governance Code).

### 2.3.6 Four-eyes principle in the management

46 The company's management shall consist of at least two persons in order to widen responsibility for business decisions as well as to limit the possibilities for abusing managerial powers.

Should this not be appropriate in justified exceptional cases due to the size of the company and the scope of its business activities, even where the possibilities of part-time or extraofficial employment in the management are fully utilised, then rules shall be adopted in the articles of association or the rules of procedure for the management to ensure that, as a minimum, a four-eyes check of the management's decisions is guaranteed.

### 2.3.7 Other requirements

47 The federal ministry managing the holding must endeavour to ensure that it is stipulated in the articles of association, in the management's rules of procedure or the group corporate guidelines of the company in which the Federation has directly or indirectly a majority holding that the approval of the federal ministry managing the holding as referred to in section 65 (3) sentence 3 of the Federal Budget Code – which is contingent on the approval pursuant to section 65 (3) sentence 2 of the Federal Budget Code – must be obtained if the company acquires holdings.

48 In addition, it shall be ensured that the articles of association, the management's rules of procedure and any other fundamental components of the company's documentation (such as group corporate guidelines, for example) do not contain any provisions that adversely affect the Federation's appropriate influence.

## 2.4 Reporting obligations under stock corporation law and capital market law

49 To avoid legal and economic disadvantages, reporting and information requirements apply under the relevant transparency rules:

### 2.4.1 Reporting obligations under stock corporation law

50 As soon as the Federation – either directly or indirectly (via its dependent companies) – has a holding of more than 25% (section 20 (1) of the Stock Corporation Act (*Aktiengesetz*)) or 50% (section 20 (4) of the Stock Corporation Act) in a stock corporation, the company shall be notified of this in writing immediately "as a precaution"; should this notification not be made, there is a risk that the rights attaching to the shares may not be exercised for the period in which the Federation failed to make such notification (section 20 (7) of the Stock Corporation Act). The company must also be notified in the same way as soon as the Federation's holding falls below the thresholds specified above (section 20 (5) of the Stock Corporation Act).

### 2.4.2 Notification and information obligations under capital market law

51 If the Federation directly or indirectly holds shares in a listed company (issuer), the notification and information obligations under capital market law apply (section 20 (8) of

the Stock Corporation Act).

For example, under German law, if the Federation's stake in a listed company whose home country is Germany reaches, exceeds or falls below 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of voting rights by purchase, sale or other means, the issuer and the Federal Financial Supervisory Authority (BaFin) must be notified of this in writing immediately, and at the latest within four trading days (sections 33 et seqq. of the Securities Trading Act (*Wertpapierhandelsgesetz*)). The reporting obligation under section 33 of the Securities Trading Act applies to any party that is directly entitled to voting rights attaching to shares belonging to that party, or to which voting rights are attributed pursuant to section 34 of the Securities Trading Act. A party that holds shares only indirectly may become subject to a reporting obligation insofar as the voting rights are attributed pursuant to section 34 (1) sentence 1 of the Securities Trading Act, i.e. via a subsidiary. There may be additional notification obligations for owners of qualifying holdings pursuant to section 43 of the Securities Trading Act as well as obligations under the Securities Takeover Act (*Wertpapierübernahmegesetz*). In the case of issuers from other countries, the relevant legal frameworks, including any national specificities, would also have to be observed.

In view of the large number of provisions and the frequency of amendments to capital market legislation, the legal situation needs to be reviewed on a case-by-case basis.

The Federal Ministry of Finance supervises compliance with notification and information obligations centrally in order to ensure uniform and full compliance with the notification obligations and the uniform exercising of voting rights in shareholders' meetings. For this reason, the Federal Ministry of Finance shall be immediately informed of shareholdings as well as any changes to them.

## 3 Management of the holding

### 3.1 Active holdings management

52 The federal ministry managing the holding actively exercises the Federation's rights as a shareholder, both in the shareholders' meeting and elsewhere. In other words, it acts in a systematic and forward-looking way with regard to the holding and, to the extent that this is legally permissible, takes steps at an early stage to ensure that the competent company bodies take the appropriate measures in each case, primarily by preparing the members of the supervisory body chosen or delegated at the Federation's suggestion accordingly.

To this end, it shall engage in regular discussions with the management and with members of the supervisory body (including employees' representatives) as well as other relevant stakeholders if applicable.

There should be a clear separation between exercising the ownership function and those functions that may affect conditions for the Federation's business activities and, in particular, market regulation.

### 3.2 Specification and regular review of the significant federal interest

53 The federal ministry managing the holding specifies the identified objectives to be achieved with the holding (cf. no 9), elaborating them into medium-term impact objectives that can be operationalised. These impact objectives are the medium-term objectives for the holding that are to be achieved by means of the company's activities – in other words, they represent the Federation's ownership strategy. For the Federation as a shareholder, the impact objectives shall therefore describe

- what impact the company's activities are intended to have with respect to the significant federal interest; i.e. what is to be achieved in terms of the significant federal interest by means of the company's activities and how the company is to contribute to this, and
- how the company is to position itself and develop.

They shall be formulated in the form of a measurable or at least identifiable target state, and an appropriate, medium-term target date for reaching them shall be set.

The impact objectives (together with those of other government levels which also have a holding in the company, if applicable) shall be discussed with the management and stipulated – in a suitable form and at regular intervals that are based on the company's planning horizon as well as on the target dates of the impact objectives – for the (further) development of the company strategy that is reflected in the medium-term planning. This stipulation may be made, for example,

- by means of a shareholder discussion,
- by means of the grant notice, if applicable, or
- by means of a shareholder resolution or order,
- within the framework of a funding programme (in this case, it may be formulated jointly for several companies or institutions)

  or,
- in the case of a stock corporation, via the members of the supervisory body chosen or delegated at the Federation's suggestion, to the extent that this is legally permissible.

In the case of minority holdings in stock corporations, it may be necessary to share the impact objectives with the company units responsible for communication with shareholders, with a view to promoting a better understanding on the part of the board of the objectives pursued by the Federation.

The impact objectives shall not be amended prior to the deadline set for achieving them unless the Federation's expectations of the company have changed from a technical point of view.

The federal ministry managing the holding ensures that the company's strategy and medium-term planning are geared towards the impact objectives and are implemented accordingly. In turn, it ensures that any prerequisites for this that fall within its area of responsibility are in place. It prepares the members of the supervisory body chosen or delegated at the Federation's suggestion in such a way as to enable them to exert influence

accordingly within the supervisory body.

54 The federal ministry managing the holding ensures that the impact objectives as well as the significant policy-related federal interest that is enshrined and specified in the company objective are achieved and that the company fulfils the significant federal interest in a cost-effective way (cf. nos 91–97); if necessary, it takes appropriate corrective action.

