AdAR Arbeitskreis deutscher Aufsichtsrat e.V.

HENGELER MUELLER

Supervisory Board Survey 2023

SEPTEMBER 2023

Foreword

Over the last few years, aspects relating to sustainability and the ESG criteria have turned into critical factors for commercial enterprises to consider, and as a result supervisory board agendas have been devoting more and more attention to them. This year, in general, positioning the company to be fit for the future counted among the central topics addressed by supervisory boards. Additionally, globally persistent geopolitical instability and supply-chain disruptions, triggered by bottlenecks, unrelenting inflation and energy pricing, continue to dominate in the German corporate landscape.

But what has this meant for supervisory boards and the work they do in concrete terms? What further topics are defining supervisory boards' agendas at present? How are these topics impacting the skills and expertise profiles of supervisory boards? And what significance does the greater professionalisation of supervisory board work have in times of crisis? Together with AdAR, the Arbeitskreis deutscher Aufsichtsrat e.V. (German Supervisory Board Working Group), we explored these and many more questions in this year's supervisory board survey.

We hope you find this reading enlightening and inspiring.

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Please note: The values used in this study report are rounded figures. Furthermore, 'prefer not to say' responses have been left out for better comprehensibility. Therefore, in individual cases, total sums might not come out to 100 (per cent). Moreover, not all respondents answered all of the questions, meaning that there may be different survey sample sizes for individual questions.

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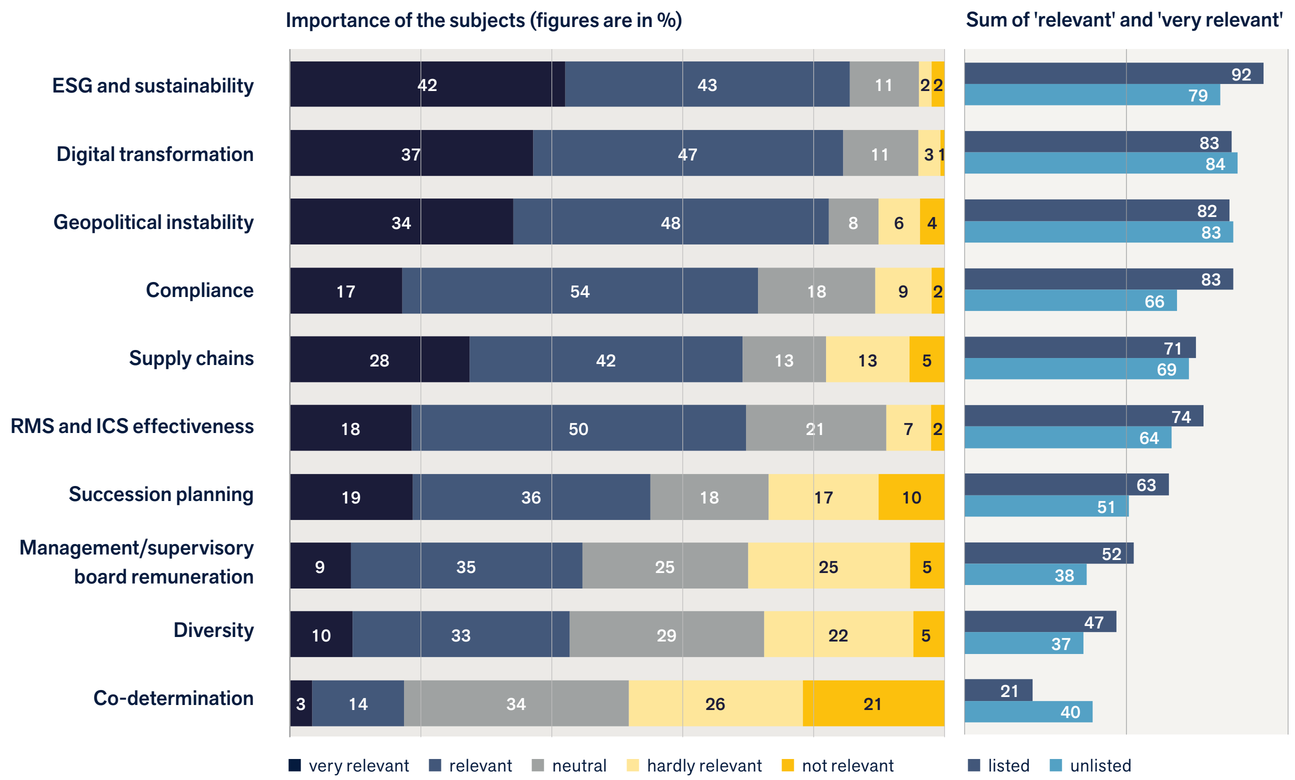
A. Topics and agendas

The 2023 supervisory board agenda

The subject of sustainability is growing into an ever more important competitive aspect for commercial enterprises. And the ESG criteria figure centrally in that development. In light of increasingly more stringent environmental laws and compliance and quality directives, but also considering companies' own ethical objectives, it is hardly astonishing that those factors are also impacting supervisory boards' agendas. Eighty-five per cent of the supervisory board members we surveyed consider the subject of ESG and the transformation of their companies towards more sustainability the central matters on their agendas.

What subjects are defining your supervisory board's agenda in 2023?



