

GERMAN RAILWAY INDUSTRY ASSOCIATION (VDB)

**CODE OF CONDUCT**

**SOCIAL RESPONSIBILITY AND FUTURE-ORIENTED ACTION**

**Index**

GENERAL BACKGROUND TO THE CODE OF CONDUCT .....	3
PREAMBLE.....	4
1. BASIC UNDERSTANDING OF CORPORATE MANAGEMENT .....	5
2. SCOPE.....	5
3. BASIC PRINCIPLES .....	6
3.1 COMPLIANCE WITH THE LAW.....	7
3.2 INTEGRITY AND CORPORATE MANAGEMENT.....	8
3.3 CONSUMER INTERESTS .....	11
3.4 COMMUNICATION.....	12
3.5 HUMAN RIGHTS AND WORKING CONDITIONS.....	14
3.5.1 PERSONAL PRIVACY AND DATA PROTECTION .....	14
3.5.2 HEALTH AND SAFETY .....	14
3.5.3 PROTECTION AGAINST HARASSMENT .....	15
3.5.4 FREEDOM OF EXPRESSION.....	16
3.5.5 PROHIBITION OF CHILD LABOR.....	17
3.5.6 PROHIBITION OF FORCED LABOR .....	17
3.5.7 REMUNERATION .....	18
3.5.8 EMPLOYEE RIGHTS .....	18
3.5.9 PROHIBITION OF DISCRIMINATION .....	18
3.5.10 WORKING TIME .....	18
3.6 ENVIRONMENTAL PROTECTION.....	19
3.7 CITIZENSHIP .....	20
3.8 IMPLEMENTATION AND ENFORCEMENT.....	20
LIST OF ABBREVIATIONS .....	22

## **COMMENTARY ON THE CODE OF CONDUCT<sup>1</sup>**

In this commentary, the text of the code of conduct itself is shown with a gray background. This is followed by the commentary, which has a white background.

### **GENERAL BACKGROUND TO THE CODE OF CONDUCT**

The German Railway Industry Association (VDB) is offering its member organizations the opportunity to make a voluntary commitment to abide by a set of ethical standards in the form of this code of conduct (CoC).

There are a number of reasons why the VDB is making this recommendation, not least the fact that numerous different codes of conduct have emerged in the German railway industry in the last few years. In addition, there are increasing expectations on the part of Deutsche Bahn AG (DB) that the conduct of its suppliers should be both lawful and socially responsible. The VDB therefore believes it has a responsibility to develop a CoC that represents a consensus among its member organizations and that also satisfies DB requirements. The VDB is aware that many of its members have already issued their own CoCs and introduced compliance statutes in their respective organizations. The VDB CoC is intended to facilitate a basic common understanding that summarizes and harmonizes the various CoCs in its member organizations.

### **BASIS**

The VDB developed its CoC over the course of 2008 and 2009. It based its code on templates available from related industries and companies. These included, primarily, the CoC issued by the German Electrical and Electronic Manufacturers' Association (ZVEI), other CoCs in the industry, and a draft of the as yet unfinalized "Joint guidelines of Deutsche Bahn AG and the VDB to ensure fair competition". The draft of ISO 26000 was also taken into account.

Members are therefore able to link the CoC provisions to ISO 26000.

### **EXPLANATION OF TERMS**

#### *Code of conduct*

A code of conduct is a voluntary undertaking that specifies ethical and/or socially responsible standards of behavior.

#### *Compliance*

In this context, the term initially refers to an entity's compliance with relevant laws, regulations and official standards, corporate principles (legal compliance), internal codes and guidelines, compliance with the principles of good corporate management and with generally accepted ethical principles and standards (corporate social responsibility). The term also covers an organizational concept aimed at ensuring that an entity and its employees take appropriate action to comply with the aforementioned standards and guidelines and that such action is transparent.

#### *Social responsibility*

Social responsibility, or corporate social responsibility (CSR), has become a key issue for businesses. In its CoC, the VDB calls on entities to assume responsibility for both their actions and decisions to the extent permitted by available opportunities.

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<sup>1</sup> Note: After passing the VDB Code of Conduct, there have been new legal regulations such as the UK Bribery Act, the French Sapin II Act and EU Regulation 2017/821. To ensure that the VDB Code of Conduct adequately addresses these new developments, the commentary on the VDB Code of Conduct has been updated for Chapters 3.2 and 3.5.

**PREAMBLE**

The German Railway Industry Association (VDB) is an umbrella organization bringing together the manufacturers of all products involved in railway operations. This includes the manufacturers of vehicles, infrastructure, control and safety systems, together with associated suppliers and service providers. The VDB is committed to fair business relationships based on collaboration, including such relationships involving system providers and the supply industry. The VDB is especially committed to creating a common basis for socially responsible corporate activities. With this code of conduct (hereinafter referred to as "CoC"), the VDB is helping its member organizations respond to the variety of general conditions in the global market and face up to the challenges presented by social responsibility as a result of these conditions and as a result of the increasing level of networked collaborative activities within value chains.

The VDB has developed the content of this CoC on the basis of the code of conduct issued by the German Electrical and Electronic Manufacturers' Association (ZVEI). The CoC is intended to lend weight to the interest of the VDB and its member organizations in fair, sustainable, socially responsible, and ethical principles as the basis for their activities.

The CoC is designed as a voluntary commitment that can be signed by member organizations but that does not give rise to the establishment of any third-party rights. The VDB recommends that its members adopt this CoC.

**GENERAL BACKGROUND TO THE PREAMBLE**

The preamble introduces and presents the principles and concerns that have guided the VDB when preparing the CoC. The VDB openly commits to its social responsibility and also offers this opportunity to its member organizations via recognition and acceptance of the CoC.

**EXPLANATION OF TERMS***Voluntary commitment*

The VDB CoC has the nature of a voluntary commitment. It is a unilateral declaration by the signatory member organization concerned. The organization undertakes to comply with the standards and principles set out in the code. The declaration comes into effect when the VDB CoC is signed by the member organization. The signed document is then held by the VDB.

*Rights of third parties not established*

The voluntary commitment is not legally binding. In other words, the signatory organization cannot be made liable to a third party on the basis of any infringement of the VDB CoC. This does not affect the legal responsibility of the organization, i.e. it can still be the subject of legal proceedings if it violates the law. However, compliance with the VDB CoC may be made mandatory by virtue of suitable provisions in individual contracts; this may also include binding agreements on controls and sanctions.

## **1. BASIC UNDERSTANDING OF CORPORATE MANAGEMENT**

At the core of this CoC lies a basic common understanding with regard to socially responsible corporate management. This means that the signatory organization shall act responsibly: it shall be mindful of the consequences of its corporate decisions and actions from an economic, technological, and also social and environmental perspective, and shall take action to appropriately reconcile the various interests involved. To the extent permitted by available opportunities and scope for action, the signatory organization shall voluntarily contribute to the general good and sustainable development of society at the locations where it operates. This approach shall be based on generally accepted ethical values and principles, particularly integrity, probity, and respect for human dignity.

