Corporate governance report

For Porsche, responsible, transparent and efficient corporate governance is an integral part of the company's corporate culture.

Corporate statutes of Porsche Automobil Holding SE
The legal basis for the corporate statutes of Porsche Automobil Holding SE is formed by the European SE provisions and the German SE Implementation Act as well as the German Stock Corporation Act (AktG). The differences this leads to compared to the statutes of a stock corporation mainly pertain to the formation and composition of the supervisory board. The dual management system with a strict separation of executive board and supervisory board, the principle of parity co-determination in the supervisory board as well as the co-administration and control rights of the shareholders in the general meeting continue to be the main core elements of the company statutes of Porsche Automobil Holding SE.

Corporate management by the executive board
The executive board has sole responsibility for the management of Porsche Automobil Holding SE and the Porsche group and represents the company in transactions with third parties. Its main tasks pertain to the strategy and management of the Porsche group as well as the implementation and monitoring of an efficient risk management system. If the executive board has two members, as is currently the case, decisions have to be made unanimously. The activity of the executive board is regulated in more detail in rules of procedure issued by the supervisory board.

The executive board informs the supervisory board regularly, without delay and comprehensively about the planning, business development and the risk management of the company and consults with the supervisory board on the strategy of the Porsche group. Certain transactions stipulated in the bylaws of the Porsche Automobil Holding SE and the executive board's rules of procedure may only be carried out by the executive board subject to the prior approval of the supervisory board. These include, among others, the acquisition and the sale of the companies of a certain size, the establishment and closure of plant locations, the introduction or discontinuation of business divisions as well as legal transactions with ordinary shareholders or supervisory board members of Porsche Automobil Holding SE.

Monitoring of management by the supervisory board

The supervisory board appoints the members of the executive board, and also advises and monitors the executive board in their managerial activities. The structure already ensures the fundamental independence of the supervisory board in its control of the executive board since a member of the supervisory board may not at the same time belong to the executive board and the competencies of the two bodies are strictly segregated.

The supervisory board is composed of twelve members. The size and composition of the supervisory board are governed by the European SE provisions. These are supplemented by the co-determination agreement entered into with representatives of the European Porsche employees. This defines the competencies of the employees in the works' council of Porsche Automobil Holding SE and the procedure for the election of the SE works' council and the representation of the employees in the SE supervisory board as well as the relevant rulings in the articles of association. Shareholders and employee representatives are equally represented on the supervisory board of Porsche Automobil Holding SE, following the basic principles of German co-determination.

The supervisory board takes its decisions with a simple majority of the votes cast by the participating supervisory board members. In the event of a tie, the supervisory board chairman, who always has to be a member of the supervisory board elected by the shareholders, casts the deciding vote.

The supervisory board has formed an executive committee which acts as personnel committee; in urgent cases, it also decides on transactions requiring the approval of the supervisory board. Other committees are formed as required.

Rights of the shareholders

Porsche Automobil Holding SE's share capital is equally divided into ordinary shares and preference shares without voting rights. The shareholders exercise their rights in the annual general meeting. When passing resolutions, each ordinary share of Porsche Automobil Holding SE grants one vote. There are no shares with multiple or preferential voting rights. Nor are there maximum voting rights. Every shareholder is entitled to take part in the annual general meeting, to express an opinion on items on the agenda, to table motions and to demand information about company matters if this is needed to properly judge an item on the agenda.

Among other things, the general shareholder meeting adopts resolutions on the exoneration of the executive board and the supervisory board, the appropriation of profits, capital measures and amendments to the articles of association.

