

# INSIGHT

## CORPORATE GOVERNANCE

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## GERMANY

**Essential:** Information, Analysis and Opinion for Investment Professionals, Advisers and Academics



### CONTENTS

- |                  |  |                  |  |
|------------------|--|------------------|--|
| <p><b>02</b></p> | <p><b>COMPANIES</b><br/> Mannesmann trial reopened<br/> Porsche boss refuses salary transparency<br/> Supervisory Boards: questions wanted<br/> Confusion at Puma<br/> Exchange of blows at VW</p> <hr/> | <p><b>14</b></p> | <p><b>PEOPLE</b><br/> New division of responsibilities at BASF<br/> Wolfhard Lechnitz: new IVG CEO<br/> Further changes on IWKA Executive Board<br/> Herz moving in at Puma<br/> Board expansions at Salzgitter and Stada<br/> Schuchmann resigns from Vossloh</p> <hr/> |
| <p><b>10</b></p> | <p><b>FINANCIAL INVESTORS</b><br/> Against the "locust" image<br/> Credit market threatens to overheat<br/> Takeover law becomes European</p> <hr/>  | <p><b>17</b></p> | <p><b>CAMPUS</b><br/> Dividend-based bonuses lose importance<br/> German corporate-governance model successful<br/> EU endorsement process a source of confusion<br/> Sarbanes-Oxley as stress factor</p> <hr/>  |
| <p><b>12</b></p> | <p><b>POLITICS</b><br/> Buhlmann's Corner:<br/> Cooling-off for Schröder<br/> DSW calls for smaller Supervisory Boards<br/> Code of honour for politicians</p> <hr/>                                     | <p><b>20</b></p> | <p><b>CAPITAL NEWS</b><br/> Holdings: Buying &amp; Selling in December<br/> NEW: Insight shareholder structures in DAX30, MDAX and TECDAC30<br/> Insight Shareholder ID: Merck</p> <hr/>   |
|                  |  | <p><b>37</b></p> | <p><b>INDEX OF COMPANIES</b><br/> <b>INDEX OF PERSONS</b></p>  |

## COMPANIES

## Mannesmann trial reopened

The Federal Court of Justice (BGH) has set aside the acquittals in the Mannesmann trial by the Düsseldorf Regional Court. The BGH stated that in its acquittal in summer 2004 the Regional Court had erred in denying the elements of the offence of breach trust. The accused had infringed the duty of care of the assets of the Mannesmann Group because the firm had derived no benefit from the bonus payments approved. The BGH ruled out the “unavoidable error as to the prohibited nature of the act” found by the Regional Court. Following the BGH judgment, proceedings are to reopen in the Regional Court.

In the Mannesmann trial, former Supervisory Board members **Joachim Funk** (Chair), **Josef Ackermann** (Deputy Chair, and CEO of the Deutsche Bank) and **Klaus Zwickel**, as well as **Klaus Esser**, Ex-CEO of Mannesmann AG, and **Dietmar Droste**, ex Legal Officer of Mannesmann AG, were accused of having wrongly approved 57 million marks in bonus payments to the Mannesmann management in the year 2000. The resolution was passed shortly before the already decided takeover by Vodafone. Among benefi-

ciaries of the decision were Esser and Funk (in his capacity as Ex-CEO).

In its judgment the BGH for the first time laid down clear criteria for subsequent payments to managers: “If a variable component has been agreed, it may be awarded subsequently.” Even without such agreement, a subsequent bonus may be awarded if “benefits simultaneously accrue to the company”. In the Mannesmann case the bonuses had had “exclusively the nature of a reward”, and were accordingly a “squandering contrary to the duty of care” of the “entrusted company assets”. Additionally, in the view of Lars Kutzner of the law firm of Flick Gocke Schaumburg, the BGH has set new criteria for applying the breach-of-trust clauses to business decisions. The BGH no longer sees as criminal breaches of duty in terms of the offence of breach of trust only those infringements of civil-law duties that are particularly grave. However, Kutzner criticizes the fact that no new criterion for the beginning of a criminally relevant breach of duty has been defined. That means that managers, CEOs and Supervisory Board members would still “have to live in a legal position that has not exactly got any more certain”.



Deutsche Bank  
in Frankfurt

## Victory on points for Breuer against Kirch

Former media tycoon Leo Kirch has suffered a partial defeat in his legal dispute with the Deutsche Bank. The Frankfurt Regional Court rejected Kirch’s suit against the 2003 resolutions of the Deutsche Bank AGM. Kirch claims the election of the Supervisory Board was invalid, since the members were elected not individually, but en bloc. The Court rejected the suit because Mr and Mrs Kirch had lodged objections as shareholders of the Deutsche Bank before the decisions were even taken.

## OPINION

## Between integration and over-regulation

The consultation on future priorities for the Action Plan on company law and corporate governance published by the European Commission on 20 December 2005 contains a number of positive aspects from a German viewpoint. Among these is the "one share one vote" principle, here in Germany already largely in place since the 1998 Control and Transparency Code. Again, the proposed right to choose between monistic and dualist systems is a clear advance, and would open up the organizational range hitherto reserved for the European Company to other companies too. In view of the not always pleasant experience with short-term projects, however, the new proposals must be attentively followed, especially from the viewpoints of costs and benefits.

Particularly the area of corporate governance is becoming increasingly hard to follow, since not only the Council, Commission and Parliament but also a growing variety of expert groups are becoming active in integration efforts. Thus, only in October 2004 the EU Commission convoked a Corporate Governance Forum, to monitor the "congruence" of the national codes. In April 2005 it additionally brought together an Expert Advisory Group, to "provide detailed technical advice" One cannot fail to see a certain intrinsic dynamic here.

In terms of content, many EU plans ought to be closely checked for practical usefulness. Thus, it was important to prevent the corporate-governance statement from being made part of the situation report in connection with revision of the 4th/7th (balance-sheet) directives, so that its content would have to be checked by auditors. The obligation to justify departures from the code will undoubtedly lead to further discussion about what quality and volume requirements to place on the argumentation. Many things do not, moreover, necessarily look consistent. Thus, only in October 2004 the Commission adopted a recommendation on the independence of Supervisory Board members explicitly refraining from the originally provided compulsory setting up of an Audit Committee. Nonetheless, according to the 8<sup>th</sup> directive (on auditors), listed companies must now set one up.

The Commission had also originally given assurances that Supervisory Board members could decide on their own responsibility the number, tasks and composition of committees. The Auditors Directive instead requires that one member of the Audit Committee must be independent and have expertise in accounting and/or auditing. Yet there is still no definition of this "financial expert".

The flood of regulations on organization, transparency and liability does not necessarily lead to more capital-market attractiveness, but more likely to its opposite. The statement by internal-market commissioner McCreevy that he is "conscious of the need not to overburden companies with too much regulation" must be followed, particularly in the area of corporate governance, by action – or often better by refraining from it.



Professor Dr. Rüdiger von Rosen, executive director, Deutsches Aktieninstitut e.V., Frankfurt

degussa.

creating essentials

## Degussa at a bargain price?

RAG is taking over specialist chemical firm Degussa completely. The conglomerate already has, through its subsidiary RAG Projektgesellschaft, a 50.1 % holding in Degussa. On 1 July RAG is to buy 42.86 % from energy group E.ON at a price of around €2.8 billion (€31.50 per share). In the opinion of shareholder representatives, E.ON is selling Degussa too cheaply. "Selling off Degussa at a bargain price is hardly acceptable for shareholders," says Jürgen Kurz of investor association Deutsche Schutzvereinigung für Wertpapierbesitz (DSW). It is astonishing for E.ON to have accepted a discount of 18.5 % from the last quotation, the FT Germany cites one investment banker as saying. RAG CEO Werner Müller called the Degussa takeover a "milestone on the road to the stock exchange". RAG is to be listed in the first half of 2007.

E.ON wants to propose to shareholders an extra distribution of €4.25 per share. RAG is making Degussa shareholders a public voluntary bid at a price of €42 per share. Analysts at Sal. Oppenheim rate the takeover price for free Degussa shareholders as "good".

## Police raid on BMW suppliers

The bribery case surrounding an ex BMW purchasing manager arrested in July is, according to a report in "Der Spiegel", taking on bigger proportions. Munich public prosecutors have again searched seven private houses and offices of suppliers to the automobile group. They include two firms located in Munich and a branch of a US group in Allershausen near Nuremberg. According to indications from the prosecutors, these three firms are suspected of having paid bribes of at least 500,000 dollars to ex BMW employees for preferential treatment on contracts for interior finishings. In the raids two employees were arrested. That makes seven total accused now jailed.

## Ex managers sue KarstadtQuelle

Five ex top managers of struggling KarstadtQuelle have sued the commercial group. They seek a ruling that the firm should continue to bear the costs of service cars, as provided in their contracts. The sum at issue for all five individual actions totals some €230,000. The plaintiffs are ex Quelle boss Reinhard Koep and former Karstadt executives Heinz Plagge, Jürgen Krüger and Karl-Heinz Schmidt. Former KarstadtQuelle CEO Walter Deuss is suing for payment of his chauffeur's overtime; the amount involved is €15,000.

According to a report by the "Westdeutsche Allgemeine Zeitung" Deuss has also had his pension rights insured against possible insolvency of the firm, which is alleged to have cost KarstadtQuelle 5 million Euros. KarstadtQuelle is remaining silent on the matter.

## Porsche boss refuses salary transparency

Sports-car manufacturer Porsche wants a shareholder resolution at the AGM on 27 January 2006 that CEO Wendelin Wiedeking need not disclose his salary. Since all voting shares are held by the Porsche and Piëch Families, assent to this agenda item is considered certain.



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## INTERVIEW

## “Don’t hesitate to ask silly questions”

**Dr. Schilling, recently there has been an accumulation of surprising replacements or resignations of executives. Why do such surprises happen?**

**SCHILLING:** The very formal atmosphere on many Supervisory Boards is a contributory factor. In such an atmosphere, critical topics cannot be brought up at the meeting. If there is no opportunity to express criticism outside the meeting either, then management does not hear any critical voice from the Supervisory Board, even though there may be growing unease on the oversight body. Then a comparatively small trigger may be enough to tip over the feeling on it, and an executive is replaced, to the total surprise of those involved and the public.

**How can that be avoided?**

**SCHILLING:** By ensuring that on the Supervisory Board talk is open and to the point, something admittedly harder in Germany than elsewhere. If that is not possible, then informal communication must be institutionalized.

**Isn’t that really a contradiction in terms?**

**SCHILLING:** Absolutely, but that’s the only way to ensure the safety-valve function that a good supervisory body needs. Dinner together the previous evening is no longer enough.

**You criticize Supervisory Board members for being too passive. How is this passivity manifested?**

**SCHILLING:** Many Supervisory Board members let the management presentations that take up as much as 90 % of meeting time passively go by them; even explanatory questions are hardly put. Yet a Supervisory Board or Management Board can really do its job well only if the atmosphere is such that members need not hesitate to ask what might seem silly questions.

**Why are those questions not asked, then?**

**SCHILLING:** Many Supervisory Board members admit in confidence that they are no longer capable of forming a view of their own about the business or about the firm’s strategy, because the material has got too complex to be understood with nothing more than common sense.

**Can committees help here?**

**SCHILLING:** Special topics like accounting or IT systems can still be delegated to committees, but for strategic decisions all members are still responsible.

**You also do board reviews at international level. Are foreign Supervisory Boards or Management Boards more active?**

**SCHILLING:** No, basically not. Despite the great structural differences, this problem is a global one. I was amazed to find out how little the detailed challenges of good company oversight differ from each other in such varied countries as Germany, Britain, France, Holland, Belgium, Switzerland and the USA.

**The issue has been debated for a long time now.**

**Do you see any changes?**

**SCHILLING:** Definitely. By now most Supervisory Board members want – both from a sense of responsibility and for liability reasons – to break away from their traditional role of nodding through management proposals.

**And how are they doing that?**

**SCHILLING:** Alone, they can hardly achieve anything on supervisory bodies. What’s needed is a changed interaction by the whole body, to give individuals the chance to play a different role. It’s like in Parliament, where a newcomer can’t change the ground rules either.

