

Translated abstract of:

Sick, Sebastian, Die Effizienzprüfung des Aufsichtsrats, Arbeitshilfen fuer Aufsichtsräte der Hans-Böckler-Stiftung, 2. edition, Duesseldorf 2011;

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Hans-Boeckler-Foundation, Hans-Boeckler-Str. 39, 40476 Düsseldorf, Germany

Mail: sebastian-sick@boeckler.de; phone: +49 211/7778-257

Examination of Efficiency of the Supervisory Board¹ – Evaluation Guidelines

1. Questionnaire on the Examination of Efficiency (Evaluation) of the Supervisory Board

The questionnaire printed here serves as a platform for approaching the topic of »examination of efficiency«² or evaluations of the supervisory board. The questionnaire can be an aid for supervisory board committees when conducting a self-evaluation. It was developed for *supervisory boards under German company law* and thus takes into account the dualistic company model and the recommendations of the German Corporate Governance Code for listed companies.

The questionnaire can also be used as an aid for foreign organs – for example, the monistic board – as long as the differences between the systems are taken into consideration. Thus it is made available here in English translation.

The questionnaire originates – in its original German version – from *Sick, Sebastian, Die Effizienzprüfung des Aufsichtsrats*, in: *Arbeitshilfe 16 für Aufsichtsräte*, Hans-Böckler-Stiftung, 2011. It was developed by a working group of the DGB's Codetermination Working Group under the auspices of the Hans-Böckler-Stiftung to provide in particular employee representatives on the supervisory board with help and encouragement in dealing with the topic of »examination of efficiency«. But this questionnaire can also be of assistance to other supervisory board members and foreign organs. Actors can develop their own approach on the basis of the questionnaire.

2. Working with the Questionnaire

The questionnaire contains only yes/no questions. This makes it very easy to evaluate the answers and they are not subject to the imprecision of differing subjective weightings. In specific instances, however, it would definitely make sense, instead of remaining limited to yes/no answers, to provide more differentiated evaluation options, for example, on a scale of 1 (strong agreement) to 5 (do not agree). Adding a column »Don't know« alongside »yes« and »no« may also be considered so that wrong information can be excluded. After each section there is a general question about supplementary comments, which may be taken up in a dialogue.

There are several ways of using the questionnaire:

- (i) It can be applied directly to the examination of efficiency. It can be adapted to the specific needs of the relevant company through individual modification or supplementation.

¹ As recommended in the German Corporate Governance Code (recommendation 5.6: Examination of Efficiency – The Supervisory Board shall examine the efficiency of its activities on a regular basis).

² The German Corporate Governance Code uses the expression „examination of efficiency“ instead of the common expression „board evaluation“.

- (ii) It can be used to critically evaluate other questionnaires and thus serve as a template for proposed modifications and additions in the implementation of another questionnaire. The structural overview can be used as a rough checklist of topics.
- (iii) If the whole supervisory board is not willing to implement the questionnaire it can be filled in and evaluated by the employees' side alone.
- (iv) The list of questions can be evaluated independently. Questions answered »yes« in each case indicate a positive evaluation of work, those answered »no« always indicate a negative evaluation. Thus if the majority of supervisory board members tick »no« in any event action is needed.
- (v) If necessary, the help of an external consultant can be drawn on.

3. Explanatory Notes on the Contents of the Questionnaire

The questionnaire deals with the most important topics of an examination of efficiency. A balanced approach to the relevant topics was striven for, so that the interests of the shareholders' representatives and the employees' representatives are given equal attention. This is not the case with all available lists of questions. Particular value was put on the evaluation of »soft« factors – such as dealing with divergent opinions and open communication in the supervisory board or how members understand their roles – which, together with structural and organisational elements, enable effective cooperation within the supervisory board. Furthermore, questions about risk management and other auditing topics were taken into consideration, but not emphasised. Questions on compliance with the German Corporate Governance Code, which is supposed to enable efficient working, are also included. With regard to some sets of questions shareholders' representatives and employees' representatives are differentiated. This is because, first, the questionnaire is aimed primarily at supervisory boards with codetermination, so that, second, many questions – for example, on preliminary discussions among shareholders' representatives and employees' representatives – can only be answered by those concerned and, third, in this way a differentiated picture of how supervisory board members see themselves can be established.