The representatives of the shareholders on the supervisory board are elected by the annual general meeting. The following applies to the election of employee representatives on the supervisory board: The articles of association of Porsche Automobil Holding SE provide for the appointment of employee representatives to the supervisory board by the annual general meeting, unless an agreement reached in accordance with the SEBG ("SE-Beteiligungsgesetz": German Law on Employee Participation at SEs) on the involvement of employees provides for a different procedure for appointing workforce representatives to the supervisory board. The latter is currently the case. The agreement on the involvement of employees at Porsche Automobil Holding SE contains the provision that employee representatives are directly appointed to office following their election by the works council of the SE. Even if no such agreement had been made, the annual general meeting would be bound by the nominations of the works council for workforce representation.

Financial reporting and annual audit
The Porsche group's financial reporting is based on the International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) insofar as they are applicable within the European Union, as well as the provisions of German business law applicable under Sec. 315a (1) HGB ("Handelsgesetzbuch": German Commercial Code). The financial statements of Porsche Automobil Holding SE as parent company of the Porsche group are based on the accounting provisions of the German Commercial Code. Both sets of financial statements are audited by an independent auditor.

Risk management
The Porsche group has a group-wide risk management system which helps management to recognize major risks at an early stage, thus enabling them to initiate counter-measures in good time. The risk management system at the Porsche group is continuously tested for efficiency and continually optimized to reflect changed conditions. For details, please refer to pages 67 to 85.

Communication and transparency
Porsche attaches great importance to transparent communication and regularly keeps shareholders, financial analysts, shareholder associations, the media and the general public informed about the situation of the company and its business development. This information can be sourced at the website www.porsche-se.com which contains all press releases and financial reports as well as the articles of association of Porsche Automobil Holding SE and information about the general shareholder meeting. Interested visitors to the home page of Porsche Automobil Holding SE have the opportunity to subscribe to a newsletter that regularly informs them of developments at the Porsche group.

Besides the regular reporting, Porsche announces details of circumstances that are not in the public domain in accordance with Sec. 15 WpHG ("Wertpapierhandelsgesetz": German Securities Trading Act) which, when they become known, could significantly impact on the share price of the Porsche share. These *ad hoc* announcements are also presented on the homepage of Porsche Automobil Holding SE.

Directors' dealings
Pursuant to Sec. 15a WpHG, members of the executive board and supervisory board as well as certain persons in management positions and persons closely related to them must disclose the purchase and sale of Porsche shares and related financial instruments. Porsche Automobil Holding SE publishes such announcements about transactions of this kind on the Porsche homepage.

Declaration of compliance with the corporate governance code

The background
On 26 February 2002 the Federal German Government Commission on the corporate governance code introduced a standard of good and responsible corporate governance for executive boards and supervisory boards of companies listed on the stock exchange. Pursuant to Sec. 161 (1) AktG, the executive and supervisory boards of listed companies are obliged to make an annual declaration of conformity as to whether they have complied and are continuing to comply with the code, or which of the recommendations contained in the code have not been or are not applied, and why.

For the period until 8 August 2008 the declaration below refers to the version of the code amended 14 June 2007 and for the period from 9 August 2008 to 5 August 2009 to the version of the code amended 6 June 2008, and since 6 August 2009 to the version of the code amended 18 June 2009, which was published in the electronic Federal Gazette on 5 August 2009. If no explicit reference is made to a specific version of the code then the respective recommendation remained unchanged in this period.

Declaration of compliance of Porsche Automobil Holding SE
The executive board and supervisory board of Porsche Automobil Holding SE declare in accordance with Sec. 161 (1) AktG that the company has essentially complied and does comply with the recommendations of the Government Commission of the German corporate governance code announced by the Federal Ministry of Justice in the official part of the elektronischer Bundesanzeiger (German Electronic Federal Gazette). Where this is not the case in terms of individual recommendations at present, most of the recommendations of the code will be complied with in future in light of the intention to create an integrated automotive group with Volkswagen AG and the related adjustments to bring corporate governance in line with the corporate governance of Volkswagen AG. However, the company did not comply and/or has not yet complied with the following recommendations:

