



By-laws of the Blue Action Fund (Blue Action) Supervisory Board (SB)

As adopted by the Supervisory Board 24 November 2022)

Introduction

Blue Action's charter sets forth comparatively detailed provisions on various Supervisory Board governance matters including the number of SB members, SB responsibilities, the conduct of meetings and the like, which for ease of reference are attached hereto as Annex 1. These by-laws ("the SB-bylaws) seek not to duplicate but are intended rather to complement the relevant provisions of the charter, also taking into account relevant recommendations of the code of the Federal Association of German Foundations ("Grundsätze Guter Stiftungspraxis") and the German Public Company Governance Kodex (PCGK), so that taken together the charter and these bylaws provide an overall governance structure for the SB.

The SB has also adopted by-laws for the Management Board (the "MB-by laws"). The SB by-laws and MB by-laws are intended to complement each other and should be considered together.

1. Internal Supervisory Board Matters

1.1 SB Membership. The SB will seek to ensure that it manages its composition so that its members, as a group, have the necessary knowledge, abilities and experience to fulfill their supervisory function. The SB shall seek a diverse membership considering especially such factors as gender.¹ For donors other than BMZ/KfW to be eligible for SB membership status, the SB currently requires a minimum commitment of Euro 8 million which makes the donor eligible for a three-year term. Contributions under that amount can lead to Observer status.

1.2 SB Role. The SB is an oversight body with strategic and support responsibility, not a managing or implementing one. The SB has no authority to represent Blue Action except in

¹ PCGK Section 6.2.1 and 6.2.2. As a volunteer board of a charitable organization, the SB will be flexible about setting certain restrictions on membership (e.g. retirement age) that might otherwise apply to paid board positions or for-profit oriented organizations.

legal transactions with the MB (e.g. the MB employment contracts). When acting within its oversight role, it is liable only for gross negligence and willful misconduct.²

The SB shall cooperate with the MB in a close and trusting manner for the benefit of the Foundation. The SB may reserve for itself the right to agree in advance to actions to be taken or transactions entered into by the MB. Under the MB by-laws §7, consent of the SB is required for certain matters.³

In their support role, it is expected that SB members will use their positions and influence as appropriate to advance Blue Action's fundraising efforts and more generally promote Blue Action in public fora, lobby for political support, etc.

1.3 Capacity, Loyalty and Conflict of Interest. SB members serve in their individual capacities.⁴ They owe a duty of loyalty to Blue Action and its purpose. Each member of the SB shall immediately disclose conflicts of interest to the other members of the SB. No SB member shall vote on or participate in the decision-making process of any matter in which such SB member has an interest.⁵

All transactions between the Foundation on the one hand and the members of the SB and related persons or organizations on the other must comply with industry standards. Insofar as they are not otherwise subject to approval under charter or these by-laws, significant transactions with the aforementioned persons or organizations require the consent of the SB.⁶

1.4 Committees. The SB may create such committees as it deems necessary to efficiently carry out its work and delegate agreed responsibilities to such committees, provided that it may not delegate its general responsibility for strategy and MB oversight. The SB should approve a terms of reference for each committee it creates. Committees may consist of one or more MB members and may be advised by such advisors as the committee member(s) believe add value to the Committee's work.⁷

1.4.1 Audit Committee. The SB shall appoint an audit committee and establish a terms of reference for the committee.⁸

1.5 Meeting(s) of the SB. Section 12 of the charter (see Annex 1) contains detailed provisions on meetings, which are to be held at least twice per year. At least once per year, the SB shall hold a session without the presence of the MB.⁹ In addition to or as part of SB meetings, executive sessions attended only by SB members without observers or the MB can be organized on ad-hoc basis as needed.

1.6. Member Conduct and Board Evaluation. Each SB member is responsible for assuring that s/he has adequate time to devote to foundation affairs. If a member misses more than half of the meetings in any given year this shall be reported in the annual governance report.¹⁰ The SB

² Charter Section 11(1) and 5(4). Were the SB to direct action by the MB outside of its defined areas of competence, it would exceed its statutory competence and accept some legal responsibility.

³ See Annex 2. PCGK Section 6.1.1.

⁴ PCGK Section 6.2.3.

⁵ PCGK Section 6.4.1.

⁶ PCGK Section 5.4.3.

⁷ Charter Sections 10(6)

⁸ PCGK Section 6.1. Charter Section 12.3.

⁹ PCGK Section 4.2.2.