55 The federal ministry managing the holding regularly checks (cf. the administrative provision number 2.9 on section 69 of the Federal Budget Code)

- whether the significant federal interest remains in place, or whether it has ceased to exist or has changed, and
- whether the holding in the company is still the best and most cost-effective way to meet the objective pursued by means of the holding. In this context, a special focus shall be on
  - comparing the assumptions made in the economic feasibility study conducted prior to acquiring the holding or during the most recent review of the holding with the actual circumstances and
  - comparing the assumptions made with regard to the alternatives considered (cf. no 10) with new experience and insights and reassessing cost-effectiveness.

56 If the significant policy-related federal interest has changed, the necessary adjustments with regard to the holding, especially adjustments to the company objective and the impact objectives, shall be made, or steps taken towards making them.

57 If the significant policy-related federal interest has ceased to exist, the holding shall be viewed and managed primarily from an asset-related perspective, in addition to the Federation's responsibility as a (co-)owner. In this case, a strategy shall be developed on how to proceed with the holding (e.g. sale of the stake, transfer of other public tasks to the company and corresponding amendment of the company objectives, merger with another federal enterprise, liquidation, or other). Such a strategy shall also be developed if the purpose behind the Federation's holding can now be better and more cost-effectively achieved by other means.

58 The federal ministry managing the holding shall sufficiently document the impact objectives and the considerations taken into account in reviewing the significant federal interest.

59 Indirect holdings shall be included in the definition of the impact objectives and the performance monitoring of the direct holding to the extent that the significant federal interest is to be met at the indirect holding or the indirect holding is to contribute to meeting the significant federal interest (cf. no 20).

## 3.3 Exertion of influence by the Federation via the supervisory body

### 3.3.1 Appointment of persons to supervisory bodies by the Federation

60 If the Federation has the right to suggest or delegate members of a supervisory body, the

persons appointed may be

- federal employees or
- other persons

who have the special expertise and practical experience needed to perform their duties in the supervisory body and who can be presumed to represent the significant federal interests appropriately.

Restrictions to the activities of federal ministers and parliamentary state secretaries in supervisory bodies pursuant to section 5 (1) sentences 2 and 3 of the Federal Ministers Act (*Bundesministergesetz*) and section 7 of the Act Governing the Legal Status of Parliamentary State Secretaries (*Gesetz über die Rechtsverhältnisse der Parlamentarischen Staatssekretäre*) in conjunction with section 5 (1) sentences 2 and 3 of the Federal Ministers Act must be observed.

As a rule, members of the German Bundestag who are not parliamentary state secretaries should not be appointed to supervisory bodies of companies in which the Federation has a holding. This is in order to avoid potential conflicts of interest in accordance with the principle of the separation of powers.

61 Section 5 of the present principles sets out the checks that shall be performed, the procedure that shall be followed and the agreements with the appointed persons that shall be made upon the appointment of persons to supervisory bodies.

62 The federal ministry managing the holding or (in cases where other federal ministries that are involved in the relevant policy area have the right to suggest or delegate members of the supervisory body) the suggesting or delegating federal ministry ensures that any federal employees who are chosen or delegated as members of supervisory bodies have the up-to-date expertise needed to perform their duties. These members of supervisory bodies, as well as federal employees who prepare these members for supervisory body meetings, shall be given the opportunity to participate in suitable training courses.

63 When appointing federal employees to supervisory bodies, the focus shall be on employees who are generally familiar with the topics and procedures of federal holdings management.

In this context, it shall be borne in mind that federal employees who are members of a company's supervisory body are not permitted to act on behalf of an authority in an administrative procedure in which the company is involved (e.g. approval procedures, regulation, government supervision of companies that have been assigned statutory tasks, awarding of grants etc.) pursuant to section 20 (1) no 5 of the Administrative Procedures Act (*Verwaltungsverfahrensgesetz*). The provisions of sections 20 and 21 of the Administrative Procedures Act, as amended, concerning the exclusion of persons from administrative procedures and absence of impartiality shall be observed. These provisions apply directly if the persons concerned are involved in an administrative procedure as defined in section 9 of the Administrative Procedures Act; in other cases, they apply accordingly as the expression of a general legal principle to maintain objectivity in administrative operations (impartiality principle). Any existing grounds for exclusion arising from special laws, e.g. section 6 of the Ordinance on the Award of Public Contracts

(*Vergabeverordnung*), shall also be observed. Typical conflicts of interest also exist in the constellations described in no 125. Federal employees who can be expected to have such conflicts of interest with regard to their function or tasks shall therefore not be appointed as members of the company's supervisory body.

If, following careful checks, federal employees who can be expected to have such conflicts of interest with regard to their functions or tasks are to be appointed nonetheless, the federal ministry in question must take clear and well-documented measures that are made public in the organisational unit in question (e.g. organisational decisions, instructions or declarations by the person concerned) to ensure that, regardless of the function of the person concerned, the necessary decisions with regard to the company are taken by other persons having the authority to take such decisions.

### 3.3.2 Duties of members of the supervisory body chosen or delegated at the Federation's suggestion

64 The general rights and duties of the supervisory body and its members are based on the articles of association and on provisions under company law.

65 The duty to supervise the management is of particular importance, and gives rise to a duty to intervene in the case of negative developments.

The principles for the audit of companies pursuant to section 53 of the Budgetary Principles Act (*Haushaltsgrundsätzegesetz*) (cf. the Annex to administrative provision number 2 on Section 68 of the Federal Budget Code (*Bundeshaushaltsordnung*)) may serve as a guideline in determining the issues to be considered when supervising the management, as may audit standard 720 of the Institute of Public Auditors in Germany (*Institut der Wirtschaftsprüfer e.V.*). In any case, the supervisory body must gather information about the company's situation and development and about the management of its business, based on reports and other documents issued by the management and on the audit report pursuant to section 321 of the Commercial Code (*Handelsgesetzbuch*). If there are any concerns regarding the audit report pursuant to section 321 of the Commercial Code or the report on the audit pursuant to section 53 of the Budgetary Principles Act, the supervisory body must look into them and supervise the actions taken to address any existing deficiencies.

If a company in which the Federation has a holding has one or more holdings itself, the supervisory body shall also supervise whether the management is properly exercising the company's rights as a shareholder. This includes ensuring that the company in which the company has a holding does not conduct any business without the approval of the supervisory body if such business would be subject to supervisory body approval at the parent company. If the company in which the company has a holding does not have its own supervisory body, such business shall be subject to the approval of the parent company's supervisory body.

66 Members of companies' supervisory bodies who were chosen or delegated at the Federation's suggestion shall take the special interests of the Federation into consideration

when fulfilling their mandate (cf. section 65 (6) of the Federal Budget Code).

