

# Corporate governance report 2016

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## **Corporate governance at VTG AG**

The actions of VTG are oriented toward long-term success. Accordingly, VTG places great value on responsible and transparent management of the company. Corporate governance is the very foundation on which shareholders, employees and business partners can work together in complete trust. VTG largely complies with the recommendations of the German Corporate Governance Code.

## **Declaration of Conformity in accordance with § 161 of the German Stock Corporation Act (AktG)**

The current and all previous declarations of conformity with the German Corporate Governance Code are permanently accessible on its website [www.vtg.de](http://www.vtg.de) (These announcements can be found under Investor Relations – Corporate Governance – Declaration of Conformity).

## **Wording of the current Declaration of Conformity**

In accordance with § 161 of the German Stock Corporation Act, the Executive Board and Supervisory Board of VTG AG state:

## **Declaration of Conformity 2017**

On February 14, 2017, the Executive and Supervisory Boards of VTG AG issued a declaration of conformity in accordance with § 161 of the German Stock Corporation Act. VTG AG complies to a large extent with the recommendations of the Commission of the German Corporate Governance Code as amended on May 5, 2015 and has largely complied with these since the issue of the last declaration of conformity on February 12, 2016. The

following recommendations have not been or are not being implemented:

### **1. Section 3.8 paragraph 3 of the Code**

The directors' and officers' liability insurance taken out by the company for the members of the Supervisory Board does not provide for any deductible for the members of the Supervisory Board since such deductible in the view of the company is not necessary to increase the feeling of responsibility and motivation of the members of the Supervisory Board in the performance of their duties.

### **2. Section 4.2.2 paragraph 2 sentence 3 of the Code**

The recommendations regarding the vertical remuneration comparison contained in section 4.2.2 paragraph 2 sentence 3 of the Code were neither implemented nor is it intended to implement them. The Supervisory Board, in accordance with § 87 (1) sentence 1 of the German Stock Corporation Act, already by law must ensure that the total remuneration of each member of the Executive Board is in proportion to the duties and performance of the Executive Board member and the situation of the company and does not exceed the normal level of remuneration unless there are special reasons. In doing so, the Supervisory Board also takes into account the remuneration of the subordinate levels of management. The determinations required by the Code for the vertical remuneration comparison involve substantial problems of distinction. Against this background, the currently existing flexible concept of the Supervisory Board without such determinations, which takes into account the specific situation of the individual case, is considered preferable.

### **3. Section 4.2.3 paragraph 2 sentence 6 of the Code**

The contracts of the Executive Board members currently in office contain a fixed maximum amount only with regard to the fixed and variable components of the remuneration, but not with regard to the “total remuneration” (including a potential discretionary bonus). In the view of the Supervisory Board is the capping of the Executive Board remuneration aimed by the Code already sufficiently ensured by the existing arrangements. Like in the past, the Supervisory Board will continue to use its best judgment when considering a potential discretionary bonus. For this reason it is not intended to implement this part of the recommendation of the Code.

### **4. Section 4.2.3 paragraph 2 sentence 6 of the Code**

The Supervisory Board does not consider it essential for an appropriate pension scheme to define the intended level of pension benefits and therefore reserves the right to make pension commitments without such definition. Due to specified plans and assumptions the Supervisory Board nevertheless is in a position to a sufficiently accurate picture of the annual and long-term expenditure for the company.

### **5. Section 4.2.3 paragraph 4 of the Code**

Some of the existing executive board contracts do not include a “severance payment cap”. In future too, the Supervisory Board cannot rule out concluding executive board contracts with provisions that in this respect do not accord with the code. The Supervisory Board is of the opinion that, in the interest of finding the optimal candidates for membership of the Executive Board, the existing freedom in the formulation of such contracts should not be restricted in advance in terms of individual elements thereof.

#### **6. Section 4.2.4 of the Code**

As a result of a resolution to this effect of the Annual General Meeting of June 5, 2014, the company has not published individual reports on the remuneration of the members of the Executive Board. In accordance with this decision the compensation of the Executive Board will not be individually disclosed also in the annual financial statements and in the consolidated financial statements of the company for the financial years through and including 2018.

