Corporate Governance Report

December 2023

The German Public Company Governance Kodex (as most recently revised in September 2020, the ‘PCGK’) does not by its terms apply to Blue Action Fund as a non-commercial foundation.\(^1\) Nevertheless, from its inception, Blue Action Fund (‘Blue Action’) has aligned its governance with the principles set forth in Part I of the PCGK. Blue Action also acknowledges that it is listed in Annex 10 to the PCGK as one of the ‘Institutions with special political or financial significance for the Federal Republic of Germany in which Germany has influence on the appointment of members of supervisory bodies or similar bodies and/or the management’. Against this background, Blue Action decided in 2021 to begin adhering to PCGK Part I on a voluntary basis. In line with the requirement in PCGK Part I, Blue Action is pleased to publish its Corporate Governance Report 2023.

1. Overview and Recent Governance Developments

Blue Action is governed by a two-tier (Supervisory and Management) Board structure. There are no shareholders in a foundation and accordingly there is no equivalent of a shareholders’ meeting. By default, the Supervisory Board (SB) therefore takes over some of the functions foreseen by the PCGK that a shareholders’ meeting would have in other structures.

The SB is currently composed of two Members plus Observers. Dr. Heike Henn (appointed by the German Federal Ministry for Economic Cooperation and Development, ‘BMZ’) continued to serve as SB Chair, with Stephan Opitz (appointed by KfW) as SB Deputy Chair, until her term came to an end in (month) 2023. On 30 August 2023, Gisela Habel was appointed by BMZ to act as Blue Action’s new SB Chair till 29 August 2026. Stephan Opitz term lasts until end of 2025.

Observers are invited from other funding partners, namely the Swedish Foreign Ministry, the Agence française de développement (AFD), the Norwegian Agency for Development

\(^1\) See PCGK preamble, page 7. ‘The principles also apply in a comparable way to companies with a federal participation in other legal forms of private law, e.g. in the legal form of a stock corporation. In addition, they apply in a comparable way – and in some cases partly with limitations – also to legal entities under public law and to foundations under private law that the federal government has established or on which the federal government exercises influence for other reasons, provided that their object is a commercial or other economic one or predominantly includes such an object.’ (Emphasis added)
Cooperation (Norad) and the Irish Department of Foreign Affairs (Irish Aid). IUCN is an appointed advisor to the Supervisory Board.

In 2023, Stephan Opitz and Dr. Heike Henn served on Blue Action’s Audit Committee and were closely informed about Blue Action’s control systems as part of the auditor’s reports covering the financial year 2022. Starting with the audit covering the financial year 2023, Gisela Habel will serve next to Stephan Opitz on the Audit Committee.

The Management Board (MB) is currently composed of two members: Markus Knigge – Blue Action Executive Director - continues to serve as MB Chair with a term extended until 8 May 2027. Judith Weigand – Blue Action Programme Director – is a member of the MB on a three-year appointment until 31 April 2024. She was elected as the MB Deputy Chair in October 2021.

2. Supervisory Board and Management Board Compensation

The SB continues to serve on an honorary basis without compensation. The SB has agreed compensation packages for Markus Knigge and Judith Weigand which are consistent with practice for environmental NGOs in Europe but are considerably below comparable private sector standards. Both are entitled to modest merit-based bonuses under their contracts of between 10 and 20% of their fixed salaries.

MB salaries in this report are not disclosed, as would normally be required for PCGK compliant entities. Salary levels are fully transparent to all SB Members and to BMZ and KfW, which as the appointing institutions of the SB Chair and Deputy Chair, are entitled to see internal Blue Action documents including salary information. Disclosure of compensation levels is not customary in the charitable sector in Germany and given the relatively modest salaries involved, requiring MB Members to disclose their compensation could be disadvantageous to recruiting the best personnel.

3. Comments on Sustainable Business Practices (Section 5.5.1-5.5.3 PCKG)

Sustainability and the 2030 Sustainable Development Goals (SDGs) are built into the DNA of Blue Action. Its grants pursue projects that support, in particular, SDG 14 by conserving marine biodiversity, contributing to recovery of fish stocks and enhancing livelihood conditions and food security. Other SDGs pursued through these projects are, in particular, SDG 1, 2 and 13.

Blue Action is also committed to principles of equal treatment and a discrimination-free culture. Our SB is currently composed of one female and one male with two additional males and two females participating as Observers. Five different nationalities were represented at the end of 2023.

Blue Action’s staff (including the MB for these purposes) is currently composed of nine women and two men, representing three different nationalities. Several of our staff manage their hours on a flexible basis to care for their children. Blue Action provides flexible home-working conditions.

Employees’ positions and salaries lean on corresponding classification from the German Collective compensation agreement for the public service ‘Tarifvertrag für den Öffentlichen Dienst Bund’.

Blue Action has established a feedback mechanism, including anonymous feedback about the Executive Director. In July 2023, a formal Whistle-Blower Policy was adopted. Other complaint mechanisms are provided through the Grievance Mechanism and a Counter Fraud Policy.
4. Comply or Explain Disclosure

The PCGK explicitly recognises that one size does not fit all and that there may be good reasons for certain entities to adopt a different governance regime than that contemplated by more than 100 'soll' (comply or explain) provisions of the PCGK. In cases where an alternative is adopted, the reporting entity is required to explain the basis for its different approach. Pursuant to these requirements, Blue Action reports the following exceptions:

1. Responsibility and Liability (PCGK Section 34.3.1): Rather than responsibility for ordinary negligence, the Charter of Blue Action (Section 5(4)) provides that SB and MB Members are liable for intentional violations of duty and gross negligence. This is consistent with practice for foundations and the 'honorary'/volunteer nature of the SB’s functions and the relatively modest, charitable sector-oriented salaries of MB Members who are paid.

2. Directors and Officers Liability Insurance Requirements (PCGK Section 4.3.2): In the event the reporting organisation takes out a D&O policy, the PCGK foresees a deductible amount of 10% of the amount of the MB Member’s liability capped at 150% of his/her salary. Consistent with generally accepted practice for charitable organisations, and given the relatively modest salaries involved, the Blue Action D&O insurance policy has no deductible.

3. Requirement to Select MB Members in a Competitive Process (PCGK Section 5.2.2): Markus Knigge – Blue Action Executive Director – was chosen in a competitive process, as was Judith Weigand when she was hired to an executive staff position. She was subsequently elected to the MB by the SB after careful deliberation.

4. Requirements on Compensation Structure (PCGK Sections 5.3.1 and 5.3.2): The detailed provisions on compensation are complied with almost in full. However:
   - Given the modest nature of the bonuses of the MB, neither the provision requiring differentiated elements of the KPIs/objectives to be weighted separately for the bonus calculation nor the entire extent of the documentation requirement for the bonus determination is complied with in full (the minutes do document that bonuses were considered and agreed by the SB).
   - Neither the provision foreseeing a reduction in MB salaries in the event of a serious worsening of the economic situation nor the provision foreseeing a salary repayment in the event of a breach of duty are considered to be appropriate for a not-for profit, non-commercial enterprise. They are also not customary in the German charitable sector.

5. Requirement for SB to have Legal, Compliance and Corporate Governance Competence (PCGK Section 6.2.1): The SB does not have direct competence in these areas but assures oversight through support personnel at KfW and BMZ and independent advisors as necessary.


Issued in December 2023, on the authority of:

The Supervisory Board
The Management Board