### **GENERAL BACKGROUND TO THE CLAUSE**

The implementation of the values and principles set out in the VDB CoC is based on the creation of a uniform understanding of social responsibility and sustainable development in corporate management. These values and principles together form the guidelines for corporate social responsibility as defined by the VDB CoC.

### **EXPLANATION OF TERMS**

#### *Socially responsible corporate management*

This term encompasses a number of different facets. First, it covers a commitment to comply with statutory rules and regulations, for instance those defined by section 91 German Stock Corporation Act (AktG), section 43 German Private Limited Companies Act (GmbHG), and section 130 German Administrative Offenses Act (OWiG); please refer to the implementation guidelines (due to be presented in the spring of 2010) for information on any other special statutory rules and regulations. However, socially responsible corporate management is not simply limited to compliance with such statutory requirements, it also embraces the wider social responsibility of an organization, for example for the well-being of its employees, and for the environment and society in general.

#### *Sustainable development*

Sustainable development is defined as follows: "Sustainability is the idea of continuous development of the economic, environmental and social dimensions of human existence such that these dimensions always remain viable in the future. These three pillars of sustainability are interdependent and must be coordinated such that they remain in balance over the long term."<sup>1</sup>

## **2. SCOPE**

This CoC shall apply to all countries in which the signatory organization maintains branch offices and/or business units. To the extent permitted by available opportunities and scope for action, the signatory organization also undertakes to help its suppliers comply with the content of this CoC and to encourage its suppliers to do the same in turn in their supply chains.

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<sup>1</sup> German Bundestag Academic Services: Nachhaltigkeit, Der aktuelle Begriff (Sustainability, The Latest Concept) 06/2004, April 6, 2004.

## **GENERAL BACKGROUND TO THE CLAUSE**

This clause clarifies the scope of the VDB CoC, i.e. the extent to which it is intended to be applicable. The key point is that the principles set out in the CoC must be applied in the member organizations, in their subordinated units, and then also passed on within the supply chain. The aim is that the principles of the VDB CoC should apply as comprehensively as possible, be observed as widely as possible, and – in the interests of sustainability – should have an enduring positive impact on the economic, environmental and social activities of commercial organizations. The VDB CoC should be passed on to suppliers as appropriate, using a differentiated approach taking into account local circumstances.

## **EXPLANATION OF TERMS**

### *Branch offices and business units*

Branch offices and business units should be taken to mean all subordinated businesses and parts of businesses, such as subsidiaries, non-independent branch offices, and permanent establishments. These terms do not include the parent company of the member organization or its sister companies. The CoC is therefore only intended to cover the vertically integrated units below the member organization as well as the member organization itself.

### *Opportunities and scope for action*

Opportunities and scope for action refer to the flexibility available to the member organization enabling it to implement the VDB CoC. This flexibility is limited, for example, by the size of the entity, its financial strength, action already taken in respect of compliance or CSR, or by the entity's negotiating power. The values encompassed by the VDB CoC are therefore protected by the overall objective of establishing a common level of corporate social responsibility in the industry.

### *Supply chains*

The CoC provides that its standards should not just be observed by the signatory organization, but that its values should also be passed on to suppliers and, where appropriate, throughout the entire value chain. If a supplier is unable to commit to the VDB CoC or similar CoC, the supplier concerned should at the very least declare support for comparable values and principles. Suppliers should undertake to encourage their business partners to adopt these values and principles to the same degree.

## **3. BASIC PRINCIPLES**

The signatory organization shall actively work toward ensuring that it observes and complies with the values and principles in the following text on a long-term basis.

## **GENERAL BACKGROUND TO THE CLAUSE**

The clause serves to introduce the values and principles specified thereafter in the VDB CoC. It also refers to the principle of sustainability. In addition, it imposes an obligation on the member organization to actively implement and continuously apply the values and principles of the VDB CoC.

## **EXPLANATION OF TERMS**

### *Long-term compliance*

The basic principle is that the member organization should commit to and systematically implement certain values and objectives. The entity should actively work toward upholding and implementing the basic principles embedded in the VDB CoC as well as passing on these principles on a continuous basis. It follows from these requirements that the entity must at all times keep these basic principles (and the action taken to implement the principles and monitor compliance) up to date; further development work may be required in connection with the principles, as appropriate. The entity should look for a suitable method of communicating the principles to its employees. It is extremely important that the effectiveness of the methods used to communicate the principles and of the monitoring and control systems is continuously reviewed.

## **3.1 COMPLIANCE WITH THE LAW**

The signatory organization shall comply with applicable laws and other legal requirements in the countries in which it operates. In countries with a weak institutional framework, the organization shall carefully assess the standards it should apply based on good corporate social responsibility practice in its home country.

## **GENERAL BACKGROUND TO THE CLAUSE**

A key principle embedded in the VDB CoC is compliance with the law in the member organization's own country as well as in all other countries in which the organization operates. Although this clause primarily relates to legal compliance, it does have wider implications because compliance with the law is an indispensable basis for socially acceptable behavior and also an indicator of the extent to which an entity is meeting its social responsibility.

## **EXPLANATION OF TERMS**

### *Laws*

The term "laws" refers to a collection of generally binding legal standards formally enacted by the relevant legislative body.

### *Other legal requirements*

Other legal requirements refer to requirements from additional legal sources that, although not laws within the meaning of the aforementioned definition, are nevertheless binding either because they are based on laws or because they impose an obligation directly on certain entities or persons to comply with specified modes of conduct. Examples of such other legal requirements include implementation regulations for certain legislation such as the German Road Traffic Regulations (StVO), the German Trans-European Rail System Interoperability Regulation (TEIV) and the associated German Technical Specifications for Interoperability (TSI).

### *Weak institutional framework*

Indicators of a weak institutional framework in a country include dictatorship, despotic government, corruption (to be identified, for example, by using the corruption index from Transparency International). A lack of fundamental civil rights (for example, freedom of speech), a lack of environmental protection and/or health and safety provisions, or deficiencies in the enforcement of such provisions may imply a weak institutional framework.

### *State under the rule of law*

A state under the rule of law refers to a state in which the authority of the state is permanently linked to an objective system of values and legal system, the basic tenets of which cannot be readily amended. A separation of powers and a system of checks and balances are essential features of a state under the rule of law, as are governmental activities that can be predicted and verified, and guaranteed freedoms for citizens.

