CHARLES UNIVERSITY

Faculty of Law

Petr Ryšina

The Legal Status of CEOs in the Corporate Governance of Czech and Foreign Joint Stock Companies

Master's Thesis

Thesis Supervisor: JUDr. Klára Hurychová, Ph.D.

Department of Business Law

Date of Completion (Manuscript Closure): 29th May 2023

Prohlašuji, že jsem předkládanou diplomovou práci vypracoval samostatně, že všechny použité zdroje byly řádně uvedeny, a že práce nebyla využita k získání jiného nebo stejného titulu.

Dále prohlašuji, že vlastní text této práce včetně poznámek pod čarou má 241 163 znaků včetně mezer.

Petr Ryšina
V Praze dne 29.05.2023

I hereby declare that the submitted master's thesis is written by myself independently, that all the resources are duly referenced, and that this thesis has not been subjected to obtaining of another or the same degree.

I further declare that the text of the thesis has 241 163 characters, including spaces and footnotes.

Petr Ryšina
In Prague on 29th May 2023

Acknowledgement

I would like to thank the supervisor of my thesis JUDr. Klára Hurychová, Ph.D., for her valuable guidance and thesis consultations. I also wish to thank Univ.-Prof. Dr. Michael Gruber for the highly valued opportunity to write part of the thesis under his supervision at the University of Salzburg. Furthermore, I would like to thank my family for their support and patience, without which it would have been impossible.

Poděkování

Na tomto místě bych rád poděkoval vedoucí mé diplomové práce JUDr. Kláře Hurychové, Ph.D. za její cenné vedení a konzultace k této práci. Dále bych rád poděkoval Univ.-Prof. Dr. Michaelovi Gruberovi za možnost psát část diplomové práce pod jeho vedením na Univerzitě Salcburk. V neposlední řadě bych rád poděkoval mé rodině za její podporu a trpělivost, bez níž by nebylo možné práci dokončit.

Table of Contents

Introduction *1*
1. CEOs in the Context of Corporate Governance Theories *4*

1.1 Historical Development of Corporate Governance **5**
1.2 Agency Theory **8**
1.3 Organisational Board Models **11**

1.3.1 Unitary Board Model 11
1.3.2 Two-Tier Board Model 13
1.3.3 Comparison of a Two-Tier and a Unitary Board Model 15

2. Definition of the Legal Status of CEOs *17*

2.1 Definition of the Chairperson's Role **19**
2.2 CEO and Chairperson Duality **21**

2.2.1 CEO as a Chairperson of the Board 22
2.2.2 Separation of the Functions of CEO and Chairperson of the Board 24
2.2.3 The Main Differences Between Both Approaches 26

2.3 Current Trends in Good Corporate Governance Practise **27**

2.3.1 Does the Separation of Roles Lead to Success? 27
2.3.2 Check and Balances to Offset the CEO and Chairperson Duality 29
2.3.2.1 Introduction of a Lead Director 29
2.3.2.2 Independent and Non-Executive Directors 31
2.3.2.3 Board Committees 33

3. Studies of Particular International and National Legal Regulations *36*

3.1 OECD **36**
3.2 EU **37**

3.2.1 Directive on the Exercise of Certain Rights of Shareholders in Listed Companies 39

3.3 Anglo-American World **41**

3.3.1 UK 42
3.3.1.1 The Companies Act and Model Articles 43
3.3.1.2 Corporate Governance Codes 45
3.3.1.3 UK as the Founder of the Separation of Both Roles 46
3.3.2 USA 47
3.3.2.1 Sarbanes-Oxley Act 48
3.3.2.2 Dodd-Frank Act 50
3.3.2.3 US Stance on the CEO and Chairperson Debate 51
3.3.3 Summary of the Legal Status of CEOs and Chairpersons in the Anglo-American World 52

3.4 Germany **53**

3.4.1 Management Board 54

3.4.2 Supervisory Board 56
3.4.3 Incompatibility of Membership in the Management Board and the Supervisory Board 56
3.4.4 Legal Status of the Chairperson of Management Board 57
3.4.4.1 Appointment and Removal of Chairpersons of the Management Board 60
3.4.4.2 The Duty of Coordination and Monitoring 61
3.4.5 Management Board Spokesperson 63
3.4.6 Summary of the Legal Status of CEOs and Chairpersons in Germany 64

3.5 Austria 65
3.6 Czech Republic 67

3.6.1 Available Board Models 68
3.6.2 Definition of the Role of CEOs in Czech Regulation 69
3.6.3 Definition of the Role of CEOs in Czech Academia 71
3.6.3.1 Excursus Into the Issue of Concurrent Functions 73
3.6.4 Position of CEOs in a Two-Tier Board Model 74
3.6.4.1 Management Board 74
3.6.4.2 Supervisory Board 75
3.6.5 Position of CEOs in a Unitary Board Model 76
3.6.6 Appointment and Removal of the Chairperson of the Board 77
3.6.7 Legal Status of the Chairperson of the Board 78
3.6.8 Development of the Role of CEOs in Corporate Governance Codes 79
3.6.8.1 Czech Corporate Governance Code 2018 81
3.6.8.2 Recommendations for the Future Czech Corporate Governance Code 82
3.6.9 Case Study on the Separation of the Roles of CEO and Chairperson of the Management Board in Companies Listed on the Prague Stock Exchange 83
3.6.10 Summary of the Legal Status of CEOs and Chairpersons in the Czech Republic 85

Conclusion 88
List of Abbreviations 91
Reference list 92
Annex No. 1 – Case Study on the Separation of the Roles of CEO and Chairperson in the Companies Listed on the Prague Stock Exchange 102
Abstract 104
Abstrakt 105

Introduction

One of the pivotal questions of good corporate governance practice is what role within the company's organisational structure should the CEO play. Understanding the legal status of CEOs in corporate governance is a complex and wide-ranging issue that requires a broad interpretation throughout the field of company law. The object of this thesis is to clarify the differences between the legal status of CEOs in various countries, with its primary focus on differences in the approaches taken in the Anglo-American countries with a tradition of unitary boards and selected countries in Continental Europe with predominantly two-tier board structures.

The Anglo-American world, the cradle of corporate governance, is often considered a role model for other countries. International investors and capital markets push the companies to apply the Anglo-American model where domestic law allows it. Following similar patterns of corporate governance leading to a greater degree of uniformity between systems will enable companies to expand smoothly into foreign markets and stock exchanges.

In many countries within Continental Europe, the tradition of the CEO is not embedded. The management board represents a collegial body which might have a person with the title of chairperson at the top. The chairperson is endowed with minimal additional executive powers compared to other directors. It is often asked if the movement towards a CEO of Anglo-American style with a strong position within the company can be beneficial for the corporate governance of companies.

The problem is that in many countries, the legal status of CEOs is not codified and therefore their rights and duties can often be questioned. This work aims to contribute to the understanding of legal aspects of the role of the CEO around the world with a focus on the Czech Republic. The call for unification also applies to the role of CEOs. However, the legal regulation of their position within the corporate structure differs and sets certain limits in introduced jurisdictions. This work aims to analyse these individual similarities and differences in the position of CEOs in board structures across various jurisdictions.

The main objective of this thesis is to give a comprehensive answer to this research question: Is there a universal legal status of the CEO applicable worldwide? If not, what are the key distinguishing features of the different models? Is there a visible convergence among them? As the scope of the topic is broad, the questions will be answered particularly in the context of the relationship between the roles of CEOs and chairpersons within the board's organisational structure.

This thesis is divided into an introduction, three chapters and a conclusion.

The first chapter shall provide an essential theoretical insight into the matter from a corporate governance perspective. Specifically, this chapter aims to demonstrate the importance of the topic on the historical milestones of the corporate governance debate. It also addresses the traditional principal-agent problem associated with the relationships between managers and shareholders. Finally, the two main organisational board models will be introduced with emphasis on subjects related to the position of CEOs.

The thesis will continue with the second chapter, which focuses on the characteristics of CEOs and chairpersons within the board organisational structure of the company. Different executive and non-executive powers of both roles will be analysed. A perspective on the issue of separating the positions of CEO and chairperson will be provided. In the last part of the second chapter, current trends and legal mechanisms that can contribute to an improved corporate governance practice will be introduced.

The third chapter will apply the acquired theoretical knowledge to analyse and compare selected international and national legal regulations. It will focus on the role of the globalisation of capital markets and possible convergence between national regulations. Three main groups will be examined. Firstly, the contribution of international bodies (OECD and EU) will be discussed. Secondly, the regulation in the role models countries with unitary board models (the UK and the USA) will be described. Finally, the typically two-tier board countries of Continental Europe (Germany, Austria and the Czech Republic) will be subjected to analysis. Special attention will be given to the Czech Republic as the author's domestic country.

This thesis focuses on the legal status of CEOs of companies listed on stock exchanges. This secures better comparability between the relevant jurisdictions. As far as terminology is concerned, the term joint stock companies is used as an umbrella term for the companies listed on the stock exchange, with the knowledge that different terminology with similar meanings, such as public companies or stock corporations, might be used in various jurisdictions. The exact word is used when a subtle distinction between the terms must be emphasised. Terms such as CEO or chairperson are used to include both men and women equally in this thesis, the same applies to their respective pronouns.

Regarding the methodology, the following research methods will be deployed. The body of literature on the topic area of CEO and chairperson was subjected to scoping literature review. The primary method applied is the descriptive method combined with the comparative method of selected legal jurisdictions. The thesis will be enriched by the empirical qualitative case study on the practice of Czech listed companies. The results of this case study will be subject to the

analytical method. For the conclusion, reasoning synthesis and deduction will be used. Since this thesis studies codified laws, interpretation and subsumption of legal norms will be applied as well.

The thesis is based on facts and legislation as of 25th May 2023.

1. CEOs in the Context of Corporate Governance Theories

"It's never been more essential for [you] CEOs, to have a consistent voice, a clear purpose, a coherent strategy, and a long-term view. Your company's purpose is its north star in this tumultuous environment. The stakeholders your company relies upon to deliver profits for shareholders need to hear directly from you – to be engaged and inspired by you."[1]

Larry Fink

This quote is excerpted from the annual letter to CEOs and shareholders from Larry Fink, the CEO and chairperson of BlackRock, which is the world's largest asset manager. It includes some defining characteristics of how the professional community perceives a CEO's role. The quote stresses the importance of CEOs and their leadership and visionary role within the company.

First, the role of CEOs should be placed in a broader context of the corporate governance debate. Corporate governance is an intensely discussed topic spanning various disciplines with no single predominant definition. Due to its multidisciplinary overlap with other scientific fields, giving one all-encompassing definition of corporate governance is complicated. From the legal point of view, one broadly accepted definition is that of Sir Adrian Cadbury. In the Cadbury report in 1992, he defined corporate governance as follows: "*Corporate governance is the system by which companies are directed and controlled."*[2] It is appropriate to use the definition of Sir Adrian Cadbury because he was not only cardinal to the modern conception of corporate governance, but his figure is also very relevant to the subject of this thesis, as he was a strong advocate of the separation of powers at the top of the company.

A well-designed corporate governance system provides legal instruments to balance the direction and control of the companies with separated ownership of shares and control of the company. In practice, relationships between the involved actors are the central area of interest. The shareholders, the board, the management, and other stakeholders are the primary actors in the corporate governance.[3] For the purposes of this thesis are particularly relevant the board and the management and their interconnected relationships. Most of the management power of companies

---

[1] FINK, L. *Letter to CEOs: The Power of Capitalism* [online]. 2022. Available from: https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter [Accessed 18th January 2023].

[2] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE. *Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Report)* [online]. 1992. Available from: https://www.frc.org.uk/getattachment/9c19ea6f-bcc7-434c-b481-f2e29c1c271a/The-Financial-Aspects-of-Corporate-Governance-(the-Cadbury-Code).pdf [Accessed 12th December 2022]. p. 14.

[3] DAVIES, P. *Introduction to Company Law*, 3rd edn. Oxford: Oxford University Press, 2020, 393 p. ISBN 978-0198854920. p. 11.

is delegated from shareholders either to the board or to the senior management.[4] The consequent allocation of management and control powers between the board and the senior management is of great importance for the successful running of the company.

Unfortunately, a perfect model of corporate governance has not been discovered yet. In the operation of companies, corporate scandals occur from time to time with varying frequency in all jurisdictions. The CEO is often identified as the guilty party.[5] But along with all the negatives, these scandals also give the world lessons and incentives to improve the parts of the corporate structure that proved to be dysfunctional. The Cadbury Committee was formed due to a number of wrongdoings in UK companies and it reached findings fundamental to modern corporate governance.[6] The same thing happened in the US world of capital markets at the turn of the millennium, where Congress passed the Sarbanes-Oxley Act after collapses of Enron and WorldCom.[7] Common patterns determining good practice exist and can be applied across different models. The thesis elaborates on these patterns and outlines the points critical to a legitimate functional organisational framework for companies worldwide.

1.1 Historical Development of Corporate Governance

Since history is a great teacher, it is appropriate to explain how the world of corporate governance around the CEO got to the state where it stands today. For the sake of this work, it is important to give the readers a brief opening insight into several milestones in corporate governance history which are influencing the current state of affairs.

The origins of joint stock companies date back to the beginning of the 17th century when the British East India Company was founded. This company aimed to facilitate the emerging British trade in the Indian Ocean region. The organisational structure of the company could already resemble today's joint stock companies. Several thousands of shareholders invested in the

---

[4] HANSMANN, H. and KRAAKMAN, R. *The End of History of Corporate Law.* Georgetown Law Journal, 89(2), 2001, pp. 439-468. p. 444.

[5] Most recently see for example the US FTX collapse (U.S. SECURITIES AND EXCHANGE COMMISSION. *SEC Charges Samuel Bankman-Fried With Defrauding Investors in Crypto Asset Trading Platform FTX* [online]. 2022. Available from: https://www.sec.gov/news/press-release/2022-219 [Accessed 17th February 2023]) or the German Wirecard fraud (GUYTON, P. *Wirecard-Betrug vor Gericht: Duell der Pleitenbanker* [online]. TAZ Verlags- und Vertriebs GmbH. 2022. Available from: https://taz.de/Wirecard-Betrug-vor-Gericht/!5900770/ [Accessed 17th February 2023]).

[6] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE (n 2). p. 8.

[7] UNITED STATES. *Public Law 107-204, Sarbanes-Oxley Act, as amended.* 2002.

company, 26 directors governed its affairs and senior managers performed in roles similar to present-day CEOs.[8]

Moving forward, the turning point for company law represents the UK case of Salomon v A Salomon Ltd. In this case, the House of Lords conclusively ruled on the premise enacted in the Companies Act 1862 that companies have separate legal personalities from shareholders. Thus, shareholders are in most cases not personally liable for the company's debts and the assets of shareholders are protected from the company's creditors in case of business failure.[9] This principle had become fundamental for company law and constitutes a foundation for a debate on corporate governance issues.

The separate legal personality of the company means that shareholders own share certificates which represent their participation in the company, but it is the company itself which is the owner of its property. The idea of separate ownership and control of the company resonated in corporate governance discussions. Historically, a direct connection between the owners and the management of the company have existed. However, during the 20th century, many companies turned into large complex nexuses with dispersed ownership and complicated organisational structures. The owners decided to put control into the hands of professionally trained managers.[10]

The US academics Berle and Dodd famously held the subsequent debate about in whose interests should be the company managed. Berle argued that all the powers should be exercised only for the sole benefit of the shareholders, who should also exercise control rights over the company. This theory was labelled the shareholder primacy theory.[11] This position was opposed by Dodd, who held the view that businesses should also protect the interests of other involved parties, such as employees or customers.[12] This approach emphasises, in addition to making profit, also social and ethical aspects of corporate governance, and was later labelled as the stakeholder theory.[13] What is the purpose of a company and whose interests it should serve is a question that could be debated endlessly without reaching a clear answer, yet that issue is beyond the scope of

---

[8] BOWEN, H. V. *The Business of Empire: the East India Company and Imperial Britain, 1756-1833.* Cambridge: Cambridge University Press, 2006, 304 p. ISBN 978-0-52-108982-1. pp. 119 and 139.

[9] Salomon v Salomon & Co Ltd., 1897, 13 LQR 6 in KERSHAW, D. *Company Law in Context: Text and Materials.* 2nd edn. Oxford: Oxford University Press, 2012, 944 p. ISBN 978-0-19-960932-1. pp. 32-34.

[10] JENSEN, M. C. and MECKLING, W. H. *Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure.* Journal of Financial Economics, 3(4), 1976, pp. 305-360. p. 309.

[11] BERLE, A. A. and MEANS, G. C. *The Modern Corporation and Private Property.* 10. print., New Jersey: Transaction Publishers, 2008, 380 p. ISBN 978-0887388873. p. 278. and JOHNSTON, A. *EC Regulation of Corporate Governance*. Cambridge: Cambridge University Press, 2009. 400 p. ISBN 978-0511770753. p. 21.

[12] DODD, E. M. *For Whom are Corporate Managers Trustees?* Harvard Law Review, 45(7), 1932, pp. 1145-1163. p. 1156.

[13] FREEMAN, R. E. *Strategic Management: A Stakeholder Approach*. Boston: Pitman, 1984, 276 p. ISBN 978-0-27-301913-8. p. 10.

this thesis. The point was briefly introduced because it also plays its role when thinking about the board and senior management, who should always bear in mind whose benefits it serves while in the office.

The phenomenon of separation of ownership and control is closely connected to the question of management power and accountability, which has been the target of attention especially since the second half of the 20th century.[14] Lack of shareholder interest in the company's operations due to dispersed share ownership structures and a weak position of boards led to what is called the managerial capitalism era. As a result, the companies were run by omnipotent managers without meaningful monitoring neither from the board nor the shareholders.[15] The absence of regulatory checks and balances, as well as the lack of interest of involved parties, provided the management with the opportunity to act for their own benefit. Paradoxically, despite some cases of managerial wrongdoings, this was a time of prosperity for companies and their shareholders. That is likely to be attributed to the long period of economic growth following the end of the Second World War.[16]

Yet prosperity never lasts forever, and with the end of the managerial era, the time to shine for corporate governance has come. Already in the late 1970s, corporate governance reform in the US came under the spotlight after a series of corporate scandals, such as the Watergate affair.[17] The rest of the world followed and the 1990s are considered the decade of corporate governance internationally.[18] It was discussed that to foster the accountability of managers, there should be a more substantial contribution of boards and shareholders in corporate governance.[19] During this period, it became the norm for companies to set up various board committees, to appoint an increasing number of independent directors as board members and to discuss the board composition in general.[20] At the same time, it was also a time of even greater importance of CEOs, whose sought-after status changed from being competent officers to being charismatic leaders. This lasts to this day and it is the priority of companies to have the right person at the top of the

---

[14] CHEFFINS, B. R. *Corporate Governance since the Managerial Capitalism Era.* Business History Review, 89(4), 2015, pp. 717-744. p. 718.
[15] Ibid. p. 719.
[16] Ibid. p. 722.
[17] CHEFFINS, B. R. *The Rise of Corporate Governance in the UK: When and Why.* Current Legal Problems, 68(1), 2015, pp. 387-429. p. 390.
[18] OECD BUSINESS SECTOR ADVISORY GROUP ON CORPORATE GOVERNANCE. *Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets* [online]. 1998. Available from: https://www.oecd-ilibrary.org/industry-and-services/corporate-governance-improving-competitiveness-and-access-to-capital-in-global-markets_9789264162709-en [Accessed 29th March 2023]. p. 14.
[19] CHEFFINS (n 14). p. 733.
[20] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE. (n 2).

company's hierarchy, which consequently leads to incentivising CEOs, for example, by linking their remuneration to the market performance of managed companies.[21]

As the millennium changes, interest in corporate governance has persisted. The number of corporate scandals, such as Enron or WorldCom, intensified the interest in regulating businesses, which in turn has weakened the power of CEOs in favour of boards and shareholders.[22] Furthermore, activist shareholders, particularly in the form of hedge funds, which have targeted underperforming businesses, maximised the pressure on CEOs and led to higher turnover in management teams.[23]

The last breaking point in the history of corporate governance is the financial crisis, which started in 2007 with the bursting of the housing bubble in the US and spread worldwide in the following years.[24] Legislators and regulators believed that corporate governance regulatory requirements proved insufficient and played a significant role in causing the crisis. Therefore, they pushed for a more rigid approach to corporate governance regulation.[25] The OECD report identified particularly remuneration systems, risk management practices, board performance and exercising of shareholder's rights as problematic aspects of corporate governance requiring more attention.[26] Even though the regulatory frameworks have been evolving significantly from year to year, the problems identified in the OECD report after the financial crisis remain relevant to this day.[27]

1.2 Agency Theory

The question of the CEO's position within corporate governance stems from the age-old problem associated with the above-outlined separation of ownership and control. The problem was addressed in numerous works dealing with the agency problem or principal-agent problem. Adam Smith already addressed this issue in his 1776 work The Wealth of Nations. Smith famously expressed the idea of different motivations of owners and stewards as follows: *"The directors of such companies, however, being the managers rather of other people's money than of their own,*

[21] CHEFFINS (n 8). p. 737.
[22] Ibid. p. 739.
[23] Ibid. p. 742.
[24] OECD. *Corporate Governance and the Financial Crisis: Key Findings and Main Messages* [online]. 2009. Available from: https://www.oecd.org/corporate/ca/corporategovernanceprinciples/43056196.pdf [Accessed 12th December 2022]. p. 12.
[25] BAINBRIDGE, S. M. *Corporate Governance after the Financial Crisis.* Oxford: Oxford University Press, 2012, 270 p. ISBN 978-0199772421. p. 4.
[26] OECD (n 24). p. 13.
[27] OECD. *Corporate Governance Factbook 2021* [online]. 2021. Available from: https://www.oecd.org/corporate/corporate-governance-factbook.htm [Accessed 20th March 2023]. pp. 11 ff.

it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master's honour, and very easily give themselves a dispensation from having it. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company."[28] As apparent from the quotation, the potential divergence of interest between different classes in companies has been here for centuries and continues to be here today.