**Doesn’t the Supervisory Board chair bear primary responsibility for how a session runs?**

**SCHILLING:** Yes, but especially in Germany chairmen are often, because of the need for preparation in connection with codetermination, completely overloaded, whereas the ordinary members tend to have too little to do. The Supervisory Board chair can work effectively only if he has a close relationship of trust with the CEO and keeps his back free. On the other hand, the Supervisory Board chair has to maintain independence vis-à-vis management, express criticisms clearly and plainly and have the strength to replace a manager who is no longer up to the job. A very ticklish task.

**Should the Supervisory Board be more strongly composed according to special knowledge and abilities of members?**

**SCHILLING:** The composition of many Supervisory Boards is still a reflection of the firm’s past. Supervisory Board members ought however to be chosen according to their possible contribution to guaranteeing the company’s future capability. This “professionalization process” is, however, already fully under way, and is being still further pushed by institutional investors and the interested public.

**If a Supervisory Board is stocked with expert competitors, there is a threat of conflicts of interest.**

**SCHILLING:** It is indeed a dilemma that those who know the field best are mostly working for competitors, and therefore out of the question for Supervisory Board membership. Gaining qualified Supervisory Board members is a constant balancing act between relevant knowledge and conflicts of interest.

**How do you see the tightened Sarbanes-Oxley rules in this connection?**

**SCHILLING:** The American approach of making every even only potential conflict of interest into a criterion for exclusion does not lead to strengthening oversight over the company. Quite contrary to the public perception, the problem we face today is mostly not of independence but of competence.



Dr. Florian Schilling is a partner at Board Consultants International

## RWE without the City of Cologne...

The City of Cologne wishes to sell its holding in utility group RWE completely. The city owns 118,120 shares (0.03 % of the registered capital). Around 20 local authorities are said to have already sold a total of 8.5 million shares. Some 100 cities, municipalities and special associations hold about 31 % (as of July 2005) of the RWE capital. The City of Düsseldorf had announced the stepwise sale of its shares (15.7 million shares, some 2.8 %) in summer. The Cities of Dortmund and Essen are keeping their holdings; Dortmund directly and indirectly holds 19 million shares, making it one of the biggest participants.

## ... but with a conduct code

Utility group RWE has introduced a conduct code for its employees. RWE had announced such a code of honour in connection with the affair surrounding the CDU parliamentarians Hermann-Josef Ahrens and Laurenz Meyer; both politicians were paid as RWE employees, but according to what they themselves said did no work in return. RWE is now undertaking to act neutrally in party-political terms and make no donations to political parties or party-related organizations or foundations. People in public posts or elected office as their main occupation are no longer to be employed; nor are any further consultancy contracts to be concluded. Money payments and pecuniary benefits to officeholders or elected representatives, public bodies and offices and the like are to be recorded in a registry and forwarded to RWE AG.



## BaFin investigates conduct of major Metro shareholders

The Federal Financial Supervisory Authority (BaFin) is checking whether major Metro shareholder Otto Beisheim and the Haniel and Schmidt-Ruthenbeck Families failed to comply with disclosure obligations in the years 2000 through 2002. According to a newspaper report, it was not till March 2005 that they notified BaFin that they had already in early 2001 for a while held a voting share of 56.5 %, through the Baluba Investment company, domiciled in Guernsey. According to the Securities Trading Act, shareholders must forthwith notify the crossing in either direction of certain threshold values.



## Shareholders' Meetings in Europe Organization of AGMs in France and Germany

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## Confusion at Puma

Unclear statements by Mayfair CEO Rainer Kutzner are causing confusion at Puma. Kutzner becomes a Supervisory Board member of the sports-goods manufacturer on 9 January, and as managing director of asset management company Mayfair represents the interests of major shareholders Günter and Daniela Herz. Initially Kutzner had told the "Handelsblatt" that he did not rule out a takeover bid; no decision had however yet been taken. One day later he rejected takeover speculations ("We are not planning to increase the holdings") and weakened his denial to the paper again: retaining the present holding was as likely as reducing or increasing it. Everything was open. In 2003 after a family quarrel at commercial group Tchibo the Herz siblings had parked their golden handshake of 4 billion Euros in Mayfair. The company bought into Puma in May with a bare 17 %, and in early September increased its holding to 25.3 %.



## FMC begins share conversion

Dialysis technology company Fresenius Medical Care (FMC) is beginning in January to convert its preference to ordinary shares. The company has reached a settlement with the shareholders who had lodged actions for avoidance against this project. The settlement provides for setting up an additional body for corporate governance and a special payment from the mother company Fresenius to the outsider FMC ordinary shareholders. Shareholders who had voted against the resolutions under company law at the extraordinary general meeting of FMC will receive an additional payment. The special payments total 6 million Euros. Within four weeks, preference shares are to be converted to ordinary shares in Fresenius Medical Care with an additional payment of € 9.75 each.

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## Formal BaFin investigation of Porsche ...

The Federal Financial Supervisory Authority (BaFin) has begun a formal investigation of suspected insider trading in connection with the participation of sports-car manufacturer Porsche in carmaker Volkswagen. BaFin is further investigating whether the ad-hoc notification was made public too late. Porsche had announced in an ad-hoc notice on 26 September that it wanted to take a holding of around 20 % in Volkswagen. This had however already been reported on the Saturday by news magazine "Der Spiegel". The routine investigations for suspected insider trading in VW shares have instead been discontinued by BaFin.

## ... and a formal exchange of blows

Potential conflicts of interest from the dual role of Porsche major shareholder and VW Supervisory Board chair Ferdinand Pich are not seen by Porsche CEO Wendelin Wiedeking. The overlap in sales was 2.8 % and in procurements 7 or 8 %. Wiedeking, a member of the government commission on the German Corporate Governance Code, called Professor Theodor Baums and investment bank J.P. Morgan "grailkeepers of Corporate Governance". The report by J.P. Morgan went far beyond the target. The demand to keep out meant trading rights as equity holder underfoot. Meanwhile, VW shareholder Tweedy Browne was again calling for Pich's resignation. The US investment company wants to oust the VW Supervisory Board chair at the next AGM on 3 May. Tweedy favours ex Siemens CEO Heinrich von Pierer as Pich's successor; von Pierer is Supervisory Board chair of supply company Siemens and currently an ordinary VW Supervisory Board member. According to indications from Tweedy, several shareholder groups are supporting the move.

Wiedeking countered speculation that Porsche would shortly be increasing its VW holding to a blocking minority. While the board had authorization from the Supervisory Board to increase the holding in VW, it was not aiming at a blocking minority: "In principle nothing should be ruled out. But a blocking minority is not our declared objective. We still have to climb the first mountain. At the moment we're still in base camp." For him, a merger was not at issue. A participation was as a rule subject to correction, so that Porsche would also not take any harm. Porsche currently holds 18.5 % of the VW shares and has an option to raise the holding to 21.9 %.



Commerzbank-Building in Frankfurt.

Foto: Markus Goetzke, Commerzbank AG

## Commerzbank investigations extended

The investigations by Frankfurt public prosecutors of Commerzbank CEO Klaus-Peter Müller and other current and former employees of the bank have been extended. "We have extended the investigations and asked foreign authorities for judicial assistance," said a spokeswoman for the prosecutors' office. No end to the investigations is accordingly as yet foreseeable. The public prosecutors are investigating suspicions of money laundering in transactions in Eastern Europe.

## Deutsche Bank to get out of Linde?

The Deutsche Bank has transferred its Linde shareholding of around 10 % to a Luxemburg subsidiary. The bank does not want this step seen as a signal that a sale of the holding in the manufacturer of industrial gases and forklift trucks is imminent. It continued, however, to be the case that the bank in principle wanted to get rid of its industry holdings. Shortly before selling part of its DaimlerChrysler holding in November, the Deutsche Bank had according to information in the "Börsenzeitung" similarly transferred the holding in the auto group to the Luxemburg unit.



## ANALYSIS

## Conflicts of interest – squaring the circle?

Dual appointments on Supervisory Boards of competing firms continue to provide fuel for controversy. Recently, particularly the dual role of Ferdinand Pich as Supervisory Board chair of auto group Volkswagen and member of the Supervisory Board of sports-car manufacturer Porsche has sparked criticism, after Porsche took an 18.5 % holding in VW.

A still unresolved question in relation to conflicts of interest from dual appointments on Supervisory Boards of competing firms is when the threshold from harmless concurrent interests to relevant conflicts of interest is crossed. In particular, it is also unclear when a conflict of interest is so major that it has to lead to terminating an appointment. Company law is not much help here. On the contrary, it definitely does not prohibit dual appointments on Supervisory Boards of competing firms, although proposals for amendments in this direction were made in connection with KonTraG (the Control and Transparency Act) and the German Corporate Governance Code. Practice is thus increasingly faced with the demarcation question whenever important concurrent positions occur. As a rule, the following basic scheme is applied: if the companies involved have identical activities, a major clash of interests is to be presumed. If core areas of business or major trading partners are close, a major conflict of interest can mostly similarly be presumed.

It is different with diversified companies. Here the assessment depends decisively on how strong the diversification is and in how many business areas there is a competitive position. If the share of the doubtful business area is less than 10 to 25 % of total activities, it is generally no longer to be presumed that a major conflict of interest is present. However, blanket threshold figures do not really do justice to the issues or even ultimately to clean conduct of business, since every competitive situation is different. In the upshot, therefore, there can be no way round an assessment according to the individual case.

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### Invalid shareholder vote at Mobilcom

The Schleswig Higher Regional Court has declared the resolution of the general meeting of telecommunications firm Mobilcom on its settlement in the billions with former major shareholder France Telecom invalid because of formal errors. The board had not informed shareholders adequately of the original agreement with France Telecom, said the court in justifying its judgment. Mobilcom shareholders had at an extraordinary general meeting in January 2003 agreed to a financial settlement with France Telecom on the withdrawal of the French telecoms firm from the UMTS company, thus opening the way to saving Mobilcom. Actions had thereupon been brought against resolutions of the shareholder meeting. Following the Higher Regional Court's ruling, ex CEO Thorsten Grenz, his sales manager and possibly also Mobilcom's Supervisory Board are threatened with actions for damages. The investor association Schutzgemeinschaft der Kapitalanleger (SdK) is testing liability suits against the ex CEO and the Supervisory Board.

## FINANCIAL INVESTORS

## Credit market threatens to overheat

Aggressive financing by private-equity funds is causing concern at rating agency Standard & Poor's. "We are approaching a culminating point on the leveraged-finance market," opines Paul Watters. Financing structures were being very aggressive, he said. The debts taken on by financial investors to fund acquisitions were higher than ever before in relation to companies' profits. That was a warning signal. The rating agency expects a deterioration of credit ratings in 2006. The number of downgradings of industrial groups would rise. However, Standard & Poor's also sees the first signs of the market turning, despite mega-deals like TDC or Hertz. Banks would be more restrictive about providing credit, and demand higher prices, which would slow down the booming private-equity market.

## DAX30 without the HVB share

The shares of the HVB Group taken over by Italian bank UniCredit were taken off the DAX30 on 19 December. The security is now on the subsidiary index MDAX. The HVB share is no longer among the 45 biggest German companies by market capitalization or stock-exchange turnover. HVB's place on the blue-chip index is being taken by real-estate funder Hypo Real Estate, a former HVB subsidiary. Taken onto the TecDAX30 were companies active in the solar sector ErSol Solar Energy and Q-Cells; they replace Elmos Semiconductor and Micronas.

**Hypo Real Estate**  
GROUP

**ErSol**  
Solar Energy AG



### Against the "locust" image

The European private-equity branch is defending itself against the "locust" image widespread in Germany. According to a study by the sector's association EVCA, the European private-equity sector has in the last four years created a million new jobs. The number of jobs in companies financed by private equity and venture capital has, it says, risen by 5.4 % annually. Altogether, by the end of 2004 the industry was employing nearly 6 million people in companies financed through it; of these, 83 % were in buyout-financed companies. In this group the number of employees has risen by an average of 2.4 % per year. 37 % of buyouts created no jobs. The study was commissioned by the European Private Equity and Venture Capital Association (EVCA) from the Center for Entrepreneurial and Financial Studies (CEFS) at the Technical University of Munich. Over 1,000 equity funds in the seven biggest European markets were surveyed; they represent some 94 % of the European private-equity market. Around a tenth of those surveyed supplied usable answers. The study did not go into how employment developed following the departure of the financial investors. Nor were bankruptcy cases taken into account.