### Good corporate practice

Good corporate practice is characterized by a large number of different factors. Significant factors include, in particular, the principles set out in the VDB CoC, i.e. compliance with laws, transparency of important processes, creation of a working environment that is free of discrimination and that promotes health and safety, appropriate consideration of the needs of employees, and environmental protection. When an entity bases its activities on these and other values, this approach should not be confined to its operations in its own country. In countries in which corporate practice of this nature is not yet well established, the entity should also carefully consider what other action would be sensible and reasonable to ensure that it is continuing to follow good corporate practice in the country concerned.

## **3.2 INTEGRITY AND CORPORATE MANAGEMENT**

The signatory organization shall base its activities on generally accepted moral values and principles, in particular integrity, transparency, probity, respect for human dignity, openness, and shall not discriminate on the basis of race, ethnic origin, gender, religion or ideology, disability, age, or sexual identity.

The signatory organization shall oppose bribery and corruption as defined by the relevant UN convention<sup>2</sup>. It shall act with integrity, promote responsible corporate management and control, and initiate suitable measures to prevent offenses being committed, either directly or indirectly, in particular violations of the law, as follows:

Theft, embezzlement, fraud, breach of trust, falsification of documents, anti-competitive collusion in connection with invitations to tender, disclosure of proprietary data/confidential business information or unauthorized exploitation of technical models or specifications, bribery and corruption in business transactions, granting undue advantage, granting monies or other benefits to employees of contractual partners, or receiving such monies or benefits.

The signatory organization shall follow legitimate, recognized business practices and shall pursue a policy of fair competition, in particular observing the requirements under competition and anti-trust law.

## **GENERAL BACKGROUND TO THE CLAUSE**

The principles set out in this clause show that the VDB CoC's principles are not solely concerned with upholding voluntary aspects of social responsibility (for example, corporate citizenship). Rather, one of the aims of the VDB CoC is to ensure that there is a mandatory standard both in the member organization's own country and in other countries by bringing about a commitment to integrity and transparency in corporate management. The existence of international criminal law in this regard demonstrates that this is not just an end in itself. See section 1 et seq. German Criminal Code (StGB): National legislation in Germany threatens companies that do not comply with applicable law with consequences that are not limited to penalties,

<sup>2</sup> United Nations Convention against Corruption 2003, in force since 2005.

e.g. in the form of significant fines, but that can also result in exclusion from competitive tendering procedures. Further consequences may involve the payment of damages or even personal liability on the part of the chief executive officer. In this regard, German law is only referred to as an example of what can happen under other jurisdictions, in some of which the consequences can be even more far-reaching, notably in the USA for example. Besides consequences in terms of criminal penalties or liability, entities that do not satisfy the integrity and transparency requirements may also face numerous other business consequences, for example an increase in costs resulting from the need to restore the reputation of the business and establish a functioning compliance structure, possible enforced structural changes in the business, and possibly also exclusion from competitive tendering procedures, which in the case of DB may be for a period of as much as seven years (see DB general purchasing terms and conditions). It can therefore be stated that the introduction of a code of conduct and compliance systems is not just a passing fad but a necessary element of self-management and organization that has emerged as part of economic development.

#### *National anti-corruption laws*

Following the passing of the VDB Code of Conduct, the following laws were passed in particular:

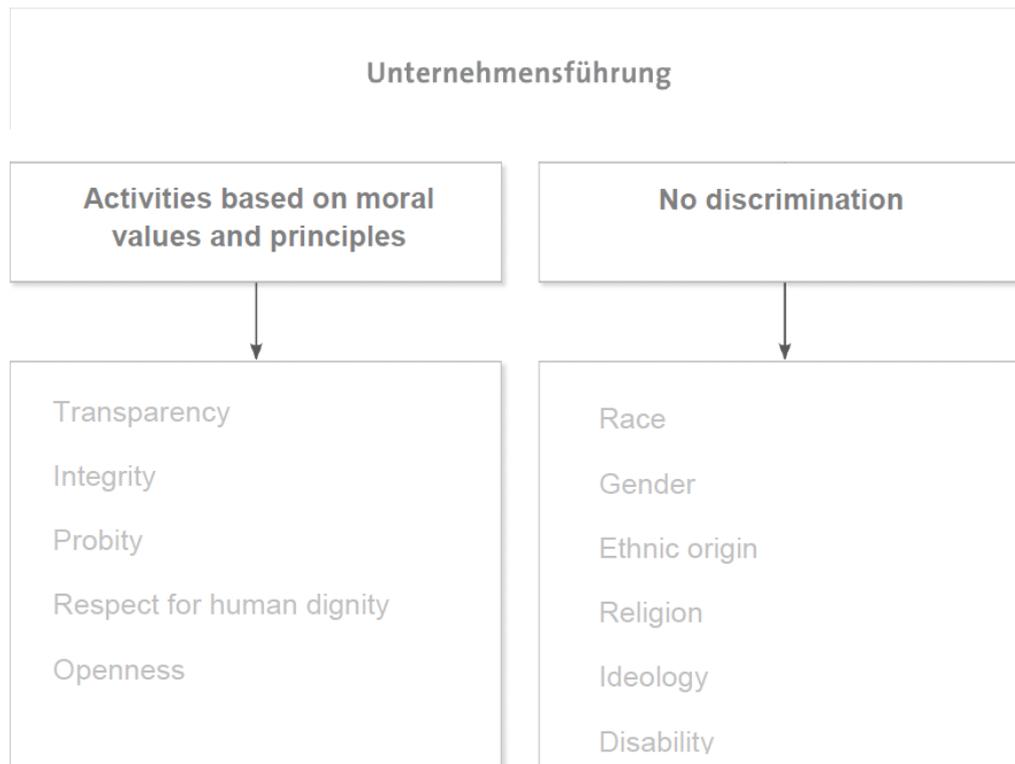
- the UK Bribery Act in Great Britain in 2010 and
- the Sapin-II Law in France in 2016.

Both laws provide for measures to prevent corruption, which must also be implemented by companies to an appropriate extent insofar as they fall within the scope of the laws. This principle applies equally to anti-corruption laws of other countries.

#### *Conflict minerals*

In recent years, companies' handling of so-called conflict minerals has come to the fore. It is part of good corporate management, which is based on generally accepted moral values and principles, that no acts of war or violations of human rights are promoted, financed or supported through one's own entrepreneurial activities. In the USA there is a legal framework for this – Sec.1501 of the Dodd-Frank Act. In the EU, Regulation 2017/821 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (OJ of EU L 130 of 19/05/2017) aims to import into the EU only materials whose production does not involve the financing of acts of war or the violation of human rights. Considering the framework laid down by the relevant legal system, each company shall take appropriate measures to ensure compliance with the due diligence obligations in the management of the supply chain. These measures are aimed at avoiding the use of raw materials in the company's products that directly or indirectly finance armed groups that violate human rights.