“If the company takes out a D&O (directors’ and officers’ liability insurance) policy for the executive board and supervisory board, a suitable deductible should be agreed.” (No. 3.8 (2) of the German corporate governance code as amended 14 June 2007 and 6 June 2008)

“A similar deductible must be agreed upon in any D&O policy for the supervisory board.” (No. 3.8 (2) sentence 2 German corporate governance code as amended 18 June 2009)

The recommendation of the code as amended 14 June 2007 and 6 June 2008 was not followed. With regard to the agreement of a deductible in the D&O insurance policies for the executive board, the new provisions of Sec. 93 (2) sentence 3 AktG have been applied since the entry into force of the VorstAG (“Gesetz zur Angemessenheit der Vorstandsvergütung”: German Act on the Appropriateness of Executive Board Compensation) on 5 August 2009.

With respect to D&O insurance for the supervisory board, the recommendation of the Code as of 18 June 2009 has not been followed to date for the following reasons: Porsche insures the D&O risk under its general asset and liability insurance and does not include a specific deductible in the total premium payable. A large deductible, which would have to be a standard sum in order to comply with the principle of equality, would have widely differing consequences for members of the supervisory board depending on their individual circumstances in respect of private income and assets. In the worst case, a less wealthy member of the supervisory board might find himself/herself in serious financial difficulties which, in view of the fact that all members have the same duties and obligations, is not fair. For the same reason, no deductible was agreed upon in D&O insurance policies for executive board members until the VorstAG entered into force on 5 August 2009.

In spite of the arguments against including a deductible in the D&O insurance policies for the supervisory board, the executive board and supervisory board have decided to include a corresponding deductible in the D&O insurance policies from now on.

“At the proposal of the committee dealing with executive board contracts, the full supervisory board shall resolve and regularly review the executive board compensation system including the main contract elements.” (No. 4.2.2 (1) German corporate governance code as amended 14 June 2007)

“At the proposal of the committee dealing with executive board contracts, the full supervisory board shall resolve and regularly review the executive board compensation system including the main contract elements.” (No. 4.2.2 (1) German corporate governance code as amended 6 June 2008)

“At the proposal of the committee dealing with executive board contracts, the full supervisory board determines the total compensation of the individual executive board members and shall resolve and regularly review the executive board compensation system.” (No. 4.2.2 (1) German corporate governance code as amended 18 June 2009)

Resolutions on the remuneration system, including the main contract elements, are taken by the executive committee which at the same time acted as personnel committee until the entry into force of the VorstAG. We believe that the executive committee is better able to negotiate the material elements of employment contracts with executive board members than the much larger full session of the supervisory board. Once the VorstAG entered into force on 5 August 2009, the full supervisory board decides on the amount and, if necessary, the reduction of executive board compensation. The structure of the remuneration system for the executive board of Porsche is discussed and checked regularly in its entirety by the supervisory board.

“In concluding executive board contracts, care shall be taken to ensure that payments made to an executive board member on premature termination of his contract without serious cause, including fringe benefits, do not exceed the value of two years’ compensation (severance payment cap) and compensate no more than the remaining term of the contract. The severance payment cap shall be calculated on the basis of the total compensation for the past full financial year and if appropriate also the expected total compensation for the current financial year.” (No. 4.2.3 (4) German corporate governance code as amended 6 June 2008 and 18 June 2009)

“Payments promised in the event of premature termination of an executive board member’s contract due to a change of control shall not exceed 150 percent of the severance payment cap.” (No. 4.2.3 (5) German corporate governance code as amended 6 June 2008 and 18 June 2009)

The recommendations in No. 4.2.3 (4) and the recommendation based thereon in (5) of the German corporate governance code have to date not been complied with because their implementation involves considerable legal and practical complications. Despite these difficulties, however, the recommendations will be considered in future when entering into contracts with the members of the executive board.