→ Study: [www.evca.com](http://www.evca.com)

## OPINION

## Takeover law becomes European

The ministerial draft of an Act transposing the Takeover Directive has come out. That means not inconsiderable changes are coming this year in German takeover law, in particular in the WpÜG (Securities Purchase and Takeover Act). The background is the **EU Takeover Directive**, finally adopted on 21 April 2004 thanks to the decisive influence of the rapporteur in the European Parliament, German Klaus-Heiner Lehne, after 30 years of political disputes. These included most recently the still-existing barriers to takeovers EU-wide in national law, particularly for lack of a neutrality requirement on the management of the target company, as well as voting-rights restrictions and limitations on transferability of shares (also termed absence of a level playing field). Here a compromise was reached that will also be the core of the impending amendments to the WpÜG.

The Takeover Directive provides for a neutrality requirement on management and for so-called breakthrough rules, whereby voting-rights restrictions and barriers to share transfers would have no effect in a takeover. Germany will however exercise the option not to take these rules over bindingly into the national WpÜG (the so-called opt-out); accordingly, for the present only the limited neutrality requirement in the WpÜG already in force will remain. However, the AGM of a listed company can by the majority required for a charter amendment decide to apply the EU rules to their company (so-called individual opt-in). As regards neutrality § 33 a WpÜG will then apply. However, the effects of such a decision on neutrality remain within limits. The major difference is that the general meeting cannot then decide defensive measures in advance (anticipatory resolutions), but only once the bid has been made known.

If however the opt-in resolution applies (also) to the breakthrough rules, there will be radical changes.

For then what will apply to the company will be § 33b WpÜG, hitherto unprecedented in German law. It blocks all share transfer restrictions in charters or consortium agreements for the takeover; the classic defensive instrument of transferability restriction is then no longer available. Similarly, voting-rights restrictions and voting trusts will be put out of action in the takeover; one-share-one-vote will then mandatorily apply. This does not of course affect preference shares with no vote.

The opt-in is supplemented by the reservation as to reciprocity (§ 33c WpÜG). This means the AGM can decide, for a maximum of 18 months, that § 33a and § 33b WpÜG will, notwithstanding the opt-in resolution, not apply where the bidder is not subject to corresponding rules. This is meant to allow companies to create a level playing field for neutrality and the breakthrough rules by themselves. In the EU's intentions, this system should let the capital market decide whether it likes issuers that open themselves to takeovers by resolving to opt in. There are accordingly in future to be "progressive" and "conservative" companies. Whether, though, a listed company ought to opt in depends on a multiplicity of questions in the individual case. Initial enquiries indicate that it is of particular importance whether the firm concerned is potentially more likely to be a bidder or itself a candidate for takeover. In the latter case the management is liable to see problems in an opt-in, since it would then be losing leeway for defensive measures. How far, on the other hand, the capital market may "reward" a company's openness to takeovers through an opt-in with higher quotations is something that still remains to be seen.

**Dr. Stefan Simon,**  
lawyer and tax consultant,  
Flick Gocke Schaumburg

## DSW calls on Biedenkopf Commission to take action

Investor association Deutsche Schutzvereinigung für Wertpapierbesitz (DSW) fears that the Codetermination Commission that has been sitting since early December will not achieve any radical reform of codetermination. The Commission, on which union and employer representatives sit, is supposed to reform codetermination law under the chairmanship of Kurt Biedenkopf. The danger that nothing worthwhile for the economy will result is great, says the shareholder association,

because trade-unionists are sitting at the same table as employee representatives. "It smells of agreement on the smallest common denominator." The DSW calls for smaller, more efficient Supervisory Boards with a maximum of twelve members. Additionally, in its view the unions' statutory right to delegate should be abolished: "The trade-union representatives on Supervisory Boards should be replaced by employee representatives coming directly from the workplace."

### BUHLMANN'S CORNER

#### Cooling-off for Schröder

That a politician, and still more an ex-Chancellor like Gerhard Schröder, should become a media consultant – that's something one can follow. And that the Swiss Ringier Group should offer better terms than the Germans is arguably because in the Alps they don't have to pay for the German Football League. But joking apart, that the politician should become adviser to a business he himself created is something obvious, if he created it with his own resources and on his own responsibility. For many observers, though, the question that quite naturally arises, but remains unanswered, is, did Chancellor Schröder bargain for his Supervisory Board post at the expense of the German people?

Those offering criticisms now are doing no more than support the general corporate-governance principle of the "cooling-off period". What this means is a phase of healthy distance between acting on behalf of shareholders, or in this case citizens, and deriving personal benefit therefrom. The German Corporate Governance Code (instigated by Gerhard Schröder) obviously does not look at the matter any too rigidly, if two former managing directors on the Supervisory Board counts as admissible (the "Lex ThyssenKrupp"). It is

(still) always usual to swap a still-warm executive seat for an oversight post on the Supervisory Board – with no checks at all, and preferably as Chair at the end of the table. Indeed, so few are the checks that even legal barriers are ignored, as was to happen in the case of Munich Re in 2004. Lack of ethics cannot be substituted by a law or an institution: corporate governance as a widely accepted lived order is what is called for.

How broad the spectrum is can be seen in these very December days. One member of the Corporate Governance Code Commission boasts of having spent 3 billion Euros without any oversight being exercised over the asset. VW AG last month published a Sustainability Report (its first), while statuesque Brazilian girls distracted attention from the politically damaged conduct of the business. It's just the opposite of what Porsche boss Wendelin Wiedeking (who in the "Handelsblatt" says VW "needs a vision") says: "... but experience teaches that political logic is often something different from business logic."



Hans-Martin Buhlmann is the founder of VIP Vereinigung Institutionelle Privatanleger e.V. ([www.vip-cg.com](http://www.vip-cg.com)), a proxy voting agency

## Code of honour for politicians

The Federal Government is considering bringing in a code of honour for ex top politicians. The trigger is Gerhard Schröder's plan to take up the chair of the Supervisory Board of Russian gas-pipeline firm NEGP. Justice Minister Brigitte Zypries is suggesting introducing the EU code for ex politicians in Germany. The code imposes a year's "cooling-off period" on retiring commissioners, in which they can take a new job only with special permission. Corporate-governance expert Professor Marcus Lutter has come out against a waiting period: "That sort of mechanism would not be very useful." Too long a time-out would mean that "the politicians would lose their core competence – their contacts." Were such a transitional period actually to be brought in, "it should not exceed one year."

## Electronic Commercial Register to start in 2007

Data in the Commercial, Co-operative Societies and Companies registers subject to mandatory publication, such as annual accounts and register entries, can as from 1 January 2007 be called up centrally online ([www.unternehmensregister.de](http://www.unternehmensregister.de)). The government's bill implements the EU Transparency and Company directives, as well as the decisions of the Government Commission on Corporate Governance.

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## PEOPLE

## Management and Supervisory Board changes in DAX30, MDAX and TEC30

**Martin Brudermüller** will as from 1 January be on the board of chemicals group **BASF**; from 1 April he will be taking over competence for the Asia Region with headquarters in Hong Kong from board member **Andreas Kreimeyer**. Kreimeyer will continue to be in charge of Functional Polymers and Performance Chemicals, and additionally take over the Coatings sector from board member **Klaus Peter Löbbe**. Löbbe is in future to concentrate solely on the North America and Mexico Region. Brudermüller previously headed the Functional Polymers division in Ludwigshafen. The appointment of **Eggert Voscherau**, Vice Chairman and Industrial Relations Director, was extended until the AGM in May 2008. Voscherau is also responsible for the Europe Region and for BASF's sites Ludwigshafen, Schwarzheide and Antwerp.



Martin Brudermüller

Dr. **Wolfgang Plischke**, currently head of the **Bayer** Pharmaceuticals Division, has been appointed to the Board of Management. Plischke will succeed Dr. **Udo Oels** (Innovation, Technology and the Environment, and the Asia Region), retiring after the AGM on 28 April 2006.



Dr. Wolfgang Plischke

The new Logistics head at **Deutsche Post** since 20 December is **John Allan He** will be taking over from Dr. Frank Appel the enlarged logistics business following acquisition of British logistics company Exel. Allan's board appointment is for three years. Appel assumes responsibility for the new Global Corporate Services division, as well as for Global Customer Solutions.



John Allan

**Hans-Peter Schmid** is on the Management Board of **Deutsche Postbank**, effective 29 November. He assumes responsibility for over-the-counter sales in Retail Banking. Lothar Rogg, previously in charge of the sector, is leaving the Postbank board to concentrate on the branch organization of the Deutsche Post. Schmid was most recently Deputy Chairman at Bonnfinanz AG, where he was responsible for sales.

Dr. **Michael Kemmer** has resigned from the board of **HVB Group** and as Chief Risk Officer and Member of the Management Committee of UniCredito. In connection with the takeover of the HVB Group by Italian bank UniCredito, HVB Supervisory Board members Volker Doppelfeld, Dr. Dr. Albrecht Schmidt and Professor Dr. Wilhelm Simson resigned their Supervisory Board posts on 27 November and Dr. Mathias Döpfner, Max Dietrich Kley, Dr. Diether Münich, Gerhard Randa and Dr. Hans-Jürgen Schinzler on 28 November. The new Supervisory Board members are **Alessandro Profumo** (CEO UniCredito), **Carlo Salvatore** (UniCredito Chairman), **Aldo Bulgarelli** (lawyer), **Ranieri de Marchis** (UniCredito CFO), **Paolo Fiorentino** (Head of Global Banking Services UniCredito), **Dario Frigerio** (Head of Private Banking and Asset Management UniCredito), **Roberto Nicastro** (Head of Retail UniCredito) and **Vittorio Ogliengo** (Head of Corporates/SMEs UniCredito).



Dr. Eckart John von Freyend

As from 1 July Dr. **Wolfgang Lechnitz** will be the new CEO of **IVG** Immobilien; one month earlier he becomes a board member. Lechnitz was till August CEO of real-estate company Viterra, sold by E.ON. He will succeed Dr. **Eckart John von Freyend**, moving to the Supervisory Board a year earlier than planned. Dr. Bernd Kottmann will additionally be responsible on the board for portfolio management, and will become deputy chairman on 1 July. Additionally, next July Dr. **Georg Reul** will come onto the board (funds business).

The Supervisory Board of machine and plant builder **IWKA** on 9 December revoked the appointment of Professor **Gunther Reinhart** as technology executive with effect at the year's end. The technology executive post is being eliminated. At latest by 1 May Dr. **Jürgen Koch** will become Chief Financial Controller; on 22 December he was appointed to the Executive Board. Koch was previously CFO at wood-processing company Pfeleiderer. **Dieter Schäfer**, currently responsible for controlling, will then take on responsibility for the packing-technology sector.



Jürgen Gießmann

Deputy CEO of technology company **Jenoptik**, **Jürgen Gießmann**, left the board on 1 December. He is to focus on his role as chairman of the board of directors of M+W Zander Holding AG; Jenoptik has sold all its holdings in M+W Zander (72.9 %) to private-equity investor Springwater Capital. Gießmann's responsibilities on the Jenoptik executive board are being assumed by remaining board members Alexander von Witzleben (chair) and Norbert Thiel.

Professor Dr. **G. Konrad Schmidt** has since 23 December been a member of the Supervisory Board of **mobilcom AG**. Schmidt is a partner in the law firm Weil, Gotshal & Manges LLP and replaces **David Bonderman**, who left the Supervisory Board a few days ago. Bonderman is a partner at Texas Pacific Group, which holds 18 % of the mobile phone company.



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Dr. **Rainer Martens** becomes responsible for engineering and production on the board of **MTU** Aero Engines Holding from 1 July 2006 for a period of three years. Hitherto in charge of the Bremen site of aircraft manufacturer Airbus, Martens will replace Dr. Michael Süß, whose contract is expiring. The Supervisory Board has also extended the contract of CFO Reiner Winkler until 2011.

Dr. **Bernd Drouven** will from 1 January be CFO of **Norddeutsche Affinerie**. He has been a director (Prokurist) at the copper producer since January 2004, responsible for strategic planning within the NA Group.

**Puma** Supervisory Board members Arnon Milchan and David Matalon, representatives of former major shareholder Regency, are resigning effective 9 January 2006. Dr. **Rainer Kutzner** is to join the oversight body of the sports-goods manufacturer as representative of major shareholder Mayfair; Kutzner is Mayfair's CEO. Asset management company Mayfair Vermögensverwaltungsgesellschaft mbH, through which Günter and Daniela Herz hold their participation, had raised its Puma voting share to 25.27 % on 6 September. The Herz siblings also plan to fill the second vacant Supervisory Board post.



