

## **Declaration of corporate governance in accordance with Section 289f and Section 315d of the German Commercial Code (HGB)**

### **1. Declaration pursuant to Section 161 of the German Stock Corporation Act**

On February 22, 2018, pursuant to Section 161 of the German Stock Corporation Act (*AktG*), the Executive Board and the Supervisory Board issued the following annual declaration of compliance:

“Bilfinger SE complies with all recommendations of the German Corporate Governance Code as amended on February 7, 2017, with the following exceptions:

The recommendation in section 4.2.3 paragraph 2 sentence 6 (limitations on the maximum amount of Executive Board remuneration in general and the variable components of that remuneration) is not followed. As part of the long-term incentive (LTI), the variable remuneration component for members of the Executive Board of the company which has been valid since 2015, virtual shares in the company, so-called performance share units (PSU) are allocated each year, the number of which is subject to adjustment during a three-year performance period depending on the achievement of the average ROCE target value as determined by the Supervisory Board as well as the development of the total shareholder return value (TSR value) of the company's share in relation to the TSR value of the shares of the MDAX listed companies. The final number of units is subject to a cap which limits the final number of units to 150% of the original number of units. The share price of the company that is relevant for the value of the PSU at the conclusion of the three-year performance period is not subject to any limitation because an upper limit in this respect contradicts the basic principle of a share-based remuneration. The Supervisory Board is authorized however, in the case of extraordinary events or developments, especially in the case of extreme increases in the share price, to appropriately reduce the mathematical final number of PSU's.

Since issuing the declaration of compliance of March 9, 2017, the Company has complied with all recommendations of the GCGC as amended on May 5, 2015 and, since its entry into force, as amended on February 7, 2017, until the current date,

with the exception of the recommendations in sections 4.2.3 para. 2 sentence 6 and 4.2.3 para. 2 sentence 8.”

## **2. Principles of corporate governance**

In the course of our activities for the company, we follow the legal requirements, the regulations set out in the Articles of Incorporation of Bilfinger SE and the recommendations of the German Corporate Governance Code with which we comply, barring the exception listed in the above declaration issued in accordance with Section 161 AktG. We also apply the following principles of governance:

### Compliance

Compliance with legal and internal regulations is the basis of successful business activity and is part of good corporate governance. Bilfinger SE, also in the reporting year 2017, put a substantial effort into ensuring compliance with laws and internal regulations and made significant investments in connection with compliance and for the further improvement of our compliance system and will continue to do so unabated. We never compromise on safety and integrity. Our comprehensive Bilfinger Compliance System ensures that compliance violations are avoided ('prevent'), that potential misconduct is recognized at an early stage ('detect') and, once such misconduct is identified, that the reaction is fast and consistent ('respond').

In order to firmly and sustainably establish compliance in the company, a comprehensive compliance- governance and the seamless interaction among all control functions in the company is necessary.

One key component is our comprehensive Code of Conduct, which describes responsible and legally compliant behavior as well as on-topic the fundamental principles of our behavior and which is binding for all employees worldwide. It was extensively revised at the beginning of the reporting year 2017. The individual subject areas are formulated in specific terms with related guidelines and provide the basis for ethical business conduct within our activities. A training program and broad-based internal communications ensure that all employees are familiar with the Code of Conduct and with all relevant policies. In addition, a Compliance Help Desk offers a central point of contact for comprehensive advice for all employees on compliance-related issues. Employees can report – also anonymously – possible misconduct using our whistleblower system insofar as they do not wish to use the normal

reporting line to their supervisor or other persons of trust. Such notifications and other potential violations of the compliance rules are reviewed and investigated by an independent Allegation Management Committee and the Allegation Management Office in order to punish possible misconduct and to continuously optimize the Compliance Program and the effectiveness of controls on an ongoing basis, respectively. A Disciplinary Committee deals with potential sanctions and ensures their consistent application. Whistleblowers are protected from reprisals and, in addition, the whistleblower system can also be used by third parties (suppliers, subcontractors, business partners and other service providers) using our website.