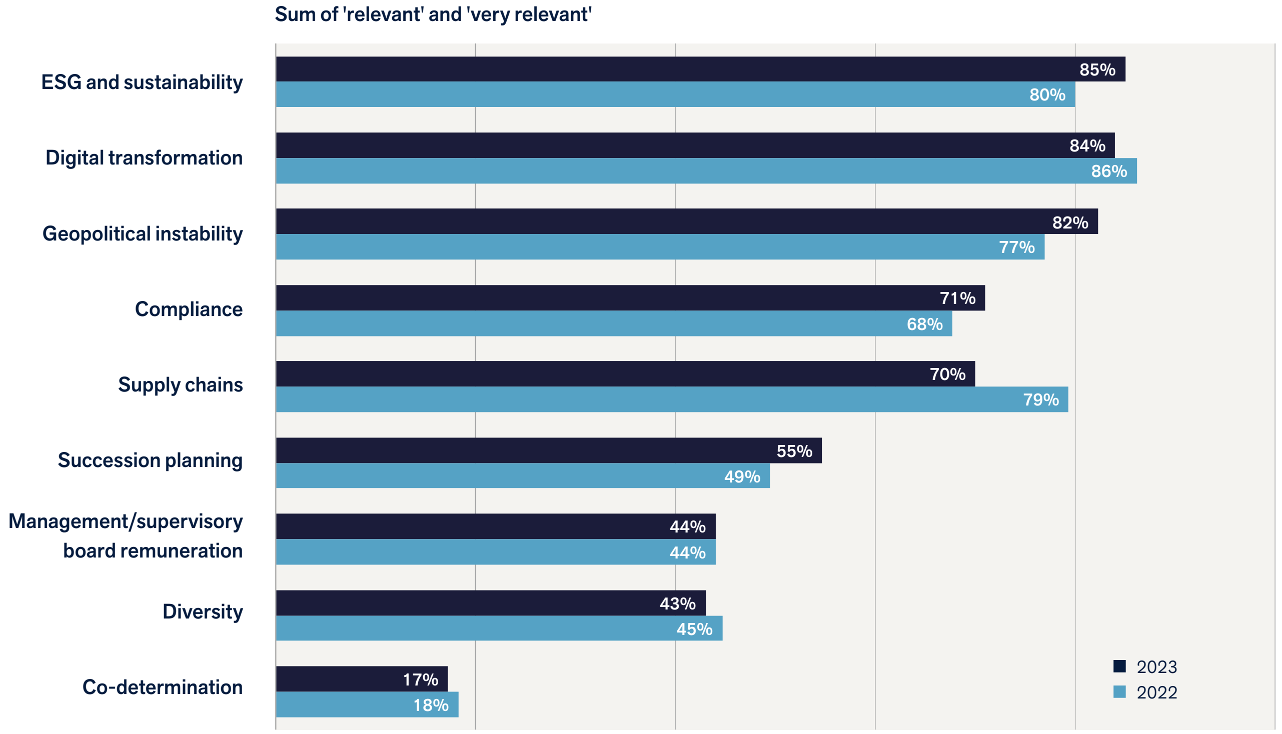
In general, like last year, the supervisory board members attached the greatest importance to setting their companies up to be ready for what the future brings. In contrast to the results of the 2022 survey, while the subject of digitalising or digitally transforming their companies no longer ranks first this year, it still remains greatly relevant (with 84 per cent of respondents saying so).

With a view to positioning their companies for the future, sustainability issues have kept the supervisory boards of listed companies somewhat busier than their counterparts at unlisted companies (92 per cent versus 79 per cent), while digitalisation is an almost equally common consideration at both listed and unlisted companies (83 per cent versus 84 per cent).

Because crises around the world are still ongoing, geopolitical instability also continues to loom over supervisory boards' agendas. In the respondents' order of priority, this concern currently ranks third and rose slightly in importance compared to last year (82 per cent versus 77 per cent).

Overall, the three top issues for the work done by supervisory boards (sustainability/ESG, digitalisation and geopolitical instability) are equally relevant, and the differences in their weighting are marginal.

What subjects have been on your agenda in particular in 2023 (compared to 2022)?



Supply chains have remained just as relevant in 2023. Even though supply chains are now more stable again and, accordingly, the subject's significance has lessened marginally compared to last year (70 per cent of respondents calling them relevant in 2023 versus 79 per cent in 2022), they continue to preoccupy supervisory boards because of bottlenecks and the changes in energy prices influenced by unremitting inflation. The entry into force of the German Act on Corporate Due Diligence in Supply Chains at the beginning of this year and the associated compliance measures have made the subject even more relevant. The supervisory board members of both listed and unlisted companies deem this topic to be important to almost the same degree (71 per cent versus 69 per cent). A greater disparity becomes apparent between the two respondent groups when it comes to compliance, which has been dominating the agenda of listed companies' supervisory boards to a far greater degree (83 per cent) than it has for their counterparts at unlisted companies (66 per cent).

This year, for the very first time, our study asked supervisory board members whether they thought their internal control systems (ICS) and risk management systems (RMS) were effective. Sixty-eight per cent of respondents said that they were. The German Act to Strengthen Financial Market Integrity introduced the requirement that management boards of publicly traded companies must implement adequate and effective ICS and RMS. The 2022 update of the German Corporate Governance Code (GCGC) urges also taking sustainability aspects into consideration when complying with that requirement and has formulated tighter disclosure rules. It is therefore unsurprising that this subject is also highly significant in the work supervisory boards do (with 74 per cent of the surveyed officers of listed companies and 64 per cent of those from unlisted companies saying so).

This was followed by succession planning (55 per cent), management board and supervisory board remuneration (44 per cent), diversity (43 per cent) and co-determination (17 per cent), some of which trail the one before it by a considerable margin.

In this regard as well, the order of the priorities is different at listed and unlisted companies. Succession planning is given somewhat higher priority by the supervisory board members of publicly traded companies (63 per cent) than by their counterparts at unlisted companies (51 per cent).

The difference between listed and unlisted companies is greater with regard to management board and supervisory board remuneration. According to 52 per cent of the respondents from listed companies, this is a far more established topic there than on the supervisory boards of unlisted companies (38 per cent). Differences between the respondent groups can also be seen in their opinions regarding diversity. Forty-seven per cent of the surveyed officers of listed companies reported having this subject on their agendas, while only 37 per cent of the respondents from unlisted companies said the same.

Distinct differences between the respondent groups are also apparent on the subject of co determination. Survey responses are showing a consistent trend in this respect: like last year, unlisted companies considered co-determination to be far more preoccupying than publicly traded companies did (40 per cent versus 21 per cent in 2023 and 25 per cent versus 9 per cent in 2022, respectively). This difference may be due to the fact that co-determination is enshrined at listed companies and tends to be part of the routine.