Dr. Rainer Kutzner

**Salzgitter** is enlarging the board by two members, to six. From 1 January **Hans Fischer** is in charge of the Steel Division and **Heinz Groschke** of the Trading Division at the steel and pipe group. To date Executive Board chairman Wolfgang Leese had also led the Steel Division. Groschke is taking over from Wolfgang Eging, who is also responsible for the Tubes Division. Fischer and Groschke have since April 2005 been executive managers of the group.



Thomas Kölbl

From 1 January the board of generics supplier **Stada** has three new members: **Alexander Oehmichen** (Legal, Human Resources and Corporate Development), **Christof Schumann** (Research, Development and Quality Assurance) and **Hans Stols** (Procurement, Production and Logistics). Leaving is Klaus-Peter Reich (Research, Development and Quality Assurance); his contract ran till the end of 2006. The Executive Board is thus increased from three members to five; the three new directors are all in-house. The company justifies the measure by the increasing size of the company and the abundance of duties and responsibilities.

**Thomas Kölbl**, currently deputy executive board member of sugar group **Südzucker**, becomes an ordinary member as from 1 January 2006. Kölbl will succeed CFO Dr. Christoph Kirsch.

**Burkhard Schuchmann** resigned as CEO of transport technology company **Vossloh** on 31 December. CFO Werner Andree will provisionally head the firm jointly with Human Resources director Milagros Caina-Lindemann. Dr. Christoph Kirsch has been appointed to the Supervisory Board, succeeding Kajo Neukirchen. Kirsch is leaving the Südzucker executive board at the July 2006 AGM on age grounds.

Board of Directors member of hardware and software producer **Wincor Nixdorf**, **Philip Mantle**, died on 22 December. His responsibility - global banking business - will be provisionally exercised by President and CEO Karl-Heinz Stiller. Mantle had been appointed to the board on 1 October.



## CAMPUS



Foto: Markus Goetzke; Commerzbank AG

## Successful corporate-governance model

Germany has developed a corporate-governance model of its own that is successful, ready for the future and internationally competitive. This is the finding of an analysis by Sigurt Vitols, Senior Research Fellow at the Wissenschaftszentrum Berlin. The returns on equity earned with the German model of so-called negotiated shareholder value are in his view internationally competitive. The implementation of measures to enhance company value, in the German model not done single-handedly by an all-powerful CEO but negotiated among top managers, major shareholders and employee representatives, was able to run more smoothly than in “Anglo-Saxon” firms. As a final argument, Vitols adduces the less unrestrained debt accumulation in German than in US companies. On Vitols’s view the “power of the banks” in Germany was not, as in the USA, being replaced by the “power of the funds”, so that Germany was not converging on the Anglo-Saxon model; the proportion of share funds in total listed capital was stagnant at 13 %. Vitols points to studies showing that the presence of a major shareholder, in large companies increasingly insurance companies, can even be favourable for corporate governance: long-term-oriented shareholders tended to talk to management instead of selling the shares. That was also why it was not surprising that it was in America that management remuneration was rising most steeply. A high proportion of share-price-oriented remuneration, moreover, created an incentive not only to act in the interests of shareholders, but also to deceive shareholders.

## Dividend-based bonuses losing importance

DAX30 companies are increasingly abolishing dividend-oriented remuneration of Supervisory Board members. The number of companies basing their bonuses on an indicator has risen to over a third. Additionally, remuneration is developing into a balanced mix of fixed and variable components. This is the finding of a study by management consulting company Towers Perrin. On average the remuneration of a Supervisory Board chair in a DAX30 company in 2005 has been around €198,900, 11% up from the previous year. The range from lowest to highest is once again wide: Adidas Supervisory Board chair Henri Filho gets €42,000 and Albrecht Weste (Henkel) €360,800. The highest rise in total remuneration went to Klaus Zumwinkel, Supervisory Board chair at Deutsche Telekom (up 69 % to €166,900). The remuneration of the HVB Group’s Supervisory Board chair shrank by contrast by 21%, to €130,000, Schering’s by 15 % to €311,300, Infineon’s by **4 % to €58,820** and Metro’s by **2 % to €182,370**. A deputy chair receives on average €136,300 (up 13 %). The total remuneration of ordinary members rose by 7 % to around €68,000.

➔ [www.towersperrin.de](http://www.towersperrin.de)

## ANALYSIS

## The confusions of the EU endorsement process

The first balance-sheet date on which almost all European listed companies are to render accounts uniformly in accordance with the world-recognized International Financial Reporting Standards (IFRS) is approaching by leaps and bounds. At least, that was the intent of the EU's so-called IAS directive of 2002. But it's not as simple as all that. For on the one hand, when the directive was adopted many of today's IFRS accounting standards had not yet been developed, and on the other, accounting is in many countries, for instance Germany, regulated in commercial or company law, and the IFRS have first to be brought into these. The path to this leads through a multi-stage recognition procedure (the so-called Endorsement Process) and usually, depending on the complexity of the regulations, takes up to 10 months. But how far this procedure proves practicable and how far balance-sheet compilers, Supervisory Board members, shareholders and analysts can understand and follow it remains to be seen. The fact is, at any rate, that even without the intermediate stage of endorsement, confusing however legally necessary, the IFRS are already complicated enough, and barely comprehensible to those who have to use and apply them.

For users in Europe who now have to do their accounting according to the IFRS a number of questions present themselves. At least three of the central ones can be given some clarification, as follows.

◆ Can a company apply a new standard (IFRS) that has not yet been through the endorsement process and therefore not yet incorporated into law? All capital-market-oriented companies within the EU, and therefore also German ones, should on 31 December 2005 apply (only) the „EU-endorsed-Standards“, if they wish to draw up a group report in line with the provisions of commercial law. Applying all the IFRS might mean, given the major consequences for the company, that the auditor would have to give a restricted attestation.

The IFRIC (International Financial Reporting Interpretations Committee) regularly publishes interpreta-

tions of existing IFRS, so as to eliminate lacunae in application or interpretation.

◆ Is application of the interpretations by companies similarly dependent on the status of the relevant endorsement process? IFRIC should be taken into account directly by companies in accordance with the regulations in the relevant interpretation, unless associated with amendments to an IFRS standard itself, which would in turn have to go through the endorsement process.

◆ What effects does the time-lag in applying the IFRS brought by the endorsement process have for European companies simultaneously listed on a US exchange? The US stock-exchange regulator SEC accepts no restricted attestations by auditors. There follow two alternatives for the companies:

◆ Present and publish a group report according to EU-endorsed standards, with correspondingly unrestricted auditor's attestation. To obtain various SEC facilitations, the companies would additionally have to submit conversion accounts for results and equity capital from EU-endorsed standards to complete IFRS.

◆ Present a complete IFRS group report, to be drawn up additionally to the commercial-law report and separately given unrestricted attestation by the auditor.



Armin Slotta, auditor, CPA, is a partner at PricewaterhouseCoopers

## Modest efficiency gains from Sarbanes-Oxley

The German system of corporate governance is on a par with the American one, is the finding of a survey of the 18 companies listed on US exchanges. Risk management and risk reporting are on the view of more than 80 % of the companies surveyed adequate and sufficiently concrete in the German system. The costs arising from the Sarbanes-Oxley Act are in the opinion of those surveyed in no proportion to the benefit. Only a minority of the 18 companies sees any improvement to the running of the internal audit system from compliance with the Sarbanes-Oxley Act. The survey was done in summer 2005 by Georg Stadtmann and Markus F. Wißmann of WHU Koblenz.

→ Study: [www.ssrn.com/abstract=858884](http://www.ssrn.com/abstract=858884)

## Hesitant implementation of new compliance requirements

Only a bare 5 % of companies have implemented all the regulatory compliance requirements (Sarbanes-Oxley or the 8th EU company-law directive). 37 % of companies are in the process of implementation and a further 11% are planning for it. That means half the companies surveyed by software producer Serena, the Deutsches Aktieninstitut DAI and market-research institute IT-Research in summer 2005 do not even have a compliance project in the planning stage. 124 managers responded to the survey. By the end of 2005, however, some 23% of the companies want to have completed one. This year a further 48 % are hoping to join them. Thus, 29% of managers surveyed are planning to have their corporate-governance project completed only in 2007 or later. Perceptible or even considerable enhancement of competitiveness from the effects of corporate governance and compliance are expected by 35 % of those surveyed; around 47 % of them rate the effects of the rules as neutral, and nearly 18 % expect strong or sizeable impairment.

→ [www.serena.com/de](http://www.serena.com/de)



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## CAPITAL NEWS

## Buying & Selling in December

### Changes in holdings, capital measures and directors' dealings in DAX30, MDAX and TEC30

**Evotec (ISIN DE0005664809):** The investment company 3i has reduced its holding in Evotec (drugs R&D) from 7.2 to 4.1%. The holding is regarded by 3i as a strategic investment.

**Fresenius (ISIN DE0005785638):** The Allianz share of the registered capital of health group Fresenius has been diluted in the course of the capital increase. The insurer's voting share remains, however, at between 5 and 10 %.

**Munich Re (ISIN DE0008430026):** HypoVereinsbank has reduced its holding in the Münchener Rückversicherungsgesellschaft from 79 to around 4.9 %. The 4.9% holding is seen by HVB basically as strategic underpinning for its cooperation with Munich Re and Ergo.

**SGL Carbon (ISIN DE0007235301):** The Fidelity Management & Research Company raised its voting share in the carbon specialist to 5.1% on 15 December.

**ThyssenKrupp (ISIN DE0007500001):** The Alfred Krupp von Bohlen und Halbach Foundation took up around 15.3 million of the steel group's own shares on 21 November. The holding corresponds to nearly 3.0% of ThyssenKrupp's registered capital. The steel group wishes to add the proceeds of €267.5 million to equity capital.

ThyssenKrupp is raising the dividend for the business year 2004-5 by 10 cents to €0.70 and distributing a special dividend at a rate of 10 cents.



**TUI (ISIN DE000TUAG000):** The Spanish Caja de Ahorros del Mediterráneo has since 1 December held its voting share of 5% no longer directly, but through Inversiones Cotizadas del Mediterráneo.

**Wincor Nixdorf (ISIN DE000A0CAYB2):** On 16 November the capital share of Lazard Asset Management went down to a bare 4%. That means the banking IT producer is losing one of its four financial investors with holdings of over 5% each.

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## Capital measures in **December**

**BB Biotech (CH 0001441580):** The holding company for biotech firms has floated a convertible loan of up to 200 million Swiss Francs with a period of 3 years and a compulsory conversion component. The coupon is between 3.25 and 3.5 %. BB Biotech shareholders are being given a preferential right to the bonds. The conversion price is between 15 and 20% above the volume-weighted average rate for the share on 16 December 2005 on the SWX Swiss Exchange. The conversion price will be reduced by dividend payments due during its term. At the end of the 3-year period there will be a compulsory conversion of up to 50 % of the originally issued convertible bonds.

**QSC (ISIN DE0005137004):** The broadband communications service provider has increased its capital, with no pre-emptive rights, by €5.5 million at a price of €3.67 per share. The shares were placed with institutional investors. The extra funds of €20.2 million are to be used to expand the infrastructure. Dispersed holdings rise from 43.2 to 46% of the registered

capital. The biggest shareholders are, on the firm's indications, Supervisory Board member Gerd Eickers (12.7 %), board chairman Dr. Bernd Schlobohm (12.65 %), Baker Capital Group (30.8 %) and previous celox shareholders (0.7 %).

**Schering (ISIN DE0007172009):** The pharma group will raise the dividend for the business year 2005 by 20% to €1.20 per share.

**TUI (ISIN DE000TUAG000):** The tourism and shipping group has floated three loans for a total volume of €1.3 billion. The fixed-interest bond for €450 million has a period of 7 years and a coupon of 5.125%. The five-year bond for €550 million has a variable interest at 155 basis points above the three-month Euribor. For the first time TUI is additionally floating a hybrid bond issue for a volume of €300 million with an unlimited term and an interest rate of 8.625%. TUI wants to use the capital to finance the purchase of Canadian-British shipowners CP Ships.

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# Directors' Dealings

**adidas (ISIN DE0005003404):** Supervisory Board member Christian Tourres sold a total of 60,000 units in December, for a total of €9.4 million.

**Combots (ISIN DE0005296503):** In connection with the share-option programme, executive Matthias Hornberger has bought 20,000 units for a total of €726,000.