¹⁰ PCGK Section 6.2.3

shall at least bi-annually review the quality and efficiency of its work and that of its Committees, and follow the implementation of any recommendations for improvement.¹¹

2. Supervisory Board Observers and Guests

2.1 General. The SB may invite individuals associated with donors or with special expertise as Observers to such portions of its meetings as it determines to be appropriate. SB Observers are not SB Members and are not entitled to vote in any decisions by the SB. SB Observers have no formal legal responsibility for Blue Action. Subject to that limitation, SB Observers shall participate in SB meetings as do SB members and have a right to speak. All Observers shall maintain confidentiality about information and decisions unless such decisions are made public by the SB.

2.3. Guests. With the consent of the Chair, SB and MB members may invite guests to meetings to advise on particular agenda points or more generally follow the meeting (e.g., Blue Action, KfW and BMZ staff).

3. Annual Objectives and Performance Review of the MB

Annually prior to beginning (or at the very outset) of each year, the SB and the Executive Director shall agree the ED's annual objectives and KPIs. The goals should be sufficiently ambitious, time bound and to the extent possible measurable—and should not be adjusted or changed without a clear basis for doing so. The achievement of the goals and KPIs should be the basis for the ED's bonus award.

At one of its executive sessions, the SB shall consider the ED's performance and bonus based on a report presented by the ED. The SB Chair or Vice-Chair shall maintain a separate file documenting the evaluation and basis for the bonus decision. Compensation and bonus should be evaluated as appropriate in the context of the NGO/foundation environment and take account of the "prohibition against higher placement than comparable German government officials" (Besserstellungsverbot).

In the event an MB member takes on another paid position (for example in the supervisory board of another organization), the SB will consider the impact if any on the MB's compensation at the foundation.¹²

4. PCGK Compliance

Blue Action shall apply the PCGK in a manner consistent with its status as a charitable foundation under Hessen law, and the MB and SB shall prepare annually a corporate governance addressing the requirements of the PCGK including the required "comply or explain" statement. Any conflict of interest with a member of the SB and its treatment should be disclosed in the report.¹³

¹¹ PCGK Section 6.1.9.

¹² Sections 5.3.3 and 5.3.2.

¹³ PCGK Sections 7.1 and 6.4.1. NB—should also go into MB by-laws.

Annex

Relevant Blue Action Charter Provisions

1. General Provisions of the Charter Relating to SB Governance

§ 10(6) The SB may adopt by-laws governing its conduct, for the adoption and amendment of which, in addition to the requirements of § 12, the approval of three quarters of the members is required.

§5(3) A member of one body may not be a member of the other body at the same time.

2. Responsibilities and Rights

§ 5(2) The members of the SB serve on an honorary (volunteer) basis. If the income situation of the Foundation permits it, the SB may decide that individual or all members of the management board receive an appropriate remuneration, set by the SB. Apart from that, the members of the management board also serve on an honorary basis. All members of the two bodies are entitled to compensation for costs and expenses incurred in connection with the exercise of their duties as members of the bodies.

§5(4) Members of the bodies are only liable for intentional misconduct and gross negligence.

§11(1) The SB shall take the Foundation's strategic policy decisions, which shall be implemented by the management board. In addition, it has in particular the following tasks:

- Election of the members of the management board (§ 6 para. 1)
- Advising, supporting and supervising the management board
- Adoption of the by-laws for the management board
- Requests to the Supervisory Authority for Foundations for changes to the statutes, changes in purpose, dissolution and merger of the Foundation with another Foundation
- Consent to legal transactions and projects which, according to the by-laws of the management board, require the approval of the supervisory board
- Approval of the budget for the following year
- Appointment of the auditor
- Receipt of the audited annual financial statements
- Discharge of the management board
- Review of the allocation of the Foundation's funds and the realization of the Foundation's purpose.

§ 11(2) Each individual member of the SB has a comprehensive right to information and examination.

§ 11(3) The Chairman of the SB or, in the event of his absence, the Deputy Chairman, represents the Foundation in legal transactions with the management board and in the appointment of the auditor.

3. Composition, Appointment & Term

§ 10(1) The SB shall consist of two appointed members and up to seven other elected members. They should have expertise necessary or useful for the fulfillment of the purpose. The term of office of the members of the SB is three years. Re-appointment or re-election is permitted.

