

Newsletter, VIP eV, 2004/06/19

A SMALL STEP FORWARD FOR THE MANAGEMENT _ A GIANT LEAP IN BETTER PRACTICE

The initiative of VIP finished in a 1st small cooling off period in German Management; case concluded now.

Corporate Governance is making headway in the German corporation _ at MunichRe every eighth share is voting with VIP in favour of better practice.

The campaign on the MunichRe case launched through VIP by the Club of Florence (www.cof.cg) on its foundation in October 2003 is now completed. Over shareholders_ heads, legal machinery had been exploited to dicker over appointments. The nasty background to these actions seems ineffaceable, and any criticism of the practice seems superfluous, at least in this country: contrary to all CG recommendations, yesterday_s managers are almost automatically promoted to be advisers to and monitors of their successors, without observing any cooling-off period _ meaning a break between an executive and a supervisory role in the same company.

The debate, brought by VIP before the courts (www.vip-cg.com vip-aktiv _ shareholder-activism), was supported by shareholders and institutional investors (particularly from London) and culminated internally in discussions with very well-known figures who had underestimated in the case of MunichRe the value and the corporate-governance effect they would create through their counter-candidacy.

Nonetheless, one symbolically important partial success for corporate governance was scored: the ex-CEO (in office as such through 31 December 2003) after all declined to take the chair of the Supervisory Board, as originally planned for 2 January 2004, without the assent of the general meeting. 13% of shareholders present (13.3 million shares) in fact voted against the taking over with no transition period of supervision of the company previously managed executively. At the 2003 AGM the plan had, by the way, been left unmentioned _for safety_s sake_.

The individual discharge called for by VIP eV at the MunichRe AGM (as previously at Lufthansa against Bsirske in a different context (www.vip-cg.com - vip-info-press.)) made the dividing line drawn between the good company performance and the poor practice of the German corporation clear. In the case of MunichRe the change had been decided (and announced) on 28.4.2003 (Supervisory Board meeting), i.e. with a run-up of nine months _ but the co-

optation decision was NOT brought before the intervening AGM in good time. The Registry Court, responsible in emergencies, was supposed to step smoothly and silently into the breach.

The Club of Florence saw the urgency provision of §104 AktG [the Companies Act] - a German special provision in connection with parity-based codetermination - as a basis for action. VIP eV accordingly petitioned on 29 December, shortly before the time limit, for rejection of the Company's demand because the requisite urgency was not present, first bringing this text to the attention of the company authorities. The main point was that the procedure being utilized was based on abuse of the - here questionable - German codetermination rules (proportion between company representatives and outside supervisors).

The Court disregarded the VIP objection (see correspondence at www.cof.cg - campaigns), without even reading it first, and on 2 January appointed the just-retired CEO to the Supervisory Board. The petition on that date automatically became based on a confirmation contrary to law (www.CoF.cg membership area).

Hair-splitting about formulations the now-ex CEO had while in office allegedly merely declared his willingness to take up the post on the Supervisory Board if this were in line with the judge's wish and their correctness at this or that point in time is by now otiose: Mr Schinzler has taken the empty chair, and whether in the last analysis a 147-day wait for the chairmanship is enough to constitute a defensible cooling-off between the chief executive post and something else need not be gone into.

Even if the move from previous executive decision-maker to responsible adviser and supervisor could not be prevented in the case of high-performing MunichRe, both this case and those of DWS, DEKA, SEB and Hermes should still be seen as successes. However absurdly short the provoked cooling-off period may have been, after 2003's numerous poor-CG episodes it does presage hope for a shift in the hard-wired tendencies of Germany Inc.