**DaimlerChrysler (ISIN DE0007100000):** Manager Steven A. Torok bought 20,000 shares on 12 December by exercising options to a value of €688,000, and sold them one day later for €858,000.

**Douglas (ISIN DE0006099005):** The Dr. August Oetker Finanzierungs- und Beteiligungsgesellschaft mbH on 8 December sold 250,000 puts, to a total volume of €250,000. The company is controlled by Supervisory Board members Dr. August Oetker and Dr. Ernst F. Schröder.

**ErSol Solar (ISIN DE0006627532):** On 6 December Jürgen Pressl (executive) took up 8,000 options, to a total value of €10,320.

**Funkwerk (ISIN DE0005753149):** Executive Lutz Pfister on 5 December bought 2,000 shares under the share option programme for €33,680; he sold them seven days later for €51,580.

**Hanover Re (ISIN DE0008402215):** Andre Arrago (executive) on 16 December sold 2,700 shares at a rate of €30.00, for a total volume of €81,000.

**HeidelbergCement (ISIN DE0006047004):** VEM Vermögensverwaltung GmbH bought 2.8 million units at €75.80 for a total value of a good €212.2 million on 14 December. VEM belongs to the Merckle Group. The pharma entrepreneur Adolf Merckle had taken over the majority in the building-supplies firm in summer through his holding company Spohn Cement.

**Henkel (ISIN DE0006048432):** Executive Hans Van Bylen on 6 December sold 1,260 preference shares at a rate of €84.38, for a total volume of €106,319.

Christopf Henkel, member of the shareholder committee, on 7 December sold 65,000 ordinary shares at €76.93 each, for a total value of 5 million Euros; in late November he had sold a total of 140,000 ordinary shares on the exchange, for a total volume of a good €10.1 million. In February and June Henkel had sold altogether 120,000 ordinary shares for a total of nearly €8.2 million.

Supervisory Board chair Albrecht Woeste has over the year sold a total of 57,000 ordinary shares to a value of €4.2 million, and bought 52,628 preference shares to a value of €4.2 million.

**Qiagen (ISIN NL0000240000):** Detlev Riesner (Supervisory Board member) on 3 December sold 60,000 share options for a total of €502,560.

**QSC (ISIN DE0005137004):** Executive Markus Metyas on 5 and 6 December sold 59,116 shares from share option plan 2000 A for a total of €227,123.

**Leoni (ISIN DE0005408884):** On 12 December Supervisory Board member Eduard Schmidmer sold 11,000 shares at €27.02 each, for a total of €297,234.

**MorphoSys (ISIN DE0006632003):** Simon Moroney Vermögensverwaltung GmbH, controlled by MorphoSys CEO Dr. Simon E. Moroney, sold Moroney 113,461 shares at €39.57 each for a total of nearly €4.5 million on 15 December.

**MPC (ISIN DE0005187603):** On 20 December CEO Axel Schroeder bought 5,000 shares at €10.09 each, for a total of €50,470.

**Norddeutsche Affinerie (ISIN DE0006766504):**

Supervisory Board member Jürgen Haußelt on 29 November sold 1,000 shares at €19.71 each, for a total of €19,710. One day earlier he had sold 1,000 units on the exchange, at a price of €19.75, for a total of €19,750.

Executive Michael Landau on 21 December sold 14,000 shares at €20.70 each, for a total of €289,800.

**Premiere (ISIN DE000PREM111):** On 21 December Supervisory Board member Stefan Jentzsch bought 20,000 units at a rate of €14.48, for a total of €289,600.

**Rofin-Sinar Technologies (US 7750431022):**

Executive Günther Braun on 29 November in three transactions sold a total of 30,000 shares from the stock-options programme, for a total of 1.3 million dollars.

**SAP (ISIN DE0007164600):** On 12 December executive Werner Brandt bought 1,000 shares at a price of €154.80 each, for a total of €154,800, exercised 20,000 share options under the SAP SOP programme at an option price of €90.37 each (total option price €1.8 million) and sold 20,000 shares at a rate of €155.03, for a total volume of 3.1 million Euros.

**Siemens (ISIN DE0007236101):** Executive Jürgen Radomski on 7 December sold 11,250 shares at €66.47 each, for a total of €747,787, from the Siemens Stock Options Plan 1999.

Supervisory Board member Klaus Wigand on 16 December sold 200 shares at €70.44 each, for a total of €14,088.

**Singulus (ISIN DE0007238909):** The Family Roland Lacher Vermögensverwaltung GmbH in December sold a total of 400,000 units, for a total volume of 5.7 million.

Stefan A. Baustert bought 600 shares for a total of €8,412 on 9 December.

**Stada (ISIN DE0007251803):** Eckhard Brüggemann, Supervisory Board member, on 20 December bought 1,000 shares at €28.38 each, for a total of €28,380. Tourres hat im Dezember insgesamt 60.000

## BUSINESS DIARY

## January/ early February

**DAX30****SAP (ISIN DE0007164600)**

25.01. Provisional annual accounts,  
Fourth quarter results, Roadshow

**Siemens (ISIN DE0007236101)**

04.01. First quarter results  
24.01. Phone conference, First quarter results  
26.01. AGM

**MDAX****Douglas (ISIN DE0006099005)**

18.01. Balance-sheet press conference  
19.01. Analyst conference

**Heidelberger Druckmaschinen (ISIN DE0007314007)**

02.02. Third quarter results 2005-6

**Norddeutsche Affinerie (ISIN DE0006766504)**

31.01. First quarter results 2005-6,  
Balance-sheet press conference, Analyst conference

**Südzucker (ISIN DE0007297004)**

13.01. Third quarter results

**TECDAX30****AT & S (ISIN AT0000969985)**

26.01. Third quarter results 2005-6, Phone conference

**BB Biotech (ISIN CH0001441580)**

26.01. Provisional annual report 2005

**IDS Scheer (ISIN DE0006257009)**

26.01. Provisional results 2005

**Rofin-Sinar (ISIN US7750431022)**

02.02. First quarter results

➔ **AGM dates: [www.vip-cg.com](http://www.vip-cg.com)**

**INSIGHT Shareholder ID: DAX 30** Holdings in per cent

| Companies                   | Own-shares | Manag-ment | Notifiable shareholders  | Disclosing capital investment companies |         |                            |                                    |      |
|-----------------------------|------------|------------|--|---|---------|----------------------------|------------------------------------|------|
|                             |            |            |  | Total                                   | Change* | Biggest investment company |                                    |      |
| adidas-Salomon              | 0.00       | 5.00       | Barclays PLC   | 5.27                                    | 19.64   | -0.22                      | DWS                                | 1.64 |
| Allianz                     | 1.44       | 0.00       | Münchener Rück<br>Deutsche Bank  | 4.90<br>2.50                            | 18.71   | +0.38                      | Cominvest                          | 1.48 |
| ALTANA                      | 3.42       | 0.00       | Susanne Klatten  | 50.10                                   | 13.56   | -0.20                      | Fidelity Investments<br>Luxembourg | 1.45 |
| BASF                        | 1.80       | 0.00       | Allianz  | 2.70                                    | 24.93   | +1.12                      | Cominvest                          | 3.97 |
| Bayer                       | 1.44       | 0.00       | Capital Group<br>Companies Inc.<br>Allianz   | 5.04<br>4.76                            | 20.20   | +0.36                      | DWS                                | 2.06 |
| Bayerische<br>Motoren Werke | 1.34       | 0.00       | Fam. Quandt  | 46.60                                   | 11.58   | -0.12                      | DIT                                | 1.40 |
| Commerzbank                 | 0.28       | 0.00       | Assicurazioni Generali<br>Münchener Rück<br>MEDIOBANCA<br>BSCH                                   | 9.10<br>4.99<br>0.60<br>0.60            | 14.07   | +0.28                      | MEAG                               | 3.43 |
| Continental                 | 0.00       | 0.00       | AXA S.A.<br>Barclays PLC<br>Capital Group<br>Companies Inc.                                      | 10.05<br>5.49<br>5.10                   | 24.60   | -0.11                      | Harbor Fund                        | 2.56 |
| DaimlerChrysler             | 0.00       | 0.00       | Kuwait<br>Deutsche Bank<br>Emirat Dubai  | 7.20<br>4.40<br>2.20                    | 11.97   | +0.12                      | Deka Investment                    | 1.08 |
| Deutsche Bank               | 6.60       | 0.00       |  |   | 16.04   | +0.14                      | Deka Investment                    | 1.63 |
| Deutsche Börse              | 1.07       | 0.00       | TCI Fund Management<br>Atticus Capital<br>Capital Group<br>Companies Inc.<br>Fidelity Management | 7.89<br>5.01<br>4.91<br>4.84            | 23.28   | +0.08                      | Fidelity USA                       | 2.20 |
| Deutsche Lufthansa          | 0.00       | 0.00       | Allianz  | 4.44                                    | 29.66   | +0.43                      | Cominvest                          | 6.03 |
| Deutsche Post               | 0.00       | 0.00       | KfW  | 41.70                                   | 11.12   | +0.37                      | DWS                                | 2.41 |
| Deutsche Telekom            | 0.06       | 0.00       | KfW<br>Bundesanstalt für Post<br>und Telekommunikation   | 22.10<br>15.44                          | 13.09   | +0.07                      | DWS                                | 1.08 |
| E.ON                        | 4.77       | 0.00       | Freistaat Bayern<br>Allianz  | 4.86<br>3.60                            | 19.40   | +0.73                      | Deka Investment                    | 1.02 |



**INSIGHT Shareholder ID: DAX 30** Holdings in per cent

| Companies                                | Own-shares | Manag-ment | Notifiable shareholders   | Disclosing capital investment companies        |         |                            |                                    |      |
|--|------------|------------|---|--|---------|----------------------------|------------------------------------|------|
|  |            |            |   | Total  | Change* | Biggest investment company |                                    |      |
| Fresenius Medical Care                   | 0.00       | 0.00       | Fresenius   | 50.76  | 12.32   | -0.12                      | Jupiter (GB)                       | 1.17 |
| Henkel KGaA                              | 4.13       | 0.00       | Family Henkel<br>Jahr Vermögensver-<br>waltung GmbH & Co. KG<br>Family Schwarzkopf  | 51.48<br>6.11<br>3.89                          | 11.95   | +0.16                      | Deka Investment                    | 1.19 |
| Hypo Real Estate Holding                 | 0.00       | 0.00       | Barclays Bank plc<br>Capital Group<br>Companies Inc.<br>Egerton Capital Limited<br>Partnership<br>Morgan Stanley & Co.<br>International Limited<br>Brandes Investment<br>Partners (Brandes). LLC<br>Bayer. Landesstiftung | 7.97<br>5.20<br>4.97<br>4.89<br>3.78<br>100.00 | 20.76   | +0.42                      | Cominvest                          | 1.61 |
| Infineon Technologies                    | 0.00       | 0.00       | Siemens<br>Capital Group<br>International Inc.  | 18.23<br>10.00                                 | 11.62   | +0.52                      | Deka Investment                    | 0.84 |
| Linde                                    | 0.00       | 0.00       | Allianz<br>Allianz Deutschland<br>Commerzbank<br>Deutsche Bank  | 12.30<br>11.34<br>10.04<br>10.00               | 20.44   | +1.53                      | Artisan                            | 2.23 |
| MAN                                      | 0.00       | 0.00       | AXA S.A.<br>Deutsche Bank<br>Allianz  | 10.09<br>4.99<br>0.82                          | 27.49   | +1.39                      | DWS                                | 5.84 |
| METRO                                    | 0.00       | 0.00       | Otto Beisheim Vermögens-<br>verwaltung und Fam.<br>Schmidt-Ruthenbeck<br>Franz Haniel & Cie GmbH  | 36.58<br>19.00                                 | 11.62   | +0.83                      | Fidelity Investments<br>Luxembourg | 0.90 |
| Münchener Rückversicherungs-Gesellschaft | 0.60       | 0.00       | Allianz<br>UniCredito Italiano S.p.A.   | 9.80<br>4.89                                   | 16.02   | +0.19                      | Deka Investment                    | 1.43 |
| RWE                                      | 0.00       | 0.00       | Städte und Gemeinden<br>RW Energie-Beteiligungs-<br>gesellschaft mbH<br>Münchener Rückversi-<br>cherungs-Gesellschaft<br>Allianz<br>Belegschaft   | 21.00<br>10.00<br>4.60<br>4.00<br>2.00         | 13.78   | -0.18                      | DIT                                | 1.24 |