B. Supervisory boards' skills and expertise profiles

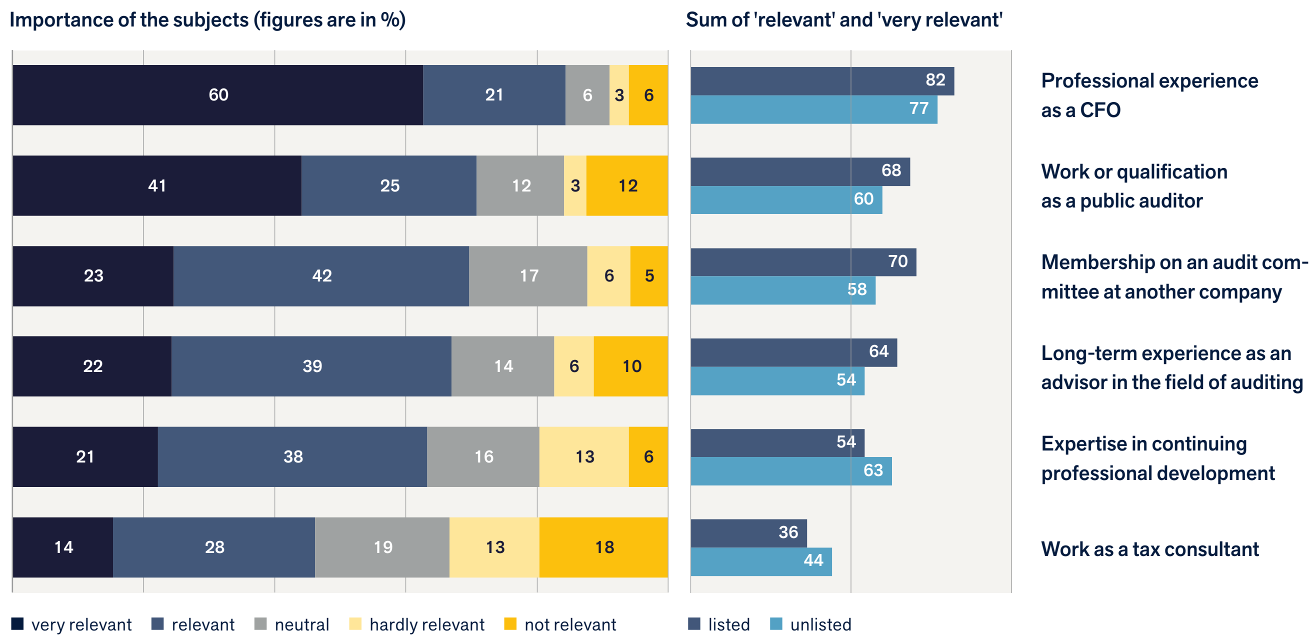
With the revised version of the GCGC (dated 28 April 2022), the government commission responsible for the Code set out stricter requirements for supervisory boards' skills and expertise profiles. By virtue of the German Act to Strengthen Financial Market Integrity, these profiles have additionally gained new meaning. Financial expertise constitutes a central aspect when providing holistic advice to and monitoring management boards.

1. Financial expertise on supervisory boards

The German Act to Strengthen Financial Market Integrity underscores the significance of financial know-how as a component of the skills and expertise profiles of listed companies' supervisory boards. Since 1 July 2021, the Act requires public-interest entities to have at least two members on their supervisory boards with expertise in accounting or auditing. Which is why it is not shocking that, like last year, most of the supervisory board members we surveyed (81 per cent overall) either agreed or strongly agreed that professional experience as a CFO was important. Besides that, obtaining the German public auditor (Wirtschaftsprüfer) qualification or working as one (66 per cent) and a membership on the audit committee of another company (65 per cent) were given nearly the same heavy weighting. These were followed by long-term experience as an advisor in the field of auditing (61 per cent) and general expertise (59 per cent). Working as a tax consultant was rated rather low as proof of expertise, the same as last year.

The supervisory board members of listed companies attached greater importance to professional experience as a CFO when gauging proof of financial expertise than their peers at unlisted companies did (82 per cent versus 77 per cent). The same was true for obtaining public auditor qualification or working as one (68 per cent versus 60 per cent), just as it was for membership on the audit committee of another company (70 per cent versus 58 per cent) and long-term experience as an advisor in the field of auditing (64 per cent versus 54 per cent). By contrast, acquiring expertise through continued education (63 per cent versus 54 per cent) and working as a tax consultant (44 per cent versus 36 per cent) were considered more relevant at unlisted companies regarding proof of expertise than at listed companies.

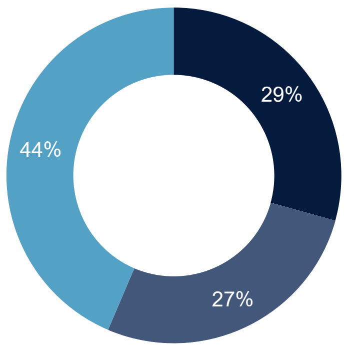
In your opinion, where did the relevant members on your supervisory board acquire the necessary expertise?

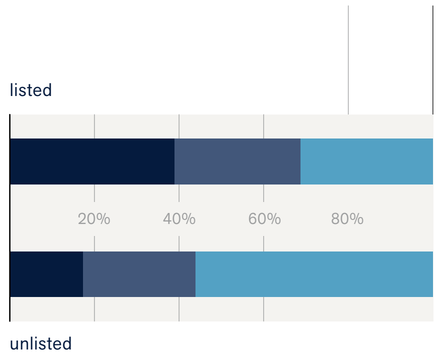


2. Training and professional development for supervisory boards

It is the duty of every member of a supervisory board under German stock corporation law to ensure that he or she has the required education and training. The GCGC recommends that companies provide their supervisory board members with the appropriate support in this regard. Currently, providing that assistance is relevant particularly when it comes to newer, and important, topics such as finances, sustainability and digitalisation. When asked about how training and professional development were handled at their companies, 44 per cent of surveyed supervisory board members stated that they organised any such programme at their own responsibility and had to bear the costs themselves. At unlisted entities, that number even rose to 56 per cent. Some 29 per cent said that their company took care of the organisation as well as the costs. At publicly traded companies, that figure jumped to 39 per cent. A further 27 per cent stated that the costs were covered by their companies, but that they needed to organise any continuing education or training course themselves. In this respect, the difference turns out not to be major between listed (30 per cent) and unlisted (27 per cent) companies.

How is training and professional development for supervisory board members handled at your company?



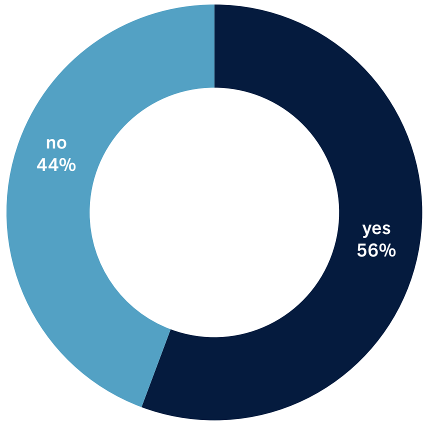


- The company organises the training and professional development and bears the costs
- The company bears the costs of the training and professional development, but the organisation is the responsibility of the supervisory board member
- The supervisory board member organises any such programme at their own responsibility and bears the costs