To further improve the compliance governance, in 2016 Corporate Compliance and Corporate Legal & Insurance were combined to a new Corporate Legal & Compliance department which, since the beginning of the reporting year, has also been responsible for the functions Independent Allegation Management as well as Export Controls. In addition, Corporate Legal & Compliance was strengthened in terms of personnel and now has a total of about 100 employees throughout the Group. Each of the nearly 200 companies in the Bilfinger Group today has a responsible Compliance Manager. At the same time, cooperation between the Compliance area and Internal Audit was intensified and formalized. The three fundamental focus areas of the Compliance Program, prevent, detect, respond, are comprehensively managed and led by these functions with a clear set of responsibilities. To strengthen the independence of these compliance-relevant corporate functions from the business segments, in addition to a reporting obligation to the Executive Board for the Head of Internal Audit as well as the General Counsel & Chief Compliance Officer, a reporting line to both the Audit Committee as well as directly to the Chairman of the Supervisory Board and the Supervisory Board was established for special cases. The General Counsel & Chief Compliance Officer of the Group thus reports directly to the Chairman of the Executive Board and regularly informs the Chairman of the Audit Committee of the Supervisory Board, the full Audit Committee as well as the full Supervisory Board on compliance-related issues and on significant developments.

To manage and monitor the organization and implementation of the entire Bilfinger Compliance System, the Compliance Review Board has been in place since October 2016. This board consists of the members of the Executive Board as well as a number of corporate department heads and convenes at least once per quarter

under the chairmanship of the General Counsel & Chief Compliance Officer. Since September 2017, the Compliance Review Board has now been supplemented by Divisional Compliance Review Boards which manage and monitor the implementation of the compliance program in the individual divisions.

In addition, the integration of the Bilfinger Compliance System and its further development in the business processes is reviewed in order to ensure the efficiency of the program and the associated measures. The Internal Audit and Controls department verifies, among other things, the implementation of compliance guidelines as part of so-called anti-corruption audits on site at the individual business units. In these audits, the integrity of the business unit's payment transactions is also analyzed on the basis of mass data analyses. In the 2017 reporting year, a total of 13 such audits were conducted around the world. The relevant audit reports were and will be made available to the Executive Board and the Chief Compliance Officer as well as other members of management in the form of relevant audit reports so that – where necessary – improvement measures can be implemented.

The entire Bilfinger Compliance System is continuously reviewed and optimized by us to ensure that regulatory requirements, market changes and the needs of our customers are taken into account. With regard to the case in the USA for violation of the US Foreign Corrupt Practices Act (FCPA) in the years prior to 2005, it was agreed in 2016 with the US Department of Justice (DoJ) that the Deferred Prosecution Agreement (DPA) that has been in place since 2013 would be extended until the end of 2018. Also within the scope of the extended DPA, the appointed Compliance Monitor reviews the effectiveness of our compliance measures and regularly reports on his findings to the company and the DoJ. For this reason, the recommendations of the Compliance Monitor in particular flow into the optimization of our Compliance System. In addition, we take into consideration the comments of the internationally renowned compliance expert Louis Freeh, who advises the Supervisory Board on the topic of compliance.

#### UN Global Compact

We are a member of the United Nations' "Global Compact", an international association of companies and organizations. Its members have committed themselves, on the basis of ten principles for responsible business to, *inter alia*,

supporting human rights, fighting discriminatory labor and social practices, improving environmental protection, diffusing environmentally friendly technologies and fighting corruption in all its forms within their scope of influence.

### **3. Executive Board and Supervisory Board procedures as well as the composition and procedures of their committees**

Bilfinger SE is a European stock corporation and is subject to the special European SE regulations and the German law on implementing a European Company as well as the German SE Employee Involvement Act. It has a dual management and control structure consisting of the Executive Board and the Supervisory Board. These bodies work in close cooperation for the benefit and in the interest of the company.