**INSIGHT Shareholder ID: DAX 30** Holdings in per cent

| Companies    | Own-shares | Manag-ment | Notifiable shareholders   | Disclosing capital investment companies              |         |                            |                        |      |
|--------------|------------|------------|---|--|---------|----------------------------|------------------------|------|
|              |            |            |   | Total  | Change* | Biggest investment company |                        |      |
| SAP          | 2.12       | 0.00       | Hasso Plattner GmbH & Co. Beteiligungs-KG<br>Dietmar Hopp und Dietmar Hopp Stiftung<br>Klaus Tschira Stiftung<br>Dr. h.c. Tschira Beteiligungs-GmbH<br>Hasso Plattner Förderstiftung gGmbH<br>Golfplatz St. Leon-Rot & Co. Beteiligungs-KG<br>Dr. Klaus Tschira | 9.90<br>8.90<br>5.10<br>5.00<br>1.70<br>1.50<br>0.20 | 12.41   | +0.69                      | OppenheimerFunds. Inc. | 1.16 |
| Schering     | 2.10       | 0.00       | Allianz<br>Allianz Deutschland<br>Brandes Investment Partners (Brandes). LLC  | 12.50<br>10.85<br>5.00                               | 14.31   | +0.49                      | Union Privatfonds      | 1.22 |
| Siemens      | 0.00       | 0.00       | Siemens-Vermögensverwaltung GmbH<br>Board & Supervisory Board   | 5.50<br>0.12   | 16.58   | -0.08                      | Deka Investment        | 1.53 |
| ThyssenKrupp | 0.00       | 0.00       | Alfried Krupp von Bohlen und Halbach-Stiftung   | 23.58  | 12.32   | +0.63                      | Deka Investment        | 1.42 |
| TUI          | 0.00       | 0.00       | Family Riu<br>Inversiones Cotizadas del Mediterráneo. S. L.   | 5.10<br>5.00   | 18.96   | +1.52                      | Deka Investment        | 1.77 |
| Volkswagen   | 12.97      | 0.00       | Dr. Ing. h.c. F. Porsche<br>Land Niedersachsen<br>Brandes Investment Partners (Brandes). LLC<br>Capital Group Comp. Inc.  | 18.53<br>18.20<br>8.58<br>3.50                       | 7.49    | +0.26                      | Deka Investment        | 1.37 |

**\* Change from previous month in percentage points**

Source: AfU Investor Research GmbH (n.paulsen@afu.de) The AfU company information agency lists over 18.000 funds and investment companies making disclosures. The position shown is taken from recently published annual and quarterly reports.

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**INSIGHT Shareholder ID: MDAX** Holdings in per cent

| Companies                           | Own-shares | Manag-ment | Notifiable shareholders   | Disclosing capital investment companies  |         |                            |                                    |      |
|-------------------------------------|------------|------------|---|--|---------|----------------------------|------------------------------------|------|
|                                     |            |            |   | Total  | Change* | Biggest investment company |                                    |      |
| Aareal Bank                         | 0.00       | 0.00       | Schweiz. Rentenanstalt<br>Bayerische Beamten-LV<br>Versorgungsanstalt des<br>Bundes und der Länder<br>Bankhaus Lampe KG<br>Deutscher Ring<br>Beteiligungs-Holding<br>Hermes Focus Asset<br>Management Europe<br>Capital Group Companies<br>Capital Research and<br>Management Co., LA<br>Fidelity International<br>SchmidtBank GmbH &<br>Co. KG aA<br>Allianz<br>Condor LV-AG | 9.62<br>9.62<br>7.20<br>6.54<br>5.66<br>5.01<br>4.94<br>4.28<br>3.89<br>3.09<br>2.95<br>1.46 | 12.69   | -0.33                      | American Funds. Inc.               | 2.08 |
| AMB Generali Holding                | 0.00       | 0.00       | Assicurazioni Generali  | 70.88  | 5.57    | +0.04                      | MEAG                               | 2.31 |
| AWD HOLDING                         | 0.00       | 0.00       | Family Maschmeyer<br><br>DWS Investment GmbH<br>Fidelity International Lim.   | 31.09<br><br>5.30<br>4.68  | 22.31   | +3.30                      | Fidelity Investments<br>Luxembourg | 4.52 |
| Bayerische Hypo-<br>und Vereinsbank | 0.00       | 0.00       | UniCredito Italiano   | 93.81  | 10.15   | +0.32                      | American Funds. Inc.               | 2.18 |
| Beiersdorf                          | 9.99       | 0.00       | Tchibo Holding<br>HGV Hamburger Ges. für<br>Vermögens- und Beteili-<br>gungsverwaltung mbH<br>Allianz   | 50.46<br>10.00<br>7.30   | 2.00    | -0.03                      | Cominvest                          | 0.44 |
| Bilfinger Berger                    | 0.00       | 0.00       | Fidelity Management &<br>Research Company<br>Fidelity International Lim.<br>Commerzbank<br>Morgan Stanley. London<br>Allianz  | 5.18<br>4.91<br>4.46<br>1.52<br>0.05   | 25.76   | +1.25                      | Deka Investment                    | 3.58 |
| Celesio                             | 0.00       | 0.00       | Franz Haniel & Cie. GmbH  | 58.40  | 13.51   | -0.89                      | Pioneer Lux                        | 1.43 |
| Degussa                             | 0.00       | 0.00       | RAG<br>EON  | 50.10<br>42.80   | 0.81    | 0.00                       | Cominvest                          | 0.20 |
| DEPFA BANK plc                      | 0.00       | 0.00       | Alliance Capital<br>Management Corpo.<br>Capital Group Comp. Inc.   | 11.30<br>7.13  | 22.61   | -0.59                      | American Funds. Inc.               | 4.56 |

**INSIGHT Shareholder ID: MDAX** Holdings in per cent

| Companies                 | Own-shares | Manag-ment | Notifiable shareholders  | Disclosing capital investment companies               |         |                            |                        |      |
|---------------------------|------------|------------|--|---|---------|----------------------------|------------------------|------|
|                           |            |            |  | Total   | Change* | Biggest investment company |                        |      |
| Deutsche Euroshop         | 0.00       | 0.00       | Family Otto<br>Alexander Otto  | 21.00<br>12.27  | 3.72    | +0.74                      | DFA Investment (USA)   | 0.98 |
| DOUGLAS HOLDING           | 0.90       | 0.00       | Dr. August Oetker Finanz- und Beteiligungs GmbH<br>HEJANA Beteiligungen<br>ORBIS HOLDINGS Limited<br>Württembergische LV<br>Commerzbank<br>Dr. Jörn Kreke<br>Claus Mingers | 12.23<br>5.40<br>5.04<br>4.97<br>4.95<br>1.10<br>0.18 | 18.73   | -0.51                      | Union Privatfonds      | 3.69 |
| EADS N.V.                 | 0.00       | 0.00       | SOGEADE<br>DaimlerChrysler<br>SEPI   | 30.20<br>30.20<br>5.52                                | 3.48    | -0.18                      | Fidelity USA           | 0.72 |
| Fielmann                  | 0.00       | 0.00       | Günther Fielmann<br>Fielmann Familienstiftung<br>Fielmann INTER-OPTIK GmbH & Co. KG<br>Marc Fielmann   | 35.12<br>15.07<br>11.41<br>7.73                       | 11.42   | +0.05                      | Fidelity USA           | 1.60 |
| Fraport                   | 0.14       | 0.00       | Land Hessen<br>Stadtwerke Frankfurt Holding GmbH<br>Deutsche Lufthansa   | 31.90<br>20.40<br>5.01                                | 5.26    | +0.12                      | Tweedy. Browne         | 0.85 |
| Fresenius                 | 0.00       | 0.00       | Else Kröner-Fresenius Stift.<br>Allianz Deutschland<br>WestLB  | 66.20<br>9.73<br>5.00                                 | 22.66   | +0.12                      | Union Privatfonds      | 2.18 |
| GEA Group                 | 3.26       | 0.00       | Dr. Otto Happel<br>Allianz<br>Kuwait Investment Office<br>Capital Group Inter. Inc.  | 20.70<br>10.08<br>7.86<br>4.99                        | 12.49   | -0.27                      | Franklin Templeton USA | 2.21 |
| Hannover Rückversicherung | 0.00       | 0.00       | Talanx   | 51.20   | 15.60   | +0.15                      | Union Privatfonds      | 1.75 |
| HeidelbergCement          | 0.05       |            | Spohn Cement GmbH<br>SCHWENK Beteiligungen GmbH & Co. KG<br>VEM Vermögensverwaltung GmbH<br>Allianz<br>AXA S.A.  | 78.90<br>7.50<br>5.14<br>4.60<br>0.42                 | 4.32    | +0.03                      | CMI                    | 0.35 |

**INSIGHT Shareholder ID: MDAX** Holdings in per cent

| Companies                   | Own-shares | Manag-ment | Notifiable shareholders   | Disclosing capital investment companies |         |                            |                                  |      |
|-----------------------------|------------|------------|---|---|---------|----------------------------|----------------------------------|------|
|                             |            |            |   | Total                                   | Change* | Biggest investment company |                                  |      |
| Heidelberger Druckmaschinen | 0.00       | 0.00       | RWE   | 15.10                                   | 17.81   | +2.56                      | Fidelity Investments Luxem bourg | 5.84 |
|                             |            |            | Allianz   | 13.40                                   |         |                            |                                  |      |
|                             |            |            | Brandes Investment Partners (Brandes). LLC                          | 10.11                                   |         |                            |                                  |      |
|                             |            |            | Fidelity Inter. Limited   | 6.45                                    |         |                            |                                  |      |
|                             |            |            | Allianz Deutschland   | 6.26                                    |         |                            |                                  |      |
|                             |            |            | Münchener Rückvers.-Gesellschaft                                    | 6.10                                    |         |                            |                                  |      |
|                             |            |            | BNP   | 0.60                                    |         |                            |                                  |      |
| HOCHTIEF                    | 9.87       | 0.00       | Custodia Holding  | 10.64                                   | 18.60   | +2.01                      | Schroder Lux                     | 2.80 |
|                             |            |            | RWE   | 7.06                                    |         |                            |                                  |      |
|                             |            |            | Schroder Plc  | 5.00                                    |         |                            |                                  |      |
| HUGO BOSS                   | 0.00       | 0.00       | Valentino Fashion Group. SpA. Mailand                               | 78.76                                   | 21.24   | -1.20                      | Union Privatfonds                | 4.25 |
| IKB Deutsche Industriebank  | 0.00       | 0.00       | KfW   | 37.80                                   | 6.97    | +0.31                      | Gerling Inv.                     | 1.00 |
|                             |            |            | Stiftung zur Förderung der Forschung für die gewerbliche Wirtschaft | 11.70                                   |         |                            |                                  |      |
| IVG Immobilien              | 0.00       | 0.00       | Sal. Oppenheim jr. & Cie KGaA                                       | 20.10                                   | 9.72    | +0.03                      | INKA                             | 2.90 |
|                             |            |            | HSH Nordbank  | 5.09                                    |         |                            |                                  |      |
|                             |            |            | Westdeutsche Genossenschafts-Zentralbank eG                         | 3.32                                    |         |                            |                                  |      |
|                             |            |            | WCM Beteiligungs- und Grundbesitz-AG                                | 1.93                                    |         |                            |                                  |      |
|                             |            |            |   |   |         |                            |                                  |      |
| IWKA                        | 0.00       | 0.00       | Wyser-Pratte Management Co., Inc.                                   | 7.00                                    | 21.03   | -0.04                      | Schroder Lux                     | 6.32 |
|                             |            |            | FMR Corp. Boston  | 5.61                                    |         |                            |                                  |      |
|                             |            |            | K Capital Partners LLC  | 5.29                                    |         |                            |                                  |      |
|                             |            |            | LB Baden-Württemberg  | 5.11                                    |         |                            |                                  |      |
|                             |            |            | Schroders plc   | 5.05                                    |         |                            |                                  |      |
|                             |            |            | Hermes Focus Asset Manag. Eu. Lim., London                          | 4.98                                    |         |                            |                                  |      |
|                             |            |            | Capital Group Comp. Inc.  | 4.80                                    |         |                            |                                  |      |
| K+S                         | 3.00       | 0.00       | BASF  | 10.00                                   | 25.03   | +1.05                      | Fidelity USA                     | 3.94 |
|                             |            |            | FMR Corporation   | 4.88                                    |         |                            |                                  |      |
|                             |            |            | PRUDENTIAL PLC  | 4.69                                    |         |                            |                                  |      |
| KARSTADT QUELLE             | 5.42       | 0.00       | M. Schickedanz. M. Dedi. L. Herl und Grisfonta                      | 63.00                                   | 6.05    | +0.97                      | OppenheimerFunds. Inc.           | 0.95 |
|                             |            |            | Allianz   | 7.56                                    |         |                            |                                  |      |