3. Supervisory boards' qualification matrices

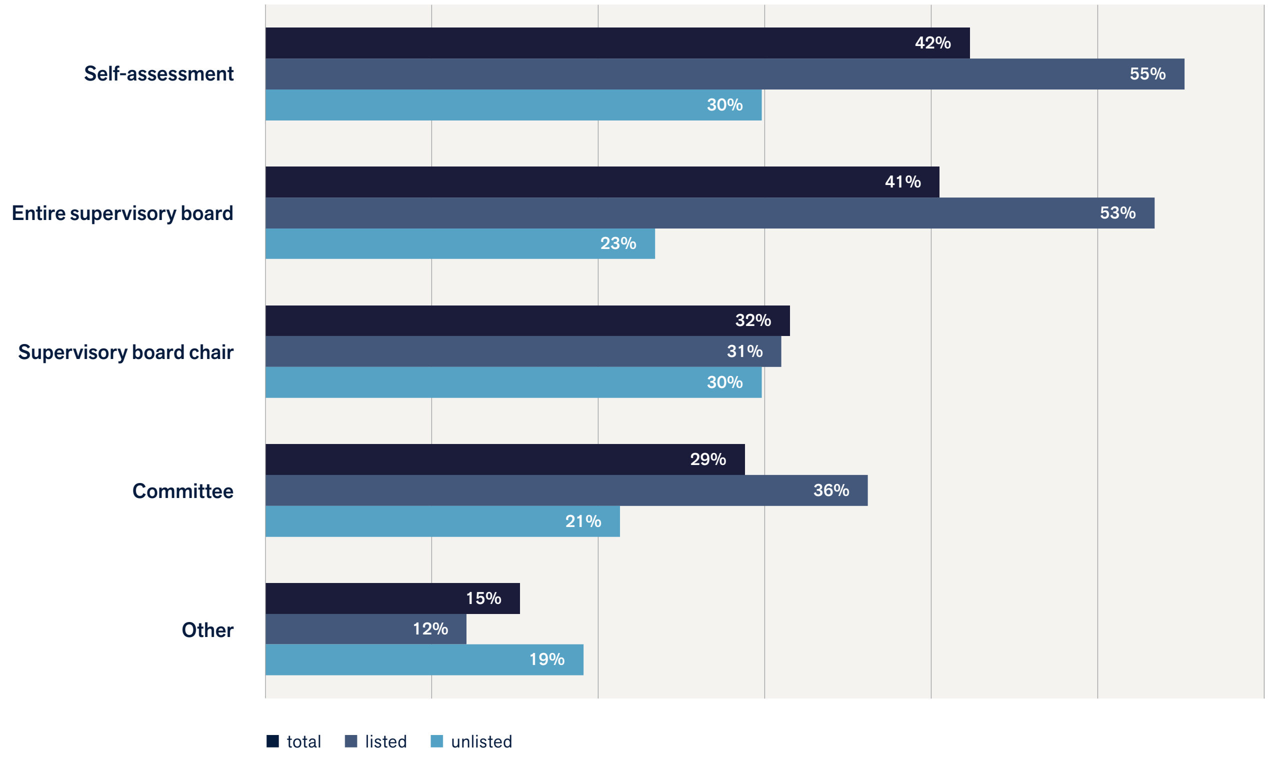
According to the GCGC's latest version, the implementation status of a supervisory board's skills and expertise profile is to be disclosed in corporate governance statements in the form of a qualification matrix. Merely describing the profile will no longer satisfy these new guidelines. Instead, the proficiencies and qualifications of the individual members of the supervisory board need to be presented in an overview table juxtaposing those with the know-how stipulated under the skills and expertise profile. When supervisory board members were posed the question whether they had already had any experience in their companies with creating and publishing a qualification matrix, the majority (56 per cent) replied that they did. At listed companies, that figure was even much higher at 76 per cent. This meant, of course, that 44 per cent of respondents still lacked any experience with qualification matrices.

Have you already had any experience at your company with creating and publishing a qualification matrix?



When asked by whom or how the qualification matrix was prepared and made, the largest percentage of the surveyed supervisory board members (42 per cent) replied that their matrix was created based on a self-assessment, followed closely (41 per cent) by the entire supervisory board contributing. In near equal measure, the supervisory board members responded that their qualification matrix was prepared and put together either by the supervisory board chairman or in a committee, 32 per cent and 29 per cent respectively. Fifteen per cent of respondents stated that their qualification matrix was drawn up elsewhere within the company.

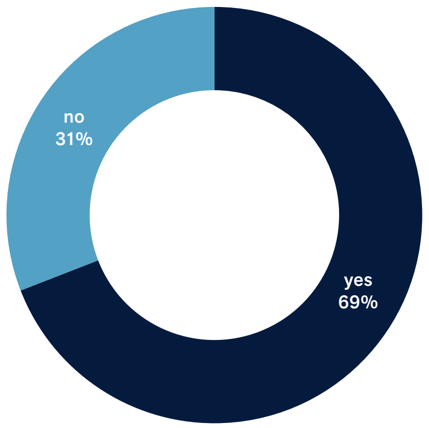
Who on the supervisory board prepares and makes the qualification matrix and how?



4. Sustainability expertise on supervisory boards

Particular expertise is also being increasingly demanded of supervisory boards when it comes to sustainability. This new importance follows from the amended preamble of the GCGC, in which the Code commission emphasises the impact that corporates have on people and the environment. The preamble makes clear that that impact is to be taken into account by management and supervisory boards in their companies' leadership, monitoring and enterprise strategy pursued in the company's best interests. Accordingly, the Code's new recommendations provide that supervisory boards' skills and expertise profiles also comprise expertise regarding sustainability issues relevant to the enterprise. While just a narrow majority (51 per cent) of those surveyed last year believed that their companies met this criterion, a clear majority (69 per cent) said the same this year. That number spikes to 82 per cent at publicly traded entities.