#### Executive Board

The Executive Board manages the Company in its own responsibility. The three members of the Executive Board manage the business of the Company in accordance with legal requirements, the Rules of Procedure established by the Supervisory Board for the Executive Board, the schedule of responsibilities of the Executive Board, the Code of Conduct of Bilfinger and the Executive Board resolutions. Details of their management authority are regulated in the Executive Board schedule of responsibilities; they have joint and equal responsibility for the management of the Company. The resolutions of the Executive Board are made primarily in the Executive Board meetings, but may also be made in written procedures or through other methods of communication. The Rules of Procedure for the Executive Board regulates, among other things, which situations require a resolution from the full Executive Board and which transactions and actions require the approval of the Supervisory Board or one of its committees. The Chairman of the Executive Board coordinates the work of the members of the Executive Board; in the reporting year 2017 there were 29 Executive Board meetings.

#### Supervisory Board

The Supervisory Board appoints, supervises and advises the Executive Board and is involved in key decisions affecting the company. The Supervisory Board executes its tasks in accordance with legal requirements, the Articles of Incorporation, its Rules of Procedure and its resolutions. It is composed of twelve members, of whom six are

representatives of the shareholders and six are representatives of the employees. Members of the Supervisory Board all have the same rights and obligations and are not bound by instructions or orders. The resolutions of the Supervisory Board are made primarily in Supervisory Board meetings, but can also be made in written procedures or through other methods of communication. Insofar as nothing else is compulsory under the law, Supervisory Board resolutions require the simple majority of votes cast. In the event of a tied vote, the Chairman of the Supervisory Board has a casting vote; if the Chairman does not participate, the Deputy Chairman has a casting vote provided he is a representative of the shareholders. The Chairman of the Supervisory Board coordinates the work of the Supervisory Board; in the reporting year 2017 there were eleven meetings of the Supervisory Board.

The Supervisory Board, taking into account the external auditors and the audit reports submitted by them, undertakes a detailed examination, as required by law, of the individual financial statements, the consolidated financial statements and combined management report of Bilfinger SE and the Group, as well as of the proposal of the Executive Board on the appropriation of profits.

#### Executive Board Committees

The Executive Board has not formed any committees.

#### Supervisory Board Committees

In order to enhance the efficiency of its activities, the Supervisory Board formed a Presiding Committee, an Audit Committee, a Nomination Committee and a Transformation Committee.

The Presiding Committee of the Supervisory Board consists of Dr. Eckhard Cordes (Chairman of the Presiding Committee), Stephan Brückner (Deputy Chairman of the Presiding Committee), Dr. Ralph Heck and Rainer Knerler. The main tasks of the Presiding Committee include, in particular, regulating the personnel issues of the Executive Board and its remuneration, unless the provisions of the German Stock Corporation Act and the German Corporate Governance Codex stipulate that they are to be regulated by the plenum of the Supervisory Board – then the relevant resolutions of the Supervisory Board are prepared and recommendations for

important resolutions are made to the Supervisory Board – and the decision on certain business dealings and transactions assigned to the Presiding Committee requiring its approval as well as conflicts of interests. In addition, the Presiding Committee can prepare certain plenary meetings and make recommendations for important resolutions to the Supervisory Board. In the reporting year 2017, seven meetings of the Presiding Committee took place.

The members of the Audit Committee include Dr. Marion Helmes (Chairman of the Audit Committee), Dorothee Deuring, Dr. Janna Köke and Jörg Sommer. It deals, among other things, with questions of accounting and the monitoring of the accounting process, the effectiveness of the internal control system, the risk management system, the internal auditing system and compliance as well as with the audit of the consolidated financial statements. The Audit Committee is also concerned with the selection and the independence of the auditor, issues the audit assignment for the annual financial statements and the consolidated financial statements to the auditor elected by the Annual General Meeting, makes a fees agreement with the auditor and also reviews the additional services provided by the auditor. With Dr. Marion Helmes, the Committee has an independent member who, in accordance with Section 100 Subsection 5 of the German Stock Corporation Act (AktG), possesses expertise in the areas of accounting and auditing and who has particular experience in the application of internal control procedures. In the reporting year 2017, five meetings of the Audit Committee took place.