"Disclosure (of the total remuneration of each member of the executive board) shall be made in a compensation report which as part of the corporate governance report describes the compensation system for executive board members in a generally understandable way." (No. 4.2.5 (1) German corporate governance code)

The individual remuneration of the members of the executive board at Porsche has not been published to date for the following reason. We believe that the disadvantages associated with such publication – the inevitable upward leveling of the board members' salaries and the invasion of the individuals' right to privacy – do not stand in any reasonable relation to the advantages to investors of such a practice. The shareholders with voting rights at the annual general meeting of Porsche AG (now Porsche Automobil Holding SE) concurred with this assessment and unanimously passed the legally required resolutions waiving publication on 27 January 2006 as did the extraordinary shareholders meeting of Porsche AG (now Porsche Automobil Holding SE) on 26 June 2007. Nevertheless, the total remuneration of each member of the executive board will be published in a compensation report in the corporate governance report in future, i.e. from fiscal year 2009/10 onwards.

"The compensation report shall also include information on the nature of the fringe benefits provided by the company." (No. 4.2.5 (3) sentence 2 of the German corporate governance code as amended 14 June 2007 and 6 June 2008, No. 4.2.5 (2) as amended 18 June 2009)

This recommendation has not been complied with to date because the total remuneration of the executive board and its composition by fixed and performance-related components is explained in the notes to the consolidated financial statements. However, the compensation report will in future – i.e. for the first time for the fiscal year 2009/10 – include information on the nature of the fringe benefits provided by the company.

"Depending on the specifics of the enterprise and the number of its members, the supervisory board shall form committees with sufficient expertise." (No. 5.3.1 sentence 1 German corporate governance code)

"The supervisory board should establish an audit committee which, in particular, deals with issues of accounting, risk management and compliance, the necessary independence required of the auditor, the issuing of the audit mandate to the auditor, the determination of audit priorities and the agreed fee. The chair of the audit committee should possess specific knowledge of and experience with the application of accounting principles and internal auditing procedures." (No. 5.3.2 sentences 1 and 2 German corporate governance code)

"The supervisory board is required to form a nomination committee composed exclusively of shareholder representatives which proposes to the supervisory board suitable candidates for its election nominations to the annual general meeting." (No. 5.3.3 German corporate governance code)

Porsche has a highly qualified and dedicated supervisory board with just twelve members. Besides the executive committee, which at the same time acts as a personnel committee and in urgent cases also decides on transactions requiring the approval of the supervisory board, the supervisory board has not set up any other additional committees to date. The supervisory board has now decided to set up an audit committee and a nomination committee, both of which satisfy the above recommendations of the code.

"The compensation of the members of the supervisory board should be reported individually in the corporate governance report, subdivided by components." (No. 5.4.7 (3) sentence 1 German corporate governance code as amended 14 June 2007, No. 5.4.6 (3) sentence 1 German corporate governance code as amended 6 June 2008 and 18 June 2009)

We have shown payments to the supervisory board in the notes to the consolidated financial statements as a single sum. We did not state the sums paid to individuals because we did not see any additional advantage for investors in this in view of the level of payments involved and the requirements stated in the articles of association. However, the corporate governance report for the fiscal year 2009/10 will include information on the compensation of the supervisory board in compliance with the recommendations of the code.

“Also payments made by the company to the members of the supervisory board or advantages extended for services provided individually, in particular, advisory or agency services should be listed separately on an individual basis in the corporate governance report.” (No. 5.4.7 (3) sentence 2 German corporate governance code as amended 14 June 2007, No. 5.4.6 (3) sentence 2 German corporate governance code as amended 6 June 2008 and 18 June 2009)

The ability to access the expertise of the individual members of the families that are shareholders in the company on specific subjects represents a particular advantage for Porsche Automobil Holding SE. As explained in the notes to the consolidated financial statements and taking the legal requirements into account, this cooperation takes place on terms that are customary in this business sector and which are also complied with in the event of comparable business arrangements being undertaken with third parties. To date individual information about the compensation for services rendered by individual members has not been presented in the corporate governance report based on a fundamental decision taken by the company. However, the corporate governance report for the fiscal year 2009/10 will include the recommended individual information.