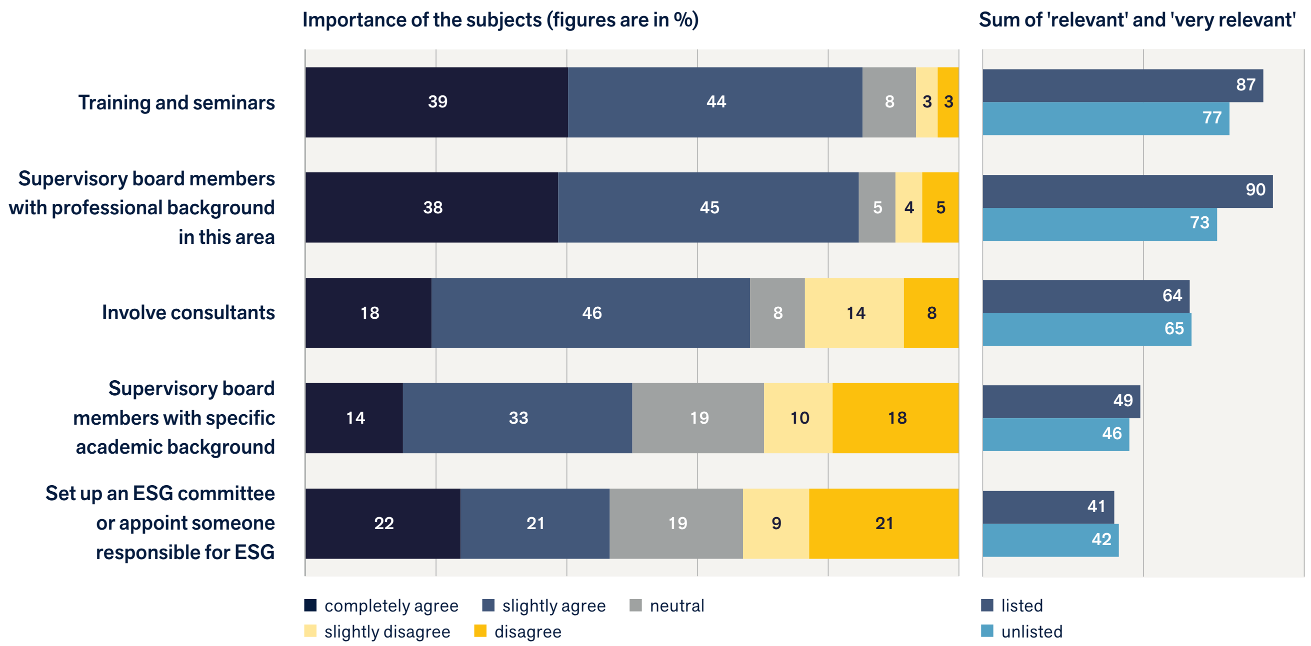
According to the guidelines of the German Corporate Governance Code, supervisory boards should have expertise on sustainability. Does your company already meet this requirement?



5. Meeting the sustainability expertise requirements

Our study shows that sustainability expertise requirements are being addressed in entirely different ways. Like last year, the surveyed supervisory board members view training and seminars as the means of choice to fulfil the requirement for this particular ESG expertise. Unlike in 2022, when training and seminars were given greater weight, this year just as many respondents look to board members with a professional background in this area (each category receiving positive responses from 83 per cent of those surveyed). By contrast, 64 per cent of supervisory board members would call on the expertise of consultants, or are already doing so. Minor importance however is still given to an academic background when it comes to choosing a supervisory board member with expertise on sustainability (47 per cent), the same as setting up an ESG committee or appointing an individual to oversee ESG matters (43 per cent).

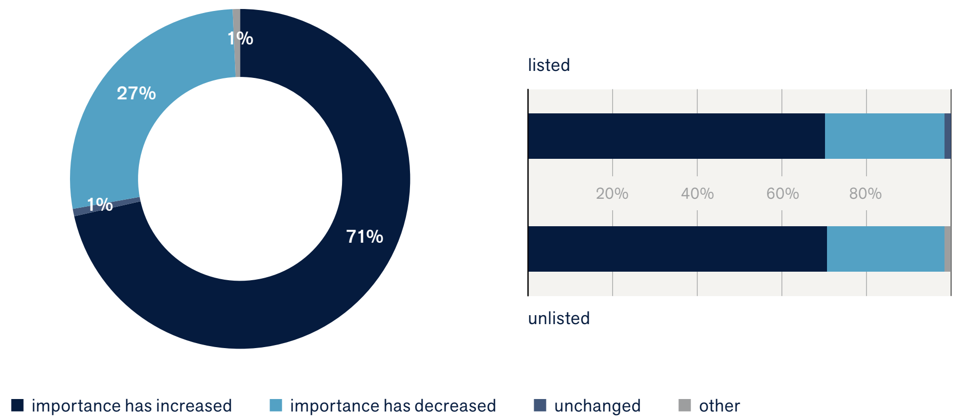
How does your supervisory board intend to address fulfilling the sustainability expertise requirements in the future, or how does your supervisory board meet the requirements already?



6. Assessing the importance of an aptitude for sustainability

The following results of our survey underscore the increased importance of sustainability for the work supervisory boards do. A clear majority of those surveyed (71 per cent) agreed that the importance of an aptitude for sustainability topics on supervisory boards had risen in the past year. That assessment was shared by the supervisory board members of listed and unlisted companies to virtually the same degree at 70 per cent and 71 per cent, respectively. Another 27 per cent considered the importance unchanged, and only 1 per cent of the surveyed supervisory board members believed that sustainability aptitude had become less important for their work in the previous 12 months.

Has your assessment of the importance of sustainability aptitude for the work your supervisory board does changed in the last twelve months or has it remained the same and why?

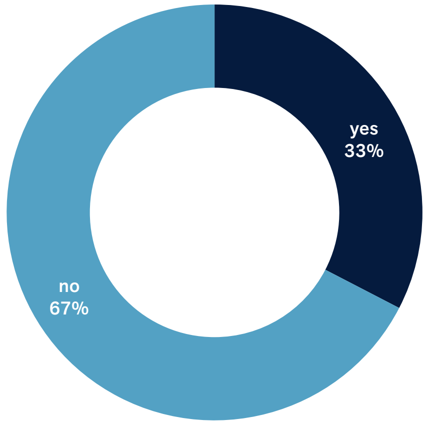


C. Supervisory boards' organisation

1. The supervisory board office

Expanding obligations and requirements due to stricter regulations and the growing complexity of responsibilities are increasingly putting supervisory board members in a tight spot to organise their work in such a way that they can fulfil their responsibilities. One way to address these challenges is to set up a supervisory board office. Depending on a supervisory board's responsibilities, its office can assist both it and the management board in providing information to the supervisory board members or function as the liaison between the two corporate bodies. According to our survey however, this approach is not yet very widespread. One reason for this may be the lack of awareness of the advantages of such an office. A clear majority of the supervisory board members we surveyed responded with 'no' (67 per cent) to the question of whether or not there was a distinct supervisory board office at their company. Fifty-six per cent of those answers came from listed companies.

