

Corporate governance report

Corporate governance is concerned with the structures and processes of good business management, supervision and transparency.

Corporate Governance Code

Bilfinger Berger supports the goal set out by the German Corporate Governance Code of enhancing the transparency and comprehensibility of the corporate governance system and fostering trust among national and international investors, customers, employees and the public in the management and supervision of German listed companies. On December 8, 2009 in accordance with Section 161 of the German Stock Corporation Act, the Executive Board and Supervisory Board issued the following statement:

“Bilfinger Berger AG complies with all of the recommendations of the German Corporate Governance Code as amended on June 18, 2009 with the following exceptions:

- The recommendation in section 5.4.3 sentence 3 (announcement to shareholders of proposed candidates for the Chair of the Supervisory Board) is not followed because this recommendation does not conform with the distribution of competences as set out in the German Stock Corporation Act, which states that the election of the Supervisory Board Chairman is the responsibility of the Supervisory Board alone.
- The recommendation in section 3.8 sentence 5 (deductible in a D&O insurance for the Supervisory Board) is currently not followed because this recommendation, announced on June 18, 2009, in section 3.8. sentence 5 of the German Corporate Governance Code, had not been made at the time of closing of the D&O insurance contract. Bilfinger Berger AG intends to amend the D&O insurance contract so that the deductible for the Supervisory Board that it calls for is in line with the recommendation in section 3.8 sentence 5.

- The recommendation in section 4.2.3 sentence 5 (consideration of both positive and negative developments in variable remuneration) was not taken fully into account in those employment contracts concluded prior to the announcement of the recommendation to the extent that they take only a single year as a point of reference for the annual bonus. In spring 2010, the Supervisory Board of Bilfinger Berger AG will review, with regard to the Act on the Appropriateness of Executive Board Remuneration from July 31, 2009, the degree to which the amended legal situation under the recommendation in section 4.2.3 sentence 5 of the German Corporate Governance Code will be taken into account in the future.

Since issuing the Declaration of Compliance of December 2008, Bilfinger Berger has complied with all of the recommendations of the German Corporate Governance Code as amended on June 6, 2008 with the exception of the aforementioned recommendation in section 5.4.3 sentence 3.”

The D&O insurance contract has now been amended so that the deductible for the Supervisory Board that it calls for is in line with the recommendation in section 3.8 sentence 5 of the German Corporate Governance Code. As a result of these changes and the planned modification of Supervisory Board remuneration as part of the Executive Board and Supervisory Board’s proposal to the Annual General Meeting on April 15, 2010 with regard to the transformation of the Company into a European stock company (Societas Europaea, SE), the Executive Board and Supervisory Board, in accordance with Section 161 of the German Stock Corporation Act, issued the following new statement on March 4, 2010:

“Bilfinger Berger AG complies with all of the recommendations of the German Corporate Governance Code as amended on June 18, 2009 with the following exceptions:

- The company does not follow the recommendation in section 5.4.3 sentence 3 (announcement of proposed candidates for the Supervisory Board chair to the shareholders), since this recommendation is not in line with the distribution of powers stipulated in the German Stock Corporation Act, which states that the Supervisory Board alone is responsible for electing its chair.
- The service contracts concluded with the members of the Executive Board before the recommendation in section 4.2.3 sentence 5 (taking into account both positive and negative developments when determining variable remuneration components) was published do not take full account of this recommendation in that they provide for a customary annual bonus to be determined on the basis of an assessment period of no more than one year. In the course of the year 2010, the Supervisory Board of Bilfinger Berger AG will review how the recommendation in section 4.2.3 sentence 5 can be accounted for in future, based on the changes to the legal framework introduced by the German Act on the Appropriateness of Executive Board Remuneration (*Gesetz zur Angemessenheit der Vorstandsvergütung*) of July 31, 2009.
- In the context of the conversion of the Company into an SE, which is being proposed by the Executive and Supervisory Boards, it is envisaged to modify the remuneration system for the Supervisory Board such that the members of the Supervisory Board of Bilfinger Berger SE will in future only receive a fixed remuneration. The remuneration system for the Supervisory Board would then no longer comply with the recommendation set out in section 5.4.6 sentence 4 (fixed as well as performance-related remuneration components).

Since issuing the declaration of compliance of December 2009, Bilfinger Berger AG has complied with all recommendations of the GCGC as

amended on June 18, 2009, with the exception of the recommendations in sections 3.8 sentence 5, 4.2.3 sentence 5 and 5.4.3 sentence 3.

Bilfinger Berger also fulfills nearly all non-binding suggestions of the German Corporate Governance Code. Excepted from this are the accessibility of the proxy representative of the shareholders, also during the Annual General Meeting (section 2.3.3), the broadcast of the Annual General Meeting through modern communications methods such as the internet (section 2.3.4) and the inclusion of components of Supervisory Board remuneration based on the long-term performance of the enterprise, (section 5.4.6).

Corporate governance structure

Bilfinger Berger AG is a stock corporation under German law and as such has a dual management and monitoring structure consisting of the Executive Board and the Supervisory Board. The third body of the Company is the Annual General Meeting. At present, no use is made of the possibility of forming an advisory board, as allowed by Article 15 of our Articles of Incorporation. The corporate governance structure remains unaffected by the transformation into a Societas Europaea (SE), which will be proposed to the Annual General Meeting on April 15, 2010 as a result of the increasing importance of European markets for Bilfinger Berger.

