

## **Declaration of corporate governance in accordance with section 289a and section 315 subsection 5 of the German Commercial Code (HGB)**

### **Declaration in accordance with section 161 of the German Stock Corporation Act**

On March 9, 2017 in accordance with Section 161 of the German Stock Corporation Act, the Executive Board and Supervisory Board issued the following declaration:

“Bilfinger SE complies with all recommendations of the German Corporate Governance Code as amended on May 5, 2015 with the following exception:

- The recommendation in Number 4.2.3 Section 2 Subsection 5 (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 is 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 remaining MDAX listed companies. The final number of units is subject to a cap which limits the final number 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.
- In addition, there is also a deviation from the recommendation in section 4.2.3 paragraph 2 sentence 8 (exclusion of retroactive changes to performance targets or comparison parameters) as relates to financial year 2016. The Short Term Incentive (STI), the variable remuneration component in place since 2015 for members of the Executive Board with a one-year assessment basis, is based on the achievement of the economic success targets adjusted EBITA and free cash

flow from operating activities of the Bilfinger Group. The Supervisory Board has retroactively adjusted the target values for these economic success targets determined for financial year 2016. The same shall apply for the ROCE target value determined for financial year 2016 within the scope of the LTI. The corporate planning that had served as the basis for the original determination of the target values became largely obsolete as a result of extensive divestments and restructurings in the Group over the course of the 2016 financial year. Adhering to these target values would have, in the view of the Supervisory Board, led to a result for the measurement of the STI and LTI that did not sufficiently take into account the situation of the company and the activities of the members of the Executive Board and, accordingly, could not develop an incentive effect with regard to the LTI. The divestments and restructurings were carried out in the interests of a sustainable development of the company within an assessment period for the variable remuneration components. The Supervisory Board believes that the retroactive adjustment for the financial year is necessary and appropriate in the well-understood interests of the company, also in consideration of the fact that the current members of the Executive Board were not involved in the original corporate planning for 2016. Therefore, the Supervisory Board has defined a 100 percent target achievement of the ROCE parameters for 2016 also for two current Executive Board members, deviating from the actual figures.

Since issuing the declaration of compliance on December 16, 2016, the Company has complied with all recommendations of the GCGC as amended on May 5, 2015 with the exception of the recommendation in Section 4.2.3 Subsection 2 Sentence 6.”

The declaration of compliance of December 16, 2016 is an update to the declaration of May 11, 2016.

## **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 exceptions listed in the above declaration issued in accordance with Section 161 AktG. We also apply the following principles of governance:

## Compliance

Compliance with laws and internal regulations is, in our view, the foundation of successful business activities and a component of good corporate governance. Our comprehensive Bilfinger Compliance Program, which is designed so that compliance violations can be preventively avoided and, at the same time, potential misconduct recognized at an early stage and, following relevant identification, quickly and consistently dealt with, is subject to ongoing review and improvement. A key component is our Code of Conduct, which outlines the topic-based general principles of our actions. The individual subject areas are formulated in specific terms with related guidelines and instructions and provide the basis for ethical business conduct within our activities.

In order to minimize risk, third parties with whom we cooperate within the scope of our business activities, are subject to an integrity audit prior to the signing of a contract. This integrity audit is a key element of our compliance system, the standards and methods that serve as its basis are developed on an ongoing basis. Particularly in the reporting year, the existing process to evaluate the integrity of our third parties was extensively revised and adjusted to make it more risk oriented.

The Group's Chief Compliance Officer reports directly to the Chairman of the Executive Board and regularly informs the Chairman of the Audit Committee of the Supervisory Board. There is a direct reporting line from the Chief Compliance Officer to the Audit Committee and Supervisory Board. A Compliance Officer assigned to each division (and, in future, region) reports directly to the Chief Compliance Officer and supports the business units in all compliance-related queries with their directly subordinate compliance managers.

Close cooperation with the Executive Board, divisional management (and, in future, regional management) and other managers and close consultation with the departments, especially Corporate Legal and Corporate Internal Audit form the basis for the effective implementation of compliance regulations. The Supervisory Board, Audit Committee and Executive Board are regularly informed about important developments within compliance. In addition, a Compliance Review Board made up of the members of the Executive Board, the Chief Compliance Officer, the Head of

Corporate Internal Audit as well as the heads of other relevant corporate departments deals with all relevant issues on a regular basis. The committee is supported by Compliance Review Board in the divisions (and, in the future, regions). Any violations of the compliance rules are reviewed by an independent Allegation Management Committee and the Allegation Management Office that was established at the beginning of 2017, a Disciplinary Committee deals with possible sanctions for confirmed misconduct and ensures their consistent application.