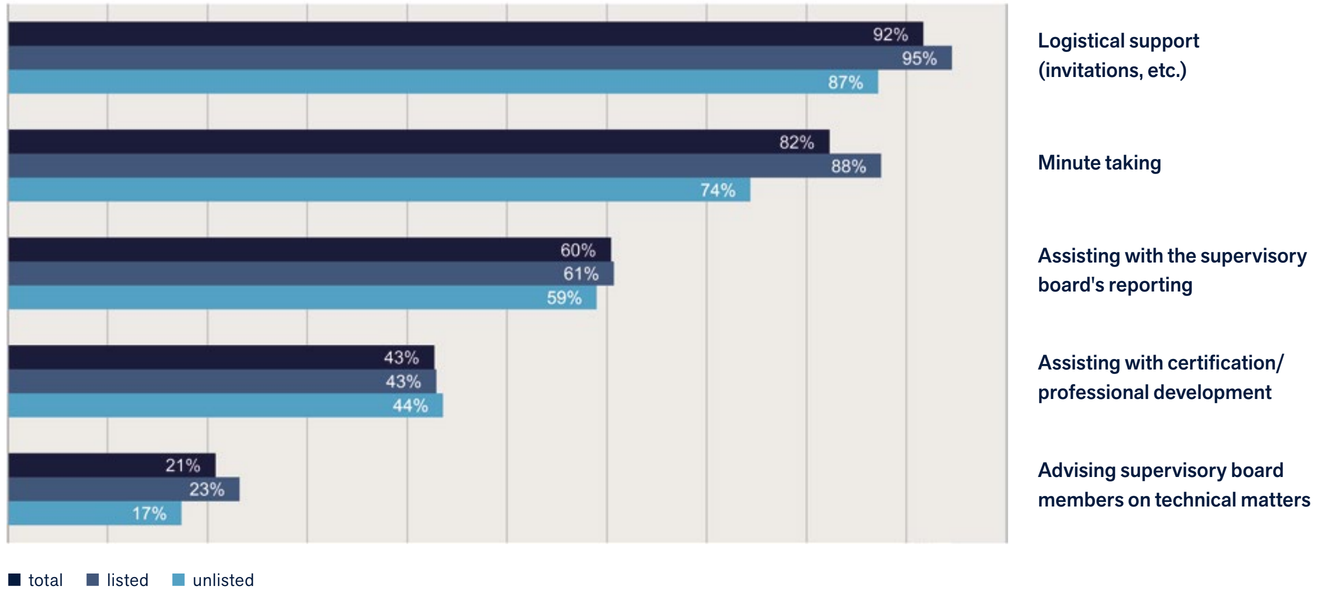
How is the supervisory board at your company organised?
Is there a distinct supervisory board office?



2. Services performed by supervisory board offices

When asked about the services that their supervisory board office performed, respondents stated that logistical support (92 per cent) and minute taking (82 per cent) counted among the main tasks. By a fairly considerable margin, those tasks were trailed by 'assisting with the supervisory board's reporting' (60 per cent), 'assisting with certification and professional development' (43 per cent) and 'advising supervisory board members on technical matters' (21 per cent).

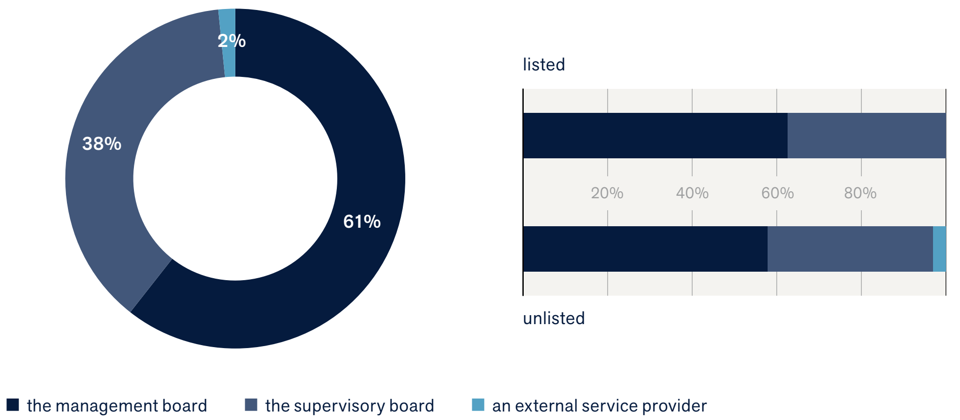
What services are performed by the supervisory board office at your company?



3. Responsibility for the organisation of the supervisory board

With regard to the responsibility for their supervisory board's organisation, a clear majority of respondents (61 per cent) stated that this rested with the management board. Of those responses, 63 per cent came from the members of listed companies' supervisory boards and 58 per cent from their counterparts at unlisted companies. Thirty-eight per cent said that their supervisory board itself was in charge of its own organisation. Only 2 per cent of the surveyed supervisory board members responded that an external service provider was taking care of the organisation.

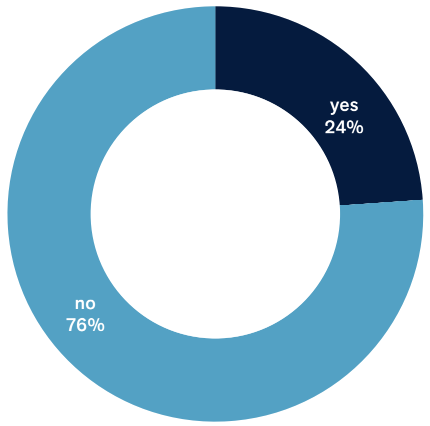
Who is responsible for the organisation of your supervisory board?



4. A supervisory board budget

The activities performed by supervisory boards entail a wide range of costs and expenses, for which there is no explicit rule, certainly not of a statutory nature, governing their classification. Because of that, the importance of a distinct budget has risen in the last few years as supervisory boards' responsibilities have expanded. The reason: more obligations and requirements have also meant greater expenditure. Our study shows however that the majority of supervisory boards surveyed (76 per cent) do not have their own budget. This is equally true for both listed and unlisted companies (76 per cent and 78 per cent, respectively).

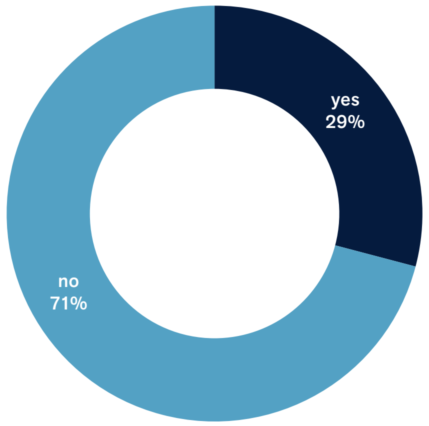
Does the supervisory board at your company have its own budget?



5. Importance of nomination committees

The GCGC recommends that listed companies in particular institute nomination committees that are in charge of preselecting candidates for their supervisory boards. That committee, according to the GCGC, should ensure that the preselection process is efficient, transparent and confidential. Even though finding competent people to fill supervisory boards has become increasingly challenging in light of additional qualification requirements, the importance of nomination committees in the work supervisory boards do has not risen in the last few years however. An obvious majority (71 per cent) of the supervisory board members surveyed did not attach any increased relevance to nomination committees. Fifty-eight per cent of those respondents came from listed entities.