## EXPLANATION OF TERMS



### *Offenses committed directly*

Offenses committed directly refer to offences that an entity has committed itself or through or with another party. This term generally encompasses all offenses in which the offender is the perpetrator.

### *Offenses committed indirectly*

In contrast, offences committed indirectly refer to all forms of indirect participation in an offense, specifically aiding and abetting. In this case, the term refers to all offenses in which the offender is an accomplice. Suitable measures: Suitable measures to prevent offenses being committed mean all actions that are necessary and appropriate to achieve this objective.

## EXPLANATION OF OFFENSES USING EXAMPLES

### *Theft (larceny), section 242 et seq. StGB*

The criminal offence of theft (larceny) refers to a situation in which a perpetrator takes away from someone else a movable item with which the perpetrator has not been entrusted with the intention of appropriating the item illegally for himself/herself or for a third party. A typical example of such theft within a business is the unauthorized removal of work materials for private use.

### *Embezzlement, section 246 StGB*

In contrast to theft (larceny), embezzlement in the criminal sense means a situation in which the perpetrator illegally appropriates for himself/herself or for a third party someone else's movable item with which the perpetrator has been entrusted. A typical example of embezzlement within a business is the appropriation of promotional gifts or the onward sale of goods subject to retention of title where this has not been expressly permitted.

*Fraud, section 263 et seq. StGB*

Fraud refers to an offense against property, in which a perpetrator, with the intent of illegal enrichment, deliberately misleads a victim by willful misrepresentation or by distortion or suppression of the truth to the detriment of the victim's property or that of a third party. A typical example of fraud within a business is the submission of claims for reimbursement of travel expenses in which the costs are overstated.

*Breach of trust, section 266 StGB*

Breach of trust is subdivided into misuse and breach of fiduciary duty. Both aspects involve the violation of a duty in connection with property entrusted to the person responsible for the breach. In the case of misuse, the perpetrator misuses the authority he or she has been given to look after third-party property, for example by carrying out transactions that are not covered by the authority or otherwise approved. In the case of breach of fiduciary duty, the perpetrator violates the obligation imposed on him/her to take care of the property; a typical example of breach of trust within a business is siphoning company monies into slush funds. It should be noted that although this example is normally a preparatory transaction, for example preceding the payment of bribes, it already meets the criteria for the offense of breach of trust.

*Falsification of documents (forgery), section 267 et seq. StGB*

The object of legal protection in the case of document crime is the security and reliability of legal dealings. The offense covers both the creation and/or use of non-genuine documents, i.e. documents that do not originate from the issuer shown in the documents (e.g. plagiarism, where products including safety or testing plates are copied), as well as the falsification of genuine documents and the use of falsified documents. A typical example is the retrospective modification of components of a contract not agreed by the parties involved.

*Anti-competitive collusion in connection with invitations to tender, section 298 StGB*

Anti-competitive collusion refers to the submission of a bid for goods or commercial services that is based on illegal collusion, the purpose of which is to cause the issuer of the contract to accept a certain bid. A typical example in business transactions is collusive conduct in connection with pricing.

*Disclosure of proprietary data or confidential business information, section 17 German Unfair Competition Act (UWG)*

Confidential business information, or proprietary data, is any non-apparent piece of information in connection with a business where the business owner has a legitimate interest in maintaining confidentiality and where the business owner requires, either expressly or on an implied basis, that the information concerned should remain secret. Such business secrets exist where there is a closed group of persons with knowledge of the information concerned. It is therefore irrelevant if several employees in a department have knowledge of the information in question. A typical example is the unauthorized forwarding of internal bid information without any indication of the source.

*Unauthorized exploitation of technical models or specifications, section 18 UWG*

The purpose of this standard is to protect embedded expertise and to prevent others obtaining a competitive advantage as a result of a breach of trust or the exploitation or communication of models or technical specifications entrusted to the perpetrator as part of business transactions. A typical example is the unauthorized forwarding of company forms.

### *Bribery and corruption*

The granting of advantage (often referred to colloquially as corruption) (section 333 StGB) and bribery (§ 334 StGB) mean offering, promising, or granting a benefit to a public official, a person with special public service obligations, or a soldier, for that person or a third person, in return for the discharge of a duty; in the case of bribery, the sought-after action is a violation of official duties. The integrity of private-sector business activities is similarly protected by section 299 StGB (bribery and corruption in business transactions). In other words, no employee of the member organization may grant business partners or other third parties any undue advantage or benefit. Such undue advantage or benefit should be assumed, in particular, if the nature and scope of this benefit are not considered socially acceptable or may be considered as having an improper influence over the actions and decisions of the recipient.

## **3.3 CONSUMER INTERESTS**

The signatory organization shall comply with applicable consumer protection regulations where consumer interests are involved.

### **GENERAL BACKGROUND TO THE CLAUSE**

This clause has been included in the VDB CoC in view of the content of ISO 26000 and statutory consumer protection regulations. The principal reason for this is that European law requires national legislators to provide consumer protection that is practically all-encompassing. However, consumer protection is only of direct concern to the rail industry to the extent that consumers, i.e. private end users, come into direct contact with the goods and services of the member organization.

### **EXPLANATION OF TERMS**

#### *Consumer protection regulations*

In numerous regulations, the legislation takes into account the fact that individuals do not always have equivalent market strength as partners in transactions; it attempts to use legal provisions to provide protection or improve the position of the consumer. The signatory organization should also comply with these consumer protection regulations for the purposes of ISO 26000 and not contravene the provisions. The current draft of ISO 26000 covers not only the traditional consumer but also the customer, and therefore special statutory regulations should of course also be observed. Such regulations include, for example, the Machinery Directive, the German Equipment and Product Safety Act (GPSGV), the standards of the German Civil Code (BGB), and the German Product Liability Act (ProdHaftG). Violations of these regulations may in some cases have far-reaching consequences. For example, even labeling that is not in the required form and failure to rectify an infringement of this nature may lead to an official product recall. Contravention of the regulations may also result in liability claims. In the railway industry, compliance with these regulations is also for the most part covered at a higher level as part of the official supervisory activities conducted by the relevant safety authority (for example, the Federal Railway Authority in Germany).

### **3.4 COMMUNICATION**

The signatory organization shall communicate openly and on the basis of dialog with employees, customers, suppliers, and other stakeholders and interest groups regarding the requirements of this CoC and its implementation. All documentation shall be duly prepared, shall not be unfairly modified or destroyed, and shall be properly retained and archived. Proprietary data and confidential business information belonging to partners shall be treated discreetly and confidentially, and shall not be forwarded or made available to third parties without authorization.