In accordance with the recommendation of the German Corporate Governance Code, the Supervisory Board formed a Nomination Committee made up exclusively of shareholder representatives whose purpose it is to recommend suitable candidates to the Supervisory Board for its own recommendations to the Annual General Meeting. The Nomination Committee includes Dr. Eckhard Cordes (Chairman of the Nomination Committee), Jens Tischendorf and Dr. Marion Helmes. The Committee did not meet in the reporting year 2017 because no new election of Supervisory Board members was necessary.

The Transformation Committee will accompany the further development of the strategic positioning and transformation of the Bilfinger Group and, without its own

decision-making authority, make relevant recommendations to the Supervisory Board where necessary. The Committee, which has equal representation, includes Dr. Eckhard Cordes (Chairman of the Transformation Committee), Stephan Brückner (Deputy Chairman of the Transformation Committee), Dr. Ralph Heck, Rainer Knerler, Jens Tischendorf and Susanne Hupe. The Committee held nine meetings in the reporting year 2017.

The resolutions of the committees were made primarily in the meetings, but partially also in written procedures or through other methods of communication. The Chairmen of the Committees reported to the plenary session of the Supervisory Board on the work done in the committees they lead.

#### **4. 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 company and consolidated financial statements as well as the combined management report for Bilfinger SE and the Bilfinger Group. It decides on the appropriation of profits and on ratifying the actions of the members of the Executive Board and the Supervisory Board, elects the members of the Supervisory Board representing the shareholders, and the external auditor. 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. It can also make a non-binding vote on the system for the remuneration of Executive Board members. Each share grants entitlement to one vote in the Annual General Meeting, whereby shares held by the company itself are not entitled to vote.

#### **5. Diversity concept**

Pursuant to Sections 289f Subsection 2 No. 2, 315d Sentence 2 HGB which took effect with the implementation of the CSR Guideline (2014/95/EU) on April 19, 2017, Bilfinger SE shall report on the diversity concept it follows for the composition of the Executive Board and Supervisory Board, its objectives, the form of its implementation and the results achieved in the reporting year.

### Succession planning and diversity concept for the Executive Board

The Supervisory Board ensures a long-term succession planning takes place in the Executive Board and coordinates this also with the Executive Board. In this regard, professional qualifications for the area of responsibility to be assumed, performance to date and experience as well as convincing management qualities represent particularly important criteria for an Executive Board candidate. When filling these positions, the Supervisory Board pays particular attention to diversity in the entire Executive Board. The Executive Board should be supplemented by differing profiles, professional and life experience, especially in an international environment for the good and in the interest of the company.

As part of its decision in the filling of Executive Board positions, the Supervisory Board also considers the following aspects, whereby the Supervisory Board, when filling a specific Executive Board position, always considers the circumstances of each individual case and is guided by the interests of the company.

- The members of the Executive Board should have many years of management experience, also in major companies or groups and bring with them experience from various careers wherever possible.
- At least one member should have international management experience.
- At least one member of the Executive Board should have a professional background in the process industry.
- The Executive Board in its entirety should have many years of experience in the areas services, compliance, finance and personnel management.
- Integrity should be a high priority for each individual Executive Board member.
- The Supervisory Board has defined a target for the proportion of women in the Executive Board. This is explained in Section 6.
- In accordance with the recommendation of the German Corporate Governance Code, the Supervisory Board has defined an age limit for members of the Executive Board at the end of the age of 65. Deviations from the age limit in individual cases are to be justified. Regardless of this rule, the Supervisory Board pays attention to a sufficient mix of ages among the members of the Executive Board.

