Market analysis by Kirchhoff and CMS: Every fourth company in the DAX160 voluntarily publishes preliminary figures

Hamburg, July 1, 2025 - A current market analysis by Kirchhoff in cooperation with CMS shows: Numerous listed companies use the voluntary publication of preliminary business figures as an instrument of active capital market communication - beyond regulatory ad hoc obligations and reporting deadlines. The study covers the publication behavior of all 160 DAX, MDAX and SDAX-listed companies for the 2024 financial year. Legal uncertainties arise in relation to the trading ban for executives regulated in Art. 19 para. 11 of the EU Market Abuse Regulation (MAR).

A total of **64 of the 160 companies analyzed - i.e. 40.0% -** have published preliminary figures for the 2024 financial year. Of these, **44 companies (27.5%)** communicated voluntarily - without an ad hoc occasion - exclusively via corporate news. **20 companies (12.5%)** informed the capital market "involuntarily" about the preliminary figures as part of an ad hoc obligation - for example as a result of missed forecasts.

Over 40 percent of SDAX companies publish preliminary figures - compared to only 5 percent of DAX companies

The **SDAX** was particularly active: **38 of the 70 companies (54.3%)** published preliminary figures. Of these, **29 cases (41.4%)** were voluntary announcements without a regulatory ad hoc reason. In the **MDAX, 21 out of 50 companies (42.0%)** communicated preliminary figures, including **13 companies (26.0%)** without an ad hoc obligation. The **DAX** remains more cautious: here, only **5 out of 40 companies (12.5%)** reported preliminary results - only **2 companies (5.0%)** of which did so voluntarily.

Jens Hecht, Managing Partner of Kirchhoff Consult GmbH, explains: "The study clearly shows that small caps publish preliminary figures much more frequently than the blue chips. This is because small caps publish their audited figures later on average. However, investors don't want to be in the dark about financial performance for so long."

The analysis shows a clear correlation between the publication date of the annual report and the likelihood of a voluntary pre-release: companies that publish their audited annual financial statements late in March or April are significantly more likely to make voluntary pre-releases. Of the 44 companies that voluntarily report preliminary results, 28 groups (63%) publish their annual reports after March 20.

In comparison: in the DAX, only around 18% of companies publish their annual report after March 20 - in the SDAX, on the other hand, this figure is around 64%.

The data show that companies with later reporting dates deliberately aim to close an information gap with the capital market by voluntarily disclosing key performance indicators even before the full annual report is published. The timing of the disclosure appears to be a key driver behind this communication decision.

An analysis of the content of the voluntary reports on the preliminary figures shows a consistent KPI orientation: almost all companies reported sales figures, followed by EBITDA, EBIT and, in some cases, free cash flow. Differences exist above all in the depth and preparation of the key figures. While SDAX companies often publish additional detailed operational metrics - such as customer contracts or employee figures - communication in the DAX is usually limited to standardized financial figures.

It is striking that a total of 26 companies (16.3%) published preliminary figures **during the year**. Most of these announcements were made in the form of ad hoc disclosures, sometimes accompanied by corporate news.

Another key aspect of the analysis concerns the announcement practice via the financial calendar. Only 18 of the 44 voluntary publications of preliminary figures - corresponding to 41.0% - were announced in advance in the financial calendar. While all DAX companies with voluntary publication had specifically scheduled these, the rate in the MDAX was 58.3%, but only 31.0% in the SDAX. In some cases, a retrospective review was no longer possible as past calendar events could no longer be viewed on the investor relations websites.

Quiet period rarely traceable
Only 8 companies in the DAX160 surveyed explicitly state a quiet period in their financial calendar. In the vast majority of cases, such information is either completely missing or can no longer be viewed retrospectively, for example because past calendar events have been deleted from the investor relations websites.

It is therefore not possible to identify a uniform or clearly comprehensible practice for quiet periods. For external addressees, it often remains unclear whether and to what extent a communication break is defined or observed at all.