#### **GENERAL BACKGROUND TO THE CLAUSE**

Given the broad range of meaning inherent in the general clause header Communication, VDB considers that it has a responsibility to describe certain specific aspects of corporate communications.

#### **EXPLANATION OF TERMS**

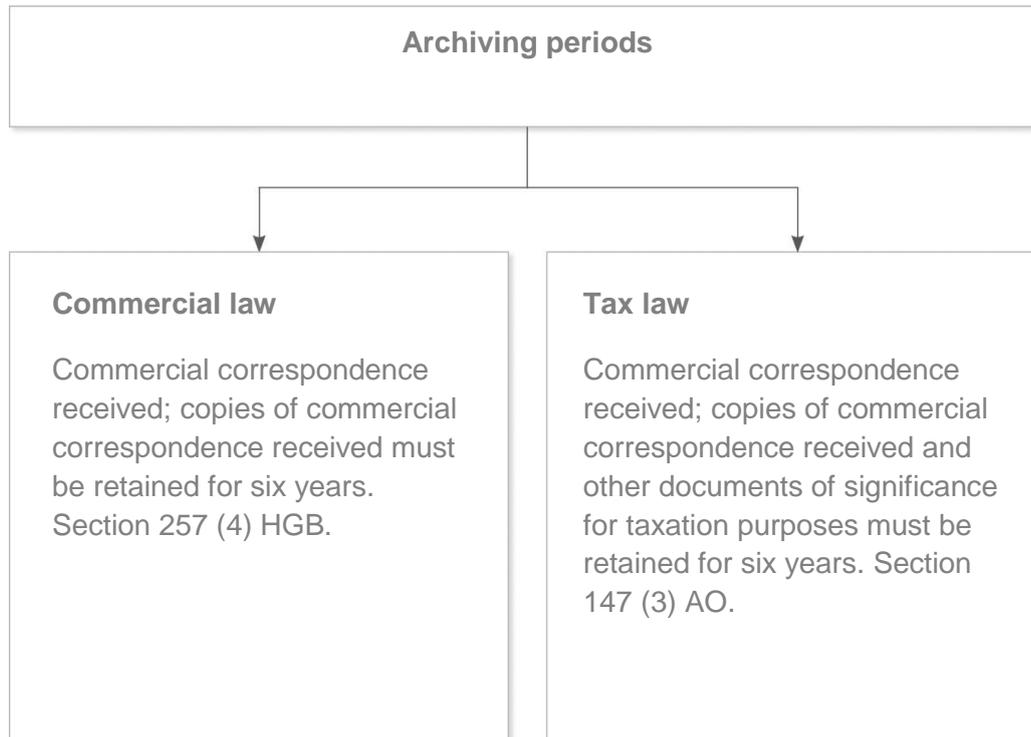
##### *Open, dialog-oriented communication*

In this context, open, dialog-oriented communication covers the internal and external circulation of the VDB CoC as well as the dialog with relevant stakeholders and interest groups regarding the CoC and action related to its implementation. Another possible option is to set up a contact person for the communication of the CoC within the organization.

##### *Proper handling of documents*

The proper handling of documents means that business documents that have become an integral part of legal transactions must be properly and responsibly retained and stored; the signatory organization must also comply with archiving periods (see below) and take action to ensure that the documents are not accessed and/or removed. In other words, this primarily means that the principle of confidentiality must be applied and the documents protected against access of the content by unauthorized persons. Customer data, employee data, and corporate data must be treated confidentially not only for data protection purposes but also to protect the confidentiality and integrity of business transactions as well as the assets generally embodied in the information concerned. Confidential information includes all non-public information that could be of benefit to competitors or that could have an adverse impact on the business, its customers, or suppliers if it were to come into the public domain. Such information includes not only the organization's own information but also information entrusted to the organization by third parties, such as licensors or joint venture partners. The obligation to maintain the confidentiality of such information remains in force even after a business relationship has come to an end, or in the case of employees, after employment contracts have ended.

The necessary archiving periods must also be observed.



### *Proprietary data and confidential business information*

Proprietary data refers to technical business secrets, whereas confidential business information covers more general commercial information. Proprietary data and confidential business information comprises information on circumstances or processes in connection with the operation of the business that is known only to a limited group of persons. For an outsider, this information would be worth knowing. However, the business owner has declared that the information must be treated as confidential; if the information became known to outsiders, this could be detrimental to the business. Circumstances and processes that are in the public domain do not constitute proprietary data or confidential business information, even if the business owner designates the information as such.<sup>3</sup> According to rulings issued by the German Federal Court of Justice in connection with anti-trust law, all the following criteria must be satisfied before information can be considered proprietary data or confidential business information: The information must comprise (i) facts that (ii) are in connection with a commercial business operation, (iii) are known only to a limited group of people and are therefore not blatantly obvious, and should be treated as confidential in accordance with the (iv) identifiable wishes of the business and (v) objectively in accordance with the entity's legitimate economic interests that are worthy of protection (in particular, if the business would suffer loss or damage were the information to be made public). The protection of proprietary data and confidential business information is therefore particularly important for business entities. Proprietary data and confidential business information may have a significant impact on the value of a business and its position in the marketplace.

<sup>3</sup> See German Federal Labor Court, judgment of December 15, 1987 – 3 file no. (app.) 474/86 – Federal Labor Court decision 57, 159, judgment of March 16, 1982 – 3 file no. (app.) 83/79 – Federal Labor Court decision 41, 21; Administrative Appeals Tribunal North Rhine-Westphalia, decision of November 8, 2000 – 13 B 15/00 – RTkom (telecommunications law journal) 2001, 168.

It goes without saying that proprietary data and confidential business information should then also be treated as confidential even if a declaration of confidentiality has not been expressly issued. Unauthorized disclosure of proprietary data or confidential business information may result in legal proceedings either under anti-trust provisions (sections 17, 19 UWG) or as a criminal offense (section 203 et seq. StGB).

### **3.5 HUMAN RIGHTS AND WORKING CONDITIONS**

The signatory organization shall support the promotion of human rights. It shall comply with human rights in accordance with the UN's Universal Declaration of Human Rights<sup>4</sup>. It shall also comply with the core labor standards of the ILO<sup>5</sup> to the extent that these are referred to in the text below.

#### **3.5.1 PERSONAL PRIVACY AND DATA PROTECTION**

Personal privacy, including personal data, shall be protected.

#### **3.5.2 HEALTH AND SAFETY**

Health and safety at work shall be maintained, in particular by guaranteeing a secure, health-enhancing working environment in order to avoid accidents and injuries.

### **GENERAL BACKGROUND TO THE CLAUSE**

The fundamental principles for decent working conditions should be shown in this clause.