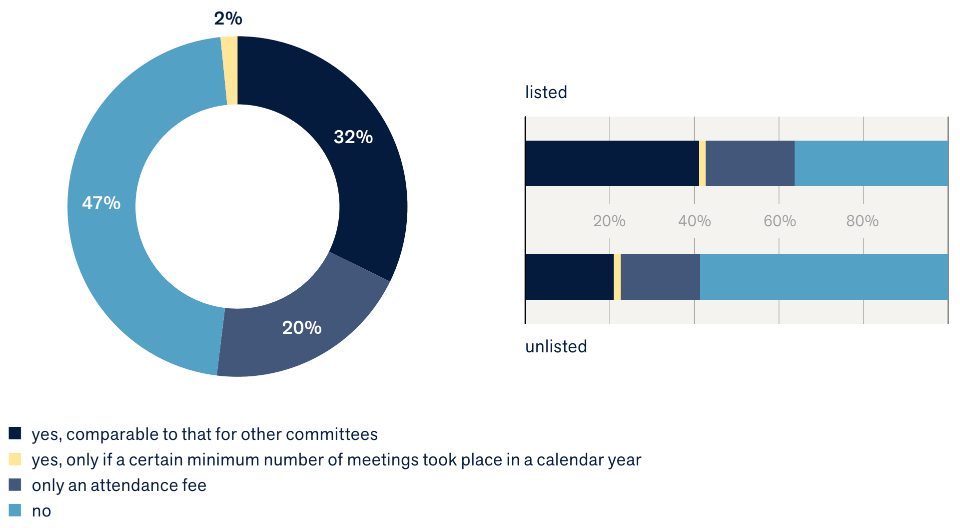
Has the importance of the nomination committee at your company grown?



6. Nomination committees' remuneration

Remuneration for serving on a nomination committee is an aspect handled in very different ways. Notable differences are apparent between listed and unlisted companies. Forty-seven per cent of the supervisory board members surveyed said that the members of their nomination committee were not remunerated. At unlisted companies, that figure is even higher at 59 per cent. On the other hand, 32 per cent responded that the remuneration for serving on this committee was currently comparable to that for being a member of other committees. The figures here also showed that listed companies tend to be more willing (41 per cent) to remunerate their nomination committee members. Another 20 per cent stated that remuneration was given exclusively in the form of an attendance fee, and just 2 per cent said that remuneration was paid only if a certain minimum number of meetings took place in a calendar year.

Is serving on the nomination committee at your company currently remunerated?



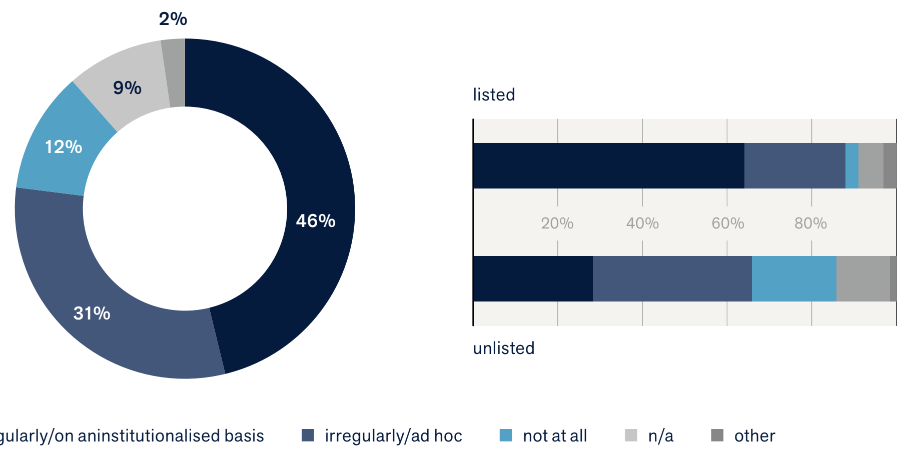
D. Supervisory board efficiency

Professionalising supervisory boards also encompasses the regular review of their operations and decision-making processes. The aim behind this is to bring about a lasting improvement in company supervision. The GCGC also espouses this goal.

1. Frequency of reviewing supervisory board operations and decision-making processes

Compared to last year, the percentage of surveyed supervisory board members dropped noticeably who stated that their corporate body is reviewed regularly on an institutionalised basis: 46 per cent in 2023 versus 63 per cent in 2022. Thirty-one per cent of supervisory board members replied that such a review occurred only irregularly or on an ad hoc basis. No such evaluation of the board occurs with another 12 per cent of respondents. The reason for this may be that in many cases a self assessment of the supervisory board had just taken place according to the relevant company's chosen cycle. Conducting self assessments too frequently involves the risk of them taking on a routine character and the quality of their findings not being entirely meaningful, thereby reducing their efficacy..

How regularly does your supervisory board review its operations and decision-making processes?

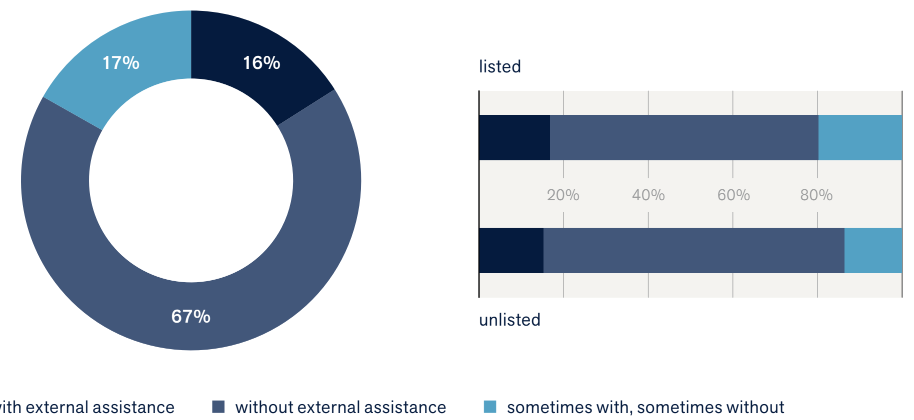


Like in 2022 previously, major differences appeared between listed and unlisted companies with regard to efficiency reviews. For example, according to the responses from the surveyed supervisory board members, assessing the work and decision-making processes of supervisory boards is institutionalised at 64 per cent of listed companies, while at unlisted companies it is only 28 per cent. Further, noticeably more respondents from unlisted companies (38 per cent) than listed companies (24 per cent) stated that irregular evaluations were conducted at their companies. Considering that the GCGC encourages regular efficiency evaluations, it is scarcely surprising that the degree of institutionalisation of such reviews was distinctly higher at listed companies again this year.