Trading ban periods can be (unintentionally) brought forward by the publication of preliminary figures
According to ESMA, which BaFin has endorsed, the publication of preliminary financial figures may result in the closed period being postponed. The rigid closed period of 30 calendar days, during which the members of the issuer's management board and supervisory board may not carry out any transactions for their own account or for third parties in connection with shares or other financial instruments of the issuer (see Art. 19 (11) MAR), then ends not with the publication of the relevant financial report, but with the publication of the preliminary financial figures. The prerequisite for such an advance of the 30-day closed period is that the published preliminary financial figures have been approved by the management board and include all key figures that are expected to be included in the relevant annual financial report/annual report or half-yearly financial report.

However, ESMA and BaFin have left open which financial figures are to be regarded as "key figures" - for example, whether these are all key figures for which a forecast has been issued or all financial performance indicators that are most significant for the business activity. The legal literature is also vague on this question and defines it as the totality of (key) information that is also expected for the corresponding financial report. **In practice, there is therefore a certain degree of (legal) uncertainty as to whether the preliminary financial figures published in each individual case include "all key figures" and whether the closed period is brought forward.** If the closed period is not anticipated and not (possibly) communicated to the board members in advance, there is a risk that their own transactions will fall within the trading ban period.

Various approaches can be considered to minimize risk, but none of them are optimal:

- If key KPIs are not published among the preliminary financial figures in order to avoid a possible advance of the closed period, this contradicts the purpose of early and sufficient investor communication so as not to fall behind in the competitive environment on the capital market.

- A comprehensive publication of all preliminary financial figures, which could be understood as key figures within the meaning of ESMA and BaFin in order to ensure that the closed period is brought forward, can be difficult for companies to implement, as a sufficiently reliable value must already be available for all these figures at the relevant time.
- To the extent that the uncertainty as to whether the 30-day closed period will be postponed and thus has to be calculated back from the date of publication of the preliminary financial figures cannot be eliminated by a correspondingly limited or comprehensive publication of preliminary figures, a 30-day closed period should be assumed for reasons of prudence, both for the period prior to the publication of the preliminary financial figures and for the period prior to the publication of the relevant financial report. For the members of the management and supervisory boards, however, this would de facto mean a significantly extended period of the trading ban in the result, which seems difficult to accept in practice.

Dominik von Zehmen, lawyer at CMS, adds: "The practice of publishing preliminary financial figures shows that there is a great need for clarification as to which financial figures are to be regarded as 'key figures' in the opinion of ESMA and BaFin. We will address this issue together with Kirchhoff. Irrespective of this, we recommend the involvement of a service provider, particularly for companies with share ownership guidelines, who carries out the share purchases for the board members independently and uninfluenced. This allows board members to avoid the risks associated with directors' dealings and insider trading law on the one hand and the administrative burden on the other. In practice, we have already structured the administration of the Share Ownership Guidelines several times in such a way that a directors' dealings notification only has to be submitted in relation to the standing order and further notifications in relation to the individual execution transactions carried out by the service provider can be omitted."

The authors of the study also recommend that companies integrate voluntary pre-releases of key financial figures and the quiet period into their financial calendar. Uniform communication standards are the only way to ensure transparency, comparability and fairness on the capital market in the long term.

ABOUT KIRCHHOFF

With around 70 employees, Kirchhoff Consult GmbH is a leading communications and strategy consultancy for financial communications and ESG in German-speaking countries. For over 30 years, Kirchhoff has been advising clients on all aspects of financial and corporate communications, annual and sustainability reports, IPOs, investor relations, ESG and sustainability communications. 'Designing Sustainable Value': Kirchhoff combines content expertise with excellent design to create sustainable value.

Kirchhoff Consult is a member of Team Farner, a European alliance of partner-led agencies. The common goal is to build the European market leader for integrated communications consulting.

ABOUT CMS

CMS is one of the leading law firms in Germany in the field of commercial law. More than 750 lawyers, tax advisors and notaries advise large corporations as well as medium-sized companies and start-ups on all aspects of national and international commercial law. In Germany, CMS has offices in the eight major business locations of Berlin, Düsseldorf, Frankfurt, Hamburg, Cologne, Leipzig, Munich and Stuttgart. CMS is represented worldwide by more than 6,800 lawyers in over 45 countries.

Further information can be found at cms.law.

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