4. Structure of the Questionnaire

I. Organisation of the Supervisory Board/Meeting Procedures

- ⇒ distribution of tasks
- ⇒ committees
- ⇒ spontaneity
- ⇒ long-term review of decisions
- ⇒ tasks/aims
- ⇒ supervision/advising the board
- ⇒ strategic planning
- ⇒ actions requiring agreement
- ⇒ risk monitoring

II. Provision of Information

- ⇒ between board and supervisory board
- ⇒ between supervisory board chair and plenum
- ⇒ timing
- ⇒ quality

III. Personnel: Supervisory Board and Management Board

- ⇒ selection of personnel
- ⇒ independence
- ⇒ qualifications

IV. Self-perception

- ⇒ how supervisory board members see their role: employees' representatives/shareholders' representatives
- ⇒ interaction: shareholders' representatives – employees' representatives

V. General

5. Questionnaire

For reasons of clarity the questionnaire contains only yes/no questions. Naturally, supplementing this with further evaluation options can be considered in specific instances (see Explanatory Notes under 2.).

Hans-Böckler-Stiftung Questionnaire on Evaluating the Efficiency of the Supervisory Board			
	Questions on individual topics	Yes	No
I.	Organisation of the supervisory board and meeting procedures		
A	Plenum		
1.	Is the number of regular meetings of the supervisory board enough?		
2.	Are there rules of procedure with regard to the rights and duties of the supervisory board?		
3.	Do you consider the rules of procedure of the supervisory board to be adequate and practicable? (assuming question 2 was answered »yes«)		
4.	Do some actions of management require prior agreement of the supervisory board?		
5.	Are you satisfied with the scope of the list of actions requiring agreement?		
6.	Are the discussions in the supervisory board primarily open-ended as regards outcome?		
7.	Are criticisms and diverging positions taken up constructively?		
8.	Are spontaneous discussions with the board common?		
9.	Are discussions expedient and outcome-oriented?		
10.	Do all supervisory board members take part in the debates in the supervisory board?		
11.	Does the supervisory board recommend alternatives to the ideas of the management board?		
12.	Is the advice given to the board on company strategies effective?		
13.	Does the supervisory board monitor accounting processes, the effectiveness of the internal control system, risk management and internal auditing, as well as the final audit in an appropriate way?		
14.	Are the technical knowledge and experience of the supervisory board members used adequately?		

15.	The functioning of the supervisory board does not suffer from frequent absences of individual members.		
16.	Does the supervisory board review its decisions over the long term?		
17.	Do the minutes adequately reflect the date of the meeting, the participants, the items on the agenda, the substantive contents of negotiations and the decisions taken, as well as measures to be implemented?		
18.	Other remarks and comments		
B	Questions for employees' representatives		
1.	Are preliminary talks held on the employees' side in preparation for supervisory board meetings?		
2.	Do preliminary meetings help in getting to grips with the flow of information?		
3.	The discussion in the supervisory board is not limited to declaring agreement with proposals already discussed in the preliminary employees' meeting, instead the arguments are weighed and evaluated in the plenum?		
4.	Does the board participate in employees' preliminary meetings, if necessary?		
5.	Other remarks and comments		
C	Shareholders' representatives		
1.	Are preliminary talks held on the shareholders' side in preparation for supervisory board meetings?		
2.	Do preliminary meetings help in getting to grips with the flow of information?		
3.	The discussion in the supervisory board is not limited to declaring agreement with proposals already discussed in the preliminary employees' meeting, instead the arguments are weighed and evaluated in the plenum?		
4.	Does the management board participate in shareholders' preliminary discussions, if necessary?		
5.	Other remarks and comments		
D	Committee work:³ only to be answered if there are other committees than the joint committee (§27 para 3 MitbestG).		
1.	Are your experiences with committee work positive?		
2.	Is the number of committees adequate?		

³ Where necessary, the questions are to be tailored to the relevant committees. Committees can also be subject to a separate evaluation.

3.	Is the division of tasks between the plenum and the committees appropriate?		
4.	Does sufficient decision-making authority remain with the plenum?		
5.	Are the committees staffed with competent people?		
6.	The chair of the supervisory board is not the chair of the audit committee.		
7.	Does the numerical ratio between employees' representatives and shareholders' representatives in committees correspond to the ratio in the supervisory board plenum?		
8.	If the committees are not established on a parity basis is there at least one employees' representative in each committee?		
9.	Other remarks and comments		
II.	Provision of information to the supervisory board		
A.	Between the management board and the supervisory board		
1.	Is the provision of information regular, timely and adequate?		
2.	Does the supervisory board actively seek information from the management board?		
3.	Do you consider the level of information of shareholders' representatives and employees' representatives to be equal?		
4.	Is the information easy to understand?		
5.	Is all significant information also provided in written form?		
6.	Are the annual accounts and the audit reports made available at least two weeks before the taking of the resolution?		
7.	Do you receive standardised written reports on the company's economic situation at least on a quarterly basis?		
8.	Other remarks and comments		
B.	Between the chairman of the supervisory board and the plenum		
1.	Are you satisfied with communication between the supervisory board chair and the other supervisory board members?		
2.	Does the chairman of the supervisory board inform the plenum regularly, in good time and adequately?		
3.	Is the agenda agreed between the chairman of the supervisory board and his or her deputy?		
4.	Other remarks and comments		