In order to identify possible misconduct at an early stage and to allow our employees to report violations of the rules, we operate a whistleblower system. Relevant information is investigated by an independent authority in order to punish possible misconduct and in addition continually improve the Bilfinger Compliance Program and the effectiveness of controls. Whistleblowers are protected against any reprisal; the whistleblower system can also be used by third parties (suppliers, subcontractors, business partners or other service providers) via our homepage. Confirmed cases of misconduct will result in consequences for those involved up to dismissal or criminal charges from responsible authorities.

In addition, the integration of the Bilfinger Compliance Program 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 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. The results are made available to the Executive Board and the Chief Compliance Officer in the form of relevant audit reports so that – where necessary – improvement measures can be implemented

The entire Bilfinger Compliance Program is continuously reviewed and developed by us in order to meet, also in the future, the requirements of a developing legal and regulatory environment as well as the increasing expectations of our customers and employees. In particular, the recommendations of the independent Compliance Monitor, Dr. Mark Livschitz, are also included. The Monitor regularly reviews our compliance program and its efficiency in accordance with a 2013 agreement with the

U.S. Department of Justice which was extended by two years in September 2016. In addition, we take into consideration the comments of the internationally-renowned 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 to supporting human rights, abolishing discriminatory labor and social practices, improving environmental protection 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 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 2016 there were 39 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 2016 there were 14 meetings of the Supervisory Board.

### Cooperation between the Executive and Supervisory Boards

The Executive Board agrees the Company's strategic orientation with the Supervisory Board and regularly discusses with it the status of strategy implementation. The Executive Board also regularly informs the Supervisory Board, both verbally and in writing, on business developments and the situation of the Company. On the basis of this reporting in particular, the Supervisory Board monitors the legality, correctness, suitability and profitability of the Executive Board's management of the business. The Articles of Incorporation and the Rules of Procedure as prepared by the Supervisory Board for the Executive Board list those transactions and activities for which the approval of the Supervisory Board is required. This applies, among other things, to the acquisition and sale of shareholdings, for the submission of bids for major projects and for the investment budget. The Supervisory Board can make other forms of transactions dependent upon its approval. The most important issues that are discussed and agreed between the Executive Board and the Supervisory Board also include economic development, corporate planning, earnings situation, risk management, corporate financing and

corporate structure. The Chairman of the Supervisory Board is informed by the Chairman of the Executive Board without delay of important events which are essential for the assessment of the situation and development as well as for the management of the enterprise.

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, 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 the decision on certain business dealings and transactions. In addition, the Presiding Committee can prepare certain plenary meetings and make recommendations for important resolutions. In financial year 2016, five meetings of the Presiding Committee took place.

The Audit Committee includes Dr. Marion Helmes (Chairwoman of the Audit Committee since May 11, 2016, previously Hans Peter Ring), Dorothee Anna Deuring, Dr. Janna Köke (each since May 11, 2016, previously Dr. John Feldmann

and Wolfgang Bunge) and Jörg Sommer (since September 22, 2016, previously Thomas Kern). It deals, among other things, with questions of accounting, risk management, compliance and auditing. The Audit Committee issues the auditing assignment to the auditor selected by the Executive Board for the individual and consolidated financial statements and agrees a fee with him. The members of the Committee, in addition to Dr. Marion Helmes (since May 11, 2016, previously Hans Peter Ring) 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 financial year 2016, 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 (since May 11, 2016, previously Dr. John Feldmann) and Dr. Marion Helmes (since May 11, 2016, previously Udo Stark). The Committee met twice in 2016.

The Transformation Committee will accompany the further development of the strategic positioning and transformation of the Bilfinger Group and, where necessary, make relevant recommendations to the Supervisory Board. The Committee, which was newly formed in financial year 2016 and 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 two meetings in 2016.

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. The Meeting 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 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. Law on the equal participation of women and men in management positions in the private sector and in the civil service.**

The law on the equal participation of women and men in management positions in the private sector and in the civil service took effect on May 1, 2015. Based on the legislation, Bilfinger SE has set the following targets for the period until June 30, 2017:

##### Supervisory Board

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 is following the goal of filling the quota equally. Until the Annual General Meeting on May 11, 2016, the share of women in the Supervisory Board was eight percent, afterward until September 6, 2016 it was 42 percent and since that time it has been 50 percent.

##### Executive Board

As a target for the share of women in the Executive Board, the Supervisory Board has agreed that there will continue to be no female members. If a vacancy should become available by then, the Supervisory Board will 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 below the Executive Board

Management level 1 below the Executive Board includes employees who belong to management levels 1 and 1a in accordance with the internal company definition. The Executive Board has decided to reach a target of an eight percent share of women in management level 1. On June 30, 2015, the date for the definition of the target, this share was 4 percent.

#### Management level 2 below the Executive Board

Management level 2 includes employees who belong to management level 2, in accordance with the internal company definition. The Executive Board has decided to reach a target of a ten percent share of women in management level 2. On June 30, 2015, the date for the definition of the target, this share was six percent.

### **6. 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 2016 on March 15, 2017.