67 They shall work to ensure that the preparatory meeting documents are made available to the members of the supervisory body no later than 14 days prior to the meeting in order to allow for thorough preparation and timely consultation with the federal ministry managing the holding and any other federal ministries involved.

68 Members of the supervisory body who were chosen or delegated at the Federation's suggestion shall inform the federal ministry managing the holding of matters of particular importance at an early stage; agreements to this effect shall be reached with them (see Annexes 5, 6 and 7).

If, in exceptional cases, it is not possible to inform the federal ministry managing the holding prior to the supervisory body meeting, members of the supervisory body who were chosen or delegated at the Federation's suggestion shall work towards a postponement of the decision in question.

69 Members of the supervisory body who were chosen or delegated at the Federation's suggestion shall notify the federal ministry managing the holding immediately if they become aware of any plans or considerations on the part of the company to acquire or modify holdings in other companies. In such cases, they shall point out to the management that section 65 (2) and (3) of the Federal Budget Code must be complied with.

70 Prior to important decisions that are to be taken by the supervisory body, members chosen or delegated at the Federation's suggestion shall generally agree on a common position (cf. also the administrative provision number 3 on section 65 of the Federal Budget Code).

To the extent that this is expedient, they shall also agree on a common position with members of the supervisory body who were chosen or delegated at the suggestion of other government levels (e.g. *Länder* or local authorities).

71 If members of the supervisory body who were chosen or delegated at the Federation's suggestion do not share the position held by the majority of the supervisory body, they shall have their views and their vote recorded in the minutes.

72 If the prerequisites under budgetary law are not (or not yet) in place at the time a resolution is passed by a corporation's supervisory body on a measure that has budgetary effects for the Federation, the members of the supervisory body chosen or delegated at the Federation's suggestion shall indicate this fact and lodge a reservation.

73 The members of the supervisory body chosen or delegated at the Federation's suggestion shall report on the meetings of the supervisory body to the government agencies managing the holding in a timely manner. If an important reason makes this necessary, they shall make this report immediately following the meeting.

These reports shall provide information about the key results of the meeting and contain background information to the minutes if appropriate. In this context, the reporting from the management, which overall is largely based on section 90 of the Stock Corporation Act

(*Aktiengesetz*), shall be summarised, and other matters of significance (e.g. personnel changes in company bodies and other key management positions of the company) shall also be addressed. Moreover, the reports shall set out the reasons that caused the members of the supervisory body who were chosen or delegated at the Federation's suggestion to take the position they did in voting on a resolution adopted by the supervisory body. This applies in particular to votes to set remuneration, monitor performance and determine whether objectives agreements that are relevant for remuneration have been met.

As a rule, these reports shall be submitted in writing. If the federal ministry managing the holding and the member of the supervisory body have agreed on oral reporting, the submission of the oral report and its contents shall be documented by the federal ministry managing the holding.

The federal ministry managing the holding may waive the need for a report from a member of the supervisory body who works for a different federal ministry if the federal ministry managing the holding is already receiving information in writing from its own members of the supervisory body. The member's reporting to their own federal authority remains unaffected. The need for a report from a member of the supervisory body may also be waived if the member in question is the chair of the supervisory body and plans to send out the minutes shortly, containing all the information that is significant for the holdings management.

In individual cases, the need for a report can also be waived if an employee of the federal ministry managing the holding who is involved in the holdings management (a) personally attended the supervisory body meeting and (b) documents the aspects of the meeting that are significant for the federal ministry managing the holding in a way that goes beyond the minutes and fulfils the requirements placed on reports from members of the supervisory body (including the reasons behind voting behaviour). Please note the relevant statutory restrictions on the participation of persons who are not members of the supervisory body pursuant to section 109 (1) of the Stock Corporation Act, which is also applicable to the supervisory body of a limited liability company that is subject to employee co-determination, pursuant to section 25 (1) no 2 of the Co-determination Act (*Mitbestimmungsgesetz*) and section 1 (1) no 3 of the One-third Participation Act (*Drittelbeteiligungsgesetz*).

The federal ministry managing the holding and the member of the supervisory body chosen or delegated at the Federation's suggestion shall agree on the reporting obligation in accordance with Annexes 5–6. If necessary, an additional reporting obligation towards the federal ministry of which the member is an employee shall be agreed in accordance with Annex 7. Insofar as there is no reporting obligation pursuant to section 62 (1) of the Federal Civil Service Act (*Bundesbeamtengesetz*), the member of the supervisory body is released from the obligation to maintain secrecy vis-à-vis the company with regard to the reports only if the supervisory body was notified of the agreed reporting obligation in text form (section 394 sentence 3 of the Stock Corporation Act, in conjunction with section 52 of the Limited Liability Companies Act (*GmbH-Gesetz*), if applicable). Members of the supervisory body who were chosen or delegated at the Federation's suggestion shall therefore provide the chair of the supervisory body with a copy of the agreement and request that the entire

supervisory body be notified. The recipients of the reports and all persons who receive the reports or parts thereof through official channels for information purposes are subject to secrecy regarding the contents of the reports, pursuant to section 395 of the Stock Corporation Act, in conjunction with section 52 of the Limited Liability Companies Act if applicable.

The reporting obligation generally also covers preparatory meeting documents provided by the company as well as documents provided during the meeting and as a follow-up. The former shall immediately be made available to the federal ministry managing the holding or the unit preparing the mandate in the authority of which the member is an employee, so that preparations for the meeting can be made.

Members of supervisory bodies of capital market-oriented companies should note that company information disclosed to them may constitute inside information as defined in the EU Market Abuse Regulation. In some cases, this may affect the reporting obligation vis-à-vis the federal ministry managing the holding and, if applicable, the federal ministry preparing the mandate.

### 3.3.3 Federal employees in supervisory bodies

74 Federal employees who were delegated or chosen as members of the supervisory body of a company in which the Federation has a holding at their employer's suggestion shall, as a rule, comply with the instructions given by their employer.

75 In the internal relationship, employees who are federal civil servants shall consider carefully any non-compliance in accordance with the principles of civil service law and, if deemed necessary, raise objections in accordance with the official procedure (see section 63 (2) of the Federal Civil Service Act). Non-tenured federal employees covered by collective agreements and other non-tenured federal employees are subject to the general rules on the right of the employer to issue instructions.

In external relationships, instructions shall not be complied with if the required actions constitute a criminal or administrative offence. Members of supervisory bodies can in particular become liable to criminal prosecution if they intentionally act to the detriment of the company.

76 If a remuneration or allowance is paid for work in a supervisory body, persons delegated or chosen as members of the supervisory body of a company in which the Federation has a holding at their employer's suggestion shall comply with the relevant provisions of the Ordinance on Outside Work by Federal Civil Servants (*Bundesnebentätigkeitsverordnung*).