Executive Board

The Executive Board manages the Company in its own responsibility. The members of the Executive Board are appointed by the Supervisory Board. The Executive Board consists of six members (see page 213).

Details of the remuneration of the members of the Executive Board can be found in the Remuneration Report, which is included as a section of this corporate governance report (see page 42).

Supervisory Board

The Company's Supervisory Board is composed of 20 members, of whom ten are representatives of the shareholders and ten are representatives of the employees. The members representing the shareholders are elected by the Annual General Meeting. In accordance with the German Industrial Codetermination Act, the members representing the employees are elected by the workforce. The Supervisory Board advises and monitors the management of the Company by the Executive Board. Within the context of its report, the Supervisory Board informs the shareholders on its activities (see page 50).

The current composition of the Supervisory Board and the committees formed for more efficient execution of its activities can be seen in the section of the Annual Report entitled *Boards of the Company* (see page 208). The proposal to the Annual General Meeting on April 15, 2010 on the transformation into an SE calls for a reduction in the number of Supervisory Board members, with no change in the principle of parity in the composition of that body.

The remuneration of the members of the Supervisory Board is shown in the remuneration report (see page 48).

Annual General Meeting

The Annual General Meeting is to be convened at least once each year. The Executive Board presents to the Annual General Meeting certain documents, including the individual and consolidated financial statements, and the management reports for the Company and the Group. The AGM decides on the appropriation of profits and on ratifying the actions of the Executive Board and the Supervisory Board, elects the members of the Supervisory Board representing the shareholders, and the external auditors. In addition, it makes decisions on amendments to the Articles of Incorporation and in certain other cases as specified by applicable law or the Articles of Incorporation. Each share grants entitlement to one vote in the Annual General Meeting.

Directors' dealings

Pursuant to Section 15a of the German Securities Trading Act, the members of the Supervisory Board and the Executive Board, other persons with management duties who regularly have access to insider information on the Company and who are authorized to make significant business decisions, and certain persons who are in a close relationship with those persons, are legally obliged to disclose to Bilfinger Berger AG any acquisitions and disposals of Bilfinger Berger shares and related financial instruments, particularly derivatives in an amount of more than €5,000 in any calendar year. We published details of such transactions on our website at www.bilfinger.com, among other places, without delay.

The members of the Executive Board and the Supervisory Board do not own any shares in the Company or any related financial instruments that together, either directly or indirectly, constitute more than 1 percent of the shares issued by the Company.

Compliance system

The Code of Conduct is a significant component of our compliance system. Bilfinger Berger is aware that the interests of the Company and its partners can only be effectively guaranteed through responsible dealings and adherence to ethical principles. These principles have been clearly formulated in our Code of Conduct. The Behavioral Guidelines, which apply to all Group employees, include fundamental rules for the counteraction of corruption, bribery, bid rigging and illegal employment as well as guidelines on dealing with confidential information, donations and social behavior in the Company. Because of the wide variety of legal and social conditions which exist in Germany and abroad, the Code of Conduct also includes country-specific behavioral guidelines.

A network, consisting of the Chief Compliance Officer of the Group and the compliance officers of the first tier operating units that report to him is responsible for the distribution and application of our Code of Conduct. To supplement the position of the internal ombudsmen, we have appointed an external ombudsman to whom employees, and persons from outside the Company can report misconduct.

Information that is given to the ombudsman through the hotline remains anonymous since, on this special line, the number of the caller cannot be identified. Internal whistleblowers are protected against reprisals; the voluntary disclosure of one's own misconduct will have a beneficial impact on the employee.

The control systems we have implemented to ensure compliance with the Code of Conduct include both routine and extraordinary audits from Internal Auditing, special controls with regard to compliance with regulations for competition and employee deployment as well as regulating and controlling the use of third parties in connection with order acquisition. Our Code of Conduct and the compliance system are components of events for employees, employee reviews and comprehensive training measures. With the intranet-based e-learning program we introduced over the course of the reporting year, we will be training a large number of employees on compliance issues without them ever having to leave their desks. Through the immediate reporting of serious cases, as well as through quarterly reports from the Chief Compliance Officer, the Executive Board, the Audit Committee of the Supervisory Board and the entire Supervisory Board are informed regularly about developments in this area.

A Compliance Committee made up of the Heads of Legal, Internal Auditing and Human Resources, which meets at least once in each quarter, supports the Chief Compliance Officer in the general framework and the further development of the compliance system.

We actively pursue information on compliance violations through our own investigations, by notifying the relevant authorities and cooperating with them to achieve a full resolution. Any misconduct that is discovered will result in personnel consequences and organizational measures as required. The insights gained from reporting, the comparison with other systems and the evaluations from external specialists all contribute to the ongoing development and improvement of our compliance system.

Remuneration of the committees

The following remuneration report is part of the management report and, at the same time, part of this corporate governance report. The Supervisory Board has included it in the approval of the management report and has adopted it for its reporting on corporate governance and remuneration as its own.

In the course of its management reporting, the Executive Board issued a corporate governance statement pursuant to Section 289a of the German Commercial Code that has been made available to the general public on the Company's web site (www.bilfinger.com) under the heading *corporate governance statement*. This Corporate Governance Report is, as relates to Clause 3.10 of the German Corporate Governance Code a supplementary component of the corporate governance statement made pursuant to Section 289a of the German Commercial Code.

Mannheim, March 4, 2010

Bilfinger Berger AG

The Executive Board

The Supervisory Board