The work of Smith, as well as the work of Berle and Means,[29] got more attention from authors writing on the theory of the company a few decades later in the 1970s. Among them were Jensen and Meckling, who defined the agency relationship as "*a contract under which one or more persons (the principal(s)) engage another person (the agent) to perform some service on their behalf which involves delegating some decision making authority to the agent."*[30] As a result of the agency relationship, shareholders incur additional costs, which can be divided into three categories: (i) costs of monitoring by the principals (e.g. having the financial accounts of the company proved by independent auditors), (ii) costs of bonding by the agent (e.g. giving guarantees that prevent potential exploitation of the principals), and (iii) residual loss (e.g. overpaying of assets by opportunistic conduct of agents).[31]

The definition of agency relationship above is general and can be used across various disciplines. If the agency theory is applied to the problems in the field of company law, there are three central agency conflicts: (i) conflicts between managers and shareholders – as pivotal for this thesis is described below, (ii) conflicts between minority and majority shareholders – company laws protect the weaker party by law on groups of companies, and (iii) conflicts between shareholders and other stakeholders – such as exploiting employees to maximise profits for shareholders.[32] Law tries to keep agency costs and conflicts as low as possible by employing diverse legal strategies. Regulatory and governance frameworks are looking for ways to ensure that power exercised by one of the participating classes is performed in the company's best interest and is not exploited for the own benefit of individual parties.

---

[28] SMITH, A. *The Wealth of Nations*. London: Ward Lock, 1838, 765 p. ISBN Not Assigned. p. 586.
[29] BERLE, A. A. and MEANS, G. C. *The Modern Corporation and Private Property.* 10th print., New Jersey: Transaction Publishers, 2008, 380 p. ISBN 978-0887388873.
[30] JENSEN and MECKLING (n 10). p. 308.
[31] Ibid. pp. 305-360.
[32] KRAAKMAN, R. et al. *The Anatomy of Corporate Law: A Comparative and Functional Approach.* 3rd edn. Oxford: Oxford University Press, 2017, 281 p. ISBN 978-0-19-872431-5. p. 49.

The agency conflict of company law attracting the most attention is between shareholders and management of companies. When applied to the definition above, the large body of shareholders of the company (principals) hires a small number of managers (agents) to manage the company on their behalf.[33] Such delegation of authority to managers without effective control can result in opportunistic behaviour or inefficient management of the company's wealth by managers, as the interests of managers do not fully correspond with that of shareholders. Moreover, the managers do not bear the risk of being the residual claimants of the company, as they usually own only a small percentage of outstanding shares, and thus, there is a potential for misalignment of interest when it comes to adopting business decisions.[34]

In spite of information asymmetry and the need for coordination between the shareholders and the managers, law tries to provide the parties with instruments to decrease agency costs to a possible minimum. The theory recognises five basic legal strategies to regulate agency costs and protect principals. These are as follows: (i) constraining agent decisions by rules and standards, (ii) setting incentives to the agents in the form of trusteeship or rewards, (iii) giving principals decision rights in the form of initiation or veto, (iv) principal's appointment and removal rights of agents, and (v) principal's possibility to enter or exit the relationship with the agent.[35] The legal strategies naturally overlap. To work best in practice, they should be applied in combination and are not mutually exclusive. To provide an example of an interconnection between the strategies, consider the executive. The terms and conditions of director's remuneration are set out in remuneration policies (standards), which often give the directors an incentive in the form of stock option plans (reward) and the shareholders are in many jurisdictions entitled to vote on director's remuneration (decision rights).

Governance of the companies by setting rules and standards is the legal strategy for reducing the agency cost that will be given prime consideration in the following parts of the thesis. Agency theory provides a theoretical background to the questions relevant to board organisation, such as whether to vest power in the hands of one individual in the form of a dual CEO and chairperson function or rather split the roles to improve the monitoring function of the board.

---

[33] The theoretical question whether the company or the shareholder are the principals is left aside.

[34] FAMA, E.F. and JENSEN, M.C. *Separation of Ownership and Control.* The Journal of Law and Economics, 26(2), 1983, pp. 301-325. p. 304 ff.

[35] DAVIES (n 3). pp. 31 ff.

1.3 Organisational Board Models

Three elemental organisational board models are recognised in the world of capital markets. The most prominent is the unitary board structure in which the CEO holds a very strong position within the company. Secondly, the two-tier board structure, also called the German model after its most significant representative, is considered to be a more collegial form of corporate governance.[36] And finally, the auditor's board structure, prevailing in Japan or Italy, where a board of auditors is established as a compulsory body to monitor the accounting matters as well as the activities of directors and management. The auditor's board structure may resemble the German model. Nevertheless, the powers of the board of auditors are limited compared to the supervisory board in Germany, as the board of auditors, for example, does not have appointment rights.[37] As less significant in the world of capital markets, the auditor's board structure will not be addressed in detail.

1.3.1 Unitary Board Model

A unitary board model is a form of organisational structure, which has become established particularly in the USA and the UK. It is also a dominant model used in some countries of Continental Europe such as France.[38] In companies with a unitary board model, there is a concentration of both management and supervisory powers within a board. The board is the body where the power to lead and control the company is concentrated.[39] The board has the power to reserve matters to decide. The residual business management authority is delegated to the executive management. The most senior members of management, such as the CEO or CFO, are usually part of the board, but it is not a necessity, and they might stand outside the board as well.[40]

The main duties of the board include determining the company's purpose and the means to achieve it. The board should establish a system of effective control mechanisms to monitor the risks. Its other important powers include appointment rights, as the board is responsible for

---

[36] PLESSIS du J. J. In AFSHARIPOUR, A. and GELTER, M. (eds.) *Comparative Corporate Governance.* Cheltenham: Edward Elgar Publishing, 2021, 544 p. ISBN 978-1788975322. p. 145.

[37] Ibid. p. 165.

[38] HOPT, K. C In FLECKNER, A. and HOPT, K. (eds.) *Comparative Corporate Governance: A Functional and International Analysis.* Cambridge: Cambridge University Press, 2013, 1141 p. ISBN 978-1139177375. p. 32.

[39] COMMITTEE ON CORPORATE GOVERNANCE. *The Combined Code – Principles of Good Corporate Governance and Code of Best Practice* [online]. 1998. Available from: https://www.frc.org.uk/getattachment/53db5ec9-810b-4e22-9ca2-99b116c3bc49/Combined-Code-1998.pdf [Accessed 8th February 2023]. p. 3, 8, 10 and 13.

[40] JUNGMANN, C. *The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board System.* European Company and Financial Law Review, 3(4), 2006, pp. 426-474. p. 437.

preparing appointment and remuneration plans for senior management, including the CEO. Other tasks include counselling and supporting the management and subsequent evaluation of its performance.[41] From the above-described powers, it is evident that the board is responsible for setting the fundamental long-term goals of the company and serves as a bridge between the shareholders and the management of the company.

The fact that there is not a body with a monitoring function in companies with unitary board model is offset by a number of non-executive directors. The separation of executive and non-executive roles leads to a distribution of management and monitoring powers at least within the single statutory body.[42] All directors have access to relevant information, which is considered an advantage compared to the two-tier board model. A swifter and more extensive information flow should allow the board to make informed decisions on point.[43] However, some argue that it is again the executive directors and managers who decide which set of information will be provided to non-executive directors.[44] This practice would ultimately lead to the same situation as in the two-tier board model, where some directors handle different set of information than others.

Another issue related to the separation of management and control in unitary board companies is the combining of positions of chairperson and CEO. There is a danger of having one powerful dominating person at the top of the company's hierarchy if the positions of chairperson and CEO are combined.[45] This could limit the supervisory role of the board and is not considered appropriate corporate governance practice if protective mechanisms are not set up.[46] Companies with a two-tier board model cannot experience this situation of conflict of interest because parallel membership in the management board and supervisory board, and thus their chairpersonship, is excluded by mandatory law.[47]

---

[41] FINANCIAL REPORTING COUNCIL. *The UK Corporate Governance Code* [online]. 2018. Available from: https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf [Accessed 18th November 2022]. p. 4.

[42] HOPT, K. and LEYENS P. C. in AFSHARIPOUR and GELTER (eds.) (n 36). p. 116.

[43] JUNGMANN (n 40). p. 459.

[44] Ibid. p. 460.

[45] JENSEN, M. and MONKS, R. *U.S. Corporate Governance: Accomplishments and Failings.* In CHEW, D. and GILLAN, S. (eds.) *U.S. Corporate Governance*. New York Chichester, West Sussex: Columbia University Press, 2009, 320 p. ISBN 978-0231148573. p. 58.

[46] OECD. *G20/OECD Principles of Corporate Governance* [online]. 2015. Available from: http://dx.doi.org/10.1787/9789264236882-en [Accessed 18th November 2022]. p. 51.

[47] See for example *Business Corporations Act 2012*, Section 448(4).

1.3.2 Two-Tier Board Model

There is a tradition of a two-tier board model in Continental Europe. It originated in the 17th century in the Netherlands.[48] Nowadays, the main representative of a two-tier board model is Germany. The elementary characteristic of the two-tier board model is a clear separation of powers between the managing body (the management board) and the controlling body (the supervisory board). The two-tier board model is often presented as the counterpoint to the unitary board model, implying that the advantages of one model correspond with the disadvantages of the second model and vice versa.[49]

The members of the management board are responsible for the business management in the broad sense and the members of the supervisory board have the duty to monitor the company's affairs as representatives of the shareholders and other stakeholders.[50] Contrary to the unitary board model, members of statutory bodies should not get into situations of conflict of interest. Although the separation of powers is seen as a main advantage of the two-tier board model, it can also cause problems, as increased cooperation and open discussion between both statutory bodies are required to transmit all relevant information between the two boards.[51]

The management board consists of directors who are as a general rule all executive directors.[52] Directors are responsible for setting long-term strategies but also have the right to manage the day-to-day business. Traditionally, the directors are appointed by the supervisory board[53] and can therefore be deemed to serve as agents for the supervisory board. In theory, directors increase the likelihood of getting re-appointed by the supervisory board by performing well in their functions. Thus, there are management board members as agents appointed by the supervisory board and supervisory board members as agents to shareholders appointed in most cases by shareholders at the general meeting.[54] One of the directors is usually appointed as a chairperson of the

---

[48] CADBURY, A. *Corporate Governance and Chairmanship: A Personal View.* Oxford: Oxford University Press, 2002, 268 p. ISBN 978-0199252008. p. 71.

[49] ROTH, M. *Corporate Boards in Germany*. In DAVIES, P. et al. (eds.) *Corporate Boards in Law and Practise: A Comparative Analysis in Europe*. Oxford: Oxford University Press, 2013, 818 p. ISBN 978-0198705154. p. 268.

[50] CADBURY (n 48). p. 73.

[51] JUNGMANN (n 40). p. 450.

[52] ROTH, M. *Corporate Boards in Germany*. In DAVIES et al. (eds.) (n 49). p. 288.

[53] See for example *German Stock Corporations Act,* 84(1) or *Austrian Stock Corporations Act*, Section 75(1). Otherwise in the Czech Republic where the directors are appointed in the general meeting, unless the power is delegated to the supervisory board by the articles of association (*Business Corporations Act 2012*, Section 438(1)).

[54] ROTH, M. *Corporate Boards in Germany*. In DAVIES et al. (eds.) (n 49). p. 264.

management board. This position is also executive and thus has some similarities with the Anglo-American concept of the CEO.[55]

The supervisory board is responsible for monitoring the management board of the company. It should also act as an advisory body to the management board in setting long-term strategic and conceptual targets. Using the Anglo-American lingo, the supervisory board is composed of non-executive directors, whose core task is supervising the management board. The supervisory board members are appointed in the general meeting by the shareholders and are agents of shareholders to whom they are accountable. In practice, however, it is often the case that members of the supervisory board are selected before the general meeting by the members of the management board. The general meeting in such a case only formally confirms the pre-selected candidates.[56] This practice weakens the main advantage of this model, as it decreases the independence of supervisory board members. The problem may be even more evident if the former chairperson of the management board is appointed as the chairperson of the supervisory board.[57]

Another structural problem of the two-tier board model is the information asymmetry between the management board and the supervisory board. Relevant information must be provided to the supervisory board so that it can perform its statutory supervisory role. As the supervisory board is not directly involved in the decision-making process, the management board must provide most of the information. This limited access to information and dependence on the data provided by the management board may limit the effectiveness of adequate supervision.[58] The role of the chairperson is important in this field, as he should act as the main information link between the two bodies.[59]

Supervisory boards shall not take decisions that are within the competence of the management.[60] Request for approval of certain business matters may be vested in the hands of the supervisory boards but these are generally not the decisions on strategic management of the company. Instead, supervisory boards can evaluate decisions taken by the management board

---

[55] FELTL, CH. *Der Vorstandsvorsitzende der Aktiengesellschaft*. Wirtschaftliche Blätter, 25(5), 2011, pp. 229-239. p. 231.

[56] JUNGMANN (n 40). p. 450.

[57] Ibid. p. 450.

[58] Ibid. p. 454.

[59] REGIERUNGSKOMMISSION DEUTSCHER CORPORATE GOVERNANCE KODEX. *Deutscher Corporate Governance Kodex* [online]. 2022. Available from: https://www.dcgk.de/de/kodex/aktuelle-fassung/praeambel.html [Accessed 18th November 2022]. Recommendation D.6, p. 14.

[60] *German Stock Corporations Act*, Sections 105 and 111.

retrospectively. Nevertheless, the trend is to entrust supervisory boards with more competencies in consulting with the management board.[61]

1.3.3 Comparison of a Two-Tier and a Unitary Board Model

When evaluating the two main board models, they both have their benefits and drawbacks. A conclusion cannot be drawn which model would work better in terms of effectiveness or functionality. The OECD Principles declare that both models can be effective means of control, and none is superior to the other.[62] The OECD Principles refer primarily to common features that can benefit the company regardless of the jurisdiction in which it is incorporated. Also, most of the conducted empirical studies conclude that no primary board model would surpass the other one, and each of them works better under different circumstances.[63]

Due to the current trends in international trade and the liberalisation of capital markets, there is a continuing demand for the convergence of different legal systems. These attempts apply to company law and corporate governance as well. One of the areas where the convergence is apparent represents executive remuneration. To provide a specific example, the implementation of say on pay across the jurisdictions, which was first introduced in the Anglo-American world,[64] to be later followed by EU legislators as well.[65] On the other hand, there are also areas where convergence seems impossible. Broadly speaking, these can be the differences between unitary and two-tier structures. One of them is the existence of supervisory boards, or more specifically, the codetermination regime, which is fundamental to German company law but difficult to imagine in the practice of US companies.[66]

The relevant question being asked is if one of the corporate governance models will eventually prevail and become dominant worldwide. It seems that the goals of the two approaches are becoming very similar, but the means and forms of how to achieve them differ. In Anglo-American countries, the role of non-executive directors gets a lot of attention, which indicates efforts to separate the managing and supervisory roles of the board.[67] These efforts to appoint outsiders to the board bears a resemblance to the two-tier system, where the emphasis has always

---

[61] JUNGMANN (n 40). p. 452.
[62] OECD. (n 46). p. 10.
[63] JUNGMANN (n 40). p. 462.
[64] HURYCHOVÁ, K. *Princip Say on Pay v Připravované Unijní Legislativě.* OR 3/2017, pp. 65-83. p. 67.
[65] EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2017/828 Amending Directive 2007/36/EC as Regards the Encouragement of Long-Term Shareholder Engagement.* 2017. Art. 9a.
[66] DAVIES, P. and HOPT, K. J. *Corporate Boards in Europe – Accountability and Convergence.* The American Journal of Comparative Law, 61, 2013, pp. 301-375. pp. 345 and 374.
[67] CADBURY (n 48). p. 71.

been on the separation of these roles. However, at the same time, the two-tier system is criticised for its inability to react to rapid changes and ways are being sought to effectively respond to unforeseen circumstances for example by empowering individuals with more decision-making power.[68] To sum up, determining the practice of board organisation in the future is looking into the crystal ball. However, a uniform corporate governance regime is rather out of sight, and particular social and political environments will prevail.

[68] VON HEIN, J. *Vom Vorstandsvorsitzenden zum CEO?* Zeitschrift für das Gesamte Handelsrecht und Wirtschaftsrecht, 166, 2002, pp. 464-502. p. 471.

2. Definition of the Legal Status of CEOs

Providing a general definition of the term CEO is a challenging task. Due to the diversity of particular national legal regulations, it will always be somewhat inaccurate and misleading. As apparent from the previous Chapter 1.3 on organisational board models, the organisational framework of the company depends significantly on the place of incorporation. The same applies to the legal anchoring of the CEO as a legal institute. Thus, at this point, only a brief introduction and the most relevant points to the topic of CEOs will be presented. For a more detailed description of the CEO figure, see the following chapters on the relevant national jurisdictions.