The two appointed members of the SB are determined as follows:

- a. A member of the SB is appointed by the founder KfW, who does not need to be an employee of KfW.
- b. A member of the SB is appointed by BMZ, who does not need to be an employee of BMZ.

The other members of the SB shall be elected by the members appointed pursuant to paragraphs (a) and (b) above, by joint declaration. Elected members shall be persons who have demonstrable expertise in the area of foundation management or the purposes of the Foundation (pursuant to § 2).

§ 10(2) The appointed members may be recalled at any time by the appointing institution. In the event of the departure of an appointed member, a substitute member shall be appointed by the person entitled to do so under para. 1 a) and b). Upon the resignation of an elected member, the appointed members shall be free to elect a successor by joint declaration.

4. Chair and Deputy Chair

§ 10(3) The member of the supervisory board appointed by BMZ in accordance with paragraph 1 b) above shall be Chairman of the supervisory board; the member of the supervisory board appointed by KfW pursuant to para. 1 a) shall be Deputy Chairman. In the event that BMZ or KfW have waived in writing the right for their appointed member of the supervisory board to also be the supervisory board Chair or Deputy Chair, as the case may be, the entire supervisory board shall elect from among its members a Chairman or Deputy Chairman of the supervisory board for a period of three years. Re-election is permitted.

§ 10(5) Insofar as BMZ or KfW no longer wish to exercise their rights referred to in paragraph 1 (a) and (b) above, and have declared this in writing to the Foundation, all the members of the supervisory board shall be chosen by election, i.e. by a majority vote decision of the supervisory board. The same applies if BMZ or KfW do not exercise their right to appoint within six months after the departure of a person appointed by them. To the extent that appointed members are replaced by election, the special rights assigned to them by this charter shall no longer apply.

5. Conduct of Meetings and Resolutions

§ 12(1) Meetings of the SB shall be convened by the Chairman or his deputy, whenever necessary for proper management, but at least once a year. The meeting shall be convened by giving at least two weeks' notice and stating the agenda. Meetings shall also be convened if two members of the supervisory board or the management board of the Foundation so request it.

§ 12(2) Decisions of the SB are generally taken at meetings. The SB shall have a quorum if more than half of its members are present or represented after a proper notice has been made. A member of the SB may be represented at the meeting by another member of the SB.

§ 12(3) Errors in convening a meeting are considered to be cured if all members are present or represented and no member disagrees.

§ 12(4) Unless stipulated otherwise in this charter, the SB shall take its decisions by a simple majority of the non-abstaining members who are present or represented. In the event of a tie, the Chairman's vote, or in the event of his absence the vote of his Deputy, shall be determinative.

§ 12(5) Minutes of the SB meetings shall be kept and must be signed by the Chairman and the secretary. Meetings may also be held by telephone or video conferencing unless a member of the supervisory board objects. Resolutions shall be recorded in writing. The minutes shall be reported to all members of the SB and to the Executive Director of the management board of the Foundation.

§ 12(6) The Chairman may also request written, telegraphic or electronic voting by circulation procedure in text form, with the transmission of the decision items and indication of the voting period, which as a rule will be at least two weeks. The decision must be documented in an appropriate manner and recorded in the minutes of the next meeting.

If a member of the SB disagrees with the Chairman's request, the latter shall convene a regular meeting of the SB.

§ 12(7) Secrecy must be maintained on the contents of the supervisory board meetings. This does not apply to the appointed members in relation to their appointing institutions.

Annex 2

SB approval is required for the following matters as per bylaws of the Management Board (MB):

§ 7 Transactions subject to Prior Authorization

- (1) The MB requires the consent of the SB for the following transactions:
 - a) Adoption and amendment of Foundation policies such as the Investment Policy and Grant Procedures Manual and the fundamental operating principles of the Operations Manual (see § 9 below).
 - b) Pursuit of any grant project (approval of the overall concept proposal and maximum Euro amount) and termination of approved projects
 - c) Conclusion, amendment or termination of any non-grant contract (e.g. employment contract, consulting or other service provider contracts, etc. which either (i) is outside the ordinary course of business, or (ii) was not budgeted in the Foundation's annual budget and commits the Foundation to an amount in excess of Euro 75,000 per year.
 - d) Setting up expert panels or advisory councils and selecting their members
 - e) Non-grant spending in any given year in excess of 105% of the approved budget for that year.
 - f) Acceptance of additional contributions to the endowment.
- (2) The SB may also grant the MB revocable consent for individually specified matters in advance.