C.	Between the committees and the plenum		
1.	Is the supervisory board kept adequately informed of the committees' work?		
2.	Other remarks and comments		
III.	Personnel questions		
A.	Supervisory board		
	a) Selection of shareholders' representatives⁴		
1.	Are the shareholders' supervisory board members selected in accordance with verifiable criteria, such as professional competence, availability and internationality?		
2.	Can it be ruled out that business connections are an important criterion in the selection of supervisory board members on the shareholders' side?		
3.	Other remarks and comments		
	b) Questions concerning the selection of all supervisory board members		
1.	Is it ensured that supervisory board members have no board function (executive board or supervisory board) or advisory tasks at significant competitors?		
2.	Are there age thresholds?		
3.	Is it ensured that no more than two former executive board members can be on the supervisory board?		
4.	Are there sufficient independent members of the supervisory board who are not in a business, personal or other relationship with the company or its management that might create a conflict of interest?		
5.	Were any conflicts of interest with regard to supervisory board members disclosed?		
6.	No supervisory board member has more than three supervisory board mandates.		
7.	Is the supervisory board qualified to carry out its tasks?		
8.	Is the aspect of diversity (heterogeneity: internationality, proportion of women) recommended in the German Corporate Governance Code with regard to the composition of the board complied with?		

⁴ The democratic election of employees' representatives is subject to criteria that ensure the quality of supervisory board work. On this, see also the DGB's principles of regular supervisory board activities: *Arbeitshilfe für Aufsichtsräte 10*.

9.	Does at least one independent member of the supervisory board have expertise in the areas of accounting and auditing (listed companies: so-called financial expert)?		
10.	Other remarks and comments		
B.	Management board		
1.	Is it ensured that management board members take up supervisory board mandates outside the company only with the agreement of the supervisory board?		
2.	Is long-term succession planning carried out in cooperation with the management board?		
3.	Does the plenum of the supervisory board deal with all questions connected to the employment contracts of management board members?		
4.	Does the plenum of the supervisory board decide on the compensation package of individual board members, adequately and conclusively?		
5.	Does the plenum regularly review the remuneration system?		
6.	Other remarks and comments		
IV.	Self-perception of supervisory board members		
A.	Questions to employees' representatives		
1.	Are you satisfied with the cooperation between shareholders' representatives and employees' representatives?		
2.	According to your understanding, are the employees' interests part of the interest of the enterprise?		
3.	Do all supervisory board members participate equally in supervisory board debates?		
4.	Are different perspectives and viewpoints raised in discussions?		
5.	Is it your impression that supervisory board members are adequately prepared at supervisory board meetings?		
6.	Other remarks and comments		
B.	Questions to the shareholders' representatives		
1.	Are you satisfied with the cooperation between shareholders' representatives and employees' representatives?		
2.	According to your understanding, are the employees' interests part of the interest of the enterprise?		

3.	Do all supervisory board members participate equally in supervisory board debates?		
4.	Are different perspectives and viewpoints raised in discussions?		
5.	Is it your impression that supervisory board members are adequately prepared at supervisory board meetings?		
6.	Other remarks and comments		
V.	General		
	Do you have any suggestions concerning how the activities of the supervisory board might be improved?		

6. Efficiency Review Procedure

1. Determination of review contents and procedure. (This is the responsibility of the supervisory board itself.) It is decided who shall be responsible for coordinating the procedure. The supervisory board decides by resolution.
2. Preparation of an individualised questionnaire – for example, using the list of questions printed here – and selection of those to be questioned.
3. Presentation of the list of questions to the whole supervisory board. Every supervisory board member should have the opportunity to express their views or to suggest amendments.
4. If necessary, hold interviews with individual supervisory board members on the basis of the questionnaire.
5. Evaluation of answers to the questionnaire and interviews.
6. Presentation and discussion of the results.
7. Development of recommendations for the future work of the supervisory board.
8. Implementation of recommendations.
9. Fixing the date of the next evaluation (preferably enshrined in the supervisory board's rules of procedure).

These stages are not to be regarded as strictly separate. They can overlap in individual instances. But they can be regarded as a kind of checklist. At each stage there is the option of bringing in an external consultant to be selected by the supervisory board (or the standing committee). This should be agreed at stage 1, however.