The individual letters of the abbreviation CEO stand for Chief Executive Officer. It has historically been used in Anglo-American business and legal terminology. Nowadays, it has, due to globalisation, become adopted worldwide. An analysis of the abbreviation CEO could provide a better idea of the meaning of the function. The term chief means that the position represents the very top of the company's organisational hierarchy or, as explained in the Cambridge dictionary, "*the highest in rank or position*".[69] The term executive is well-known from corporate governance theory, which means that the CEO is representative of the company's executive arm, primarily responsible for the company's business management. The officer is the trickiest term. There is extensive research on the subject of directors who are often wrongly put into the same group with officers labelled as the management.[70] However, although directors and officers are often overlapping, they are not the same. Directors are appointed either by shareholders or supervisory boards, whereas officers are usually chosen by the directors.[71] In addition, the powers of directors are broader than those of officers, as directors are also responsible for monitoring and directing the officers.[72]

In the traditional substantial sense, the CEO should represent the heart of the company, the poster boy that comes into people's minds when somebody talks about the company. A CEO serves as a distinctive voice, introduces future strategical aims and creates a long-term purpose of the company.[73] On the one hand, he must be ready to take decisions that ultimately affect many

[69] CAMBRIDGE DICTIONARY. *Meaning of Chief* [online]. 2023. Available from: https://dictionary.cambridge.org/dictionary/english/chief [Accessed 10th April 2023].
[70] JOHNSON, L. P. and MILLON, D. *Recalling Why Corporate Officers Are Fiduciaries.* William and Mary Law Review, 46(5), 2005, pp. 1597-1654. p. 1650.
[71] Ibid. p. 1605.
[72] Ibid. p. 1607.
[73] FINK (n 1).

people's lives. On the other hand, he needs to be aware of the possible consequences and be ready to be held accountable for them.[74]

The CEO is the head of the so-called C-suite, which is the label for the group of the most senior management level of companies. In addition to the CEO, other members of the C-suite may include: CFO – Chief Financial Officer, COO – Chief Operating Officer, CIO – Chief Information Officer, CHRM – Chief Human Resources Manager, CSO – Chief Security Officer, CGO – Chief Green Officer, CAO – Chief Analytics Officer, CMO – Chief Marketing Officer, CDO – Chief Data Officer, CLO- Chief Legal Officer and others.[75] An exclusive relationship towards the CEO possesses the CFO. He is the closest ally of the CEO and is his main contact in financial matters. The CFO is also the one who oversees the risk assessment and should inform the other directors about potential risks and internal controls management deployed.[76]

Members of the C-suite can simultaneously be managers and executive members of the board. It means that they can hold both titles – the director and the officer. This is usually the case primarily for the CEO and CFO.[77] According to Davies, CEOs are "*invariably members of the board in the UK practice"*.[78] The same applies to the USA, where they sometimes perform the role of the chairperson of the board.[79] In Germany and Austria, it is even the norm to not distinguish between the positions of the CEO and chairperson of the board. The two terms can be used interchangeably based on the context.[80] According to a case study by the author, this is also the practice in the Czech Republic.[81]

However, it is not a requirement for managers to be board members and its generally allowed to delegate powers to managers below the board level.[82] Boards dominated by non-executive

---

[74] MONKS, R. and MINOW, N. *Corporate Governance,* 5th edn. New Jersey: John Wiley & Sons, 2011, 512 p. ISBN 978-0470972595. p. 354.

[75] BOIVIE, S. et al. *Corporate Directors' Implicit Theories of the Roles and Duties of Boards*. Strategic Management Journal, 42(9), 2021, pp. 1662-1695. p. 1672.

[76] BRANCATO, C. et al. *The Role of US Corporate Boards in Enterprise Risk Management.* The Conference Board Research Report No. R-1390-06-RR. 2009. p. 9.

[77] SHIVDASANI, A. and ZENNER, M. *Best Practices in Corporate Governance: What Two Decades of Research Reveals.* In CHEW and GILLAN (eds.) (n 45). p. 91.

[78] DAVIES (n 3). p. 33.

[79] CADBURY (n 48). p. 69 and SPENCER STUART. *2022 U.S. Spencer Stuart Board Index* [online]. 2022. Available from: https://www.spencerstuart.com//media/2022/october/ssbi2022/2022_us_spencerstuart_board_index_final.pdf [Accessed 12th December 2022]. p. 36.

[80] HOPT, K. J. *The Dialogue Between the Chairman of the Board and Investors: The Practice in the UK, the Netherlands and Germany and the Future of the German Corporate Governance Code Under the New Chairman.* Revue Trimestrielle de Droit Financier, 3, 2017, pp. 97-104. p. 101.

[81] See the Annex No. 1.

[82] DAVIES, P. et al. *Boards in Law and Practice: A Cross-Country Analysis in Europe.* In DAVIES et al. (eds.) (n 49). p. 10.

directors can better focus on their monitoring tasks. This can have positive effects, such as faster replacement of underperforming CEOs or a better bargaining position in takeover bids.[83] For example, some US boards are composed of a majority of non-executive directors which is also considered a good practice endorsing the monitoring function of the board.[84] In Switzerland, there is also an increasing number of CEOs standing outside the board.[85] Similarly, the EU law foresees CEOs outside the board.[86]

To sum up, practice indicates that there are two main models of the CEO's legal status within the company:

(i) managerial model - the CEO has a hybrid role[87] as a member of both the board as an executive director (possibly as its chairperson, which will be addressed in the following chapters) and the group of most senior managers of the company; and

(ii) monitoring model - the CEO stands outside the board, which consists mainly of non-executive directors responsible for overseeing management below the board level, incl. CEO. This practice includes extensive delegation of powers to management below the board level.

2.1 Definition of the Chairperson's Role

In addition to the CEO, it is also necessary to introduce the interdependent role of the chairperson. The chairperson is a full-fledged member of the board. In addition to the role of a director, he also represents the authority of the board as a whole. According to Cadbury's report, "*chairpersons are primarily responsible for the working of the board…for ensuring that all relevant issues are on the agenda, and for ensuring that all directors…are enabled and encouraged to play their full part in its activities.*"[88] It lies in the hands of the chairperson to create a favourable operating climate and communication within the board to facilitate the environment of smooth operation for all directors.

The role of a chairperson is pivotal to the topic of this thesis because the legal status of chairpersons is often better legally anchored than the one of CEOs, as will be analysed in the comparative part of this thesis. At this point, it is only worth pointing out that there are subtle

---

[83] SHIVDASANI, A. and ZENNER, M. *Best Practices in Corporate Governance: What Two Decades of Research Reveals.* In CHEW and GILLAN (eds.) (n 45). p. 91.
[84] DAVIES, P. *Corporate Boards in the UK.* In DAVIES et al. (eds.) (n 49). p. 288.
[85] DAVIES and HOPT (n 66). p. 318.
[86] EUROPEAN PARLIAMENT and COUNCIL OF THE EU (n 65). Art. 1.
[87] SEGRESTIN, B. et al. *The Separation of Directors and Managers: A Historical examination of the status of managers.* Journal of Management History, 25(2), 2019, pp. 141-164. p. 153.
[88] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE (n 2). p. 20.

nuances worth to be borne in mind when considering the role of a chairperson in different settings, i.e. the distinction between chairperson of the board in the unitary board model, chairperson of the management board which is often considered to be synonymous with the term CEO and also chairperson of the supervisory board.

The main task of the chairperson is to chair the board, yet the manner of conducting the role is individual and depends on the person of the chairperson and his position within the company. The chairperson should prepare for the meeting's agenda in advance. Although a board meeting is dynamic and can go in different directions, the chairperson should be able to use his expertise and experience to assess possible scenarios. Board discussions must be beneficial for the company's welfare, and the chairperson should ensure that the best available conclusion is reached. This also includes the factor of creating a functional working environment and culture within the board, where those involved know what their respective roles are and stand in the position to perform them.[89] This is reflected when new directors are appointed, as the chairperson should be available to answer any possible questions.[90]

As stated, the role of the chairperson is the most significant during board meetings. Depending on the particular legal regulation, the chairperson may be given additional executive powers, such as a casting vote in case of a tie-break or even veto.[91] Before the board meeting itself begins, the place and time of the meeting must be determined. The course of a board meeting and its decision shall be recorded in the minutes of a board meeting. Since the minutes of a board meeting might be used in the future as evidence, it is often the role of the chairperson and company secretaries to record discussed agenda correctly.[92]

Another point distinguishing the chairperson from other members is his representative role vis-à-vis the public or, more broadly speaking, the stakeholders. The main task in this field is to speak for the board in a capacity similar to a spokesperson. The public, customers or individual and institutional shareholders can approach the chairperson seeking explanations of the company's business strategies or future development.[93]

Finally, an important aspect is cooperation between the chairperson and CEO. This factor comes into play when the roles are separated. The cooperation of both individuals is essential for

---

[89] CADBURY (n 48). p. 79.

[90] FINACIAL REPORTING COUNCIL. *Guidance on Board Effectiveness* [online]. 2018. Available from: https://www.frc.org.uk/getattachment/61232f60-a338-471b-ba5a-bfed25219147/2018-guidance-on-board-effectiveness-final.pdf [Accessed 12th December 2022]. p. 18.

[91] DAVIES, P. et al. *Boards in Law and Practice: A Cross-Country Analysis in Europe.* In DAVIES et al. (eds.) (n 49) p. 23.

[92] CADBURY (n 48). p. 90.

[93] FELTL (n 55). p. 235.

the successful running of the company. Moreover, the chairperson should act as a bridge connecting all the board members, primarily the non-executive directors and the CEO.[94] It is crucial that the two individuals are partners rather than competitors because the board's effectiveness depends on the relationship between these two most powerful figures in the company.[95]

2.2 CEO and Chairperson Duality

How to structure a board to best serve the involved parties and to control the power of senior management, has been an issue immanent to corporate governance already since the 1990s. Whether to have the same individual serving as a CEO and chairperson, is a question rooted in the agency theory. The matter of CEO and chairperson duality was addressed in a study by Finkelstein and D'Aveni, who have drawn attention to the fact that when companies address the question of whether to combine the roles of CEO and chairperson, they are facing a double-edged sword of choosing between the contradictory objectives of independent oversight and unity of command.[96]

The calls for separation of the roles of CEO and chairperson can be described as a convergence of unitary and two-tier board models, as the membership in the management board and the supervisory board, i.e. also their chairpersons, are incompatible.[97]

Traditionally, the chairperson of the board and the CEO could be the same individual, yet good corporate governance practice recommends separating the positions. Two countries which engage the most in the debate on the separation of the functions of CEO and chairperson are the USA and the UK.

The UK is the pioneer in the separation of CEO and chairperson roles. The topic arrived on the scene together with the publication of the Cadbury report in 1992 and has been part of the corporate governance debate ever since. A number of countries, such as Sweden, Italy, Belgium or the Netherlands, have included some form of separation of CEO and chairperson roles in their

---

[94] ROBERTS, J. and STILES, P. *The Relationship Between Chairmen and Chief Executives: Competitive or Complementary Roles?* Long Range Planning, 32(1), 1999, pp. 36-48. p. 47.

[95] DAVIES, P. et al. *Boards in Law and Practice: A Cross-Country Analysis in Europe.* In DAVIES et al. (eds.) (n 49). p. 28.

[96] FINKELSTEIN, S. and D'AVENI, R.A. *CEO Duality as a Double-Edged Sword: How Boards of Directors Balance Entrenchment Avoidance and Unity of Command.* Academy of Management Journal, 37(5), 1994, pp.1079-1108. p. 1080.

[97] *German Stock Corporations Act*, Section 105(1) and all other national stock corporations acts except for Russia.

CGC.[98] To give a specific example, Dutch CGC provides that the chairperson of a unitary board cannot be an executive director and cannot be in charge of the day-to-day business of the company.[99]

Since each approach certainly has its costs and benefits at the margin, the following paragraphs will focus on analysing the potential strengths and weaknesses of separating and combining the roles of CEO and chairperson.

2.2.1 CEO as a Chairperson of the Board

The arguments for combining both roles include the following:

1. Dual CEO and chairperson provide a unity of command and a clear leadership structure. If the roles are separated, the decision-making power might be limited, and therefore, as a result, there might be a lack of accountability among the persons in power. A clear leadership structure at the top of the hierarchy allows companies to pursue their objectives and implement adopted decisions briskly. [100]
2. Separation of both roles can increase the information asymmetry on the board because two individuals are performing functions that may partially intersect. For the successful running of the company, it is then essential that the two individuals share all the necessary information.[101] Information asymmetry is a topic in itself, and in the debate on CEO duality, it represents a double-edged sword. On the one hand, having a dual CEO and chairperson should give boards easier access to information that can be provided directly by the CEO and chairperson. On the other hand, there is a risk of abusing authority by the CEO and chairperson or possibly withholding or filtering important information from the board.[102]
3. It reduces the risk of unhealthy rivalry within the board.[103] If the two individuals at the top of the hierarchy fight for power, it creates a problem for the whole board. There is

[98] DAVIES, P. et al. *Boards in Law and Practice: A Cross-Country Analysis in Europe.* In DAVIES et al. (eds.) (n 49). p. 21.

[99] MONITORING COMMITTEE CORPORATE GOVERNANCE CODE. *The Dutch Corporate Governance Code* [online]. 2016. Available from: https://www.mccg.nl/publicaties/codes/2016/12/8/corporate-governance-code-2016-en [Accessed 18th November 2022]. Principle III.8.1.

[100] OWEN, G. and KIRCHMAIER, T. *The Changing Role of the Chairman: Impact of Corporate Governance Reform in the United Kingdom 1995-2005.* European Business Organization Law Review, 9(2), 2008, pp. 187-213. p. 195.

[101] BAINBRIDGE, S. M. In GORDON, J. and RINGE, W. G. (eds.) *The Oxford Handbook of Corporate Law and Governance.* Oxford: Oxford University Press, 2018, 1248 p. ISBN 978-0198743682. p. 323.

[102] DAVIES, P. et al. *Boards in Law and Practice: A Cross-Country Analysis in Europe.* In DAVIES et al. (eds.) (n 49). p. 36.

[103] CADBURY (n 48). p. 101.

empirical evidence showing that if the CEO and the chairperson do not get along, it creates additional costs for the company.[104] As Monks found in the survey among American CEOs when conducting the research, they often encountered the following sentiment: "*You've got to have one boss,…*".[105] The idea is based on the assumption that if the roles are separated, there will always be power struggles and questions concerning the division of competences.

4. A strong position allows the dual CEO and chairperson to take difficult decisions that the separate CEO might not have the courage to undertake. Because of the greater oversight given by the board to separate CEOs, they are more reluctant to take a risky decision that might be necessary. [106]
5. It represents the common practice in some regions and some types of companies. If an effectively working individual with outstanding strategic visions occupies both roles, there is no reason to separate the positions by law artificially. It can also shrink the labour market, as some capable candidates would prefer to work in a combined position where they could better promote their policies.[107] In some countries, the title of chairperson serves as an incentive for well-performing CEOs and expresses a vote of confidence by other directors.[108] This is however more of a psychological question and the fact that positions in senior management are often occupied by persons who want to hold unlimited power in their hands.
6. It is how the founders lead their companies. Companies often start as small businesses and are managed by their founders. As they grow, the organisational structure often remains the same time and the founders stay at the top of the hierarchy in the combined role of CEO and chairperson. Moreover, founders often possess a specific aura and detachment to the company that hired managers can hardly replace. The counterargument is that even smaller businesses would often benefit from an unbiased view of an outside chairperson. The chairperson could be available to the company

[104] DAVIES, P. et al. *Boards in Law and Practice: A Cross-Country Analysis in Europe.* In DAVIES et al. (eds.) (n 49). p. 22.
[105] MONKS and MINOW (n 74). p. 304.
[106] TUGGLE, CH. et al. *Commanding board of director attention: investigating how organizational performance and CEO duality affect board members' attention to monitoring.* Strategic Management Journal, 31(9), 2010, pp. 946-968. p. 960.
[107] MONKS and MINOW (n 74). p. 304.
[108] BRICKLEY, J. A. et al. *Leadership Structure: Separating the CEO and Chairman of the Board.* Journal of Corporate Finance, 3(3), 1997, pp. 189-220. p. 192.

limited period and provide the board with independent advice, particularly at board meetings.[109]

7. Finally, an argument that can be considered rather ridiculous given the size of the companies, but is still expressed in some studies, is that when the roles are combined, there is only one remuneration to be paid. Therefore, appointing only one person and paying costs only to that dual CEO and chairperson is more convenient for the company.[110]

2.2.2 Separation of the Functions of CEO and Chairperson of the Board

Advocates of separate roles argue that:

1. There is a large concentration of power in the hands of one person in case of combining both roles. The system of checks and balances of corporate governance is diverted if the roles of chairperson and CEO are combined. The monitoring function of the board is weakened if the CEO, as a member of the management team, is also the chairperson of the board. The agency theory argues that the risk of pursuing their own interests is higher when both roles are combined.[111] Furthermore, there is a belief that the power associated with the combined CEO and chairperson role can easily distort personal judgment and consequently lead to inappropriate decisions.[112] At the same time, dual CEO and chairperson was considered to play a cardinal role in the emergence of a number of corporate scandals.[113] By contrast, some authors argue that the board can offset these issues and remain a sufficient monitoring body, if the board is strong enough and has a sufficient number of non-executive directors and a lead director.[114]
2. Combining both roles blurs the difference between the supervisory and the management roles of the board. The system of checks and balances is a big topic even when discussing the organisational structure of the unitary board as such and it materialises in a discussion about dual CEO and chairperson. As expressed by Schmid and Zimmerman, if the roles are combined, "*the CEO, who is also chairman of the*

---

[109] CADBURY (n 48). p. 106.
[110] LEVY, L. *Separate Chairmen: Their Roles and Compensation.* The Corporate Board, 14(79), 1993, pp. 10-15. p. 11.
[111] DAHYA, J. et al. *The Case for Separating the Roles of Chairman and CEO: An Analysis of Stock Market and Accounting Data.* Corporate Governance: An International Review, 4(2), 1996, pp. 71-77. p. 72.
[112] ROBERTS and STILES (n 94). p. 44.
[113] DAHYA et al. (n 111). p. 72.
[114] CADBURY (n 48). p. 110.

board, grades his own homework".[115] Thus, the effective supervisory system of the board might be undermined by dual CEO and chairperson, which in turn could again lead to an increase of the agency costs.

3. There is a belief that the chairperson should be an independent monitor so that all shareholders can be equally represented. Where a dual CEO and chairperson is appointed, the risk of potential conflict of interest is much higher than if the two functions are separated.[116] Independent chairperson can also work as a counterbalance to an ambitious CEO.[117]
4. The CEO and the chairperson perform two different full-time jobs that are both complex and demanding.[118] The splitting of the two roles enables the CEO to focus on running the company and gives the chairperson the opportunity to fully engage in the board leadership. The individual in the joint position of CEO and chairperson wears two hats. Other directors from the board should approach him differently when he wears the CEO's and the chairperson's hats. Whereas as a chairperson, he is only primus inter pares, in his position as the CEO, he acts as an executive head of the whole company.[119]
5. A different mix of skills and abilities is desirable for both positions. The need for the ability to lead a team is indeed common to both positions. However, otherwise companies need in positions people who think differently. Chairpersons should primarily be visionaries who see the company's bigger picture and long-term strategical aims. It is also believed that the chairperson can bring a perspective of an outsider and valuable contacts from previous career paths.[120] By contrast, CEOs should be executors who keep the business running on the right track.[121] Therefore, even if the workload involved in performing both positions is disregarded, finding an individual who could perform both positions simultaneously in the company's best interest would be very complicated.
6. The problem of entrenchment of CEOs in the company. The research showed that the dual CEO and chairperson can negatively affect CEOs entrenchment in the company

---

[115] SCHMID, M. M. and ZIMMERMANN, H. *Should Chairman and CEO be Separated? Leadership Structure and Firm Performance in Switzerland.* Schmalenbach Business Review, 60 (2), 2008, pp. 182-204. p. 185.
[116] DAHYA et al. (n 111). p. 72.
[117] Ibid. p. 72.
[118] OWEN and KIRCHMAIER (n 100). p. 208.
[119] CADBURY (n 48). p. 112.
[120] DAHYA et al. (n 111). p. 72.
[121] CADBURY (n 48). p. 108.

and allow them to avoid accountability to shareholders.[122] As Monk put it, it is easier to remove poor-performing CEOs despite their disapproval in companies with an independent chairperson.[123] The same view is shared by practice. For example, Warren Buffett expressed his viewpoint in a letter to shareholders stating that in his service on the boards, he had seen "*how hard it is to replace a mediocre CEO if that person is also Chairman*".[124]

2.2.3 The Main Differences Between Both Approaches

If one looks at the arguments for or against each of the approaches from a broader perspective, one cannot help but notice certain similarities with the issue of organisational board models. Similar to the organisational board models, what is considered a strength of one approach is perceived as a weakness of the other and vice versa. If this analogy is applied further, the first option is to combine the roles of CEO and chairperson in the same way as the management and supervisory roles are to some extent combined in a unitary board model. The second option is to separate the roles of CEO and chairperson, similar to a two-tier board structure, where the bodies are strictly separated so that the first body is responsible for the management and the second body is responsible for the supervision.

The companies can decide to combine the roles of CEO and chairperson, which has the disadvantage of concentration of management and control powers in the hands of one individual but the advantage of securing a better information flow between the executive and non-executive directors and a clear leadership structure.