#### **7. Section 4.2.5 paragraph 3 of the Code**

Since in accordance with the decision of the Annual General Meeting of June 5, 2014 the compensation of the Executive Board will not be individually disclosed the remuneration report does not contain an individualized description in accordance with the requirements of section 4.2.5 paragraph 3 of the Code and the model tables provided in the appendix of the Code are not applied.

#### **8. Section 5.3.2 of the Code**

The company has decided, instead of setting up an audit committee, to entrust the Supervisory Board with all monitoring activities, since this is a central task of the Supervisory Board. Moreover, the company is of the opinion that the setting up of an audit committee with at least three members would hardly relieve the existing Supervisory Board of any work, as it has only 6 members.

#### **9. Section 5.3.3 of the Code**

In view of the small size of the Supervisory Board, the company has refrained from setting up its own nomination committee. The tasks of the nomination committee as provided for in the Code have been assigned to the Executive Committee, which, as with

the Supervisory Board, comprises only representatives of the shareholders.

#### **10. Section 5.4.1 paragraph 2 of the Code**

The objectives, which the Supervisory Board specified for its composition, do neither provide for any age limit nor any regular limit of length of membership and do not contain concrete objectives regarding diversity. The Supervisory Board is of the opinion that age or length of membership are no suitable criteria for selecting qualified female or male candidates. Regarding its composition the Supervisory Board attaches importance to diversity and is open for the objectives insofar pursued by the Code. In the opinion of the Supervisory Board concrete objectives are however problematic; a practicable and adequately flexible selection of its members will thus be complicated.

#### **11. Section 7.1.2 sentence 2 of the Code**

The Supervisory Board is of the opinion that, due to the continuous reporting received by the Supervisory Board on all important events and due to the constant development of the business, a discussion of the half-year and quarterly reports with the Supervisory Board prior to publication is not absolutely necessary in order to enable the Supervisory Board to properly exercise its function of monitoring and control.

#### **12. Section 7.1.2 sentence 4 of the Code**

The company meets its publication obligations within the deadlines set out in the law and informs its shareholders in advance, at the beginning of the year, about the dates for the publication of all financial reports to be published in the course of the business year. A further shortening of the deadlines in accordance with Section 7.1.2 of the Code is not considered

reasonable by the Executive and Supervisory Boards in view of additional organizational requirements and associated expenditure.

**Update to the Declaration of Conformity**

On February 14, 2017, the Executive and Supervisory Boards of VTG AG issued a declaration of conformity in accordance with § 161 of the German Stock Corporation Act ("Declaration of Conformity").

Following the annual general meeting of June 8, 2017, the newly elected Supervisory Board has set up an audit committee. In light of intensified requirements due to the EU Audit Reform, the implementation of an audit committee shall reduce the work load of the Supervisory Board as a whole and allow a more efficient handling of specific topics in connection with the statutory audit. Therefore, Section 8 of the Declaration of Conformity concerning Section 5.3.2 of the German Corporate Governance Code is updated such that the recommendations of Section 5.3.2 of the German Corporate Governance Code have been and are complied with from the aforementioned date.

Apart from that, the Declaration of Conformity remains unchanged.

June 8, 2017

The Executive Board

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The Supervisory Board

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## **Composition of the Supervisory Board**

According to Section 5.4.1 of the German Corporate Governance Code, the Supervisory Board shall establish specific objectives for its composition, which, whilst considering the specifics of the enterprise, take into account the international activities of the company, potential conflicts of interest, the number of independent Supervisory Board members, an age limit to be specified for the members of the Supervisory Board and diversity.

Making reference to this provision of the Code, on February 10, 2011, the Supervisory Board adopted objectives for its future composition and amended this decision with regard to the revised version of Section 5.4.1 of the Code on February 11, 2013 by including a statement regarding the number of independent Supervisory Board members as defined in Section 5.4.2 of the Code. In 2015 Section 5.4.1 of the Code has been modified again and a regular limit of length of membership to be specified for the members of the Supervisory Board has been inserted into the catalogue of objectives named in Section 5.4.1 of the Code as an additional criterion. The Supervisory board did not set a regular limit of length of membership.