In accordance with the recommendation made by the Federal Ministry of the Interior, Building and Community in its circular of 28 March 2019 (D 2 – 33000/7#5), members of the federal government and parliamentary state secretaries shall not accept any remuneration or allowance for their work in supervisory bodies.

77 Federal employees shall resign from their position on the supervisory body if they leave the function on the basis of which they were appointed, or if the federal ministry that appointed

or delegated them requests that they do so.

This applies accordingly to persons holding a public office (including parliament), provided that they were appointed as members of the supervisory body by a federal ministry.

78 Each federal ministry involved in the relevant policy area shall brief the federal employees chosen or delegated as members of the supervisory body at its suggestion on the topics to be dealt with at the meetings of the supervisory body. The federal ministry managing the holding shall provide the other federal ministries involved in the subject matter with all documents and information available to it that are required in order to brief the relevant members of the supervisory body comprehensively and appropriately. If necessary, the relevant federal ministries shall exchange information during their preparations for the meetings, and they shall agree on a joint position as far as this is possible and expedient.

### 3.4 Exercising the Federation's rights at the shareholders' meeting

79 The federal ministry managing the holding shall coordinate its preparations for the shareholders' meeting with the other federal ministries involved in the concerns of the holding.

80 The Federation's shareholder rights shall not be exercised at the shareholders' meeting of a company by federal employees who are also members of a supervisory body of the same company.

81 The Federation's representatives at the shareholders' meeting shall immediately notify the federal ministry managing the holding if they become aware of any plans or considerations of the company to acquire or modify holdings in other companies. In such cases, they shall inform the management that section 65 (2) and (3) of the Federal Budget Code must be complied with.

### 3.5 Role of the federal ministry managing the holding in appointing the members of the management and setting the remuneration of the members of the management

82 Regardless of the company body that is responsible for appointing and recruiting the members of the management in each case, the federal ministry managing the holding is also responsible for deciding on the selection of candidates and the appropriateness of the remuneration, at least in the case of companies in which the Federation has a direct majority holding. Therefore, the federal ministry managing the holding plays an active part in the preparations for appointing the members of the management and setting their remuneration, either through the briefing of the members of the supervisory body chosen or delegated at the Federation's suggestion or directly in its capacity as a shareholder.

83 The federal ministry managing the holding shall ascertain in good time before the end of the term of appointment of a member of the management whether a reappointment is a feasible option in the view of the company and the managing federal ministry, taking into account all relevant aspects, and whether the person concerned is available for another term of appointment.

If a reappointment is not feasible, the federal employees in charge of managing the holding

shall start planning the succession in good time and, if necessary, involve in such planning the company body that is responsible in accordance with the company's articles of association. In this context, the remuneration criteria referred to in section 5.3.1 of the PCGC shall be taken into account.

84 The federal ministry managing the holding must ensure that the members of the management are selected through a transparent procedure that takes into consideration any statutory quotas and voluntary or obligatory internal company targets (including targets based on legal obligations) regarding the composition of the management, in particular in terms of qualifications and gender equality.

The restrictions pursuant to section 105 of the Federal Civil Service Act, sections 6a and 6b of the Federal Ministers Act and section 7 of the Act governing the Legal Status of Parliamentary State Secretaries in conjunction with sections 6a and 6b of the Federal Ministers Act must be observed.

85 When appointing persons to the management, the federal ministry managing the holding shall apply the tests described in nos 132–137 and comply with the procedure specified there.

The selection process and the relevant considerations for the selection of the persons to be appointed shall be documented clearly.

86 The federal ministry managing the holding must endeavour to ensure that the contracts for employing the members of the management are drafted and negotiated using the suggested wording for employment contracts.

87 In particular, the federal ministry managing the holding must ensure that consent is granted for the amount of the individual remuneration and its components to be published in the corporate governance report and in the Federation's report on government holdings, in accordance with the recommendations of the PCGC.

88 The federal ministry managing the holding must ensure that the remuneration is appropriate for every member of the management and that the eligibility criteria for the various components of the remuneration are unambiguously specified in the employment contract. Besides retirement benefits or payments into pension plans, this also applies to any additional and non-cash benefits (e.g. conditions for private use of official vehicles, remuneration of travel expenses, etc.). With respect to variable remuneration components, an unambiguous specification means a definition of the eligibility criteria and limitations (e.g. caps) that is precise enough that only the objectives themselves, their deadlines and their weighting are to be agreed upon in the objectives agreement that is to be agreed with each member of the management.

Variable remuneration components or parts of variable remuneration components must not be guaranteed either in writing or through oral commitments; such payments would then form part of the fixed remuneration and would have to be indicated as such.

Members of the management shall not be granted any entitlements to profit-sharing,

remuneration for overtime, special payments (e.g. Christmas allowance) or non-repayable grants (e.g. for the acquisition of real estate). Compensation payments for days of leave not taken shall only be made in the cases provided for in the Federal Leave Act (*Bundesurlaubsgesetz*).

In assessing whether the remuneration granted to members of the management is appropriate, the income they receive as members of the bodies of other companies shall as a rule be taken into consideration, provided that they accepted such ancillary positions in the interest of the company or the Federation.

The federal ministry managing the holding must ensure that in the case of members of the management to be appointed for the first time, no retirement and (if applicable) survivors' benefits are provided by way of pension commitments by the company; an exception applies to members appointed to the management of scientific institutions for which special authorisations have been granted by the Federal Ministry of Finance in accordance with administrative provision number 15.1 on section 44 of the Federal Budget Code.

89 If variable remuneration components are provided for in the employment contract of a member of the management, the federal ministry managing the holding, when briefing the members of the supervisory body or shareholders' meeting chosen or delegated at the Federation's suggestion, endeavours to ensure that the objectives agreements relevant for the remuneration are concluded in accordance with the recommendations set out in the PCGC.

90 When briefing the members of the supervisory body or shareholders' meeting that were chosen or delegated at the Federation's suggestion, the federal ministry managing the holding shall also inform these members that, unless this is precluded for overriding reasons, variable remuneration components may be considered as part of the remuneration of the members of the management of the company as an incentive to promote, in particular, the sustainable and cost-effective pursuit of significant federal interests.

### 3.6 Performance evaluation

91 A key task of the holdings management is evaluating the performance of the holding, as provided for in section 7 of the Federal Budget Code. This evaluation relates to the Federation's holding in the company as a measure for achieving the significant federal interest, and shall be carried out at regular intervals. When carrying out the evaluation, the methodology described in administrative provision number 2.2 on section 7 of the Federal Budget Code shall be followed by performing

- the objectives achievement check,
- the effectiveness check and
- the efficiency check.

These checks are intended to establish whether changes or adjustments need to be made.