If companies choose to separate the roles, they address the same issues in reverse. There is a better balance of powers between the board and senior management, increased management accountability and improved board's decision process, which is independent of management.[125] However, achieving information flow and a sufficient degree of coordination between the individual board members requires a more significant effort when two different individuals hold the positions.

[122] FINKELSTEIN and D'AVENI (n 96). p. 1080.
[123] JENSEN, M. and MONKS, R. *U.S. Corporate Governance: Accomplishments and Failings.* In CHEW and GILLAN (eds.) (n 45). p. 57.
[124] BERKSHIRE HATHAWAY. *Shareholder Letter 2014* [online]. 2014. Available from: https://www.berkshirehathaway.com/letters/letters.html [Accessed 10th April 2023]. p. 36.
[125] OECD. *Methodology for Assessing the Implementation of the G20/OECD Principles of Corporate Governance* [online]. 2017. Available from: https://doi.org/10.1787/9789264269965-en [Accessed 18th March 2023]. p. 131.

2.3 Current Trends in Good Corporate Governance Practise

According to the OECD Corporate Governance Factbook, the number of countries recommending the two positions to be separate has increased significantly to seventy-six per cent in the last few years.[126] An example of this movement is the USA, where the number of companies separating the roles has grown from thirty-five per cent in 2007 to fifty-seven per cent in 2022.[127] It is evident that there is increased pressure to separate the positions of CEO and chairperson, not only from policymakers but also from shareholders.

Even though the prevailing opinion is that it is good practice to separate the roles of CEO and chairperson, individual cases should always be considered, as one size does not fit all. This is also why companies can combine the roles under the comply or explain principles in most jurisdictions. For example, for companies operating in fast-changing industries, the advantages of one person in charge may outweigh the disadvantages thereof. Another example represents smaller companies, where the appointment of two persons may be superfluous.[128] Number of the authors also argue that there is insufficient evidence of the positive effects of role separation to force the companies to separate the roles by law.[129]

2.3.1 Does the Separation of Roles Lead to Success?

There have been a considerable number of studies on the separation of the CEO and chairperson roles.[130] The studies generally concern two main areas: (i) the development of financial performance and (ii) the quality of the operational board effectiveness. One thing the studies have in common is that they found that neither of the approaches is flawless and perfect. Otherwise, their findings are controversial and often contradictory.

Many academics argue with theoretical approaches when describing the effectiveness of the systems. However, what is even more important in the business world, are the company's results in the market. Numerous empirical studies on a causal link between the combination of the roles of CEO and chairperson and the stock price performance have been conducted. The empirical

---

[126] 76 per cent of the countries surveyed recommended the separations of roles in 2021, compared to 36 per cent in 2015 – OECD (n 27). p. 12.
[127] SPENCER STUART (n 79). p. 9.
[128] DAHYA et al. (n 111). p. 73.
[129] For findings of conducted studies see Chapter 2.3.1 or FALEYE, O. *Does One Hat Fit All? The Case of Corporate Leadership Structure.* Journal of Management & Governance, 11(3), 2007, pp. 239-259, p. 252.
[130] These include, for example: KRAUSE, R. et al. *CEO duality: A review and research agenda.* Journal of Management, 40(1), 2014, pp. 256-286, DAHYA, J. et al. *One Man Two Hats: What's all the commotion!* Financial Review, 44(2), 2009, pp. 179-212 or FALEYE (n 129). pp. 239-259.

findings provide mixed evidence. Even works of one research team provide conflicting results. In their first research, Dahya et al. found a notable positive market reaction to the separation of the roles.[131] Later in their following research, the team found no improvement in share price performance compared to companies that did not split the roles.[132] They concluded that since no improvement in performance was proved, the big push for the separating functions seems like a step out of step.[133]

Daily and Dalton also found no link between dual CEO and chairperson and the company's market performance. Yet, they concluded that CEO and chairperson duality is associated with a higher incidence of insolvency proceedings.[134] Similarly, data collected by Schmid and Zimmermann in Swiss companies showed no connection between market valuation and CEO and chairperson duality.[135]

Faleye discovered that the characteristics of companies play an important role. The CEO and chairperson duality can benefit some companies, whereas it harms others. Hence, according to him, the separation of roles should not be a general rule but should be considered on a case-by-case basis.[136] Boyd found out that combining both positions can have a positive effect in some circumstances and a negative effect in others.[137] Similarly, Coates concluded that mandating role splitting may be a good objective for large companies but not for all public companies.[138]

Studies addressing the quality of operational board effectiveness under separate and split CEO and chairperson also do not give definite results. Boivie suggests that a dual CEO and chairperson can have a good influence on the functioning of the board, as CEOs who are also chairpersons can represent a convenient liaison between the board and the company's senior management.[139] Moreover, Roberts and Stiles add that the risk of unhealthy competition between the two individuals might have detrimental consequences for the company.[140] Krause concludes that the

---

[131] DAHYA et al. (n 111). p. 76.
[132] DAHYA (n 130). p. 210.
[133] Ibid. p. 210.
[134] DAILY, C. M. and DALTON, D. R. *CEO and Board Chair Roles Held Jointly or Separately: Much Ado about Nothing?* Academy of Management Perspectives, 11(3), 1997, pp. 11-20. p. 14.
[135] SCHMID and ZIMMERMANN (n 115). p. 198.
[136] FALEYE (n 129). p. 252.
[137] BOYD, B. K. *CEO Duality and Firm Performance: A Contingency Model.* Strategic Management Journal, 16(4), 1995, pp. 301-312. p. 309.
[138] COATES, J. *Protecting Shareholders and Enhancing Public Confidence through Corporate Governance* [online]. 2009. Available from: https://corpgov.law.harvard.edu/2009/07/30/protecting-shareholders-and-enhancing-public-confidence-through-corporate-governance/ [Accessed 10th April 2023].
[139] BOIVIE (n 75). p. 1685.
[140] ROBERTS and STILES (n 94). p. 46.

problem is far too complex to reduce it to a battle between good and evil and does not find reasons for the mandatory separation of roles by law.[141]

To sum up, clear answers to the question of whether the separation of roles leads to success have not been found. The most accurate conclusion is that the issue of CEO and chairperson duality is far too complex to give an unambiguous answer on whether to separate or combine the roles of CEO and chairperson. Most authors are inclined to governance based on the comply or explain principle rather than simply mandating the duty to separate the position of CEO and chairperson by law. This is consistent with the one size does not fit all approach described above. Companies should be allowed to combine the two roles, provided that they adequately justify the rationale of this decision to their shareholders and other stakeholders and employ other corporate governance mechanisms, which will be addressed in the following paragraphs.

2.3.2 Check and Balances to Offset the CEO and Chairperson Duality

As explained above, even if one approach is preferred by law, it does not mean it suits everyone. This is also the stance of most jurisdictions, which, while often recommending separation of the roles, allow companies to combine the roles if they justify their decision.[142] When companies decide to combine the roles of CEO and chairperson, it is essential that checks and balances in the form of corporate governance mechanisms are put in place to ensure a challenging environment and independent thinking within the board. Corporate governance provides legal instruments which allow companies to balance the strong position of dual CEO and chairperson. These include in particular: (i) lead directors, (ii) independent non-executive directors and (iii) board committees.

2.3.2.1 Introduction of a Lead Director

The appointment of a lead director is an instrument, which can counterbalance the powers of the dual CEO and chairperson and allows an improved monitoring function of the board. In the UK environment, the position is called the senior independent director.[143] Lead directors should be represented by an independent non-executive director who is chosen by other board members to work as an intermediary between the board and a person who is a dual CEO and chairperson.

---

[141] KRAUSE (n 130). p. 258.

[142] See for example UK CGC 2018. p. 6. Otherwise for example in Sweden where the CEO cannot be the chairperson of the board. For details see SKOG, R. and SJÖMAN, E. *Corporate Boards in Sweden.* In DAVIES et al. (eds.) (n 49). p. 627.

[143] UK CGC 2018. p. 7.

It follows from the recommendations of the Cadbury report, which states that where the roles of the CEO and the chairperson are combined, "*strong and independent element*"[144] should be present on the board. Appointment of a lead director is also consistent with the listing rules of the US stock exchange, which require companies to appoint a lead director if they combine the functions of chairperson and CEO.[145] To sum up, lead directors can serve as an effective control mechanism which improves the monitoring function of the board and can partially work as a substitution for the separations of the roles of CEO and chairperson.

Primary tasks of the lead director should primarily include: (i) consulting the nomination process of board committees members and their chairpersons, (ii) participating in preparing of agenda for the board meetings, (iii) working on the improvement of information flow between the CEO and chairperson and other directors, (iv) working on creating of a good working environment on the board meetings and (v) being the main actor in the assessment of the CEO and chairperson performance.[146]

In addition to these ordinary activities, the lead director plays a key role in the case of the failure of the management. In case of conflict of interest among members of senior management, their role is highlighted as he is responsible for leading the board. The lead director should be able to react as quickly as possible, work as a crisis manager, and restore the company's matters back to order.[147] Recognition as a respected authority across the board plays an important role. Thus, it is recommended that a chair of one of the board committees or the most senior director is appointed as a lead director.[148]

A lead director should also be appointed when the controlling majority shareholder represents the office of the chairperson.[149] This should contribute to a better information flow between the chairperson and other directors, who would otherwise have more complicated access to relevant information.[150]

---

[144] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE. (n 2). p. 21.

[145] BAINBRIDGE, S. M. *The Board of Directors*. In GORDON and RINGE (eds.) (n 101). p. 321.

[146] IFC and LAO SECURITIES COMMISSION. *Guidelines on Corporate Governance for Listed Companies* [online]. 2021. Available from: https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/resources/guidelines_reviews+and+case+studies/guidelines+on+corporate+governance+for+listed+companies [Accessed 17th February 2023]. p. 64.

[147] LIPTON, M. and LORSCH, J. W. *A Modest Proposal for Improved Corporate Governance.* The Business Lawyer, 48(1), 1992, pp. 59-77. p. 70.

[148] Ibid. p. 71.

[149] See for example COMITATO CORPORATE GOVERNANCE. *Italian Corporate Governance Code* [online]. 2020. Available from: https://www.borsaitaliana.it/comitato-corporate-governance/codice/2020eng.en.pdf [Accessed 11th April 2023]. p. 10.

[150] FERRARINI, G. et al. *Corporate Boards in Italy.* In DAVIES et al. (eds.) (n 49). p. 382.

2.3.2.2 Independent and Non-Executive Directors

What is the responsibility of the supervisory board in a two-tier board structure can be offset by the appointment of (independent) non-executive directors in a unitary board structure.[151] There is no legal definition of the term non-executive directors, but as is apparent from language interpretation, they are members of the board who are not responsible for the management of the company, but the greater is their role in supervisory tasks. In his report, Higgs describes non-executive directors using four catchwords: "*strategy, performance, risk and people".*[152] It suggests that their role is certainly broader than being the watchdogs of executive directors. By other authors, it is stressed out that the non-executive directors should not be placed in boxes with exhaustively enumerated powers. Instead, space should be determined for companies to set the status of non-executive directors according to their needs.[153]

A common practice of unitary board companies includes a certain number of non-executive directors on the board. It is expected that non-executive directors can bring the experience, knowledge and perspective of an outsider with an unbiased vision. On the other hand, their poor commitment to matters of the company, their availability to perform the role or lack of access to information when making important decisions on matters of the company are discussed as possible problems.[154]

Two main components of the non-executive director's role should be introduced. Firstly, it is the strategic role which originated in the assumption that non-executive directors will be experienced individuals with knowledge of the business environment who will be able to provide a valuable original perspective of outsiders. Secondly, their monitoring role that is often compared to the role of the supervisory board in a two-tier board structure.[155] Hence, with the introduction of non-executive directors, a new function of a unitary board was emphasised – the monitoring of executive management.[156] The non-executive directors should work as safeguards reducing the

---

[151] DAVIES, P. et al. *Boards in Law and Practice: A Cross-Country Analysis in Europe.* In DAVIES et al. (eds.) (n 49). p. 13.

[152] HIGGS, D. et al. *Review of the Role and Effectiveness of Non-Executive Directors (Higgs Report)* [online]. 2003. Available from: https://webarchive.nationalarchives.gov.uk/ukgwa/20121212135622/http://www.bis.gov.uk/files/file23012.pdf [Accessed 12th December 2022]. p. 27.

[153] KIARIE, S. *Non-Executive Directors in UK Listed Companies: Are They Effective?* International Company and Commercial Law Review, 18(1), 2007, pp. 17-23. p. 18.

[154] Ibid. pp. 18 ff.

[155] JUNGMANN (n 40). p. 461.

[156] HIGGS et al. (n 152). p. 27

agency costs for shareholders and other stakeholders by overseeing management and holding them accountable for their actions.[157]

It is also recommended that some of the non-executive directors should also be independent.[158] Definition of independence varies from one country to another. The EU law definition of independent directors is as follows: "*…he is free of any business, family or other relationship, with the company, its controlling shareholder or the management of either, that creates a conflict of interest such as to impair his judgment"*.[159] The EU recommendation further specifies the attributes of independent directors in a non-exhaustive list in its annex.[160] The logic behind having independent directors is that they are better equipped to perform the monitoring function because they have no relationship to shareholders or other stakeholders.

In companies which decide to combine the roles of CEO and chairperson, it can be the non-executive directors who improve corporate governance by providing additional checks over a powerful dual CEO and chairperson.[161] Moreover, it can be one of the non-executive directors who act as a link between the CEO and other directors. This can be either represented by the role of lead director or another person without a formal title. This individual can utilise his authority within the board to ensure better board functioning.[162]

Non-executive directors also generally represent good candidates when a succession of the chairperson of the board comes into play. They are known to other board members and are familiar with the company's business. It could also be a precautionary measure in the event of the unexpected resignation of the incumbent chairperson. Thus, the non-executive director can replace the old chairperson in a short period of time. Nevertheless, other factors must be considered, such as potential conflict of interest with friendly board members or the requirement of different behaviour when changing roles.[163]

There is a talk in some countries about the importance of finding a balance between executive and non-executive directors. Therefore, a board consisting of only one executive director, typically the CEO, and the rest of the non-executive directors, would violate the CGC provisions in the UK, whereas, in the US, it is standard practice.[164] The UK CGC 2018 explicitly states that

---

[157] EUROPEAN COMMISSION. *Recommendation 2005/162/EC on the Role of Non-Executive or Supervisory Directors of Listed Companies and on the Committees of the (Supervisory) Board.* 2005. Preamble No. 7.
[158] UK CGC 2018. p. 6.
[159] EUROPEAN COMMISSION (n 157). Art. 13.1.
[160] Ibid. Annex II.
[161] KIARIE (n 153). p. 19.
[162] LEVY (n 110). p. 14.
[163] CADBURY (n 48). p. 118.
[164] DAVIES, P. *Corporate Boards in the United Kingdom.* In DAVIES et al. (eds.) (n 49). p. 728.

"*the board should include an appropriate combination of executive and non-executive directors*"[165], which is reasoned by a better flow of information if the top management is appointed as directors.[166]

2.3.2.3 Board Committees

Independent non-executive directors are a good bridge to the following governance mechanism, which represents the creation of board committees. The two topics are related because significant constituents dominating the board committees are non-executive directors. Together with the non-executive directors, the board committees also give the unitary board structure a supervisory flavour, as they contribute to improved oversight of managerial decisions.[167]

In recent decades, setting up expert board committees has become integral to good corporate governance practice. Most corporate governance codes and national laws include provisions requiring or recommending companies to establish committees, which make decisions separate from the board.[168] It is recommended that only committee members attend committee meetings, which can contribute to a better exchange of information, particularly between non-executive directors, which would be more complicated at the board level.[169]

Delegating a certain amount of decision-making power to the committees allows boards to work more efficiently. They also contribute to the enhancement of the role of non-executive directors because they give them better insight into business-related matters of the company.[170] At the same time, more involved non-executive directors can better perform their supervisory tasks if a dual CEO and chairperson is appointed.

There is no exhaustive list of committees to be established. However, the key committees that are formed in most jurisdictions include:[171]

1. Audit committees

The audit committee is the very basis of good corporate governance. It is a committee which came first to practice worldwide. Nowadays, certain companies must establish an audit committee in most jurisdictions.[172] Audit committees are the strictest in terms of their composition. It is

---

[165] UK CGC 2018. p. 6.
[166] DAVIES, P. *Corporate Boards in the United Kingdom.* In DAVIES et al. (eds.) (n 49). p. 729.
[167] KRAAKMAN (n 32). p. 51.
[168] See for example UK CGC 2018. pp. 8, 10 and 13 for the UK or *Sarbanes-Oxley Act.* Section 2 for the USA.
[169] FINACIAL REPORTING COUNCIL (n 90). p. 20.
[170] CADBURY (n 48). p. 93.
[171] BAINBRIDGE, S. M. *The Board of Directors*. In GORDON and RINGE (n 101). p. 314.
[172] EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2014/56/EU Amending Directive 2006/43/EC on Statutory Audits of Annual Accounts and Consolidated Accounts.* 2014. Art. 39.

generally required that the majority of members are non-executive directors. There is also often a greater demand for qualification, particularly in finance and accounting.[173]

Audit committees play an important role in the board's monitoring nature. Its main tasks include reviewing the financial statements, reporting to the board on suitable revisions of control systems and making proposals for appointing suitable external auditors. Their relationship with both inside and outside gatekeepers should be emphasised. They are in direct touch with auditors and should be the first to find out about potential issues in financial matters.[174] This priority access to information compared to regular directors puts them in a specific position against the CEO and chairperson because it allows them to supervise and make additional pressure which should secure good functioning.[175]

2. Nomination committees

Nomination committees are responsible for the process of succession and appointment of directors and senior management.[176] Establishing nomination committees stem from the traditional problem of managers, and especially CEOs, using their influence to take part in a nomination process of selecting new directors. This is problematic because the fundamental duty of directors is to monitor other directors and senior management. If directors have been appointed in part thanks to the CEO, they may feel beholden to him, which can impair their monitoring role.[177]

For successful governing of the company, it is essential to have succession guidelines in place, which allow the board undisturbed transfer of duties to an appointed successor.[178] Generally, it is recommended that CEOs are not directly involved in the nomination process of prospective directors.[179] The majority of nomination committee members should usually be independent non-executive directors to achieve transparency in appointing new directors and management.[180]

---

[173] EUROPEAN COMMISSION (n 157). Annex I and Art. 11.2.
[174] DUNNE, P. *Running Board Meetings: How to Get the Most from Them.* 3rd edn. London: Kogan Page Publishers, 2007, 164 p. ISBN 978-0749449742. p. 90.
[175] DAVIES, P. et al. *Boards in Law and Practice: A Cross-Country Analysis in Europe.* In DAVIES et al. (eds.) (n 49). p. 27.
[176] FINANCIAL REPORTING COUNCIL. Op. cit. n. 17, p. 8.
[177] JOHNSON and MILLON (n 70). p. 1651.
[178] CADBURY (n 48). p. 120.
[179] SHIVDASANI, A. and ZENNER, M. *Best Practices in Corporate Governance: What Two Decades of Research Reveals.* In CHEW and GILLAN (eds.) (n 45). p. 95.
[180] See for example UK CGC 2018. p. 8.

3. Remuneration committees

The main task of remuneration committees is to arrange principles for executive remuneration and determine complex executive pay categories. The remuneration of directors and senior management is a topic in itself which attracts much attention not only from academic scholars but also from the general public.[181] The importance of this topic is also evident from the fact that corporate governance codes often have a chapter which deals separately with the topic of remuneration.[182] The basic principle is that remuneration committees should determine remuneration packages for directors and senior management in such a way that it promotes the long-term success of the company.[183]

[181] See for example HURYCHOVÁ, K. et al. *Odměňování Exekutivy Akciových Společností*. Prague: Wolters Kluwer, 2017, 360 p. ISBN 978-8075528407 or THOMAS, D. and AGNEW, H. *UK Companies Prepare for Battle with Investors Over Executive Pay* [online]. 2022. Financial Times. Available from: https://www.ft.com/content/a9e06f16-53a6-4d90-9e88-bc8119e0308d. [Accessed February 13th, 2023].

[182] See Chapter 5 of the UK CGC 2018 or Chapter 4 of the *CCGC 2018*.