“Beyond the statutory obligation to report and disclose dealings in shares of the company without delay, the ownership of shares in the company or related financial instruments by executive board and supervisory board members shall be reported if these directly or indirectly exceed one percent of the shares issued by the company. If the entire holdings of all members of the executive board and supervisory board exceed one percent of the shares issued by the company, these should be reported separately for the executive board and supervisory board. This infomation should be contained in the corporate governance report.” (No. 6.6 German corporate governance code)

The share ratios of our shareholders are published by Porsche Automobil Holding SE as required by WpHG. Notifications of purchases and sales of Porsche preference shares by members of the executive or supervisory boards are published to the extent that this is provided for by Sec. 15a WpHG. Publication in any other form of the shares or related financial instruments held by members of these bodies has not taken place so far and is not envisaged in the future because we believe that the obligations to publish, with which we have complied in full, provide sufficient information to the capital markets and our shareholders in particular.

“The consolidated financial statements should be publicly accessible within 90 days of the end of the fiscal year; interim reports should be publicly accessible within 45 days of the end of the reporting period.” (No. 7.1.2 sentence 3 German corporate governance code as amended 14 June 2007, No. 7.1.2 sentence 4 German corporate governance code as amended 6 June 2008 and 18 June 2009)

Porsche has not complied with this recommendation to date. Corresponding to our non-standard fiscal year, we had established a publication cycle which guaranteed the company optimum publicity. In future, however, Porsche will comply with the recommendations.

Corporate Governance at the Volkswagen subgroup

In their declaration of compliance with the German corporate governance code as of 21 November 2008, the executive board and supervisory board of Volkswagen AG disclosed that the recommendations of the "Federal German Government Commission on the German corporate governance code" as of 6 June 2008 issued by the Federal Ministry of Justice on August 8, 2008 in the official part of the electronic Federal Gazette are complied with in full, with the exception of No. 4.2.3 (4) and (5) (severance payment cap).

The executive board and supervisory board of Volkswagen AG also declared that the recommendations of the "Federal German Government Commission on the German corporate governance code" as of 14 June 2007 issued by the Federal Ministry of Justice on 20 July 2007 in the official part of the electronic Federal Gazette were complied with in full in the period from 20 December 2007 to 8 August 2008 with the exception of No. 5.3.3 (formation of a nomination committee). After this time, the recommendations of the "Federal German Government Commission on the German corporate governance code" as of 6 June 2008 issued by the Federal Ministry of Justice on 8 August 2008 in the official part of the electronic Federal Gazette were complied with in full with the exception of No. 4.2.2 (1) (decision of the full supervisory board on the executive board compensation system), No. 4.2.4 (4) and (5) (severance payment cap) and No. 5.3.3 (formation of a nomination committee). The declaration of compliance is published on the web page www.volkswagenag.com/ir, under the header Corporate Governance, and the menu item declaration of compliance.

In their declaration of compliance with the German corporate governance code, the executive board and supervisory board of AUDI AG declared that the recommendations of the code as amended 14 June 2007 were largely complied with until the publication of the new version on 8 August 2008. However, this was with the exception that the supervisory board does not form a nomination committee (No. 5.3.3), elections to the supervisory board are not made on an individual basis (No. 5.4.3 sentence 1) and the compensation of the supervisory board members is not reported individually, subdivided according to components (No. 5.4.7 (3) sentence 1). The executive board and supervisory board of AUDI AG also declared that the recommendations as of 6 June 2008 and published on 8 August 2008 were and are complied with. However, the aforementioned exceptions apply, as well as the exception that No. 4.2.3 (4) and (5) (severance payment cap) are not complied with. The declaration of compliance can be found on the internet at www.audi.de/cgk-erklaerung.

Porsche Automobil Holding SE
Supervisory board and executive board