### Composition goals and diversity concept of the Supervisory Board

In terms of the composition of the Supervisory Board, it is to be ensured that its members generally have the knowledge, skills and experience necessary for the orderly execution of the office and the tasks associated with it as well as the particular requirements laid out by the law and the German Corporate Governance Code for the Supervisory Board, its committees and individual members. The goals of the composition are presented in detail in the corporate governance report (as part of the Annual Report). At the same time, a diverse composition should be achieved for which the Supervisory Board follows the following non-discriminatory concept:

- Integrity should be a high priority for each individual Supervisory Board member.
- While at least two members should notably represent the criteria for internationality through professional experience in an international context, at least three members should have detailed knowledge and experience from the company itself, whereby no more than two former members of the Executive Board may be members of the Supervisory Board.
- While at least one independent member of the Supervisory Board should have particular knowledge and experience in the areas of accounting and auditing as well as internal control procedures, a further member should have particular knowledge and experience in the area of finance and at least two more should have particular knowledge and experience in the area of business administration.
- The Supervisory Board should if possible have, as representatives of the shareholders, three entrepreneurs or personalities who have already acquired experience in the management or monitoring of another medium-sized or large company.
- The Supervisory Board pays attention to a sufficient mix of ages among the members of the Supervisory Board. In this regard, as a rule, no member should be over 70 years of age at the time of the Annual General Meeting which is to decide on his or her appointment as member of the Supervisory Board; exceptions are to be justified.
- In their entirety, members of the Supervisory Board should have different educational levels, professional and socio-economic backgrounds as well as geographic presences.

- The Supervisory Board should have a balance of male and female members; in this regard, the statutory minimum number of women and men is to be observed.

For the above diversity concept, the Supervisory Board has not set a specific timeframe because it is to be expected that with the current composition in the Executive Board and the Supervisory Board the concept has been met.

The Presiding Committee mainly manages the succession planning of the Executive Board and will ensure that the diversity concept is taken into consideration in the filling of an Executive Board position and the more extensive planning for the composition of the Executive Board in coordination with Executive Board members.

The proposals for the election of shareholder representatives to the Supervisory Board, which are made by the Supervisory Board to the Annual General Meeting, are prepared for the Supervisory Board by the Nomination Committee. This ensures that in the review of suitable candidates, in addition to the composition goals for the Supervisory Board, the diversity concept is also considered. To the Supervisory Board, it also takes steps to ensure that for the relevant nominations for shareholder representatives to the Annual General Meeting that this is supported by relevant election resolutions to the Annual General Meeting. In this regard it should be kept in mind that the Annual General Meeting is not bound by nominations. The freedom of choice on the part of the employees in the election of Supervisory Board members from the employees is protected. In the process pursuant to the German Co-Determination Act for the election of employee representatives, the Supervisory Board has no nomination rights. The composition goals and the diversity concept for the Supervisory Board are therefore not to be seen as requirements for those entitled to vote or as a limitation of their freedom of choice.

The composition of the Executive Board and the Supervisory Board as of December 31, 2017 corresponds, in the Supervisory Board's own assessment, with the diversity concepts that are followed. Abridged curriculum vitae of the current members of the Executive Board can be found in this Annual Report (in the chapter Boards of the Company); abridged curriculum vitae of the current members of the Supervisory Board are available on the company's Internet page at <http://www.bilfinger.com/en/company/supervisory-board/>. The current composition of the Supervisory Board and the committees formed for more efficient execution of its

activities can be found in this Annual Report (in the chapter Boards of the Company). There it can be seen that the Executive Board and the Supervisory Board of Bilfinger SE have a very diverse composition:

The members of the Executive Board have many years of management experience, including in groups and bring with them experience from various careers. At least Mr. Blades has international management experience and has a professional background in the process industry with a focus in oil and gas. Dr. Patzak has many years of experience in the area of finance; the same applies to Mr. Bernhardt in the area of personnel management. Compliance and integrity are a top priority for all members of the Executive Board. No member of the Executive Board has is older than 65 and there is a sufficient mix of ages among the members of the Executive Board.