[183] UK CGC 2018. p. 14.

3. Studies of Particular International and National Legal Regulations

3.1 OECD

Considering the diverse approaches of different jurisdictions, finding a common framework that would benefit most countries is not easy. Nevertheless, the OECD as a respected international organisation and by them published OECD Principles, are of the greatest value when looking for corporate governance standards beyond national codes. They have a nature of non-binding soft law document that provides companies and governments with model corporate governance principles applicable across borders. Their main importance lies in highlighting the basic objectives and general methods to achieve them. The very way to achieve these objectives is left to policymakers and capital markets participants.[184]

Moreover, the OECD established the OECD Corporate Governance Committee, an important research institution, which is reviewing corporate governance regulatory frameworks in the OECD member countries. An OECD Corporate Governance Factbook is published once every two years. It provides a comprehensive summary of data gathered from the participating jurisdictions. The information provided in the factbooks serves not only as an effective monitoring tool for the implementation process of the OECD Principles but also as a manual determining where the practice is heading. The Corporate Governance Factbook 2021 for example confirmed the premise that it is good practice to separate the roles of CEO and chairperson because it found that number of countries requiring or recommending separating the roles has increased from thirty-six per cent in 2015 to seventy-six per cent in 2021.[185]

The current version of OECD Principles was published in 2015. It is based on the previous versions from 1999 and 2004.[186] The OECD Principles take the view that it is essential for the board to be able to exercise an objective independent view of the company's business that is independent of management. Principle V.A.9 on governance structures and policies includes the following provision: "*Companies should clearly disclose the different roles and responsibilities of the CEO and/or Chair and, where a single person combines both roles, the rationale for this arrangement.*"[187] Moreover, Principle VI.E on the responsibilities of the board provides that the separation of the roles is considered good corporate governance practice promoting an appropriate

[184] OECD (n 46). p. 11.
[185] OECD (n 27). p. 143.
[186] OECD (n 46). p. 3.
[187] Ibid. p. 42.

balance of power. As an alternative to the separation of the roles, an appointment of the lead director is recommended. Furthermore, this provision also addresses as questionable the situation in the two-tier board model, where the retiring CEO and chairperson of the management board is appointed as the chairperson of the supervisory board.[188] Hence, a clear division of roles and duties between the chairperson and the CEO is of the essence, and if one person combines the roles, it must be rationalised.

The position of OECD Principles on the matter clearly favours the separation of roles. The authority of the OECD as a worldwide international organisation can contribute to a partial convergence in corporate governance across member states. Adopting provisions from the OECD Principles into national law is a common practice, either indirectly by adopting similar provisions or directly by a reference to OECD Principles.[189]

3.2 EU

The rules adopted in the EU represent a key concern for companies operating in the European single market. The EU gradually continues to harmonise national legal regulations of corporate governance, but this process is long-standing and requires careful consideration of the interests of all member states.[190]

The EU has not adopted a corporate governance code and does not plan to do so in the foreseeable future. Instead, it promotes applying of national corporate governance codes.[191] The prevailing view in Europe is that such an EU corporate governance code would be superfluous.[192] Another reason for maintaining the status quo in the matter is the preference of involved actors, as the divergence between constituting regimes is too high to find an agreement on common rules. A clear example is the codetermination regime which is essential for some countries and

---

[188] Ibid. p. 51.

[189] See for example ÖSTERREICHISCHER ARBEITSKREIS FÜR CORPORATE GOVERNANCE. *Österreichischer Corporate Governance Kodex* [online]. 2021. Available from: https://www.corporate-governance.at/uploads/u/corpgov/files/kodex/corporate-governance-kodex-012021.pdf [Accessed 18th November 2022]. p. 10 or CZECH INSTITUTE OF DIRECTORS. *Kodex Správy a Řízení Společností ČR* [online]. 2018. Available from: https://www.cginstitut.cz/wp-content/uploads/2018/12/Kodex-2018.pdf [Accessed 18th November 2022]. p. 15.

[190] EUROPEAN COMMISSION. *Green Paper: The EU Corporate Governance Framework* [online]. 2011. Available from: https://op.europa.eu/en/publication-detail/-/publication/3eed7997-d40b-4984-8080-31d7c4e91fb2/language-en [Accessed 15th March 2023]. p. 2.

[191] Ibid. p. 2.

[192] FLEISCHER, H. *Corporate Governance in Europa als Mehrebenensystem.* Zeitschrift für Unternehmens- und Gesellschaftsrecht, 41(2-3), 2012, pp. 160-196, p. 184.

undesirable for others.[193] Yet, as noted above, this approach does not mean that the EU would resign on the questions in the field of corporate governance. The EU adopts rules in the form of separate regulations, directives or recommendations that consequently lead directly or indirectly to harmonisation and convergence of the European corporate governance framework.

Firstly, the EU has adopted a Regulation on the Statute for a European company (SE) which allows the founders of an SE to choose between a two-tier board model (with a supervisory and management body) or a unitary board model (with an administrative body).[194] That is also relevant for the legal status of the CEO and chairperson because, as explained in this thesis, the position of the CEO varies depending on the structure of the company. Consider Germany that has a long-standing tradition of a two-tier board structure, but due to the implementation of the SE into its legal order, it was required to give SEs the option to choose between the unitary and two-tier board model.

Other significant legal acts adopted by the EU deal with activities of institutional investors,[195] information disclosure,[196] rights of shareholders,[197] digital tools and processes[198] or most recently non-financial reporting.[199]

The recommendation of the European Commission on the role of non-executive or supervisory directors of listed companies and board committees deals with the separation of managerial and supervisory powers.[200] It addresses the non-executive directors and board committees as examples of good corporate governance practice. It also looks at the problem of combining the functions of CEO and chairperson, stating that: *"The present or past executive responsibilities of the (supervisory) board's chairman should not stand in his ability to exercise objective*

---

[193] BEBCHUK, L. A. and ROE, M. J. *A Theory of Path Dependence in Corporate Ownership and Governance.* In GORDON, J. and ROE, M. J. (eds.) *Convergence and Persistence in Corporate Governance.* Cambridge: Cambridge University Press, 2004, 382 p. ISBN 978-0511665905. p. 90.

[194] COUNCIL OF THE EU. *Regulation No 2157/2001 on the Statute for a European Company, as amended.* 2001. Section 38.

[195] EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2013/36/EU on Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms, Amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.* 2013.

[196] EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2014/95/EU Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups.* 2014.

[197] EUROPEAN PARLIAMENT and COUNCIL OF THE EU (n 65).

[198] EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2019/1151 Amending Directive 2017/1132 as Regards the Use of Digital Tools and Processes in Company Law.* 2019.

[199] EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2022/2464 Amending Regulation 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU as Regards Corporate Sustainability Reporting.* 2022.

[200] EUROPEAN COMMISSION (n 157).

supervision."[201] Subsequently, it divides recommendations for unitary and two-tier board structures. In a unitary board structure, the recommendation can be satisfied by the separation of the roles of CEO and chairperson. In a two-tier board structure, the rule is that the resigning CEO shall not be immediately appointed as the chairperson of the supervisory board.[202] Although it is not mandatory to follow these recommendations, non-compliance should be explained and protective mechanisms should be implemented.[203]

3.2.1 Directive on the Exercise of Certain Rights of Shareholders in Listed Companies

The issue of CEOs' legal status is also addressed in the Second Shareholder Rights Directive 2017/828, which is one of the most important company law regulations arising from the EU law. It promotes inter alia a more significant exercise of shareholder rights within companies. It also deals with the remuneration of directors and its transparency. It introduced an obligation to create a remuneration policy and report of company's members and to give the shareholder the right to say on pay.

The individuals who must be included in the remuneration policy and report are the directors. The term "*director*" has been translated variously into national versions of the directive. For example, the Czech version of the directive translates the term as "*member of the body*" and the German version as "*member of the governance of the company*".[204] The directive further specifies who falls under the term director as follows:

"(i) any member of the administrative, management or supervisory bodies of a company;

(ii) where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officer…"[205]

The EU member states should now comply with the directive because the deadline for transposition into national law has already passed in 2019. Interestingly, neither Germany nor Austria has implemented the second paragraph cited above concerning the remuneration of CEOs outside the board. Both countries implemented the duty to establish a remuneration policy and report by the supervisory board. However, only members of management boards and supervisory

[201] Ibid. Para. 3.2.
[202] Ibid. Para. 3.2.
[203] Ibid. Para. 3.2.
[204] Original wording in German: "*Mitglied der Unternehmensleitung*" and in Czech: "*člen orgánu společnosti*". In EUROPEAN PARLIAMENT and COUNCIL OF THE EU (n 65). Czech and German language versions. Article 2, para. i).
[205] Ibid. Article 2.

boards are the subject of the remuneration policy and report.[206] The rationale of this approach is that in a two-tier board structure used in Germany and Austria, CEOs who are not a member of the management board do not exist.[207] Given the manner of implementation, for example senior executive employees or directors of subsidiaries are not subject to the obligation to be included in remuneration reports under German and Austrian law.[208] One might ask whether such an attitude could not be considered as emptying the meaning of the implemented directive. The prevailing opinion is that the implementation is in line with the national specifics of the German and Austrian two-tier board model, where the senior management (CEO, CFO, etc.) responsible for the business management of the company is part of the management board.[209]

The Czech legislators took the opposite approach and also implemented the obligation to include persons outside the management board, supervisory board and board of directors in the remuneration policy and report. Specifically, it is obligatory to include in the remuneration policy "*…a natural person, that is directly subordinate to the management body of the company and to whom solely has that body delegated business management of the company at least to the extent of the day-to-day management….*".[210] Although this is a step in the right direction towards greater transparency in executive pay, the above-quoted definition of CEO is overly complicated. This may lead to companies not including CEOs outside the board in their remuneration policies and reports on the grounds that they do not meet the conditions to be included, i.e. day-to-day business management was not delegated solely to one person. In practice, it does not seem to happen that the entire operative business management of the company would be delegated to the one person who on top of that stands outside the management body. Such a practice could even be considered as emptying of the powers of a management board, which is according to the Business Corporations Act 2012 responsible for the business management of a company.[211] The author conducted a case study on the remuneration reports of companies listed on the prime market of the PSE. The findings show that the vast majority of companies disclose only details of the remuneration of members on the board level and none of them declare a CEO outside the board.[212]

---

[206] See *German Stock Corporations Act*, Sections 87a and 162 and *Austrian Stock Corporations Act,* Sections 78a and 98a.

[207] GRUBER, M. *Personal Consultation.* 10th December 2022.

[208] ECKERT, G. and SCHOPPER, A. (eds.) *AktG-ON Kommentar zum Aktiengesetz*. Vienna: MANZ Verlag, 2021, 1598 p. ISBN 978-3214021208. Commentary on Section 78a, para. 3.

[209] GRUBER, M. (n 207).

[210] CZECH REPUBLIC. *Act No. 256/2004 Coll, Capital Market Undertakings Act, as amended.* 2022. Section 121m(1).

[211] CZECH REPUBLIC. *Act No. 90/2012 Coll, Business Corporations Act, as amended.* 2012. Section 435(2).

[212] The 2021 remuneration reports of eight companies traded on the prime market were considered, namely: Colt CZ Group SE; ČEZ, a.s.; Erste Group Bank AG; Kofola ČeskoSlovensko a.s.; Komerční banka, a.s.; MONETA

Therefore, a more precise definition of the term CEO or senior management in general, for example by specifying his rights and duties, would be to the benefit of the cause when implementing the directive into national law.

3.3 Anglo-American World

The category of the Anglo-American legal system has two main representatives, namely the UK and the US. If they ought to be characterised from the corporate governance perspective, the following should be highlighted. Firstly, they represent countries with highly developed capital markets with dispersed ownership structures of companies.[213] Secondly, they are countries with a long-standing tradition of unitary board structure. Boards consist of a mix of executive and non-executive directors (see Chapter 1.3 on organisational board models above for a more detailed description of the unitary board model). Thirdly, although boards were historically in charge in theory, the real power was in the hands of managers.[214] This practice was identified as one of the causes of a number of corporate failures and the recent financial crisis.

Despite the fact that the approaches of these two countries to company law are similar in many ways, there are differences worth mentioning in the approach to how companies are managed and controlled in the US and the UK.

Firstly, in response to numerous corporate scandals, the US has chosen a different path than the UK and other European countries. In the USA, the ground rules of corporate governance are codified in the written state and federal laws, such as the Sarbanes-Oxley Act[215] or the Dodd-Frank Act[216] and listing rules of the stock exchanges.[217] On the other hand, the UK vests a lot of power in the hands of shareholders and the basic principles are provided by corporate governance codes and codes of conduct.[218] The UK thus relies more on governance strategies (comply or

Money Bank, a.s.; Tatry mountain resorts, a.s.; VIENNA INSURANCE GROUP. Six of them include in their remuneration report only member of the management board and the supervisory board. Tatry mountain resorts, a.s. does not have any remuneration system in place and MONETA Money Bank, a.s. also includes one person who is member of the audit committee but is not member of the supervisory board in its remuneration report.

[213] DIGNAM, A. and LOWRY, J. *Company Law*. 8th edn. Oxford: Oxford University Press, 2014, 522 p. ISBN 978-0198704133. p. 417.

[214] LORSCH, J. W. *America's Changing Corporate Boardrooms: The Last Twenty-Five Years.* Harvard Business Law Review, 3(1), 2013, pp. 119-134. p. 120.

[215] Sarbanes-Oxley Act.

[216] UNITED STATES. *Public Law 111-203, Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended. 2010.* Section 972.

[217] NYSE. *Corporate Governance Guide* [online] 2014. Available from: https://www.nyse.com/publicdocs/nyse/listing/NYSE_Corporate_Governance_Guide.pdf [Accessed 25th November 2022].

[218] UK CGC 2018.

explain system) and the US on regulatory strategies (rules-based system).[219] To sum this up, an interesting comparison, which was presented at the lecture on corporate governance by Professor Andrew Johnston at the University of Sheffield, is that UK companies must follow the notorious comply or explain principle, while the US companies are doomed to the principle comply or die.[220]

Secondly, even though the board structures are similar, i.e. both countries are advocates of the unitary board model, their composition differs. Whereas, for the US is typical a dominating CEO as part of the board supplemented by a number of non-executives, or outside directors, as they are often called in the USA.[221] In the UK, the board is rather a collegial body which is looking for a joint decision of the board composed of an appropriate combination of executive and non-executive directors. The CEO is strictly accountable to the board, which is responsible for the monitoring function.[222] To sum it up, having in mind that the situation should be assessed case by case, the boards in the US could be labelled as "*supportive boards*", whereas the boards in the UK as "*monitoring boards*".[223]

3.3.1 UK

The history of corporate governance discussion in the UK is shorter than in its counterpart the US.[224] It got more attention only in the 1990s, after numerous corporate failures of UK companies. The LSE and the Financial Reporting Council established the Committee on the Financial Aspects of Corporate Governance. This committee was chaired by Sir Adrian Cadbury and later in 1992 it published the world-famous Cadbury report.[225] The significance of the soft law Cadbury report was enhanced when it was incorporated into the listing rules of the LSE.[226] It was ground-breaking for its time and contained a number of recommendations for corporate governance. For the purposes of this thesis are worth noting recommendations to separate the roles of CEO and

---

[219] KRAAKMAN et al. (n 32). p. 46.

[220] JOHNSTON, A. *Current Issues in Company Law and Corporate Governance.* 6th December 2019, University of Sheffield. Lecture.

[221] JENSEN, M. and MONKS, R. *U.S. Corporate Governance: Accomplishments and Failings.* In CHEW and GILLAN (eds.) (n 45). p. 53.

[222] CADBURY (n 48). pp. 69-70.

[223] JENSEN, M. and MONKS, R. *U.S. Corporate Governance: Accomplishments and Failings.* In CHEW and GILLAN (eds.) (n 45). p. 57.

[224] CHEFFINS, B. R. *The History of Corporate Governance.* In WRIGHT, M. et al. (eds.) *The Oxford Handbook of Corporate Governance.* Oxford: Oxford University Press, 2013, 830 p. ISBN 9780199642007. p. 57.

[225] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE (n 2).

[226] OWEN and KIRCHMAIER (n 100). p. 189.

chairperson, to appoint non-executive and independent directors or to create audit committees which aimed to limit dominating CEOs.[227]

The Cadbury report was the key to setting certain standards and served as a pioneer, which was later followed by a number of reports and corporate governance codes both in the UK and around the world. The works published in the UK include primarily Greenbury report,[228] Hamples report,[229] Higgs report,[230] combined codes[231] and corporate governance codes.[232] UK GCCs remain the centrepiece of UK corporate governance to this day, although they are also subject to criticism as encouraging box-ticking or duplicating existing regulatory rules.[233]

3.3.1.1 The Companies Act and Model Articles

As explained in the introductory section on the Anglo-American world, the centre of gravity of corporate governance in the UK lies in corporate governance codes, but this does not mean that the legislation does not cover the core principles of corporate governance.

As regards the board organisational structure, company law legislation leaves most questions to the discretion of companies and their articles of association, which is consistent with the principles of common law and contractual freedom.[234] Thus, the UK Companies Act does not directly address the questions of board structure and composition. Rather than assigning specific roles and powers to corporate governance actors, it looks at how the roles are performed for example whether they are exercised with reasonable care, skill and diligence.[235] The UK Companies Act does not even address what board model is prescribed for the companies.

---

[227] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE (n 2). Recommendations 4.1, 4.7 and 4.35.

[228] GREENBURY, R. et al. *Director's Remuneration Report (Greenbury Report)* [online]. 1995. Available from: https://www.ecgi.global/code/greenbury-report-study-group-directors-remuneration [Accessed 23rd March 2023].

[229] COMMITTEE ON CORPORATE GOVERNANCE. *Final Report January 1998 (Hampel Report)* [online]. 1998. Available from: https://ecgi.global/code/hampel-report-final [Accessed 18th November 2022].

[230] HIGGS et al. (n 152).

[231] FINANCIAL REPORTING COUNCIL. *The Combined Code on Corporate Governance* [online]. 2003. Available from: https://www.frc.org.uk/getattachment/edce667b-16ea-41f4-a6c7-9c30db75bb0c/Combined-Code-2003.pdf [Accessed 12th December 2022].

[232] UK CGC 2018.

[233] REDDY, B. V. *Thinking Outside the Box – Eliminating the Perniciousness of Box-Ticking in the New Corporate Governance Code*. Modern Law Review, 82(4), 2019, pp. 692-726. p. 697 and CHEFFINS, B. R. and REDDY, B. V. *Thirty Years and Done – Time to Abolish the UK Corporate Governance Code.* Journal of Corporate Law Studies, 2022, pp. 1-40. p. 19.

[234] DAVIES (n 3). p. 36.

[235] GREAT BRITAIN. *Companies Act, as amended*. 2006. Section 174.

Nevertheless, all companies operate under a unitary board model, which is also the only board model recognised by the UK CGC 2018.[236]

The definition of the term director can be found in the UK Companies Act. According to Section 250 of the UK Companies Act, the term director "*includes any person occupying the position of director, by whatever name called*".[237] Although this is just a circular definition that does not interpret a director's legal status, it at least clarifies the need to interpret the term in a substantive, rather than formal manner. This broad definition may cause interpretative problems, but it also allows to cover all cases where individuals act as directors but are not registered as such. Moreover, the UK Companies Act specifies that a public company must have at least two directors, from whom at least one is a natural person.[238]

As discussed in Chapter 1.2 on the agency theory, appointment and removal rights are one possible way to limit agency costs. Directors are usually appointed by ordinary resolution of shareholders at the general meeting, but nothing precludes another method of their appointment, such as by a board, by a specific group of shareholders or even by a third party.[239] The UK Companies Act does not specify who is responsible for appointing the directors. Thus, the question is left to the articles of association to address. In the model articles prescribed by the UK Secretary of State, which include default rules and may be adopted by the company, are stipulated two methods of director's appointment. According to the model articles, directors may be either appointed by shareholders by ordinary resolution of shareholders or by a decision of the directors.[240]

The case of the removal of directors is entirely the opposite, as the UK Companies Act includes a mandatory rule that the shareholders can remove directors by ordinary resolution at any time without giving reasons.[241] This rule has far-reaching implications also for appointing directors, as any appointed director has to bear in mind that he can at any time be removed by the shareholders.