**INSIGHT Shareholder ID: MDAX** Holdings in per cent

| Companies                       | Own-shares | Manag-ment | Notifiable shareholders                    | Disclosing capital investment companies |         |                            |                                 |      |
|---------------------------------|------------|------------|--|---|---------|----------------------------|---------------------------------|------|
|                                 |            |            |  | Total                                   | Change* | Biggest investment company |                                 |      |
| KRONES                          | 0.00       | 0.00       | Family Kronseder                           | 54.29                                   | 17.31   | +2.16                      | DWS                             | 3.21 |
| LEONI                           | 0.00       | 0.00       | GROGA Beteiligungs-gesellschaft mbH        | 20.00                                   | 10.52   | +3.19                      | UBS (CH)                        | 1.96 |
| MEDION                          | 0.00       | 0.00       | Gerd Brachmann                             | 54.87                                   | 13.64   | -2.47                      | Fidelity Investments Luxembourg | 4.19 |
|                                 |            |            | Orbis Glob. Equity Fund                    | 5.41                                    |         |                            |                                 |      |
|                                 |            |            | Fidelity Intern. Limited. Hamilton/Bermuda | 4.89                                    |         |                            |                                 |      |
|                                 |            |            | Commerzbank                                | 4.83                                    |         |                            |                                 |      |
| Merck KGaA                      | 0.00       | 0.00       | Fidelity Intern.l Limited                  | 5.79                                    | 20.89   | -0.94                      | Tweedy. Browne                  | 4.86 |
|                                 |            |            | Barclays Bank plc                          | 5.60                                    |         |                            |                                 |      |
|                                 |            |            | Capital Group Comp. Inc.                   | 4.99                                    |         |                            |                                 |      |
|                                 |            |            | Arnhold and Bleichroeder Advisors          | 4.96                                    |         |                            |                                 |      |
|                                 |            |            | AXA S.A.                                   | 4.86                                    |         |                            |                                 |      |
|                                 |            |            | Fidelity Management & Research Company     | 4.80                                    |         |                            |                                 |      |
| MLP                             | 0.00       | 0.00       | Manfred Lautenschläger                     | 28.90                                   | 13.47   | +0.48                      | Cominvest                       | 1.98 |
|                                 |            |            | Dr. Bernhard Termühlen                     | 13.69                                   |         |                            |                                 |      |
|                                 |            |            | Bankgesellschaft Berlin                    | 5.03                                    |         |                            |                                 |      |
|                                 |            |            | Deutsche Bank                              | 5.03                                    |         |                            |                                 |      |
| MPC Münchmeyer Petersen Capital | 0.00       | 0.00       | MPC Holding GmbH                           | 25.50                                   | 7.73    | -2.37                      | DWS                             | 1.60 |
|                                 |            |            | J.P. Morgan Chase & Co.                    | 20.00                                   |         |                            |                                 |      |
|                                 |            |            | FMR Corp.                                  | 5.10                                    |         |                            |                                 |      |
|                                 |            |            | Fidelity Intern. Limited                   | 4.62                                    |         |                            |                                 |      |
|                                 |            |            | Family Oldehaver                           | 2.50                                    |         |                            |                                 |      |
| Norddeutsche Affinerie          | 0.00       | 0.00       | L. Possehl & Co. mbH                       | 9.89                                    | 9.99    | +0.54                      | Cominvest                       | 1.79 |
|                                 |            |            | Allianz                                    | 2.45                                    |         |                            |                                 |      |
| ProSiebenSat.1 Media            | 0.00       | 0.00       | P7S1 Holding L.P.                          | 88.00                                   | 15.40   | -2.74                      | Artisan                         | 5.38 |
|                                 |            |            | Friede Springer                            | 12.00                                   |         |                            |                                 |      |
|                                 |            |            | P7S1 Holding L.P.                          | 13.00                                   |         |                            |                                 |      |
|                                 |            |            | Friede Springer                            | 12.70                                   |         |                            |                                 |      |
| PUMA Rudolf Dassler Sport       | 3.40       | 0.00       | Mayfair Vermögensver-waltungsgesellschaft  | 25.27                                   | 18.94   | -0.57                      | Fidelity Investments Luxembourg | 1.62 |
|                                 |            |            | Fidelity Management & Research Company     | 4.85                                    |         |                            |                                 |      |
|                                 |            |            | Morgan Stanley & Co. International Limited | 3.28                                    |         |                            |                                 |      |
| Rheinmetall                     | 0.00       | 0.00       | Credit Suisse First Boston                 | 5.03                                    | 16.17   | -3.47                      | DWS                             | 2.73 |

**INSIGHT Shareholder ID: MDAX** Holdings in per cent

| Companies          | Own-shares | Manag-ment | Notifiable shareholders   | Disclosing capital investment companies              |         |                            |                                    |       |
|--------------------|------------|------------|---|--|---------|----------------------------|------------------------------------|-------|
|                    |            |            |   | Total  | Change* | Biggest investment company |                                    |       |
| Rhön-Klinikum      | 0.00       | 0.00       | Family Münch<br>Allianz Deutschland<br>Nordea Invest. Funds S.A.<br>Bank of America Corp.<br>Alecta. Sweden   | 16.00<br>6.14<br>5.67<br>5.21<br>5.06                | 7.26    | +0.27                      | Nordea Lux                         | 1.87  |
| SALZGITTER         | 5.35       | 0.00       | Hannoversche Beteili-gungsgesellschaft mbH<br>NordLB<br>Fidelity Intern. Limited  | 25.50<br>4.96<br>4.91                                | 18.99   | +2.87                      | Fidelity Investments<br>Luxembourg | 4.15  |
| SCHWARZ PHARMA     | 0.00       | 0.00       | Schwarz Vermögensver-waltung GmbH & Co. KG<br>Schroders plc   | 60.91<br>5.00  | 9.19    | +0.23                      | Schroder Lux                       | 3.89  |
| SGL Carbon         | 0.00       | 0.00       | FMR Corp.<br>BT Pension Scheme<br>Limited. London<br>Fidelity Management<br>& Research Company<br>Commerzbank<br>Jana Partners LLC<br>Eureka (Euro) Fund<br>K Capital Partners. USA | 5.26<br>5.11<br>5.09<br>4.98<br>4.89<br>4.20<br>3.87 | 15.41   | +0.13                      | Cominvest                          | 3.97  |
| STADA Arzneimittel | 0.20       | 0.00       | DWS Investment GmbH   | 5.01   | 20.17   | +1.13                      | DWS                                | 4.56  |
| Südzucker          | 2.00       | 0.00       | Süddeut. Zuckerrüben-verwertung eG<br>ZSG NL (Niederlande) B.V  | 56.00<br>10.00                                       | 7.22    | +0.27                      | DWS                                | 1.36  |
| Techem             | 0.00       | 0.20       | Familiengesellschafter  | 25.00  | 39.24   | -0.08                      | Jupiter (GB)                       | 10.09 |
| Vossloh            | 0.00       | 0.00       | Family Vossloh<br>Arnhold and S. Bleich-roeder Advisors. LLC<br>Schroder Plc  | 30.00<br>5.01<br>4.94                                | 16.20   | -0.47                      | Frankfurt-Trust                    | 2.49  |

**\* Change from previous month in percentage points**

Source: AfU Investor Research GmbH (n.paulsen@afu.de) The AfU company information agency lists over 18.000 funds and investment companies making disclosures. The position shown is taken from recently published annual and quarterly reports.

**INSIGHT Shareholder ID: TECHDAX** Holdings in per cent

| Companies          | Own-shares | Manag-ment | Notifiable shareholders  | Disclosing capital investment companies                                       |         |                            |                                 |       |
|--------------------|------------|------------|--|---|---------|----------------------------|---------------------------------|-------|
|                    |            |            |  | Total   | Change* | Biggest investment company |                                 |       |
| AIXTRON            | 0.00       | 0.02       | J.P.Morgan Services Inc.<br>Camma GmbH. Aachen<br>Commerzbank<br>Board & Supervisory Board   | 24.91<br>11.17<br>3.83<br>0.02  | 9.83    | -0.42                      | Cominvest                       | 2.99  |
| AT&S               | 7.82       | 0.00       | Dörflinger Privatstiftung<br>Androsch Privatstiftung<br>Wiener Städtische Vers.<br>Board & Supervisory Board   | 20.09<br>19.90<br>7.00<br>1.66  | 9.48    | -0.67                      | Schroder Lux                    | 2.86  |
| BB BIOTECH         | 5.75       | 0.00       |  |   | 11.36   | -0.28                      | Bellevue                        | 5.75  |
| Bechtle            | 0.00       | 0.00       | Family Schick<br><br>BWK Unternehmens-<br>beteiligungsgesellschaft   | 32.95<br><br>18.47  | 6.22    | +1.03                      | JPMorgan Fleming<br>Funds Sicav | 1.54  |
| ComBOTS            | 5.69       | 0.13       | CINETIC GmbH<br>Michael Greve  | 56.50<br>0.13   | 2.62    | +0.42                      | Veritas SG                      | 0.66  |
| Conergy            | 5.00       | 0.00       | Hans-Martin Rüter<br>Dieter Ammer<br>Grazia Equity GmbH<br>DWS Investment GmbH   | 16.40<br>12.70<br>12.10<br>4.90   | 12.06   | +1.65                      | DWS                             | 2.81  |
| Drägerwerk         | 0.00       | 0.00       | Family Dräger<br>BB MEDTECH  | 100.00<br>16.06   | 28.77   | -10.49                     | Bellevue                        | 16.14 |
| EPCOS              | 0.00       | 0.00       | Matsushita Electric<br>Europe (Headquarters)<br>Siemens<br>AXA S.A.<br>Deutsche Bank<br>Capital Group Comp. Inc.<br>Morgan Stanley & Co.<br>Intern. Limited. London  | 12.50<br>12.50<br>5.04<br>4.97<br>4.92<br>4.05                                | 18.12   | -1.24                      | Deka Investment                 | 2.38  |
| ErSol Solar Energy | 0.00       | 1.60       | Ventizz Capital Fund<br>equitrust<br>ASi Industries<br>Nordwest Kapital-<br>beteiligung<br>Dr. Claus Beneking<br>Ersol Mitarbeiter<br>Frank Müllejans<br>Jürgen Pressl<br>Norbert Rulands<br>Angelika Beneking | 55.68<br>3.72<br>2.80<br>2.46<br>0.92<br>0.57<br>0.51<br>0.17<br>0.14<br>0.12 |         |                            |                                 |       |