### **EXPLANATION OF TERMS**

#### *Personal privacy*

Personal privacy means an individual's non-public space, in which an individual carries out their own activities, not those on behalf of a business, authorities, or similar organizations. From a business perspective, protecting the personal privacy of employees means complying with measures to protect such privacy and refraining from activities that constitute an imposition on personal privacy (for example, keeping records of the reasons for days lost through sickness or of leisure activities such as dangerous sports).

#### *Data protection*

Data protection refers to the protection of personal data in terms of collection, processing and use. In the Federal Republic of Germany, the right to informational self-determination and therefore the protection of personal data attained constitutional status by virtue of the population census judgment issued by the German Federal Constitutional Court on December 15, 1983. Data protection law encompasses those legal provisions enacted in order to protect personal data against any adverse impact on personal rights, in particular as a result of misuse or loss of this data. Data protection is based on a number of European regulations. Data protection for commercial entities and public authorities is governed by the general German Data Protection Act (BDSG) and data protection acts for the individual German states. There are also other regulations governing specific areas of economic activity that also include data protection provisions and take precedence over the general regulations, for example the Social Security Code (SGB) X for the protection of social data, the German Criminal Code (StGB) covering professional

<sup>4</sup> Universal Declaration of Human Rights, UN Resolution 217 A (III), 1948.

<sup>5</sup> ILO = International Labour Organization

obligations (for example, for doctors, attorneys), the German Tax Code (AO) which includes provisions on taxation confidentiality, and the German Statistics Act (BStatG) which covers confidentiality in relation to statistics.

#### *Health-enhancing working environment*

A health-enhancing working environment requires action and activities in the workplace to strengthen health-related resources and potential for employees. It follows therefore that businesses should not just ensure that there is a safe, healthy working environment, they should also promote activities to maintain the health of employees in the workplace (to the extent permitted by the opportunities available to the business concerned). A key point in this regard is that the range of activities should be in line with the size of the organization. Employees should be involved in the creation of this environment, where appropriate.

It is imperative that the organization strictly complies with health and safety legislation, safety regulations, and safe practices. Employees must report any infringements of these principles to the relevant units in the organization without delay so that any shortcomings can be eliminated as quickly as possible.

One of the fundamental principles for granting a safe and health beneficial work environment is to establish and apply an occupational safety management system appropriate to the company and its activities.

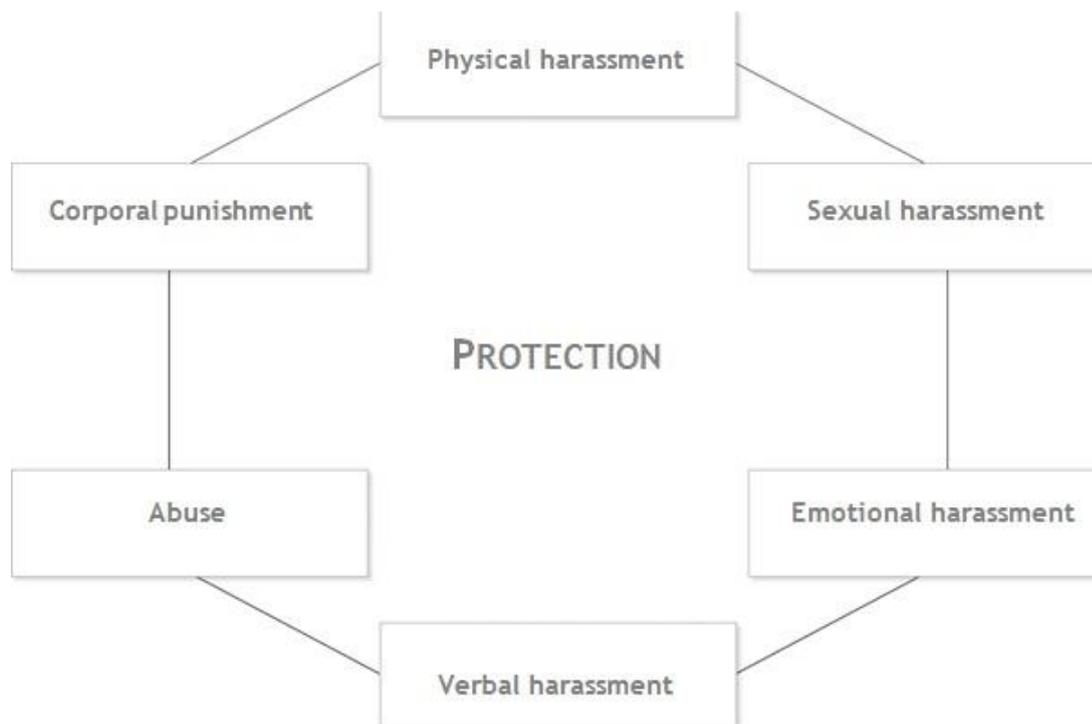
### **3.5.3 PROTECTION AGAINST HARASSMENT**

Employees shall be protected against corporal punishment and against physical, sexual, emotional, and verbal harassment or abuse.

#### **EXPLANATION OF TERMS**

##### *Harassment*

In its broadest sense, harassment refers to persistent action directed by a perpetrator against a victim in which the critical factor is that this action is perceived by the victim to be "against his/her will", i.e. derogatory or hurtful. There are many different kinds of harassment (see diagram below).



### 3.5.4 FREEDOM OF EXPRESSION

Freedom of opinion and freedom of expression shall be granted and protected.

#### EXPLANATION OF TERMS

##### *Freedom of expression*

Under section 5 (1) sentence 1 of the German Basic Law (GG), every person shall have the right to express and disseminate his or her opinion freely in speech, writing, and/or images. However, fundamental rights do not generally have any direct effect among individuals and legal entities with the result that only legal interpretations of this basic freedom apply to the dialog between employees and employers, for example on one side in the form of freedom of association for employees (who may thus join a union), and on the other side in the form of an employer's rights to organize labor and issue instructions. Freedom of expression does not relate exclusively to the relationship between employees and employers; freedom of expression must also be guaranteed between employees. The boundaries of internal freedom of expression can therefore be found in more general legislation, for example in that relating to the protection of young people, and in the right to personal honor. The basic rules for an employment relationship include a special limit to freedom of expression within an organization under German employment law. The internal code of practice not only lays down rules governing the proper conduct of work activities, it also takes into account the interests of other employees who do not wish to be constantly bothered in the workplace by opinions that they do not share and the right of the employer not to be undermined by employees. A balance therefore needs to be found in each individual case between an employee's freedom

of expression and the general interest in peaceful relations both within and outside the organization concerned. In particular:

- a) The employee may of course also have an opinion in the workplace and is entitled to express this opinion.<sup>6</sup>
- b) When expressing any job-related opinions, the employee must nevertheless appropriately take into account the concerns of the employer, works council, customers, and contractual partners.
- c) Employees are not permitted to express opinions that interfere with the course of business or that represent a serious, grave or persistent threat to peaceful industrial relations.