---

[236] UK CGC 2018. Introduction.
[237] UK Companies Act 2006. Section 250.
[238] Ibid. Sections 154 and 155.
[239] DAVIES, P. et al. *Gower: Principles of Modern Company Law*, 11th edn. London: Sweet & Maxwell, 2021, 1294 p. ISBN 978-0414088115. p. 228.
[240] UK SECRETARY OF STATE. *Model Articles for Public Companies* [online]. 2013. Available from: https://www.gov.uk/guidance/model-articles-of-association-for-limited-companies [Accessed 11th April 2023]. Art. 20.
[241] UK Companies Act 2006. Section 168(1).

According to the model articles, the directors are responsible for the management of the company and in this capacity, they may use all the powers of the company.[242] There is no sharp line between the board and management. According to Article 5 of the model articles, directors may delegate powers conferred on them to other persons or committees.[243] The wording of this provision leaves a lot of space for discretion for directors as to the extent of the powers delegated. The only limit is that the board is always responsible for overseeing of delegated tasks.[244]

One of the appointed directors is the managing director. A managing director is the UK term for the CEO, but nowadays the term CEO is also well established in the UK environment. The CEO represents the highest executive director within the company, who is responsible for managing the company as a whole.[245]

The UK Companies Act has no provisions on the chairperson or the duties linked to performing his role. The model articles for public companies address the position of chairperson in various provisions. Most importantly, Article 14 gives the chairperson a casting vote in case of a tie vote.[246] If the chairperson is appointed, he shall also chair the general meeting of the shareholders.[247]

3.3.1.2 Corporate Governance Codes

While the UK Companies Act does not categorise different groups of directors, pursuant to UK CGC 2018, directors are internally divided into two groups. Firstly, the executive directors responsible primarily for day-to-day business, and secondly, the non-executive directors entrusted with the monitoring tasks.[248]

While the UK Companies Act is silent on the role of chairperson, the UK CGC 2018 gives great weight to this role. The office of chairperson is usually performed by one of the non-executive directors. Since the publication of the Higgs report, the appointed chairperson should also meet the criteria of independence.[249] The current UK CGC 2018 recommends that the chairperson should be independent at the time of appointment, which precludes the former CEO from moving into the chairperson's office.[250]

---

[242] UK SECRETARY OF STATE (n 240). Art. 3.
[243] UK SECRETARY OF STATE (n 240). Art. 5.
[244] DAVIES, P. *Corporate Boards in the United Kingdom.* In DAVIES et al. (n 49). p. 724.
[245] DAVIES (n 3). p. 33.
[246] UK SECRETARY OF STATE (n 240). Art. 14.
[247] Ibid. Art. 31.
[248] JUNGMANN (n 40). p. 437.
[249] HIGGS et al. (n 152). p. 4.
[250] UK CGC 2018. p. 6.

From the executive perspective, the position of chairperson is of an administrative character. The duties of other directors are comparable to those of the chairperson. The main statutory responsibility of the chairperson is to ensure that board meetings and general meetings will run effectively and in compliance with all the regulations.[251] This is to be achieved by promoting constructive relationships between all directors, i.e. in particular between the CEO and the chairperson and between executive and non-executive directors. His additional responsibility is to be in touch with shareholders, to whom important strategic decisions taken at the board level should be communicated.[252]

3.3.1.3 UK as the Founder of the Separation of Both Roles

The question of whether the roles of chairperson and CEO should be separated in UK companies has a clear answer in both theory and practice. The UK norm of good corporate governance practice is to separate the roles of CEO and chairperson.

To this contributed especially the Cadbury report, which includes Recommendation 4.9 stating: "*Given the importance and particular nature of the chairman's role, it should in principle be separate from that of the chief executive.*"[253] In the reasoning for this recommendation is argued by controversy already introduced in this thesis. If the roles are combined, too much power is vested in the hands of one individual. Moreover, another provision of the Cadbury report reads: "*Chairmen should be able to stand sufficiently back from the day-to-day running of the business to ensure that their boards are in full control of the company's affairs and alert to their obligations to their shareholders.*"[254] Also this provision sounds clearly in favour of the separation of the roles, since it is the CEO who runs the daily business matters of the company. If the company still decides to combine the roles, it is recommended that a strong independent element should be present on the board.[255] Under the strong independent element should be understood the check and balances introduced in Chapter 2.3.2, i.e. a lead director, independent and non-executive directors and board committees.

The principles adopted in the Cadbury report have been embodied and, where appropriate, extended by the following codes up to the current UK CGC 2018. The UK CGC 2018 contains

---

[251] CADBURY (n 48). p. 34.
[252] HOPT (n 80). p. 98.
[253] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE (n 2). Recommendation 4.9.
[254] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE (n 2). Recommendation 4.7.
[255] Ibid. Recommendation 4.9.

a similar provision on the separation of the roles of CEO and chairperson. Specifically, Provision 9 states that "*The roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company.*"[256] If the board decides to combine the two roles, it should justify the step to its shareholders and also publish the reasons on the company's websites.[257] Another argument favouring splitting roles is the recommendation in the proxy voting guidelines of International Shareholder Services. Their influence as a major proxy advisor is appreciable. Their stand is that shareholders should always vote against the combination of roles of CEO and chairperson unless a solid justification exists, and it is only a measure for a limited period.[258]

To sum up, although the separation of the roles of CEO and chairperson is not mandatory under UK CGC 2018, companies that decide to combine the two posts must justify the rationale of the decision to their shareholders and other stakeholders. The vast majority of UK companies have decided to separate the roles. The Financial Reporting Council conducts an annual review of companies' compliance with UK CGC 2018. Its most recent Review of corporate governance reporting was published in November 2022 and was conducted on a sample of 100 FTSE 350 and Small Cap companies. The findings demonstrate that 12 per cent of assessed companies reported non-compliance with Provision 9 of the UK.[259] However, Provision 9 includes not only a recommendation on the separation of roles but also a connected recommendation that the chairperson should be independent at the time of his appointment. From this, it is evident that the number of assessed companies combining the two roles is less than 12 per cent.

3.3.2 USA

Notwithstanding competition from developing countries, the US world of capital markets remains the largest market by market capitalisation. It has performed financially well over the long term compared to other countries.[260] Yet, corporate governance had and continues to have many hurdles to overcome.[261] It had to face a number of the world's largest corporate scandals,

---

[256] UK CGC 2018. p. 6.
[257] Ibid. p. 6.
[258] INTERNATIONAL SHAREHOLDER SERVICES. *Proxy Voting Guidelines – Benchmark Policy Recommendations* [online]. 2022. Available from: https://www.issgovernance.com/policy-gateway/voting-policies/ [Accessed 30th April]. p. 16.
[259] FINANCIAL REPORTING COUNCIL. *Review of Corporate Governance Reporting* [online]. 2022. Available from: https://www.frc.org.uk/getattachment/6a896f6b-8f4a-4a19-8662-f87a269ffce3/Review-of-Corporate-Governance-Reporting_-2022.pdf [Accessed 27th April 2023].
[260] HOLMSTROM, B. and KAPLAN, S. N. *The State of U.S. Corporate Governance: What's Right and What's Wrong.* In CHEW and GILLAN (eds.) (n 45). p. 26.
[261] OECD (n 27). p. 11.

led by the notorious Enron. When it seemed that the biggest problems that caused the major failings had been overcome, the financial crisis struck. The US policymakers tried to cope with the situation by passing extensive legislation on the federal level. Simultaneously, the listing rules of the major stock exchanges NYSE and Nasdaq have adjusted the standards required of listed companies.[262]

Regarding the organisational structure, the primary issue is setting up a well-functioning management and control system. In the past, the main problem was illustrated by the title of the book *Pawns or Potentates* by Lorsch and MacIver*: The Reality of America's Corporate Board*. The authors concluded that although the policymakers expected the directors to be potentates, the reality showed that boards were merely pawns of omnipotent CEOs to whom the real power had been delegated.[263] This issue was addressed, among other things, by legislation promoting the strengthening of the powers of boards and shareholders by instruments which will be introduced in the following paragraphs.

3.3.2.1 Sarbanes-Oxley Act

The SOX is the first note-worthy act from recent US corporate governance history. It was a milestone in US corporate governance practice that changed the nature of board governance from the ground. The SOX was passed by bipartisan Congress uncommonly almost unanimously as a reaction to a series of corporate scandals. It promoted patterns of giving more powers to shareholders by regulating boards of directors and their committees.[264] President Bush introduced the act's main purpose when he signed the bill: "*This law says to every dishonest corporate leader: you will be exposed and punished. The era of low standards and false profits is over. No boardroom in America is above or beyond the law.*"[265]

As far as corporate governance and board organisation are concerned, the SOX deal mainly with the following. Firstly, the definition of independent director was herewith enacted. Only members of a board, who do not receive remuneration other than the one resulting from their position of directors and who are not affiliated with the company or its subsidiaries, may be

---

[262] STEINBERG, M. I. *The Federalization of Corporate Governance*. Oxford: Oxford University Press, 2018, 328 p. ISBN 978-0199934546. p. 206.

[263] LORSCH, J. W. and MACIVER, E. *Pawns or Potentates: The Reality of America's Corporate Boards*. Brighton, Massachusetts: Harvard Business Review Press, 1989, 224 p. ISBN 978-0875842165. p. 205.

[264] JENSEN, M. and MONKS, R. *U.S. Corporate Governance: Accomplishments and Failings.* In CHEW and GILLAN (eds.) (n 45). p. 51.

[265] BROWN, G. M. *Changing Models in Corporate Governance – Implications of the US Sarbanes-Oxley Act*. In HOPT, K. J. et al. (eds.) *Corporate Governance in Context: Corporations, States, and Markets in Europe, Japan, and the US.* Oxford: Oxford University Press, 2005, 922 p. ISBN 978-0199290703. p. 158.

considered independent directors. The SEC ordered the stock exchanges to impose the requirement on the listed companies to have a majority of independent directors on the board.[266] Additionally, in order to improve the flow of information, the independent directors must meet regularly without the presence of management.[267]

As a result of the SOX, the number of companies separating the CEO and chairperson functions began to increase, not because it was required by law but because there was peer pressure to give more attention to distinguishing between the management and supervision roles of the board.[268] After the enactment of the SOX, almost all boards with dual CEO and chairperson have nominated a lead director from among their independent directors.[269]

Another requirement that addressed directors' lack of independence and contributed to improvement in US corporate governance was the duty to establish fully independent audit committees.[270] The independence should be achieved by the requirement that audit committee members do not have any present financial ties with the company. The SOX also requires closer cooperation between audit committees and hired external auditors when evaluating the financial statements.[271] Moreover, the SOX also looked into the lack of expertise of members of the board committees. It requires disclosure of whether the company has a financial expert as an audit committee member.[272]

Finally, the most controversial section 404 of the SOX, aiming to improve the transparency of financial reporting, prescribes a duty for the management to report on internal controls in the annual report. It also determines that the responsibility of management is to establish and maintain an internal control structure.[273] The enacted duty to certify the company's annual reports by CEOs and CFOs was widely discussed. Pursuant to Section 302 of the SOX, the CEO and CFO must personally attest that each annual and quarterly report of the company provides mandatory information corresponding with the factual situation.[274] On the one hand, this provision encourages CEOs and CFOs to be more engaged in the financial situation of the company that they manage. On the other hand, there was a debate about whether it was fair to impose this costly

---

[266] CHEFFINS (n 14). p. 738.
[267] STEINBERG (n 262). p. 206.
[268] KRAUSE et al. (n 130). p. 257.
[269] Ibid. p. 279.
[270] LORSCH (n 214). p. 128.
[271] HOLMSTROM, B. and KAPLAN, S. N. *The State of U.S. Corporate Governance: What's Right and What's Wrong*. In CHEW and GILLAN (eds.) (n 45). p. 39.
[272] Sarbanes-Oxley Act. Section 407.
[273] Ibid. Section 404.
[274] Ibid. Section 302.

obligation on the companies and their officers. It was highlighted by the fact that if false information is provided, the manager can be not only barred from serving as an officer and director but also imprisoned for up to twenty years.[275]

3.3.2.2 Dodd-Frank Act

Just as the SOX was a US response to a series of scandals in the early 2000s, the Dodd-Frank Act was a reaction to the 2007-2009 financial crisis.[276] Although its primary focus was on regulating the banks and other financial institutions, which caused the outbreak of the financial crisis, this more than two-thousand-page long document also impacted other companies. The SOX focussed on the supervision of senior management and disclosure provisions, the Dodd-Frank Act added more attention to the oversight of the board and shareholder engagement.[277]

The Dodd-Frank Act has covered the legal status of CEOs in particular by the following provisions. One of the areas targeted is executive remuneration. Section 951 enacted the advisory say on pay giving the shareholders the right to vote on executive remuneration.[278] To address the inequality in remuneration of management and employees, it mandated the duty to disclose the pay ratio of CEO to median employee compensation.[279] The implementation rules of the SEC also gave shareholders an advisory vote on golden parachutes for executives.[280] Moreover, Section 954 requires companies to disclose policies regarding clawbacks for executive misconduct, which should contribute to eliminating excessive risk-taking by management.[281]

Regarding the leadership structure and separation of the roles of CEO and chairperson, Section 973 of the Dodd-Frank Act obliges companies to report whether the positions of CEO and chairperson are combined or separate and to justify the reasons behind the decision.[282] For more details, see the next chapter on the US stance on the CEO and chairperson debate below.

Section 952 established a duty to create compensation committees composed entirely of independent members, just like the SOX did for audit committees.[283] Section 971 intended to give proxy access to shareholders, which should have given them more influence over the allocation

---

[275] MILLER, G. P. In GORDON and RINGE (eds.) (n 101). p. 988.
[276] Ibid. p. 983.
[277] Ibid. p. 129.
[278] Dodd-Frank Act. Section 951.
[279] Ibid. Section 953.
[280] STEINBERG (n 262). p. 218.
[281] Dodd-Frank Act. Section 954.
[282] Ibid. Section 973.
[283] Ibid. Section 952.

of the board seats. Even though the federal court later invalidated this provision, the articles of association can stipulate the option of proxy statement.[284]

Although both introduced acts have been often criticised as "*quackery*" passed without relevant empirical background and unsuitable for the U.S. two-level federal and state law environment, they helped to bring back faith in US corporate governance and have a strong impact on US corporate governance until this day.[285]

3.3.2.3 US Stance on the CEO and Chairperson Debate

In the USA, the combination of both roles had long been taken for granted, and historically almost 80 per cent of US-listed companies held the joint position of CEO and chairperson. The management of most US companies was forcefully resistant to change this practice.[286] The exception was a group of activist institutional shareholders who pushed for the separation of the roles by shareholder resolutions or proxy mechanisms already in the 1990s based on the practice in the UK.[287] Over the years, the power of dual CEO and chairperson has been gradually limited by the practice of appointing non-executive and lead directors or establishing board committees.[288]

The US legislation has not introduced a recommendation regarding separating the roles of CEO and chairperson in the US legal system. However, there is a provision on the CEO and chairperson duality in the Dodd-Frank Act which enacted the duty to disclose whether the company combines or separates the roles in favour of the principle of transparency.[289] Moreover, additional regulation has been adopted by the SEC. It requires companies that combine the roles of CEO and chairperson to disclose whether a lead director has been appointed and to specify his role in the company's leadership structure.[290]

Unlike the UK corporate governance law, these provisions do not favour one approach over the others. Despite the dissenting opinion of some authors, who claim that the requirement to disclose the position on the role's separation creates a trend in favour of roles separation,[291] it was

---

[284] LORSCH (n 214). p. 130.
[285] BAINBRIDGE (n 25). p. 15.
[286] LIPTON (n 147). p. 70.
[287] DAILY and DALTON (n 134). p. 19.
[288] OWEN and KIRCHMAIER (n 100). p. 195.
[289] Dodd-Frank Act. Section 973. Interestingly this not a standard legal norm. Rather than a legal act, it looks like a typical provision of a corporate governance code that requires compliance or explanation.
[290] STEINBERG (n 262). p. 206.
[291] CHEFFINS, B. *The Public Company Transformed.* Oxford: Oxford University Press, 2018, 402 p. ISBN 978-0190640323. p. 363.

directly addressed during the legislative procedure in the US Congress that the act does not endorse one of the approaches and prohibits the other. The rationale of this decision is that companies may have different motives in assigning roles to the same or different person. Although there was pressure to mandate the separation of both roles to encourage independent leadership, assuming that one size fits all companies across the spectrum would be a mistake. However, the aspect of transparency is important; thus, companies must disclose their policy for their decision on this matter. [292]

According to the recent report of Spencer Stuart, fifty-seven per cent of S&P 500 companies separate the positions of CEO and chairperson.[293] That number is up from forty-three per cent a decade ago.[294] Add to that the fact that in 2007 the figure was as low as thirty-five per cent,[295] and it should be already spoken of a trend of good practice of the separation of the roles of CEO and chairperson in today's USA.

3.3.3 Summary of the Legal Status of CEOs and Chairpersons in the Anglo-American World

As countries with a unitary board organisational model, both the USA and the UK had to deal with the extensive agency problems emerging from the matter of separation and control of the company. The problem of concentrated powers of management and supervision in one body was first addressed in the UK with the publication of the Cadbury report in 1992. Later, other reports and laws pursuing similar goals were introduced in both the UK and the US.

The emphasis in corporate governance arrangements is placed on factors such as transparency, independence or expertise. Consistent with these purposes is the introduction of a lead director, the establishment of board committees, the appointment of non-executive and independent directors or the separation of the roles at the top of the company.

The UK has been a major proponent of the separation of the roles of CEO and chairperson since the Cadbury report's publication. Generally, CEOs are represented by one of the executive directors and chairpersons by one of the non-executive directors. Although the recommendation to separate the roles of CEO and chairperson operates on comply or explain basis and is not a mandatory law, it is followed by most companies.

---

[292] DODD, CH. *Committee Report on the Restoring American Financial Stability Act of 2010* [online]. 2010. Available from: https://www.congress.gov/congressional-report/111th-congress/senate-report/176/1 [Accessed 7th April 2023].
[293] SPENCER STUART (n 79). p. 9.
[294] Ibid. p. 8.
[295] Ibid. p. 8.

The US takes a more reserved approach to the question of the legal status of CEOs and chairpersons. Although regulation is gradually increasing with regard to the allocation of executive and supervisory functions, the question of whether separate or combine the two top positions has never been answered. However, extensive regulation was passed as a result of numerous corporate scandals. Two main actors are the SOX and the Dodd-Frank Act which established inter alia the duty to create independent board committees, the duty to appoint independent directors, or the obligation to improve internal audit mechanisms. Moreover, the Dodd-Frank Act introduced a provision requiring companies to disclose their position on the separation of CEO and chairperson roles. As a result of peer and shareholder pressure, the number of US companies separating the roles is gradually growing up to fifty-seven per cent of S&P 500 companies in 2022.