The Supervisory Board also has a diverse composition. More than the required two members have professional experience in an international environment and particular knowledge and experience in finance. Primarily the Chairman of the Supervisory Board meets the requirements related to particular knowledge and experience in the areas of accounting and auditing as well as internal control procedures. At least four members have detailed knowledge and experience with Bilfinger itself. None of the members of the Supervisory Board were previously active in the Executive Board of the company or holds a board function with a significant competitor. At least four shareholder representatives are experienced in the management or monitoring of another medium-sized or large company. In their entirety, members of the Supervisory Board have different educational levels, professional and socio-economic backgrounds as well as geographic presences. Compliance and integrity are a top priority for all members of the Supervisory Board. No member of the Supervisory Board has is older than 70 and there is a sufficient mix of ages among the members of the Supervisory Board. The Supervisory Board has an balanced number of men and women as members. For the share of men and women in the Supervisory Board, see Section 6 below.

## **6. Disclosures according to the Equal Participation Act – targets for the proportion of women in the Executive Board and the two management levels**

**below the Executive Board; minimum share of men and women in the Supervisory Board**

In relation to the Law on the equal participation of women and men in management positions in the private sector and in the civil service which took effect in Germany in May 2015, we achieved the targets set until June 30, 2017 as follows and for the period until December 31, 2017 defined the following new targets. In addition, the legally required minimum share of women and men in the Supervisory Board was achieved as follows.

Target achievement as of June 30, 2017

For new appointments to the Supervisory Board, with regard to the fixed gender quota of 30 percent that is to be met, the Supervisory Board followed the goal of filling the quota equally. On June 30, 2015, the decisive date for the definition of the target, this share was eight percent. Following the regular new election of the shareholder representatives during the Annual General Meeting on May 11, 2016 and the simultaneously newly-appointed seats held by employee representatives, six of the twelve Supervisory Board members are female, the share of women is thus at 50 percent. The goal of at least 30 percent is thus exceeded by far.

As a target for the share of women in the Executive Board, the Supervisory Board agreed that there will continue to be no female members. If a vacancy should become available by then, the Supervisory Board would attempt to find an appropriately qualified woman who would be suitable for joining the Executive Board. In the reference period there were no female members of the Executive Board.

Management level 1 includes employees who belong to management level 1 and management level1a in accordance with the internal company definition. The Executive Board decided to reach a target of an eight percent share of women in management level 1 of Bilfinger SE by June 30, 2017. On June 30, 2015, the date for the definition of the target, this share was 4 percent. The target as of June 30, 2017 in management level 1 was not fully met. As a result of restructuring at headquarters, particularly in the upper levels of management, in level 1 an increase from four

percent to six percent was achieved and the target of eight percent was nearly achieved.

Management level 2 includes employees who belong to management level 2, in accordance with the internal company definition. The Executive Board decided to reach a target for Bilfinger SE of a ten percent share of women in management level 2 below the Executive Board by June 30, 2017. On June 30, 2015, the date for the definition of the target, this share was six percent. At level 2, the goal of ten percent, with a share of women of 23 percent as of June 30, 2017 was clearly exceeded.

#### New targets for December 31, 2020

At the end of the reference period on June 30, 2017, with regard to the Law on the equal participation of women and men in management positions in the private sector and in the civil service, we set new goals for the future. For Bilfinger SE, the following targets should be achieved by December 31, 2020:

For the Supervisory Board, a minimum requirement as of December 31, 2020 remains the statutory gender quota of 30 percent share of women and men.

With regard to the share of women in the Executive Board, the target of zero percent remains unchanged. If a vacancy should become available by December 31, 2020, the Supervisory Board will attempt to find an appropriately qualified woman who would be suitable for joining the Executive Board.

With regard to management level 1, the Executive Board decided to achieve a target of a 10 percent share of women in Bilfinger SE by December 31, 2020. On June 30, 2017, the share was at six percent. For management level 2 at Bilfinger SE, the Executive Board determined to achieve a target of a 23 percent share of women by December 31, 2020 and thus to maintain the level reached on June 30, 2017.

### **7. Corporate governance report**

The Executive Board and Supervisory Board, in accordance with the requirements of the German Corporate Governance Code, prepare for the Annual Report a corporate governance report on the corporate governance of the company. It will be made

accessible to the general public in the Internet as part of the Annual Report 2017 on March 13, 2018.