**INSIGHT Shareholder ID: TECHDAX** Holdings in per cent

| Companies   | Own-shares | Manag-ment | Notifiable shareholders   | Disclosing capital investment companies                        |         |                            |                                    |      |
|-------------|------------|------------|---|--|---------|----------------------------|------------------------------------|------|
|             |            |            |   | Total  | Change* | Biggest investment company |                                    |      |
| EVOTEC      | 0.00       | 0.78       | Roland Oetker<br>TVM V Life Science<br>Ventures GmbH<br>3i Group Investments. LP<br>Dr. Karsten Henco<br>Dr. Edwin Moses<br>Jörn Aldag<br>Dr. Timm Heinrich Jessen<br>Prof. Heinz Riesenhuber | 13.00<br>10.51<br>4.07<br>3.49<br>0.82<br>0.78<br>0.36<br>0.29 | 1.67    | -0.02                      | Indexchange                        | 0.38 |
| freenet.de  | 0.00       | 0.00       | MobilCom<br><br>Teles Informationstechn.<br>Fidelity International<br>Hamilton/Bermuda  | 50.40<br><br>5.26<br>4.93                                      | 14.58   | -0.17                      | Fidelity Investments<br>Luxembourg | 4.16 |
| Funkwerk    | 0.00       | 0.18       | Hörmann GmbH & Co<br>Beteiligungs KG<br>Deutsche Beteiligungs<br>Harald Steglich<br>Lutz Pfister  | 50.14<br>6.30<br>0.12<br>0.06                                  | 13.25   | +0.61                      | Julius Bär (Lux)                   | 1.63 |
| GPC Biotech | 0.00       | 2.16       | ALTANA<br>Deutsche Bank<br>Allianz<br>Roland Oetker<br>Dr. Sebastian Meier-Ewert<br>Dr. Elmar Maier<br>Supervisory Board<br>Dr. Mirko Scherer   | 8.21<br>7.21<br>5.56<br>5.20<br>1.16<br>0.92<br>0.43<br>0.08   | 26.04   | -0.38                      | DWS                                | 5.82 |
| IDS Scheer  | 0.00       | 0.00       | Prof. Dr. August-Wilhelm<br>Scheer<br>Prof. Dr. Alexander Pocsay  | 41.00<br>7.10  | 16.39   | -0.86                      | Cominvest                          | 1.69 |
| JENOPTIK    | 0.00       | 0.00       | Freistaat Thüringen<br>Gabriele Wahl-Multerer<br>OppenheimerFunds. Inc.,<br>Colorado  | 14.80<br>5.83<br>4.38  | 16.80   | -0.47                      | MEAG                               | 6.70 |
| Kontron     | 0.00       | 7.19       | Hannes Niederhauser<br><br>Deutsche Bank<br>J.P. Morgan Chase & Co.<br>Ulrich Gehrman<br>Charles Newcomb<br>Dipl.-Ing. Helmut Krings  | 6.60<br><br>5.52<br>5.18<br>0.43<br>0.16<br>0.05               | 28.49   | +2.57                      | Fidelity Investments<br>Luxembourg | 9.31 |

**INSIGHT Shareholder ID: TECHDAX** Holdings in per cent

| Companies                  | Own-shares | Manag-ment | Notifiable shareholders                               | Disclosing capital investment companies |         |                            |                |      |
|----------------------------|------------|------------|---|---|---------|----------------------------|----------------|------|
|                            |            |            |   | Total                                   | Change* | Biggest investment company |                |      |
| MediGene                   | 0.00       | 4.00       | TVM V Life Science Ventures GmbH                      | 5.55                                    | 9.23    | +0.80                      | Union Lux      | 3.05 |
|                            |            |            | Deutsche Effecten- und Wechsel-Beteiligungsges.       | 4.38                                    |         |                            |                |      |
|                            |            |            | Board & Supervisory Board                             | 4.00                                    |         |                            |                |      |
| mobilcom                   | 0.00       | 0.00       | Texas Pacific Group Henderson Global Investor. London | 27.30                                   | 18.61   | +0.38                      | FPM            | 2.74 |
|                            |            |            | Hermes Focus Asset Man. Europe Limited. London        | 5.67                                    |         |                            |                |      |
|                            |            |            | France Telecom S.A.                                   | 5.08                                    |         |                            |                |      |
|                            |            |            |   | 1.00                                    |         |                            |                |      |
| MorphoSys                  | 0.07       | 3.19       | Cambridge Antibody Technology Ltd. (CAT)              | 9.32                                    | 4.81    | -0.31                      | Universal-Inv. | 0.94 |
|                            |            |            | Novartis Pharma Schering                              | 9.06                                    |         |                            |                |      |
|                            |            |            | Board & Supervisory Board                             | 6.04                                    |         |                            |                |      |
|                            |            |            |   | 3.19                                    |         |                            |                |      |
| Pfeiffer Vacuum Technology | 0.00       | 0.00       | Arnhold and Bleichroeder Advisors. LLC                | 10.40                                   | 20.08   | +0.30                      | Nordea Lux     | 4.93 |
|                            |            |            | Harris Associates L. P., Chicago Illionois            | 9.83                                    |         |                            |                |      |
|                            |            |            | Carlene M. Ziegler                                    | 6.90                                    |         |                            |                |      |
|                            |            |            | Andrew A. Ziegler                                     | 6.90                                    |         |                            |                |      |
|                            |            |            | Artisan Funds Plc                                     | 5.68                                    |         |                            |                |      |
|                            |            |            | First Eagle Overseas Fund                             | 5.12                                    |         |                            |                |      |
|                            |            |            |   |   |         |                            |                |      |
| Q-Cells                    | 0.00       | 4.45       | Ströher Finanzholding                                 | 20.50                                   |         |                            |                |      |
|                            |            |            | Good Energies Invest. B.V.                            | 16.39                                   |         |                            |                |      |
|                            |            |            | Apax Fonds  | 11.67                                   |         |                            |                |      |
|                            |            |            | TVVG Solarbeteilig.                                   | 5.46                                    |         |                            |                |      |
|                            |            |            | Dipl.-Ing. Reiner Lemoine                             | 4.45                                    |         |                            |                |      |
|                            |            |            | Milner Solarbeteil.                                   | 3.70                                    |         |                            |                |      |
|                            |            |            | Flore Fütterer Solarbeteiligungen                     | 3.14                                    |         |                            |                |      |
|                            |            |            | Ada Eysell Solarbeteiligungen                         | 2.81                                    |         |                            |                |      |
|                            |            |            | Feist Solarbeteiligungen GmbH                         | 2.80                                    |         |                            |                |      |
|                            |            |            | Pluto Solarbeteiligungen GmbH                         | 2.70                                    |         |                            |                |      |
|                            |            |            | Energy Valley   | 1.96                                    |         |                            |                |      |
|                            |            |            | IBG Beteiligungsgesel.                                | 0.91                                    |         |                            |                |      |
|                            |            |            | Sachsen-Anhalt mbH                                    | 0.90                                    |         |                            |                |      |
|                            |            |            | DKB Wagniskapital                                     | 0.90                                    |         |                            |                |      |
|                            |            |            | sonstige Altaktionäre                                 | 0.29                                    |         |                            |                |      |

**INSIGHT Shareholder ID: TECHDAX** Holdings in per cent

| Companies                      | Own-shares | Manag-ment | Notifiable shareholders  | Disclosing capital investment companies                           |         |                            |                                 |      |
|--------------------------------|------------|------------|--|---|---------|----------------------------|---------------------------------|------|
|                                |            |            |  | Total   | Change* | Biggest investment company |                                 |      |
| QIAGEN N.V.                    | 0.00       | 1.03       | Dr. Metin Colpan<br>Prof. Dr. Detlev H. Riesner<br>Peer M. Schatz<br>Dr. Franz A. Wirtz  | 4.41<br>1.86<br>1.03<br>0.75                                      | 20.69   | -0.52                      | Fidelity Investments Luxembourg | 3.70 |
| QSC                            | 0.00       | 12.03      | Baker Capital Partners<br>Gerd Eickers<br>Dr. Bernd Schlobohm<br>celox-Altgesellschafter   | 29.26<br>12.06<br>12.03<br>0.63                                   | 2.31    | +0.38                      | SüdKA                           | 0.46 |
| Rofin-Sinar Technologies. Inc. | 0.00       | 0.00       |  | 3.02  | +0.15   |                            | DFA Investment Trust            | 0.79 |
| SINGULUS TECHNOLOGIES          | 0.00       | 0.00       | DWS Investment GmbH  | 5.02  | 14.80   | +3.04                      | DWS                             | 3.53 |
| Software                       | 0.00       | 0.00       | Software Stiftung<br>Deka Investment   | 31.30<br>5.07   | 23.02   | -0.47                      | Classic Fund                    | 5.70 |
| SolarWorld                     | 0.00       | 0.00       | Frank H. Asbeck<br>Fidelity Management & Research Company<br>DWS Investment GmbH<br>Solar Holding Beteiligungsgesellschaft   | 31.50<br>9.96<br>4.95<br>4.60                                     | 12.55   | +2.20                      | DWS                             | 4.08 |
| Tele Atlas N.V.                | 0.00       | 0.90       | Janivo Holding BV<br>Robert Bosch GmbH<br>Oak Associates. Ltd.<br>New Enterprise Associates<br>Janivo Holding BV<br>Meritech<br>Telesoft<br>Stanford Junior University | 34.84<br>31.19<br>35.66<br>33.28<br>11.90<br>9.52<br>9.52<br>0.10 | 3.47    | +0.13                      | Fidelity USA                    | 1.19 |
| T-Online International         | 0.00       | 0.00       | Deutsche Telekom<br>Lagardere S.C.A.   | 90.01<br>1.12   | 0.65    | -0.12                      | UBS Lux                         | 0.12 |
| United Internet                | 3.44       | 39.04      | Ralph Dommermuth<br>Fidelity Intern. Limited<br>ComBots<br>DWS Investment GmbH<br>Michael Scheeren<br>Norbert Lang   | 37.90<br>6.52<br>6.10<br>4.65<br>0.70<br>0.34                     | 23.99   | +1.47                      | DWS                             | 5.8  |

**\* Change from previous month in percentage points**

Source: AfU Investor Research GmbH (n.paulsen@afu.de) The AfU company information agency lists over 18.000 funds and investment companies making disclosures. The position shown is taken from recently published annual and quarterly reports.



**INSIGHT Shareholder ID: Merck**

| Notifiable Shareholders                       |                   | in %         |
|---|-------------------|--------------|
| Fidelity Management & Research Company        | 2.458.891         | 4.80         |
| AXA S.A.                                      | 2.489.627         | 4.86         |
| Arnhold and S. Bleichroeder Advisors, LLC     | 2.540.854         | 4.96         |
| The Capital Group Companies Inc.              | 2.556.222         | 4.99         |
| Barclays Bank plc                             | 2.868.706         | 5.60         |
| Fidelity International Limited                | 2.966.037         | 5.79         |
| <b>Total</b>                                  | <b>15.880.339</b> | <b>31.00</b> |
| <b>free float</b>                             |                   | <b>69.00</b> |
| Investment companies(KAGs) making disclosures | 10.701.799        | 20.89        |

including the following TOP 10 KAGs

|  |                  |              |
|--|------------------|--------------|
| Tweedy, Browne                                       | 2.490.369        | 4.86         |
| Fidelity USA   | 1.162.316        | 2.27         |
| DIT  | 815.081          | 1.59         |
| Fidelity Funds Sicav                                 | 683.833          | 1.33         |
| Cominvest  | 536.963          | 1.05         |
| GMO Trust  | 472.425          | 0.92         |
| JPMorgan Fleming Funds Sicav                         | 468.390          | 0.91         |
| MEAG   | 426.998          | 0.83         |
| DWS  | 343.850          | 0.67         |
| Universal-Inv.                                       | 326.242          | 0.64         |
| <b>Other Disclosing capital investment companies</b> | <b>7.726.467</b> | <b>15.08</b> |

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## Index of Companies:

|                        |     |               |      |
|------------------------|-----|---------------|------|
| BASF                   | 14  | Linde         | 8    |
| BMW                    | 4   | Mannesmann    | 2    |
| Commerzbank            | 8   | Metro         | 6    |
| Degussa                | 3   | Mobilcom      | 9    |
| Deutsche Bank          | 2,8 | Porsche       | 4,8  |
| DSW                    | 12  | Puma          | 7,16 |
| E.ON                   | 3   | RAG           | 3    |
| Fresenius Medical Care | 7   | RWE           | 6    |
| HVB                    | 10  | Salzgitter    | 16   |
| Hypo Real Estate       | 10  | Stada         | 16   |
| IVG                    | 15  | Towers Perrin | 17   |
| IWKA                   | 15  | Tweedy Brown  | 8    |
| KarstadtQuelle         | 4   | VW            | 8,9  |

## Index of Persons:

|                         |    |                     |       |
|-------------------------|----|---------------------|-------|
| Josef Ackermann         | 2  | Wolfhard Lechnitz   | 15    |
| Rolf-E. Breuer          | 2  | Ferdinand Piech     | 8     |
| Martin Brudermüller     | 14 | Rüdiger von Rosen   | 3     |
| Hans-Martin Buhlmann    | 12 | Susanne Rückert     | 9     |
| Walter Deuss            | 4  | Florian Schilling   | 5     |
| Daniela und Günter Herz | 7  | Gerhard Schröder    | 12,13 |
| Michael Kemmer          | 14 | Burkhard Schuchmann | 16    |
| Leo Kirch               | 2  | Stefan Simon        | 11    |
| Jürgen Koch             | 15 | Armin Slotta        | 18    |
| Rainer Kutzner          | 7  | Wendelin Wiedeking  | 4,8   |

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GERMANY

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