3.4 Germany

Germany is the opposite of the UK and the USA, representing one of the countries with a compulsory two-tier board structure. Companies are obliged to set up (i) a management board (*der Vorstand*), which is responsible for managing the business affairs of a company,[296] and (ii) a supervisory board (*der Aufsichtsrat*) which controls the management and business affairs of a company and appoints and removes directors from the management board.[297]

The possible introduction of the unitary board model to the German legal system has been discussed from time to time.[298] Following reasons are mentioned to support the introduction of the unitary board model: (i) expectations of international investors calling for a unified company structure to simplify trading and reduce costs, (ii) existing common labour market for top managers who work internationally, and their nationality does not play a factor, (iii) group of companies structures would be simplified by unified approach, and (iv) facilitating of autonomy of individual business departments in case of delegation of powers which is the rule in large companies.[299]

The trend in European countries is allowing the companies themselves to decide which organisational model they choose. Companies under the law of the EU (SEs) also give the

---

[296] German Stock Corporations Act, Section 76(1).
[297] Ibid. Sections 84(1) and 90.
[298] WIETHÖLTER, R. *Interessen und Organisation der Aktiengesellschaft im Amerikanischen und Deutschen Recht.* Karlsruhe: C. F. Müller, 1961, 362 p. ISBN Not Assigned. p. 299 or HABERSACK, M. *Gutachten E zum 69. Deutschen Juristentag: Staatliche und Halbstaatliche Eingriffe in die Unternehmensführung.* Munich: C.H.Beck, 2012, 106 p. ISBN 978-3-406-63074-3. p. 103.
[299] VON HEIN (n 68). pp. 472 ff.

founders a choice between unitary and two-tier models.[300] The possibility to choose the unitary board structure might be the reason for the popularity of SEs in Germany.[301]

However, the idea of introducing a company with a board as the only statutory elected body has been repeatedly rejected under German law.[302] One of the reasons for staying on the mandatory two-tier board model is that German company law represents a legal system with strong participation rights of employees in the supervisory boards of companies.[303]

As regards the share ownership structure in Germany, it is a country with concentrated ownership of shares. Therefore, shareholder apathy has never been such a big problem as in the Anglo-American world. There is often a majority shareholder, often a bank or family, who plays an important role in monitoring the company's issues and is well-represented on the supervisory board.[304] The situation was plainly explained by a former CEO of Deutsche Bank by saying, "*if you cannot sell, you must care".*[305] The statement can be interpreted as shareholders who have a larger stake in the company are being more incentivised to take a greater interest in the company's affairs than shareholders owning only a small fraction of the company.

3.4.1 Management Board

The management board is the first mandatory body of German companies, which is primarily responsible for the company's business management. The management board is composed of a number of executive directors. In general, the number of directors on the management board depends on the shareholder's decision. Interestingly, the current version of the GCGC 2022 is silent on the number of management board members. In contrast to other countries with similar corporate governance systems,[306] but also to previous versions of GCGC,[307] the current version does not recommend that management boards have a specific minimum number of directors.

---

[300] COUNCIL OF THE EU (n 194). Art. 38 ff.

[301] ROTH, M. *Corporate Boards in Germany*. In DAVIES et al. (n 49). p. 268.

[302] VON HEIN (n 68). p. 494 or BAUMS, T. *Bericht der Regierungskommission Corporate Governance: Unternehmensführung – Unternehmenskontrolle – Modernisierung des Aktienrechts.* Köln: Verlag Dr. Otto Schmidt. 2001, 366 p. ISBN 978-3504385484. p. 40.

[303] Ibid. p. 494. However, many countries with traditional unitary board model also give employees rights to participate on business administration, for France see PIETRANCOSTA, A. et al. *Corporate Boards in France.* In DAVIES et al. (n 49). p. 194.

[304] CADBURY (n 48). p. 71.

[305] Ibid. p. 10.

[306] See for example *CCGC 2018*. Principle 5.4, p. 35 for the Czech Republic or ÖSTERREICHISCHER ARBEITSKREIS FÜR CORPORATE GOVERNANCE (n 189). Rule IV. 16, p. 19 for Austria.

[307] REGIERUNGSKOMMISSION DEUTSCHER CORPORATE GOVERNANCE KODEX. *Deutscher Corporate Governance Kodex 2017* [online]. 2017. Available from: https://www.dcgk.de/files/dcgk/usercontent/de/download/kodex/170424_Kodex.pdf [Accessed 14th March 2023]. Principle 4.2.1, p. 6.

According to German authors, it does not mean a departure from the previous approach and a multi-member management board is still a good corporate governance practice feature.[308] For certain groups of companies, it is also prescribed by law to have a minimum number of directors, either by a non-mandatory provision, such as companies with a share capital of more than three million euro[309] or by a mandatory provision, for example for companies with a certain number of employees.[310]

Directors are appointed and removed by the supervisory board.[311] The general meeting of shareholders does not possess the powers to appoint or remove members of the management board. Their right is to express a vote of no confidence to the management board or a director in the form of a general meeting resolution. However, this vote of no confidence may only be used as a cause for the removal of a management board or one of its members by the supervisory board.[312]

If the management board consists of more than one director, the supervisory is empowered to appoint the chairperson of the management board (der Vorstandsvorsitzende).[313] The legal status of the chairperson is described in more detail in Section 3.4.4 below. At this point, it is important to mention that the term CEO is considered synonymous with the term chairperson of the management board under German law, and the term CEO as such is unknown to German legal regulation. Von Hein argues that these terms should not be used interchangeably and that when describing the position at the top of the German management board, it should be held on the established term of the chairperson based on different legal cultures.[314] However, the practice generally does not follow this recommendation and uses the term interchangeably. For example, the German version of the annual report of the Deutsche Bank uses the term *Vorstandsvorsitzender* (chairperson) and the English version of the same annual report names the same position as the CEO.[315] Even distinguished German scholars on company law, such as K. J.

[308] VON WERDER, A. in KREMER, T. et al. *Kommentar zu Deutschen Corporate Governance Kodex.* 8th edn. Munich: C.H.Beck, 2021, 489 p. ISBN 978-3406738364. Commentary on the Principle 1, para. 5.
[309] *German Stock Corporations Act,* Section 76(2).
[310] *German Co-Determination Act (MitbestG),* Section 33(1).
[311] *German Stock Corporations Act,* Section 84.
[312] Ibid. Section 84(4)
[313] Ibid. Section 84(2).
[314] HOFFMANN-BECKING, M. *Vorstandvorsitzender oder CEO?* Neue Zeitschrift für Gesellschaftsrecht, 16(1), 2003, pp. 745-750. p. 745.
[315] DEUTSCHE BANK. *Annual Report 2022*. and DEUTSCHE BANK. *Geschäftsbericht 2022* [online]. 2023. Available from: https://investor-relations.db.com/reports-and-events/annual-reports/index?language_id=3 [Accessed 25th March 2023].

Hopt, use the term CEO in a unitary board structure as a synonym for chairperson of a management board in a two-tier board structure.[316]

3.4.2 Supervisory Board

The second mandatory body of German companies is the supervisory board, which consists of members appointed primarily by shareholders at the general meeting or by employees under the co-determination regime.[317] The main task of supervisory boards is of monitoring nature. They are forbidden to take business management decisions. Historically, the effective functioning of supervisory boards has been a subject of debates.[318] Supervisory boards were often criticised for many reasons, such as insufficient frequency of meetings, being only honorary positions for people without sufficient qualifications, or the fact that many people serve on enormous numbers of supervisory boards.[319] However, there have been and still are efforts to improve this situation both in legal acts and CGCs.[320]

One of the important tasks of supervisory boards is to appoint and remove the members of the management board. This power belongs exclusively to the supervisory board and cannot be entrusted to anyone else, such as one of the board committees or shareholders.[321] It is also at the discretion of the supervisory board to appoint the chairperson of the management board and his deputy from within the directors.[322] Once appointed, the supervisory board must monitor the directors and the proper performance of their duties. In case of a breach of their duties, the supervisory board shall intervene and represent the company in proceedings.[323]

3.4.3 Incompatibility of Membership in the Management Board and the Supervisory Board

Members of the supervisory board are by law forbidden from being concurrently members of the management board.[324] This issue resembles the CEO and chairperson duality in the unitary board structure. On the one hand, there is the CEO of the unitary board and chairperson of the

---

[316] HOPT (n 80). p. 101.
[317] *German Stock Corporations Act,* Section 101(3).
[318] JUNGMANN (n 40). p. 463.
[319] Ibid. p. 464.
[320] See *German Stock Corporations Act*, Section 100(1), which limits the maximum number of mandates in supervisory boards or *GCGC 2022,* Principle 11, p. 8 which sets out expertise requirements for supervisory board members.
[321] Ibid. Section 107(3).
[322] SPINDLER, G. in GOETTE, W., HABERSACK, M. and KALSS, S. (eds.) *Münchener Kommentar zum Aktiengesetz.* 5th edn. Munich: C.H.Beck, 2019, 1728 p. ISBN 978-3406772108. Commentary on Section 84, para. 115.
[323] JUNGMANN (n 40). p. 432.
[324] German Stock Corporations Act, Section 105(1).

management board in the two-tier structure, who should represent the management role. On the other hand, the chairperson of the unitary board and chairperson of the supervisory board in the two-tier structure, who should stand for the monitoring role. The purpose of the incompatibility clause is to avoid situations where the boundaries between management and supervision would disappear. If both functions were combined, it would create a de facto unitary board structure.[325] Incompatibility of membership in the management board and the supervisory board at the same time is an argument used by supporters of the separation of CEO and chairperson roles in unitary boards.[326]

Even though simultaneous membership in both statutory bodies is forbidden, the former chairperson of the management board is often appointed as a chairperson of the supervisory board.[327] This chair-for-chair swapping is improper corporate governance practice because it limits the important characteristic of the chairperson of the supervisory board, which is his independence on members of the management board. It has also been seen critically by GCGC 2022 which states that the directors should not be appointed to the supervisory board within two years of the end of their office term on the management board.[328] The former version of the GCGC also specifically addressed that if a former director is to be appointed as a supervisory board chairperson, it has to be justified to the general meeting.[329]

3.4.4 Legal Status of the Chairperson of Management Board

According to the statement of the German Bar Association, the duties of members of the management board and the supervisory board are in the German two-tier model clearly separated. Therefore, there is no need to regulate the dual role of CEO and chairperson within the German legal order. The German Bar Association, however, considers meaningful measures leading to the separation of the roles in the companies with a unitary board model.[330]

Some authors argue that de lege ferenda, there is a space to give the articles of association the autonomy to determine the position of a chairperson more freely according to the will of the shareholders in the way that it corresponds to how the CEO function is exercised in the Anglo-

---

[325] ROTH, M. *Corporate Boards in Germany*. In DAVIES et al. (n 49). p. 286.
[326] Ibid. p. 269.
[327] Ibid. p. 306.
[328] *GCGC 2022,* Recommendation C.7, p. 9.
[329] REGIERUNGSKOMMISSION DEUTSCHER CORPORATE GOVERNANCE KODEX (n 307).
[330] DEUTSCHER ANWALT VEREIN. *Stellungnahme zum Grünbuch der EU-Kommission vom 5th April 2011: Europäischer Corporate Governance-Rahmen KOM.* Die Neue Zeitschrift für Gesellschaftsrecht, 24(6), 2011, pp. 936-941, p. 937.

American world.[331] But that would necessitate a departure from the principles of collegiality and equality of all directors, which would shift the powers more towards the chairperson or the CEO if the Anglo-American terminology is used. However, such a shift is generally not seemed positive under German law, as the horizontal self-control of the management board is perceived as complementary to the vertical outside control of the supervisory board.[332] One may wonder whether there is a need for a mandatory supervisory board in such a framework. Historically, the reason was that supervisory boards could not always control the management board sufficiently and effectively.[333] The question is whether, particularly in the case of a two-tier board structure, the objective should not be a well-functioning supervisory board rather than a management board which must perform supervisory tasks.

Regarding the chairperson, pursuant to Section 84(2) of the German Joint Stock Corporations Act, a supervisory board has the power to appoint the chairperson of the management board in companies with multiple directors.[334] The GCGC 2022 provides in its first principle that the chairperson is responsible for the coordination of the work of other directors.[335] Specific requirements to perform this role or a more detailed description of his legal status within the company's organisation are not regulated by law.

Despite the fragmentary regulation of the chairperson's legal status within the company's organisational framework, it is evident that the chairperson has a specific position within the management board. The position confers him certain material rights and duties that are not inherent in other directors, and it is evident that his status is not associated only with honorary powers. The consensus is that the chairperson is the head of the entire management board. From this derives his representative and coordinating functions, such as chairing the management board meetings or representing the management board in external relation to the stakeholders.

Furthermore, it is important to emphasise his role towards the supervisory board. Pursuant to Recommendation D.5 of the GCGC 2022 chairpersons of the supervisory board and the management board shall meet regularly to discuss questions regarding the strategy, business development, possible risks and their management and the company's compliance.[336] The chairperson represents the management board and maintains regular contact with the second

---

[331] FLEISCHER, H. in SPINDLER, G. and STILZ, E. (eds.) *Kommentar zum Aktienrecht.* 5th edn. Munich: C.H.Beck, 2022, 6690 p. ISBN 978-3406784408. Commentary on Section 77, para. 49.

[332] SPINDLER, G. in GOETTE et al. (eds.) (n 322). Commentary on Section 84, para. 119.

[333] VON HEIN (n 68). p. 496.

[334] *German Stock Corporations Act*, Section 84(2).

[335] *GCGC 2022*, Principle 1, p. 4.

[336] Ibid. Recommendation D.6, p. 12.

mandatory body, the supervisory board, in particular with its chairperson.[337] The GCGC 2022 recommendation goes beyond the legal regulation in the German Stock Corporations Act, as pursuant to Section 90(1) of the German Stock Corporations Act, direct reporting to the supervisory board is only required in serious circumstances.[338] The powers of the supervisory board are in many companies strengthened in this respect by the articles of association. Although, in general, the supervisory may not interfere with business management, the articles of association or the supervisory board itself can determine that the consent of the supervisory board is required for certain types of business decisions with great significance.[339] It is the rule that these decisions are put forward by the chairperson of the management board and the supervisory board in advance. This gives de facto material influence to the chairperson of the management board that the other directors do not have.[340]

Under German law is the chairperson as regards executive powers only the primus inter pares among the other directors.[341] As expressed by Hein, the chairperson is rather a mediator than an arbitrator under German law.[342] Fundamental principles of German company law are concepts of equality and joint liability of all directors.[343] Both of these principles set legal limits to the position and powers of the chairperson. It is not allowed to give the chairperson the authority to decide separately or to decide contrary to the decision of other directors. The sole decision-making of the chairperson was deliberately abandoned with the adoption of the new German Stock Corporations Act 1965. It intentionally did not take over the right of sole decision incorporated in the old stock corporations act, which dated back to the Third Reich.[344] The explanatory memorandum to the German Stock Corporations Act 1965 provided that the right of a sole decision could be dangerous for the company because the chairperson might make hasty unsubstantiated decisions without dialogue with the other directors.[345]

The chairperson is also not allowed to instruct other directors and shall not have the right to issue any regulations of the substantive matters of the company on his own.[346] On the other hand,

---

[337] Ibid. Recommendation D.5, p. 12.
[338] *German Stock Corporations Act,* Section 90(1).
[339] *German Stock Corporations Act,* Section 111(4).
[340] BEZZENBERGER, T. *Der Vorstandsvorsitzende der Aktiengesellschaft.* Zeitschrift für Unternehmens- und Gesellschaftsrecht, 25(4), 1996, pp. 661-673. p. 664.
[341] MARTIN, CH. *Das U.S. Corporate Governance System – Verlust oder Vorbildfunktion?* Neue Zeitschrift für Gesellschaftsrecht, 20(3), 2003, pp. 948-951. p. 950.
[342] VON HEIN (n 68). p. 489.
[343] *German Stock Corporations Act*, Section 77(1).
[344] KOCH, J. *Aktiengesetz: AktG*. Munich: C.H.Beck, 2023, 2743 p. ISBN 978-3406797538. Commentary on Section 84, para. 29.
[345] BEZZENBERGER (n 340). p. 667.
[346] FLEISCHER, H. in SPINDLER and STILZ (eds.) (n 331). Commentary on Section 77, para. 49.

the position of the chairperson within the company may become stronger by giving him a casting vote in case of a tie in decision-making. It is disputable whether the chairperson can be granted a veto vote. Yet, according to the prevailing view, the veto vote is consistent with the law at least in the case of companies without the co-determination regime.[347]

Another specific type of chairperson's executive decision is his authority to adjourn the force of a board's resolution until a new decision of the management board at the next meeting is adopted.[348] These powers must be regulated in the articles of association or the rules of procedure of the management board.[349]

3.4.4.1 Appointment and Removal of Chairpersons of the Management Board

As already mentioned, under German law, the supervisory board has the authority to appoint and remove directors. The appointment of the chairperson is also an exclusive power of the supervisory board which cannot be delegated to any other body, such as a specific committee.[350] For the appointment of the chairperson is required a majority of casted votes.[351] A minority of academic commentators believe that a majority of at least two-thirds of the supervisory board members is required pursuant to Section 31(2) of the German Co-Determination Act, which applies only to an appointment as a director.[352] In most cases, a person is appointed as a management board member and a chairperson by a single act, which then requires a two-thirds majority in the supervisory board.[353] Legally, these appointments are two different acts with legal consequences for example in the event of a removal, as described in the following paragraphs.

The supervisory board can also appoint a deputy chairperson and even two chairpersons serving simultaneously.[354] Some scholars consider the dual appointment of the chairperson position not only inconvenient but also incompatible with the wording of the German Stock Corporations Act, which provides that a member of the management board (in the singular) can

---

[347] WICKE, H. *Der CEO im Spannungsverhältnis zum Kollegialprinzip-Gestaltungsüberlegungen zur Leitungsstruktur der AG*. Neue Juristische Wochenschrift, 60(52), 2007, pp. 3755-3758. p. 3756.

[348] SPINDLER, G. in GOETTE et al. (eds.) (n 322). Commentary on Section 77, para. 17.

[349] WEBER, M. in HÖLTERS, W. and WEBER, M. (eds.) *Aktiengesetz: AktG*. 4th edn. Munich: Vahlen and C.H.Beck, 2022, 2959 p. ISBN 978-3800663576. Commentary on Section 77, para. 42.

[350] *German Stock Corporations Act,* Section 107(3).

[351] *German Co-Determination Act (MitbestG),* Section 29(1).

[352] KOCH (n 344). Commentary on Section 84, para. 28.

[353] HOFFMANN-BECKING, M. in BÄLZ, U et. al. (eds.) *Münchener Handbuch des Gesellschaftsrechts*. 5th edn. Munich: C.H.Beck, 2020, 19950 p. ISBN 978-3406748004. Besondere Vorstandsmitglieder, para. 2 and *German Co-Determination Act (MitbestG),* Section 31(2).

[354] Ibid. para. 2.

be appointed as a chairperson.[355] Despite the fact that the language interpretation may raise doubts, there is no reason to believe that the legislator intended to limit the contractual freedom in the composition of management boards. The prevailing opinion is thus that, although impractical, it is permitted to appoint two chairpersons because it is not explicitly prohibited by law.[356]

As regards the term of office of the chairperson, the same rules apply to him as to the other directors.[357] The supervisory board, together with the management board, are responsible for the long-term succession planning of the management board membership.[358] The chairperson can be appointed for a maximum of five years, but the GCGC 2022 recommends that the term not exceed three years.[359] Re-appointment for another tenure is possible, but only if the same procedure is followed as for the first appointment. Automatic extension of office is therefore excluded. A new resolution must be approved by the supervisory board not earlier than one year before the chairperson's term of office ends.[360]

Removing of appointed directors or chairpersons is only possible for a grave cause. As examples of grounds for removal are specified gross breach of duties, inability to manage the company properly or withdrawal of confidence by the general meeting.[361] There is also a possibility to demote the chairperson of the management board to an ordinary director. Yet, in most cases, the reason for the chairperson's removal also suffices for his removal from the management board.[362] However, the director cannot be removed from the management board and stay in the position of the chairperson because only a management board member can serve as a chairperson.[363]

3.4.4.2 The Duty of Coordination and Monitoring

In German management boards, the principle of mutual control of the directors applies. Yet, the chairperson of the management board has a special statutory duty, broader than that of other directors, to coordinate and internally control the work of the management board arising from his

---

[355] SPINDLER, G. in GOETTE et al. (eds.) (n 322). Commentary on Section 84, para. 115 and *German Stock Corporations Act*, Section 84(2).
[356] Ibid. para. 28.
[357] Ibid. para. 28.
[358] *GCGC 2022*, Recommendation B.2, p. 7.
[359] *German Stock Corporations Act*, Section 84(1) and *GCGC*, Recommendation B.3, p. 7.
[360] Ibid. Section 84(1).
[361] Ibid. Section 84(4).
[362] SPINDLER, G. in GOETTE et al. (eds.) (n 322). Commentary on Section 84, para. 156.
[363] *German Stock Corporations Act*, Section 84(2).

appointment to the office.[364] His special status mirrors both (i) internal, i.e. for example during chairing the management board meetings and preparation of the agenda for the meetings and (ii) external, i.e. for instance when issuing a press release in the preparation of which he also plays an important role.[365] It is this statutory duty, albeit without sharp edges, that distinguishes the position of the chairperson from the spokesperson described below.