If, for example, an employee violates the honor of the employer, the employer may be entitled to impose sanctions (warning, termination of employment) depending on the severity of the violation involved.

### **3.5.5 PROHIBITION OF CHILD LABOR**

The prohibition of child labor, i.e. the employment of persons younger than 15 years old (unless local legal provisions specify a higher age threshold), shall be observed unless exemptions are permitted.<sup>7</sup>

### **3.5.6 PROHIBITION OF FORCED LABOR**

The prohibition of forced labor shall be observed.<sup>8</sup>

## **EXPLANATION OF TERMS**

### *Child labor*

Child labor refers to the employment of minors in a business where the children concerned have not reached a specified minimum age. This minimum age, and therefore the employment rules, are based on the provisions in the abovementioned ILO conventions. These conventions lay down internationally applicable rules governing the minimum age for employees. The minimum age may be lowered to 14 in countries subject to the developing country exemption included in ILO Convention 138.

### *Forced labor*

The abovementioned ILO Convention defines forced labor as any work that people are forced to do against their will under the threat of some form of punishment or other unpleasant menace.

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<sup>6</sup> Restrictions may apply in the case of enterprises serving ideological purposes (Tendenzbetriebe), although it can be assumed that this does not affect the railway supply industry.

<sup>7</sup> ILO Convention no. 138 of 1973 and ILO Convention no. 182 of 1999.

<sup>8</sup> ILO Convention no. 29 of 1930 and ILO

### **3.5.7 REMUNERATION**

Labor standards relating to remuneration, in particular levels of remuneration specified by applicable laws and regulations, shall be observed.<sup>9</sup>

### **3.5.6 EMPLOYEE RIGHTS**

The right of employees to freedom of association, freedom of assembly, and collective bargaining shall be respected to the extent possible and permitted by the law in each country.<sup>10</sup>

### **EXPLANATION OF TERMS**

#### *Remuneration*

Remuneration (wage or salary) is the pay, normally a monetary amount, due from an employer to an employee on the basis of an employment contract signed by both parties. The remuneration amount is generally derived from the employment contract and in some cases also (as regards certain components of pay) from established company practice, collective pay agreements, company agreements, and statutory provisions (for example, the German Continued Payment of Remuneration Act (EFZG)).

#### *Employee rights*

Although some employee rights are embedded in the German Basic Law (section 9 (3) GG), others only apply to internal relationships within a business as a result of implementation in specific legislation. This applies in the case of freedom of association, freedom of assembly, the right to collective bargaining, and regulations on working time and pay. Employee rights may be enforced against an employer via various stakeholder groups, for example through unions, the works council, employee associations, or similar interest groups.

### **3.5.9 PROHIBITION OF DISCRIMINATION**

Employees shall not be subject to any discrimination.<sup>11</sup>

### **3.5.10 WORKING TIME**

The signatory organization shall comply with the labor standards relating to the maximum permissible working hours.

### **EXPLANATION OF TERMS**

#### *Prohibition of discrimination*

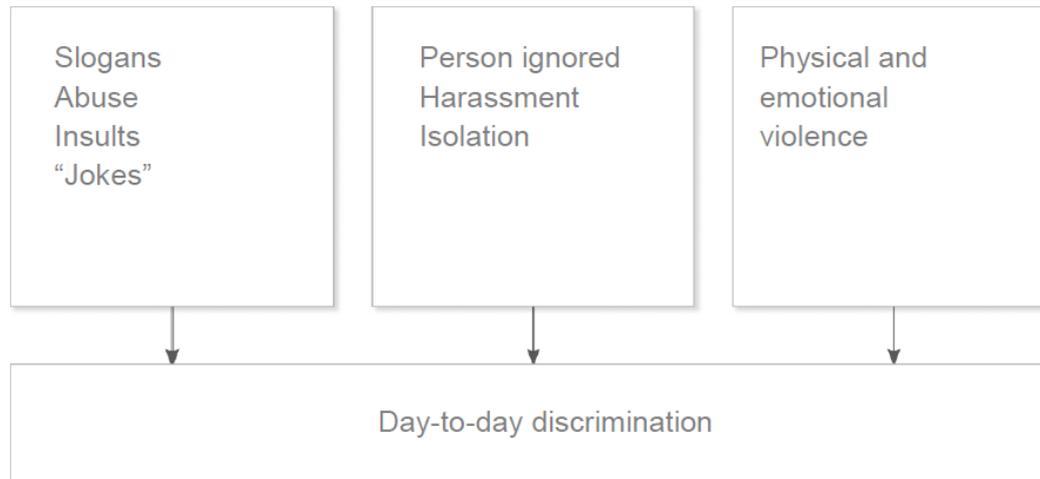
Discrimination is a situation in which individuals are singled out, disadvantaged, or vilified based on specific social groups. The starting point for any discrimination is the idea of difference. Discrimination therefore affects groups that do not share the dominant standards or prevailing opinions. Social discrimination refers to a situation in which individuals are disadvantaged based on group-specific features, such as ethnic or national origin, skin color, language, political or religious persuasion, sexual

<sup>9</sup> ILO Convention no. 100 of 1951.

<sup>10</sup> ILO Convention no. 87 of 1948 and ILO Convention no. 98 of 1949.

<sup>11</sup> ILO Convention no. 111 of 1958.

orientation, gender, age, or disability. See Germany's General Act on Equal Treatment (AGG).



### *Working time*

Working time law forms part of health and safety law. In Germany, working time is generally governed by the Working Time Act (ArbZG). Additional arrangements may also be included in individual employment contracts, agreed between employer and employee representatives, or agreed between the works council and senior management.

## **3.6 ENVIRONMENTAL PROTECTION**

The signatory organization shall satisfy the provisions and meet the standards for environmental protection that affect the operations of the organization concerned and shall act in an environmentally conscious manner at all its sites. It shall take a socially responsible approach to the use of natural resources based on the principles of the Rio Declaration .

### **GENERAL BACKGROUND TO THE CLAUSE**

This clause covers all measures taken to protect the environment with the objective of maintaining the natural basis of existence for all forms of life and a well-functioning ecological balance.