92 In the context of the objectives achievement check, a target-performance comparison between the planned objectives (target situation) and the objectives actually achieved at the relevant time (actual situation) shall be carried out in order to determine whether the

objectives pursued with the holding (no 9) and the impact objectives (no 53) have been achieved, and to determine to what degree the objectives have been achieved. The objectives achievement check shall be carried out as a final performance evaluation as soon as the scheduled deadline for achieving the objectives has been reached, and also intermittently at regular intervals as an accompanying objectives achievement check.

The objectives achievement check is also the starting point for considering whether the defined objectives are still valid, and whether the company purpose correctly reflects the Federation's significant political interest (see no 56).

93 It shall be determined, by way of the effectiveness check, whether the holding as a measure has been suitable for and instrumental in achieving the objectives, or whether other factors have caused the achievement of the objectives. The effectiveness check – like the objectives achievement check – shall be carried out as a final check as soon as the scheduled deadline for achieving the objectives has been reached, and, prior to that, at regular intervals as an accompanying check. When performing the effectiveness check, all the intentional and unintentional effects of the holding shall be identified, and it shall be determined whether the company is appropriately oriented to achieving the relevant objectives.

94 The efficiency check examines whether

- the holding as a measure has been, on the whole, efficient with regard to the purpose of the holding (efficiency of measures), i.e. whether the purpose of the holding is being fulfilled economically, and
- whether the holding is, on the whole, efficient with regard to the relationship between resources used and benefits obtained (efficiency of performance), i.e. whether the company is efficient on the whole.

The efficiency check is closely linked to the auditing of the annual financial statements and to monitoring whether the management is performing its duties properly. It includes examinations as to

- whether the objectives defined in the business or economic plan, as derived from the impact objectives, have been implemented by the management,
- how the metrics that are decisive for the company and its governance and that are included in or can be derived from the annual financial statements have actually developed in comparison with the business or economic plan and with previous years, and
- the effects of these developments on the company's economic situation, in particular its solvency and debt status.

Significant deviations from the business or economic plan, in particular deviations of the metrics in the annual financial statements from the target figures underlying the business or economic plan, shall be evaluated, taking into account the specific situation of the company. The same applies to the development of the metrics that are decisive for the company and its governance. In such evaluations, the federal ministry managing the holding shall in particular consider the metrics included in the Standardised Monitoring of

Government Holdings. The federal ministry managing the holding shall prepare the members of the supervisory body who were chosen or delegated at the Federation's suggestion for the discussions of the deviations and relevant metrics with an in-depth assessment.

If, according to this assessment, there has been a substantial change in the company's situation, the causes shall be examined and, if necessary, appropriate countermeasures shall be initiated.

In addition, the federal ministry managing the holding shall, in the context of the efficiency check, ensure that the company complies with the principles of efficiency and economy.

95 The performance of holdings in companies that receive institutional assistance may be evaluated by carrying out the performance evaluation pursuant to administrative provision number 11a on section 44 of the Federal Budget Code. This evaluation shall cover the objectives that are supposed to be achieved with the holding (cf. nos 9 and 53).

96 Key considerations and the results of the evaluation of the company's performance shall be documented in a comprehensible manner by the federal ministry managing the holding.

97 In a broader sense, evaluating a company's performance also implies that the competent company body checks the achievement of the remuneration-related objectives set out in the objectives agreements concluded with the members of the management. This shall be carried out as an objectives achievement check by means of a target-performance comparison (see no 92) for every subordinate objective that has been agreed. Where checking the achievement of the objectives agreed with the management is within the scope of responsibility of the supervisory body, the federal ministry managing the holding must prepare the members of the supervisory body chosen or delegated at the Federation's suggestion for carrying out the objectives achievement check and must document its checks and the recommendations derived therefrom.

### 3.7 Other functions of the federal ministry managing the holding

98 Where the requirement to apply the PCGC is set out in the articles of association of a company in which the Federation has a holding, the federal ministry managing the holding shall work towards ensuring that the PCGC is complied with by the company and its bodies.

99 The federal ministry managing the holding must endeavour to ensure that the company, particularly where it falls within the scope of the recommendation in the first paragraph of section 8.1.3 of the PCGC, considers submitting a non-financial statement pursuant to sections 289b et seqq. of the Commercial Code (*Handelsgesetzbuch*), applying the German Sustainability Code (*Deutscher Nachhaltigkeitskodex*) or a comparable framework for non-financial reporting with reporting obligations that include human rights aspects, or, where the company does not fall within the scope of such recommendation, that it at least considers applying the German Sustainability Code or a comparable framework for non-financial reporting with reporting obligations that include human rights aspects without submitting a non-financial statement pursuant to sections 289b et seqq. of the Commercial Code. The Federation's training programme will support the government agencies managing

the holding in this regard.

100 The federal ministry managing the holding must ensure that companies in which the Federation has a holding comply with the Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration (*Richtlinie der Bundesregierung zur Korruptionsprävention in der Bundesverwaltung*), as amended, insofar as they fall within its scope, and must set corresponding requirements, if necessary.

101 It must regularly review the list of transactions and operations requiring approval by the supervisory body, especially the appropriateness of the thresholds that are relevant for the approval requirement.

102 It must regularly verify that the frequency of the regular meetings of the supervisory body is chosen in a way that ensures proper supervision of the management. This applies in particular where the exception in section 6.5 (1) sentence 2 of the PCGC is used.

103 The federal ministry managing the holding must endeavour to ensure that measures requiring consent in accordance with section 65 (3) of the Federal Budget Code will not be implemented until the required consents and approvals have been received.

104 Any substantial checks and decisions with regard to the holding shall be documented in a comprehensible manner by the federal ministry managing the holding.

105 In its ruling of 13 October 1977 (case no II ZR 123/76, published in *Neue Juristische Wochenschrift* 1978, pp. 104 et seqq.[8]), the Federal Court of Justice (Bundesgerichtshof) argued that the Federal Republic of Germany may be the "controlling company" as defined in the German Stock Corporation Act (*Aktiengesetz*), if the relevant conditions are met. In this individual case, which concerned the form of the settlement payment to be made to former private stockholders under section 320 (5) of the Stock Corporation Act (now section 320b (1) of this Act), the Federal Court of Justice held that the Federation could be considered a "company".

According to section 311 of the Stock Corporation Act, a controlling company, which can also include the Federation, may not use its influence to cause a controlled stock corporation (*Aktiengesellschaft*) (or a partnership limited by shares (*Kommanditgesellschaft auf Aktien*)) to enter into a legal transaction detrimental to it, or to take or refrain from measures resulting in a disadvantage, unless the disadvantages are compensated for. See section 317 of the Stock Corporation Act regarding liability for damage caused by violations.