2. Performing efficiency evaluations on supervisory boards

In principle, there are many ways that a supervisory board can evaluate its efficiency. Sixty-seven per cent of surveyed supervisory board members stated that their reviews were conducted without external assistance (64 per cent at listed and 71 per cent at unlisted companies). The remainder indicated that their evaluations were in fact performed with external assistance or sometimes with and sometimes without (16 per cent and 17 per cent respectively).

How does your supervisory board review its operations processes?

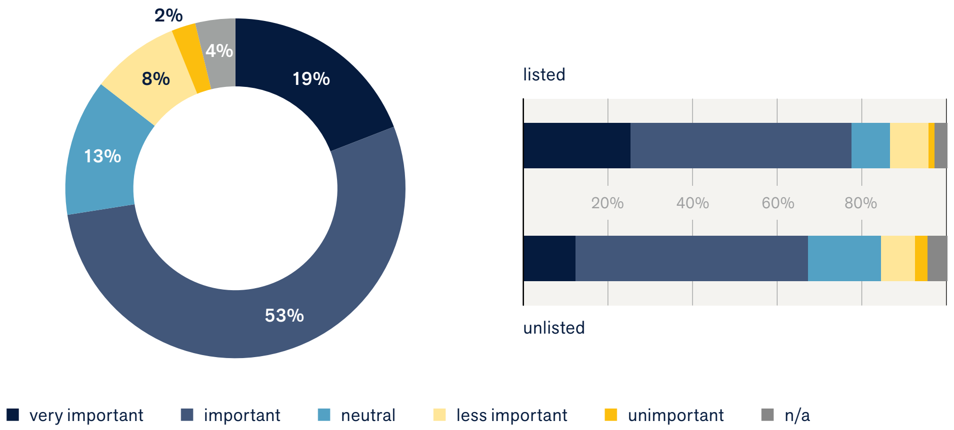


3. The added value of efficiency reviews on supervisory boards

Seventy-two per cent of the supervisory board members surveyed attest to the (high) importance of efficiency reviews. One-fifth (21 per cent) found them neither important nor unimportant or attached little importance to them. Two per cent even view them as having no added value whatsoever. Supervisory board members conducting a self-evaluation, in many cases with external support, constitutes a relatively simple and good way of gauging opinions on the quality and the efficiency of the work performed by supervisory boards directly.

Every company answers the question differently, however, how to approach such assessments.

How do you rate the added value of your supervisory board's efficiency reviews?



E. Summary

After three challenging years in which especially the coronavirus pandemic and managing the effects resulting from it were at the top of supervisory boards' agendas, this year's survey shows once again that the work being done by supervisory boards is clearly orientated towards issues relating to the future. Sustainability/ESG as well as digitalisation are the issues of the hour and – to little surprise – have no. 1 priority on agendas.

Without a doubt, financial expertise continues to dominate on supervisory boards and will certainly remain one of the core skills needed going forward. But, with a view to positioning companies for the future, obligations and expectations are growing considerably in the fields of sustainability and ESG in particular. And, in a majority of cases, the expertise of supervisory board members is already adapted to meet these demands.

Consequently however, the focus of the work supervisory boards do is shifting, which has inevitably led to new challenges in their operations and decision-making processes. In addition, the 2022 revision of the GCGC underlines the expanded requirements for the skills and expertise profiles of supervisory boards. The changes are of great practical relevance and have had a direct impact on the makeup of supervisory boards. Hence coming up with and publishing a commensurate qualification matrix in order to comply with the skills and expertise profile has taken on decisive importance.

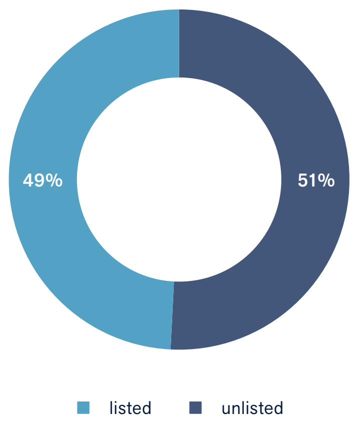
By contrast, additional professionalisation aspects such as the regular assessment of supervisory boards' operations and decision-making processes have currently dropped in priority somewhat, even though those supervisory boards that do conduct efficiency evaluations deem them highly important. The fact that these reviews are only belatedly finding their way onto supervisory boards' agendas may also have to do with the constant increase in the workload and effort required of supervisory boards to monitor their management boards. Performing mandatory responsibilities and obligations and handling obviously important issues thus have utmost priority. Mastering this balancing act will certainly remain one of the greatest challenges for supervisory boards.

F. Methodology

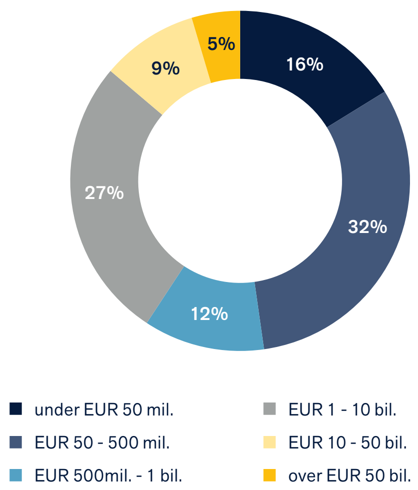
The survey was conducted from 25 April to 8 June 2023.

More than 500 supervisory board members were sent an email with the request to complete an online questionnaire. Responses were received from 161 supervisory board members.

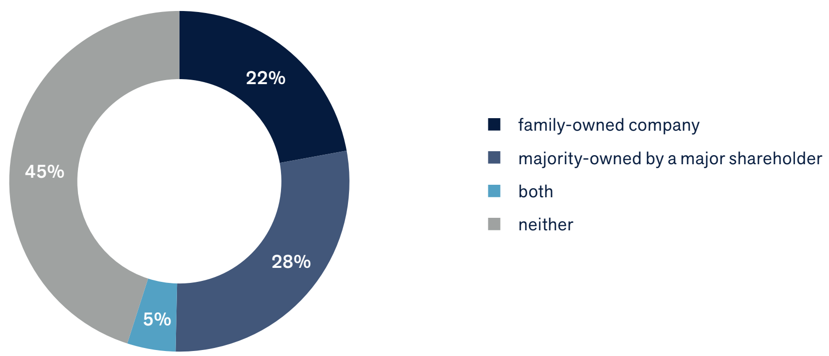
Is the company on whose supervisory board you serve listed?



What is the turnover of the company on whose supervisory board you serve?



Is the company on whose supervisory board you serve a family-owned company or majority-owned by a major shareholder?



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