

RESUMÉ

CURRENT ISSUES OF CORPORATE GOVERNANCE IN CZECH AND EU LEGAL SYSTEM

Problems addressed by corporate governance have been known for some few centuries, however, in Europe corporate governance has become an independent science discipline first at the end of the second millennium. Vast majority of experts considers separation of ownership and control being the origin of corporate governance, whereas Adam Smith is considered to be the father of this idea stating it in its publication *The Wealth of Nations* edited in 1776.

Within its legislation harmonization efforts European Commission has initiated a number of projects. Establishing the „High Level Group of Company Law Experts“ by former eurocommissioner Frits Bolkestein on 4. September 2001 can be considered a historical moment

in the development of corporate governance. The final report of the Group became a basis to a document that has given direction to company law reform efforts. The document has been named a “Plan to Move Forward” of the European Commission – (the Action Plan).

Modernizing of the company law has become one of the key priorities of the Action Plan.

The disproportion between the company law and the law of capital markets has become a stimulus to start of work on a regulation that would modernize the company law. Whereas the law of capital markets is in line with the scientific and technical progress, the company law in most of the EU member states stays significantly behind. The result of the legislation process has been the not yet implemented Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007, which is the main topic to this thesis. Not only the fact that the Directive has to be implemented by no later than 3. August 2009, but also the fact that most of the small investors and also many of the institutional investors rather than to actively exercise shareholders' rights and to fulfill their role of “watchdogs of the last resort” prefer to implement the policy of rational apathy and to obey the „rule of Wall Street“, i.e. they approach stock investment only as a commodity, leave no room for doubt that the Directive is an up to date problem.

The ideological fundament of the Directive is the Commission's intention to strengthen shareholders' rights, in particular through the extension of the rules on transparency, proxy
Aktuální otázky řízení a správy společností (corporate governance) v tuzemské a komunitární úpravě
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voting rights, the possibility of participating in general meetings via electronic means and ensuring that cross-border voting rights are able to be exercised. The Directive in a higher or lower level of details provides for the individual shareholders' rights in connection with the shareholders' right to exercise the control over a company. Exercising a voting right in general is a decision making process. Every decision making process consists of several stages – gathering information, analysis and the decision itself. For this reason the Directive in detail provides for the information on the convocation of a general meeting, its proposed agenda, the right to ask questions, the right to put items on the agenda of the general meeting and to table draft resolutions, and it also prohibits certain limitations to the voting right.

Across all the above stated rights the Directive places emphasis on taking the advantage of modern means of communication including the possibility of holding a cybernetic general meeting instead of the traditional attendance one.

The goal of this thesis is to outline the purpose of the Directive, its regulatory framework and key issues it deals with. The thesis also compares the individual articles of the Directive with domestic law and addresses considerations regarding the effects of the transposition of the Directive into the domestic legal order.