The federal ministry managing the holding must ensure that stock corporations on which the Federation is able to directly or indirectly exert a controlling influence, as set out in section 17 (1) of the Stock Corporation Act, prepare a report on the relations of the company with affiliated enterprises (dependent company report) in accordance with section 312 of the Stock Corporation Act. Exemptions will be granted only if there is a control agreement (section 312 (1) sentence 1 of the Stock Corporation Act) or a profit and loss absorption agreement (section 316 of the Stock Corporation Act), or if the company in

[8] The case underlying this ruling concerned the integration of Gelsenberg AG into VEBA AG.

question is integrated into the controlling company (section 323 (1) sentence 3 of the Stock Corporation Act).

### 3.8 Special rules in the case of holdings for the purpose of investing funds or providing concessional financing

106 Where an entity attributable to the Federation, or one of such entity's holdings (including indirect holdings), whose statutory purpose or company objective is to invest funds to cover future liabilities of, or future costs payable by, the Federation, owns holdings in order to fulfil such purpose or objective, the functions of the federal ministry managing the holding are restricted to the active holdings management as described in no 52, in addition to the obligations arising from any applicable general and specific legal bases. This includes actively and responsibly exercising the shareholder's rights, both in the shareholders' meeting and beyond. If applicable, the federal ministry managing the holding shall take steps to ensure that the bodies of the holding directly owning the stakes perform the functions mentioned above. Where the PCGC suggests that the corporate governance of a holding owned for the sole purpose of investing funds be conducted in line with the PCGC, the federal ministry managing the holding shall make efforts to ensure that the holding is structured accordingly.

107 In the case of holdings

- that are owned by an entity attributable to the Federation, or one of such entity's holdings (including indirect holdings), whose statutory purpose or company objective is to provide concessional financing with the aim of boosting the business loan market, in order to fulfil such purpose or objective, or
- that the Federation itself owns in the context of programmes to boost the business loan market and that the Federation owns solely for the purpose of granting concessional financing to the relevant company,

the functions of the federal ministry managing the holding with regard to the management of the holding are, in addition to the obligations arising from any applicable general and specific legal bases, restricted to actively and responsibly exercising the shareholder's rights, taking into consideration the framework set by European state aid rules. If applicable, the federal ministry managing the holding shall take steps to ensure that the bodies of the holding directly owning the stakes exercise the shareholder rights within the framework mentioned above.

## 4 Auditing and reporting

### 4.1 Companies established under private law

#### 4.1.1 Government holdings covered

108 The federal ministry managing the holding shall exercise the rights set out in section 53 of the Budgetary Principles Act vis-à-vis companies whose shares are majority-owned by the public sector within the meaning of section 53 of the Budgetary Principles Act[9]. Moreover,

[9] A majority holding within the meaning of section 53 of the Budgetary Principles Act means that the Federation (including

it shall use its influence on these companies to ensure that the Bundesrechnungshof (Germany's supreme audit institution) is granted in the articles of association the right to be directly informed pursuant to section 54 of the Budgetary Principles Act (section 66 of the Federal Budget Code).

If there is no majority public holding within the meaning of section 53 of the Budgetary Principles Act, the federal ministry managing the holding shall use its influence on companies other than stock corporations, partnerships limited by shares (*Kommanditgesellschaft auf Aktien*) or cooperatives to ensure that the Federation is granted in the articles of association the rights under sections 53 and 54 of the Budgetary Principles Act (section 67 sentence 1 of the Federal Budget Code).

This also applies to indirect holdings of more than 25% of the shares that are held by a company in which the public sector has a majority holding within the meaning of section 53 of the Budgetary Principles Act (section 67 sentence 2 of the Federal Budget Code). The Federation shall also be granted in the articles of association the rights under sections 53 and 54 of the Budgetary Principles Act with respect to indirect holdings of this kind in companies that have their registered seat abroad, unless this is expressly prohibited by legal provisions of the country concerned.

### 4.1.2 Scope of the audit within the framework of the extended audit of the annual financial statement pursuant to section 53 of the Budgetary Principles Act

109 The federal ministry managing the holding shall make efforts to ensure that, in the course of auditing the annual financial statement, the principles applying to the audit of companies pursuant to section 53 of the Budgetary Principles Act (cf. the Annex to administrative provision number 2 on section 68 of the Federal Budget Code) are complied with, the current questionnaire for the profession based on such principles is completed, and comprehensible audit reports that include the concluding statements of the auditors are submitted to the competent company bodies. It shall also ensure that either in the context of auditing the individual financial statement of the company in which the Federation has a direct holding pursuant to section 53 of the Budgetary Principles Act, or in the context of auditing the consolidated financial statement, the audit report also includes statements on the development of the group and whether it has been managed properly. In the event of improper reporting, the question of whether the auditor should be replaced shall be reviewed.

110 Where the Federation has a majority holding and in such cases where it has been granted the powers set out in section 53 of Budgetary Principles Act pursuant to section 67 of the Federal Budget Code, the audit in accordance with section 53 of the Budgetary Principles Act shall also include a report on the remuneration of the supervisory body, management and senior executives ("remuneration report").

111 In its report to the Bundesrechnungshof pursuant to section 69 of the Federal Budget Code, the federal ministry managing the holding shall indicate if the audit report pursuant to

its special funds) either owns the majority of shares in the company or it owns at least 25% of the shares itself and together with other government levels (including their special funds) it owns the majority of the shares.

section 53 of the Budgetary Principles Act does not comply with the requirements set out in the Annex to administrative provision number 2 on section 68 of the Federal Budget Code (principles for the audit of companies pursuant to section 53 of the Budgetary Principles Act).

### 4.1.3 Responsibility

112 The competence to exercise rights, the audit by the federal ministry managing the holding and the provision of information to the Bundesrechnungshof are governed by sections 66 to 69 of the Federal Budget Code and the administrative provisions issued in connection with it.

113 Section 69 of the Federal Budget Code establishes that the federal ministry managing the holding is directly responsible for performing proper audits, irrespective of whether the holdings management has been transferred to a subordinate authority. The federal ministry managing the holding may engage other bodies to assist with the audit.

114 Federal employees who are members of a body of the company concerned or who represent the Federation in the shareholders' meeting shall refrain from exercising any influence on the result of the audit. They may not sign any letters in which the federal ministry informs the Bundesrechnungshof of the results of its audit; their superiors shall take sign the documents instead. Should the superiors be members of a body of the company concerned, the letter shall be signed by higher superiors or by their deputies pursuant to section 6 of the Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*). Federal employees who are members of a company's supervisory body shall be given the opportunity, prior to the notification being sent to the Bundesrechnungshof, to inspect the document and state their position in that regard; however, they may not co-sign the document.