### **International character**

VTG Aktiengesellschaft is one of Europe's leading wagon hire and rail logistics companies. In addition to leasing rail freight cars, the Group provides comprehensive international multimodal logistics services, specializing in rail transport and international tank container transports. VTG is represented in many European countries, in North America and in Asia by its subsidiaries and associated companies. The VTG Group's customers and employees are just as international as the business.

The Supervisory Board considers for its composition these international activities. Therefore, at least two of the Supervisory Board members must have several years of international experience.

### **Potential conflicts of interest**

The Supervisory Board has adopted internal Rules of Procedure for itself which also contain a provision that includes the recommendations and suggestions stipulated in Section 5.5 of the German Corporate Governance Code, relating to conflicts of interest, with which every member of the Supervisory Board is obliged to comply for the duration of his/her term of office. Every Supervisory Board member must disclose conflicts of interest to the Supervisory Board, for the attention of the Supervisory Board Chairman. The Supervisory Board in its report to the Annual General Meeting informs about conflicts of interest that have occurred and how they were dealt with.

### **Number of independent Supervisory Board members**

Furthermore, the Supervisory Board shall include at least three members who are independent as defined in Section 5.4.2 of the German Corporate Governance Code, in particular have no personal or business relations with the company, its executive bodies, a controlling shareholder or an enterprise associated with the latter which may cause a substantial and not merely temporary conflict of interests.

### **Age limit and length of membership**

The Supervisory Board stands by its belief, as expressed in the Declaration of Conformity pursuant to Article 161 of the German Stock Corporation Act, that age and length of membership are no suitable criteria for selecting qualified female or male candidates.



## **Diversity**

Regarding its composition, the Supervisory Board attaches importance to diversity and is open for the objectives insofar pursued by the Code, including the objective of an appropriate degree of female representation. In the opinion of the Supervisory Board, concrete objectives in terms of quota systems are, however, problematic, a practicable and adequately flexible selection of its members will thus be complicated.

## **Implementation status**

The Supervisory Board includes more than two members with many years of international experience as well as more than three independent members as defined in Section 5.4.2 of the Code.

## **Targets for the share of women in the Supervisory Board, the Executive Board and the management levels below the Executive Board the status of the implementation**

The Law on “Equal Participation of Men and Women in Private-Sector and Public-Sector Management Positions” of April 24, 2015 modified the German Stock Corporation Act and other laws.

For VTG in particular the following obligations arise from this law:

- Setting of targets by the Supervisory Board for the share of women in the Supervisory Board of VTG AG,
- Setting of targets by the Supervisory Board for the share of women in the Executive Board of VTG AG,
- Setting of targets by the Executive Board for the share of women in the upper two management levels of VTG AG.

Following close examination of the issue the Supervisory Board by resolution of September 15, 2015 and the Executive Board by resolution of September 2, 2015 have decided as follows:

- For the Supervisory Board the target for the reference period (until June 30, 2017) is set at “0”.
- For the Executive Board the target for the reference period (until June 30, 2017) is set at “0”.
- The Target for the share of women for the reference period (until June 30, 2017) in the first level of management – in accordance with the current status – is set at 8 % and for the second level of management at 30 %.

Supervisory Board and Executive Board consider the above named targets fully complied with at present.

### **Share ownership of the Executive Board and Supervisory Board**

In accordance with §15a of the German Securities Trading Act, VTG AG is obliged to publish promptly all purchases and sales of shares by board members or by persons with whom they associate closely and to report this publication to the Federal Financial Supervisory Authority (BaFin). Accordingly, VTG publishes the announcements of these so-called directors’ dealings on its website [www.vtg.de](http://www.vtg.de) (These announcements can be found under Investor Relations – Corporate Governance – Directors’ Dealings).

As of December 31, 2015, the share capital amounted to 28,756,219 € with an identical number of votes. The total of

shares owned by members of the Executive Board was 0.52 % of the capital and the votes, the total of shares owned by members of the Supervisory Board was 0.01 % of the capital and the votes.