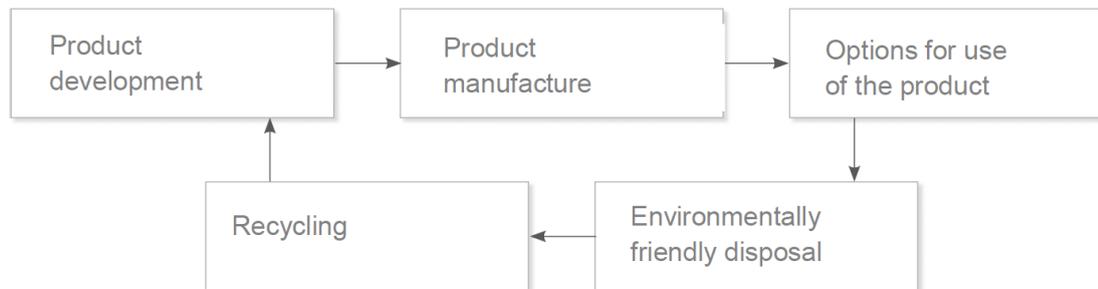
### **EXPLANATION OF TERMS**

#### *Standards*

The signatory organization must comply with statutory requirements and international standards for environmental protection. These requirements and standards include, for example, Germany's Federal Control of Pollution Act (BImSchG) and the associated technical implementation regulations, TA Air and TA Noise, as well as the national statutory provisions that have resulted from the European Restriction of Hazardous Substances (RoHS) Directive and the Waste Electrical and Electronic Equipment (WEEE) Directive. Reference is also made at this point to ISO 26000, which addresses the issue of passing on environmental protection values and also calls for environmentally friendly conduct, particularly in countries that currently have lower environmental standards. In this regard, environmental damage should be minimized on a continuous basis as far as is reasonably possible. The key point here

is that environmental protection issues should be considered and taken into account as part of a complete product overview covering all stages of the product life-cycle encompassing development, manufacture, use, and recycling or environmentally friendly disposal. For further information, a reference to the implementation guidelines should be included at this point.

#### *Environmental protection as part of a complete product overview*



### **3.7 CITIZENSHIP**

The signatory organization shall contribute to the social and economic development of the country and region in which it operates and shall support appropriate activities carried out by its employees on a voluntary basis.

#### **GENERAL BACKGROUND TO THE CLAUSE**

Citizenship is widely regarded as an important resource that can help organizations and individuals meet the challenges of social, economic, political, and environmental change in both national and global contexts. The debate on social responsibility also includes the social responsibility of legal entities, such as companies, which is also referred to as corporate citizenship.

#### **EXPLANATION OF TERMS**

##### *Citizenship*

Citizenship refers to a wide variety of voluntary, not-for-profit, public or communal activities carried out by individuals and organizations and contributing to the common good. These activities help organizations and individuals meet the challenges of social, economic, political, and environmental change in both national and global contexts and assist in finding solutions to social problems. Both financial and personnel resources may be used to support these activities, making use of any particular expertise within organizations. Support for voluntary commitment by employees does not in any way imply that there is an obligation to make donations to every organization in which employees are involved. However, it is a reason to consider, for example, releasing employees who are voluntarily contributing to the public good and undertaking activities in local associations or institutions (for example, in the fire service or Federal Agency for Technical Relief (THW)).

### **3.8 IMPLEMENTATION AND ENFORCEMENT**

The signatory organization shall make all suitable and reasonable effort to continuously implement and apply the principles and values set out in this CoC. On request, and on the basis of reciprocity, contractual partners should report on the key

action taken so that it is transparent how these partners are also ensuring that they comply with these principles and values. This shall not involve any requirement to disclose confidential business information, proprietary data, information related to competitors, or any other details that need to be protected.

## **GENERAL BACKGROUND TO THE CLAUSE**

It is not enough simply to sign a CoC. Rather, the values in the CoC need to be translated into action; the CoC therefore needs to be put into practice. The action taken must be proportionate given the objectives of the CoC, any risk exposure, and the size and capabilities of the signatory organization. Other member organizations may request information about compliance with the VDB CoC. A certain degree of sustainability should be demonstrated as a result of this clause. At the same time, requirements under ISO 26000 should also be taken into account.

## **EXPLANATION OF TERMS**

### *Proportionality*

The principle of proportionality comprises three components:

- Suitability, i.e. the action is a suitable method of achieving the desired outcome;
- Necessity, i.e. there is no less onerous or more benign means of achieving the same outcome; and
- Appropriateness, i.e. there is a reasonable ratio of disadvantage to desired positive outcome.

A course of action is therefore disproportionate, for example, if it is clearly not commensurate with the desired positive outcome. The overall analysis must include the risk exposure, the capabilities of the signatory organization, and the objective to be achieved as a result of the obligation, e.g. the size of the compliance structure in the organization. In other words, growing risk exposure or an increase in the size of the organization will also lead to an increase in the requirements that can and must be placed on the organization concerned.

### *Reciprocity*

Reciprocity refers to a mutual response and reciprocal treatment. In reporting terms, this means that, following a request for information on compliance including CSR measures, the requesting party should then also respond by supplying information covering the same scope to the other party.

### *Scope of the reporting obligation*

The scope of the reporting obligation should be determined in accordance with the proportionality principle on a case-by-case basis. Factors to be considered in determining the scope should include, in particular, risk exposure, size of organization and form of organization. Key action refers, for example, to information on monitoring compliance with the VDB CoC values and possible sanctions in the event of infringements. The reporting obligation is limited in respect of requests for detailed information, e.g. lists of participants, costings, internal corporate communications or other company confidential information.

**LIST OF ABBREVIATIONS**

AEB	Deutsche Bahn general purchasing terms and conditions
AGG	German General Act on Equal Treatment
AktG	German Stock Corporation Act
ArbZG	German Working Time Act
BDSG	German Data Protection Act
BStatG	German Statistics Act
CoC	Code of conduct
CSR	Corporate social responsibility
i.e.	That is
DB	Deutsche Bahn
GG	German Basic Law
GmbHG	German Private Limited Companies Act
GPSGV	German Equipment and Product Safety Act
ILO	International Labour Organization
ISO	International Organization for Standardization
OWiG	German Administrative Offences Act
RoHS	Restriction of Hazardous Substances
StBG	German Criminal Code
StVO	German Road Traffic Regulations
TA	Noise, technical implementation regulations for noise pollution control
TA	Air, technical implementation regulations for air pollution control
TEIV	German Trans-European Rail System Interoperability Regulation
TSI	German Technical Specifications for Interoperability
UWG	German Unfair Competition Act
VDB	German Railway Industry Association
VDB CoC	Code of conduct of the German Railway Industry Association
WEEE	Waste Electrical and Electronic Equipment
e.g.	For example
ZVEI CoC	Code of conduct of the German Electrical and Electronic Manufacturers' Association

GERMAN RAILWAY INDUSTRY ASSOCIATION (VDB)

Universitätsstraße 2  
10117 Berlin-Mitte, Germany

Telephone +49 (0)30 20 62 89 – 0

Fax +49 (0)30 20 62 89 – 50

[info@bahnindustrie.info](mailto:info@bahnindustrie.info)

[www.bahnindustrie.info](http://www.bahnindustrie.info)

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