115 When carrying out the annual audits pursuant to section 69 of the Federal Budget Code, priority (in terms of time) shall be given to auditing the records of those companies where the audit is of particular interest, for example because the manner in which a company's business is conducted or its economic situation give rise to concerns, possibly based on the reports prepared within the meaning of section 90 of the Stock Corporation Act or the audit report; this could be, for example, because a company is receiving benefits from the Federation, or there is reason to believe that the profits distributed do not correspond to the company's economic situation.

### 4.1.4 Audit files

116 The federal ministry managing the holding shall submit in particular the following documents to the Bundesrechnungshof together with the report pursuant to section 69 of the Federal Budget Code:

- the auditor's report (including the findings made pursuant to section 53 of the Budgetary Principles Act as well as any reports on interim and supplemental audits), and any statements made by the company management and the supervisory body,

- the presentations to the supervisory body and its committees as well as records of meetings that are intended to reflect the course of deliberations and the voting results,
- the reports of the members of the supervisory body,
- the records, with accompanying annexes, of ordinary and extraordinary shareholders' meetings held in the business year being audited,
- the articles of association as well as the rules of procedure for the management, the supervisory body and its committees, unless these documents have already been submitted in the versions valid for the respective business year,
- the notices to the supervisory body or its chair regarding the audit of certain areas (such as organisation, investments, cash office, and remuneration of the members of the company bodies),
- the reports on interim audits and special audits,
- the management reports and
- the reports within the meaning of section 90 of the Stock Corporation Act.

### 4.2 Companies established under public law

117 The audit rights of the federal ministry managing the holding and the audit procedure for companies that have the legal form of a public-law entity are governed by section 55 (2) of the Budgetary Principles Act.

118 If a public-law entity falling under section 55 (1) of the Budgetary Principles Act receives subsidies from the Federation or from a *Land* where the reason for, or the amount of, the subsidies is established by law, or if the Federation or a *Land* is obliged by law to grant guarantees, the budgetary and financial management of this entity shall be subject to audit by the Bundesrechnungshof even if exemptions from section 111 (1) of the Federal Budget Code have been permitted (see section 48 (2) of the Budgetary Principles Act and section 111 (2) of the Federal Budget Code).

## 5 Appointment of persons to the supervisory bodies and the management of companies in which the Federation has a holding and of other institutions that are of special political or financial significance for the Federation

119 If the German government has an influence on the filling of positions

- in supervisory bodies and/or the management of companies in which the Federation (including its special funds) has a direct or indirect holding or
- in bodies similar to supervisory bodies and/or the management of other institutions of special political or financial significance for the Federation,

the appointment of persons to such supervisory or similar bodies and to the management of such companies or other institutions is – regardless of any obligation to inform the federal cabinet – subject to the following rules.

Bodies similar to supervisory bodies (hereinafter referred to as "similar bodies") are all bodies which, in addition to other responsibilities, are also responsible for supervising the management.

Other institutions (see Annex 10[10]) include institutions of any kind and any legal form, in particular, to the extent that they are not already companies as defined in these guidelines, institutions set up by, or with the involvement of, the Federation, such as

- private or public law foundations,
- associations,
- public law agencies and entities and
- other institutions

that are of special political or financial significance for the Federation.

## 5.1 Appointment of persons to a supervisory body or similar body

### 5.1.1 Composition of a supervisory or similar body

120 The persons appointed to a supervisory or similar body shall have the expertise and experience required for the position.[11]

The persons to be appointed must be in a position to perform the tasks of a member of the supervisory body, with regard to their professional obligations. As a general rule, members of the supervisory body chosen or delegated at the Federation's suggestion shall therefore not be members of more than three supervisory bodies at the same time. In this respect, for one of the three positions referred to in the previous sentence, a position in the supervisory body of a company whose purpose is limited to functioning as a holding company for a group, and a position in the supervisory body of a subsidiary of the same company, may be counted together as one position (see section 6.2.1 of the PCGC).

The federal ministry managing the holding or the federal ministry responsible for the other institution as well as other federal ministries involved for technical reasons shall be represented by no more than two officials each. If it is in the interest of the Federation and the company or the other institution, experts who are not federal officials (e.g. high-level representatives from industry, academia or research) may also become members of supervisory or similar bodies. However, it shall be guaranteed at all times that the Federation can exercise appropriate influence over such supervisory or similar bodies (section 65 (1) no 3 of the Federal Budget Code).

121 Persons who will retire soon from public service or their public office (including parliament) or who will soon reach the age limit set for the supervisory body concerned in line with the PCGC recommendations, or the age limit set for a similar body, shall not be appointed to supervisory or similar bodies.

122 If the Stock Corporation Act (*Aktiengesetz*), the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), the Act on the Participation of the Federation in Appointments to Bodies (*Bundesgremienbesetzungsgesetz*) or other statutory provisions stipulate either

[10] Annex 10, together with Annexes 8 and 9, is updated and made public on an annual basis, with the participation of the federal ministries concerned.

[11] According to the applicable case law (Federal Court of Justice rulings in civil matters [BGHZ] 85, 293), a member of a supervisory board must have or acquire the minimum expertise and skills that are needed to understand and adequately assess, without requiring external assistance, any business matters that such a member normally has to deal with.

- a mandatory quota for the share of women and men in the supervisory or similar body or with regard to the positions within the supervisory or similar body for which the Federation has the right to suggest or delegate members, or
- an obligation to set targets for the share of women and men in the supervisory body, and a corresponding target for the share of women and men in the supervisory or similar body has been set by the competent company bodies in line with the relevant provisions,

these quotas or the defined targets shall be taken into account when members are appointed to the supervisory or similar body.

123 If various federal ministries have the right to suggest or delegate members to a supervisory or similar body, the federal ministry that is managing the holding or that is responsible for the other institution shall coordinate, at an early stage, the suggestions from the other federal ministries concerned, to ensure compliance with the Act on the Participation of the Federation in Appointments to Bodies as well as with the quotas or targets referred to in no 122 above. The federal ministry managing the holding bears the ultimate responsibility for ensuring compliance with the provisions of the Act on the Participation of the Federation in Appointments to Bodies. If a federal ministry makes a suggestion that leads to non-compliance with the above quotas or targets, it shall support the federal ministry managing the holding by providing reasons for this deviation.

### 5.1.2 Preventing conflicts of interest

124 The federal ministry which has the right to suggest or delegate persons for a position in a specific supervisory or similar body shall carefully check for the existence of any potential conflicts of interest and, if necessary, consider possible measures to prevent them.

125 In order to prevent conflicts of interest, persons shall not be appointed to the supervisory body of a company, a public law agency or to any similar body of another institution if

- they are already a member of the supervisory body of another company with which the company concerned competes on the market, or with which it is in the process of entering into or carrying out transactions under company law, or
- in the event that the company has been assigned statutory tasks, they are involved in the legal and operational supervision of the company and may in this way exercise influence on its legal or business relations, or
- they are involved in the legal and operational supervision of the public-law agency or entity or the private- or public-law foundation concerned or they are involved in supervising the company concerned in terms of commercial or commercial administrative law and may in this way exercise influence on the legal or business relations of the entities concerned, or
- the company, the public-law agency or the other institution has legal or business relations with a public-law agency where the persons in question are involved in legal and operational supervision,
- as part of their activities in the public service, they are responsible for approving grants to the company, if the earmarking provisions in the federal budget allow for grants to be provided not only to companies in which the Federation has a holding but also to other entities outside the federal administration, or

- as part of their activities in the public service, they are, with regard to the company or the other institution to be supervised, specifically responsible for granting loans, providing funds for increases in equity, issuing all types of guarantees and making compensation payments, or they are involved in public procurement procedures or in awarding public contracts.

126 It is necessary to check the existence of any other potential conflicts of interest, prior to each appointment. In each case, the final decision on suitable candidates shall reflect both the Federation's interest in ensuring an effective performance of supervisory duties by appointing persons with the required expertise, and the need to prevent conflicts of interest as required by law.

127 If, following careful checks and based on objective considerations, a person who fulfils one of more of the criteria set out in no 125 above is to be appointed nonetheless, the federal ministry responsible for the company or the other institution must ensure that the necessary decisions are taken by other persons having the authority to take such decisions (see also no 63 above). In this context, it is necessary to observe the provisions of sections 20 and 21 of the Administrative Procedures Act (*Verwaltungsverfahrensgesetz*), as amended, concerning the exclusion of persons from administrative procedures and absence of impartiality. These provisions apply directly if the persons referred to above are involved in an administrative procedure as defined in section 9 of the Administrative Procedures Act; in other cases, they apply accordingly as the expression of a general legal principle.

### 5.1.3 Required agreements with the persons to be appointed

128 The persons to be appointed to a supervisory or similar body shall enter into the agreements set out in Annex 5 or 6 and, if necessary, Annex 7. The persons to be appointed shall be informed that they are required to notify the supervisory body in writing of the reporting obligation resulting from the above-mentioned agreements, to ensure that the member's reports are effectively exempt from any secrecy provisions.

The persons to be appointed shall be provided with the relevant information on data protection in accordance with Article 13 of the EU General Data Protection Regulation (Annex 11).

### 5.1.4 Communication to the federal cabinet and documentation

129 The federal ministry that is managing the holding or responsible for the other institution shall notify the federal cabinet, for informational purposes, regarding its intention to appoint or reappoint persons to the supervisory or similar body of companies or other institutions listed in Annexes 8, 9 and 10[12], which are updated on an annual basis.

[12] The companies or other institutions listed in Annexes 8, 9 and 10 are divided into the following categories:
- Annex 8 lists direct federal holdings where the Federation owns a stake of at least 25%.
- Annex 9 lists indirect federal holdings with an annual turnover of at least €500 million.
- Annex 10 lists institutions of special political or financial significance for the Federation in which the Federation exerts an influence on the appointment of persons to supervisory or similar bodies and/or to the management.

If, by way of exception, a federal minister is to be appointed to the supervisory or administrative board of a for-profit company, without the appointment being stipulated by law, it is necessary, prior to submitting the matter to the federal cabinet and in consultation with the Federal Ministry of the Interior, Building and Community, to obtain from the German Bundestag a derogation from the ban on such membership in a supervisory or administrative board. If, by way of exception, a parliamentary state secretary is to be appointed to the supervisory or administrative board of a for-profit company, it is necessary, when communicating the appointment to the federal cabinet, to obtain from the latter, in consultation with the Federal Ministry of the Interior, Building and Community, a derogation from the ban on membership in such a body.

130 The performance of the checks referred to above and their results shall be documented by the federal ministry which has the right to suggest members. This applies, in particular, to the suitability requirement (no 120), the number of positions held in other bodies (no 120)) as well as the requirement to prevent conflicts of interest (no 124–127).

If several federal ministries have the right to suggest or delegate persons to a supervisory or similar body, the communication to the federal cabinet shall, with a view to ensuring compliance with the Act on the Participation of the Federation in Appointments to Bodies, be coordinated between the federal ministries concerned and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth before it is submitted to the cabinet. Responsibility for carrying out this coordination process lies with the federal ministry that is managing the holding or is responsible for the other institution.

131 If the criteria for including in Annexes 8, 9 and 10 a company or another institution of special political or financial significance for the Federation in which the Federation exercises influence over the appointment of persons to the supervisory or similar body are clearly met, the provisions of nos 119–130 above shall be applied in anticipation of the future listing of this company or other institution in the annual updates of Annexes 8, 9 or 10.

## 5.2 Appointment of persons to the management

### 5.2.1 Composition of the management

132 Persons to be appointed to the management of companies in which the Federation (including its special funds) has a holding or to the management of other institutions must have the specialist knowledge and skills that are required for the management position they are to hold.

133 Persons who will soon reach the age limit set for the management concerned in line with PCGC recommendations shall be appointed only for the period until they reach this age limit.

134 If the Stock Corporation Act (*Aktiengesetz*), the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), the Act on the Participation of the Federation in Appointments to Bodies (*Bundesgremienbesetzungsgesetz*), the Federal Equal Opportunity Act (*Bundesgleichstellungsgesetz*) or other statutory provisions stipulate either

- a mandatory quota for the share of women and men in the management or with regard to the positions within the management for which the Federation has the

right to suggest or delegate members, or

- an obligation to set targets for the share of women and men in the management, and a corresponding target for the share of women and men in the body has been set by the competent company bodies in line with the relevant provisions,

the federal ministry responsible for the company or the other institution must take these quotas or the defined targets into account when making its decisions on the appointment of persons to the management.

### 5.2.2 Communication to the federal cabinet and documentation

135 The federal ministry that is managing the holding or that is responsible for the other institution shall inform the federal cabinet of its intention to appoint a member of the public service or a member of the German Bundestag or the parliament of a German *Land* for the first time to the management of a company or other institution listed in Annexes 8, 9 and 10[13], which are updated on an annual basis.

136 The performance of the checks referred to above, especially regarding the suitability requirement (no 132), and their results shall be documented.

137 If the criteria for including in Annexes 8, 9 and 10 a company or another institution of special political or financial significance for the Federation in which the Federation exercises influence over the appointment of persons to the management are clearly met, the provisions of nos 119 and 132-136 above shall be applied in anticipation of the future listing of this company or other institution in the annual updates of Annexes 8, 9 or 10.

[13] See footnote 12.

## 6 Annexes

(The Annexes will be drafted after the Principles have been finalised and adopted in accordance with the version of the PCGC and the guidelines for active holdings management agreed by that point, and will then be finalised in consultation with the federal ministries that manage holdings.)

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