This principle is particularly evident in the case of horizontal delegation of powers within the management board. Nowadays, in most companies, the rule is that due to their size and organisational convenience, the management of the company is divided into several branches. The directors are further obligated to control other management board members beyond their narrow and specifically assigned area of responsibility.[366] The criteria for the division of power may vary, but in principle, three main categories are distinguished: (i) functional – division according to the different disciplines within the organisational structure, for example, finance, legal, development, operations or human resources; (ii) departmental – division according to the sectors in which the company operates, for example, renewable resources, nuclear energy and non-renewable resources; and (iii) territorial - division based on the regions in which the company operates, such as Bavaria, Brandenburg and Saxony.[367]

Horizontal delegation of powers not only puts the chairperson in charge of a specific department, most likely the business development department but also makes him responsible for running the entire management board. Compared to other directors, stricter responsibility to oversight other fields is attached to the position of the chairperson. Other directors must also monitor branches they are not in charge of, but only as their secondary responsibility. On the other hand, for the chairperson the bar is set higher and one of his primary duties is to monitor the work of other directors and apply remedial measures where appropriate.[368] Therefore, the chairperson plays an important role in allocating competencies to individual directors and oversees the cooperation of all directors, who regularly report to him on the progress of their activities.[369]

Some argue that there is no legal basis for such special requirements for the chairperson.[370] It is generally accepted that the chairperson should contribute to the smooth functioning of the

---

[364] HOFFMANN-BECKING, M. *Zur Rechtlichen Organisation der Zusammenarbeit im Vorstand der AG.* Zeitschrift für Unternehmens- und Gesellschaftsrecht, 27(3), 1998, pp. 497-510. p. 516.

[365] BEZZENBERGER (n 340). p. 663.

[366] KALLS, S. in KALLS, S., FROTZ, S. and SCHÖRGHOFER, P. (eds.) *Handbuch für den Vorstand.* Vienna: Facultas, 2017, 1514 p. ISBN 978-3708913653. Leitung der Gesellschaft, para. 77.

[367] BEZZENBERGER (n 340). p. 663.

[368] Ibid. p. 672.

[369] Ibid. p. 664.

[370] FELTL (n 55). p. 236.

management board by virtue of his position. However, substantive decisions, such as the decision on horizontal delegation of powers, do not belong to the chairperson, but to the articles of association or, if provided by the articles of association to the supervisory board, alternatively the entire management board. If the powers to make substantive decisions were conferred on the chairperson, it would violate the principles of collegiality and equality in the management board inherent to German law of joint stock companies. Furthermore, according to their view, there is no legal basis for an increased monitoring role of the chairperson because the law does not provide him with the instruments to perform this role.[371] According to this point of view, is thus the chairperson by virtue not entitled to any special rights or duties beyond his organisational and representative roles.

3.4.5 Management Board Spokesperson

From the appointment of the chairperson shall be distinguished the appointment of the management board spokesperson. This position is not regulated by law, but it is not prohibited. In some companies, it is a common practice to appoint a spokesperson instead of a chairperson. The GCGC 2022 expressly foresees the position of the management board spokesperson. In the GCGC 2022, it is specified that it can be either the chairperson or, when the chairperson is not appointed, the management board spokesperson who is responsible for the coordination of other directors and for creating the information streams between the management board and the supervisory board.[372]

Unlike the chairperson, the spokesperson may be appointed by the management board itself unless appointed by the supervisory board. Interestingly, the appointment of a spokesperson requires the consensus of all directors, while the appointment of the chairperson requires a majority vote in the supervisory board.[373] The position of the spokesperson can only be assigned to one of the directors, i.e. not to persons outside the management board.[374] The rights and duties of the spokesperson shall be defined in the rules of procedure of the management board.[375] In general, these include representation of the management board or management board meetings administration,[376] i.e. similar content of competence to that of the chairperson but narrower. Most importantly, the spokesperson is not given the power to monitor directors. Another formal

[371] Ibid. p. 236.
[372] *GCGC 2022,* Recommendation D.5, p. 12 and Principle 1.
[373] HOFFMANN-BECKING, M. in BÄLZ et. al. (eds.) (n 353). Besondere Vorstandsmitglieder, para. 5.
[374] FELTL (n 55). p. 238.
[375] *German Stock Corporations Act*, Section 77(2).
[376] WEBER, M. in HÖLTERS and WEBER (eds.) (n 349). Commentary on Section 77, para. 43.

difference is that the name of the spokesperson does not have to be disclosed in business letters or annual financial statements, which is mandatory for the chairperson pursuant to German Stock Corporations Act and German Commercial Code.[377]

However, the appointment of a spokesperson is only permitted if the supervisory board does not appoint the chairperson of the management board.[378] In practice, the question of whether a chairperson or spokesperson is appointed depends on how much power is intended to give the person at the top of the management board. If the company wants a fully equal management board, it appoints a spokesperson. If it wants a person with more powers, such as coordinating or monitoring powers, it appoints a chairperson.[379] Nevertheless, the boundary lines are not sharply defined, and a lot depends on the person holding the position and their approach to the function.[380] Another reason to appoint a spokesperson instead of a chairperson may be the possibility of removal. Unlike the chairperson, the spokesperson may be removed from office without providing any reasons.[381]

3.4.6 Summary of the Legal Status of CEOs and Chairpersons in Germany

Contrary to the Anglo-American world, the tradition of the CEO is not embedded in the German two-tier board model. The executive body responsible for the business management of the company is the management board, which is considered by virtue of law to be a collegial body. Although the possibility of enacting a unitary board model has been repeatedly discussed, the choice of board structure has not been enacted to date. Members of a management board are appointed by the second mandatory body, the supervisory board, which also has the power to appoint the chairperson of the management board. To avoid the concentration of power and support checks and balances, parallel membership in the management board and the supervisory board is excluded. Chair swapping of a chairperson of the management board and a chairperson of the supervisory board is for the same reasons considered an improper corporate governance practice.

The appointment of the chairperson is an exclusive power of the supervisory board, which can decide whether to appoint a chairperson for a multi-member management board. The chairperson of the management board is considered synonymous with the Anglo-American CEO. However,

---

[377] *German Stock Corporations Act,* Section 80(2) and *German Commercial Code,* Section 285(10).
[378] SPINDLER, G. in GOETTE et al. (eds.) (n 322). Commentary on Section 84, para. 118.
[379] WEBER, M. in HÖLTERS and WEBER (eds.) (n 349). Commentary on Section 77, para. 43.
[380] Ibid. Para. 43.
[381] SPINDLER, G. in GOETTE et al. (eds.) (n 322). Commentary on Section 84, para. 118.

the CEO role has more non-executive connotations, and compared to regular directors, the chairperson is not given many additional executive powers in the German legal landscape. With regard to executive powers, the chairperson may be granted a casting and veto vote in the management board's decisions by the articles of association. In addition, greater demands are placed on the chairperson in matters of coordination of boards and supervision of individual directors.

Companies can also decide to appoint a board spokesperson instead of a chairperson. However, the legal status of a board spokesperson is distinct from that of a chairperson. Compared to the chairperson, the board spokesperson is entrusted with fewer powers and his appointment and removal process are regulated differently.

3.5 Austria

The legal framework in Austria has a lot in common with that in Germany. One of the main similarities is that the law prescribes a mandatory two-tier organisational board structure (if the option of SE with a unitary board structure is excluded) with the management board as the management body and the supervisory board with the compulsory participation of employees as the body responsible for the supervision.[382] Yet, it is important to address the Austrian regulation and its distinctions, as the chairperson of the management board under Austrian regulation may be granted more powers than his German counterpart.

Austrian legislation does not regulate the status of the CEO. It only employs the term chairperson of the management board (der Vorstandsvorsitzende), which is often used, same as in Germany, as a synonym for the term CEO. It is generally accepted that the chairperson may be awarded the honorary title of CEO. The chairperson may even call himself CEO on his own authority in order to facilitate negotiations, especially with international partners, which is, however, not associated with any additional function and should be seen as a mere translation of the term chairperson of the management board.[383]

Members of the management board are appointed by the supervisory board, which is also given the right to select the chairperson of the management board. The Austrian Stock Corporations Act provides that the supervisory board can appoint one member of the management

---

[382] *Austrian Stock Corporations Act,* Section 75 and 86.
[383] FELTL (n 55). p. 231.

board as a chairperson of the management board.[384] The management board thus cannot elect its own chairperson.

Despite the fact that it is not compulsory by law to appoint a chairperson, it is recommended by the Austrian CGC on the comply or explain basis as an example of good practice to have a management board with more members, one of whom is appointed as a chairperson.[385] However, according to Reich-Rohrwig, only 55 per cent of Austrian companies with three or more directors appoint a chairperson and in the case of a management board with two directors the number is only 35 per cent.[386]

What makes the position of the chairperson different from the situation in Germany is the legal regulation of a casting vote (das Dirimierungsrecht). Unless the articles of association state otherwise, the chairperson shall have pursuant to Section 70(2) of the Austrian Stock Corporations Act in case of a tie vote a casting vote. In Germany, it is also possible to give the chairperson or any other director a casting vote in case of a tie vote but only if stipulated by the articles of association.[387]

However, what makes the position of the chairperson under Austrian law even more dominant is that the articles of association can award the chairperson with a right of sole decision as well as a right of veto.[388] Paradoxically, the origin of these rights lies in the German Stock Corporations Act of 1937, which was in force in Austria after the Nazi occupation of Austria. One of the guiding ideas behind this law was the leadership principle (das Führerprinzip) which consolidated the position of persons at the top of the company. In Germany, this principle was completely abandoned with the adoption of a new Stock Corporations Act in 1965. In Austria, by contrast, the explanatory memorandum to the Stock Corporations Act of 1965 continued to count on the possibility of giving the chairperson the right of sole decision.[389]

Some authors argue that the right of sole decision does not contradict the principle of collegiality and joint liability of the management board. However, some authors hold the view that the right of a sole decision is incompatible with the concept of joint liability.[390] They argue that (i) there is not a big difference between the banned right to give instructions and the right of

---

[384] *Austrian Stock Corporations Act*, Section 75(3).

[385] ÖSTERREICHISCHER ARBEITSKREIS FÜR CORPORATE GOVERNANCE (n 189). Rule 16.

[386] REICH-ROHRWIG, J. in ARTMANN, E. and KAROLLUS, M. (eds.) *Kommentar zum Aktiengesetz*. 6th edn. Vienna: MANZ Verlag, 2018, 1116 p. ISBN 978-3214083328. Commentary on Section 70, p. 25.

[387] SPINDLER, G. in GOETTE et al. (eds.) (n 322). Commentary on Section 77, para. 14.

[388] NOWOTNY, CH. in DORALT, P., NOWOTNY, CH. and KALSS, S. (eds.) *Kommentar zum Aktiengesetz.* 3rd edn. Vienna: Linde Verlag, 2021, 3782 p. ISBN 978-3707334647. Commentary on Section 70, para 27.

[389] Ibid. para. 27.

[390] FELTL (n 55). p. 237.

sole decision and (ii) it is against the universally accepted collegial nature of the management board. Maintaining the right of a sole decision would, according to them, create directors of dual quality, which would bring other problems, such as the question of directors' liability for their supervisory tasks.[391]

To summarise, the legal regulation in Austria allows management boards to give the chairperson extensive executive powers regarding the formation of business management will in an otherwise collegial management board. Some authors compare this to the Anglo-American powerful position of the CEO.[392] Nonetheless, it is important to point out that the chairperson under Austrian law does not have the right the give instructions to other directors, nor has he any power of extended control over the other directors. In other respects, the legal status of CEOs in Austria is similar to Germany.

3.6 Czech Republic

This final chapter is of considerable significance since this thesis is written at Charles University in the Czech Republic. The chapter will interpret the author's domestic Czech law on the legal status of CEOs. It will draw on the knowledge presented in the previous chapters and the practice of other countries. At the beginning of this chapter, a few remarks introducing the specifics of Czech company law should be presented.

Firstly, the tradition of large public companies with dispersed ownership is not present in the Czech Republic. Given the history of the communist past, the companies used to be owned either by the state during the communist era or by a limited number of owners as private limited liability companies not traded on the stock exchange after the Czech Velvet Revolution in 1989. Despite the fact that already more than 30 years have passed since the change from a communist centrally planned economy to a democratic market economy, companies which decide to finance their operations in another way than being listed on the stock exchange significantly prevail. Companies are comfortable with raising capital for their operations from banks and citizens capitalise their wealth in ways other than investing in the stock market.[393] Unfortunately, the result

---

[391] Ibid. p. 237.
[392] KALLS, S. In GOETTE et al. (eds.) (n 322). Commentary on Section 77, para. 76.
[393] ČVANČAROVÁ, Z. and HUČKA, M. *Správa Společností v Zemích Střední a Východní Evropy*. In HURYCHOVÁ, K. and BORSÍK, D. (eds.) *Corporate Governance*. 1st edn. Prague: Wolters Kluwer, 2015. 280 p. ISBN 978-8074786549. p. 23.

is insufficient liquidity in Czech capital markets, which generates a spiral and further discourages potential investors.[394]

In terms of numbers, at the time of writing this thesis, twenty-nine companies are traded on the PSE (eight on the prime market, eight on the standard market and thirteen on the START market).[395] The total number of all commercial companies registered in the Commercial Register is 557,209, of which 27,167 are joint stock companies.[396] It is clear from these figures that the preferred form of business organisation is to remain a private company which has its own legal implications, such as lower reporting requirements.[397]

Another reason which does not benefit corporate governance is something that Havel describes as "*practically blind trust in legal positivism*". The other side of this issue is the lack of interest of companies in soft law legal instruments in the form of recommendations or examples of good practice.[398] As described in the chapter on the UK, countries with a common law tradition have more experience with uncodified law and CGCs based on comply or explain principle. As a consequence of this problem, Czech companies often consider unenforceable rules irrelevant.

To sum up, the environment of the insider system in the Czech Republic does not represent a very favourable market for stock exchanges and corporate governance in general. Yet, this does not mean that the situation is not developing in the direction known from more experienced Western countries that can be inspirational for the Czech Republic in many ways.

3.6.1 Available Board Models

Historically, it was not possible to choose a board organisation structure in the Czech Republic. All companies had to set up two mandatory bodies, the management board (*představenstvo*) and the supervisory board (*dozorčí rada*).[399] Their powers were clearly separated, with the management board exercising the business management of the company and the supervisory board being the controlling body.

---

[394] Ibid. p. 22.

[395] PRAGUE STOCK EXCHANGE. *Official Price List* [online]. 2023. Available from: https://www.pse.cz/en/market-data/statistics/official-price-list. [Accessed 6th March 2023].

[396] CZECH STATISTICAL OFFICE. *Tabulka počtu jednotek v registru ekonomických subjektů podle převažující činnosti a vybraných právních forem* [online]. 2022. Available from: https://www.czso.cz/csu/czso/organizacni-statistika-4-ctvrtleti-2022. [Accessed 6th March 2023].

[397] HAVEL, B. et al. *Czech Corporate Governance in the Light of Its History and the Influence of the G20/OECD Corporate Governance Principles.* European Business Organization Law Review, 24, 2022, pp. 167-200. p. 169.

[398] Ibid. p. 170.

[399] CZECH AND SLOVAK FEDERAL REPUBLIC. Act No. 513/1991 Coll, *Commercial Code, as amended. 2013.* Section 173(1).

The situation changed with the adoption of the Business Corporations Act 2012 as part of the major recodification of Czech private law. According to the explanatory memorandum to the Business Corporations Act 2012, the new regulation seeks to facilitate the business management of companies, and it gives the shareholders an option to choose between a unitary and two-tier board model in line with the concept of ES.[400] Unitary board companies are gradually gaining in popularity and relevance, as they already accounted for almost one-third of all joint stock companies by 2022.[401]

However, with the adoption of the Business Corporations Act 2012, legislators opted for a half-hearted solution, as the law still required the companies that opted for a unitary board structure to establish two mandatory bodies – a board of directors (*správní rada*) and a statutory director (*statutární ředitel)*. Most experts understandably criticised this approach.[402] The adopted concept seemed to be wrong both linguistically and factually and was merely regarded as a two-tier structure with differently named bodies.[403]

The call for change has been answered when the Business Corporations Act 2012 amendment was passed. It came into force in 2021 and created a truly unitary model with only one mandatory body – a board of directors (*správní rada)*.[404] The Czech Republic has thus joined the countries that allow companies to choose between a unitary and two-tier board model. This is very pertinent for the legal status of CEOs and chairperson because their position has traditionally varied depending on the selected board model.

3.6.2 Definition of the Role of CEOs in Czech Regulation

The legal status of the CEO (*generální ředitel)* of companies within the Czech regulation is only partial and unclear. As in other countries of Continental Europe, the position of the CEO is not as long-established as in the Anglo-American world. The pressure for regulatory convergence may raise some interpretative questions in this regard. The Business Corporations Act 2012 does

---

[400] CZECH REPUBLIC. *Explanatory Memorandum to the Business Corporations Act (Act No. 90/2012)*. 2012. p. 57.

[401] MINISTRY OF JUSTICE OF THE CZECH REPUBLIC. *Final Report of the Regulatory Impact Assessment* [online]. 2022. Available from: https://justice.cz/web/msp/ke-stazeni [Accessed 29th April 2023].

[402] DĚDIČ, J. and LASÁK, J. *Monistický Systém Řízení Akciové Společnosti: Výkladové Otazníky (1. Část).* OR 3/2013, 2013, pp. 65-81. p. 2 or ČECH, P. and ŠUK, P. *Právo Obchodních Společností: V Praxi a pro Praxi (Nejen Soudní)*. Prague: Bova Polygon, 2016, 373 p. ISBN 978-8072731770. p. 324.

[403] ČECH and ŠUK (n 402). p. 324.

[404] CZECH REPUBLIC. *Explanatory Memorandum to the Draft Law No. 33/2020, which Amends the Act No. 90/2012, Business Corporations Act, as amended by the Act No. 458/2016.* pp. 156 ff.

not operate with the term CEO and only establishes the duty to appoint a chairperson in multi-member boards.[405]

In Czech company law, the term CEO appears in particular in the context of EU law. In the past, the European Company Act provided in the regulation of unitary board SEs that "*the statutory body of SE is the chairperson of the board of directors, who is simultaneously the CEO, or the CEO of SE"*[406]. It continued stating that "*for the business management of the company shall be responsible the chairperson of the board of directors (chairperson-CEO), or other natural person appointed by the board of directors, who has the title of CEO."*[407] This definition alludes to an issue peculiar to the anchoring of CEOs in the Czech legal system. The CEO can be either member of the board, most frequently as the chairperson of the board or an employee standing below the board level to whom the board vertically delegated the operative business management of the company.

A similar modus operandi was employed by the Czech legislators in the case of the transposition of the Second European Shareholder Rights Directive. The Directive was implemented in the Capital Market Undertakings Act, which created an obligation to include the following persons in remuneration reports and policies of companies: (i) members of the management board, supervisory board and board of directors – which covers inter alia CEOs as board members, and (ii) "*a natural person, that is directly subordinate to the management body of the company and to whom solely has that body delegated business management of the company at least to the extent of the day-to-day management"* – this is an implemented definition of CEOs standing below the board level.[408] This definition was discussed in Chapter 3.2.1, where it was concluded that it is unsuitable and that companies do not disclose CEOs below the board level in their corporate governance reporting.

---

[405] *Business Corporations Act 2012*. Section 44(3).

[406] In original wording: *"Statutárním orgánem evropské společnosti je předseda správní rady, který je zároveň generálním ředitelem, nebo generální ředitel evropské společnosti."* In CZECH REPUBLIC. *Act. No. 627/2004 Coll, European Company Act*. 2004. Section 26.

[407] In original wording: *"Obchodní vedení přísluší buď předsedovi správní rady, který za ně nese odpovědnost (předseda-generální ředitel), nebo jiné fyzické osobě jmenované správní radou, která má titul generální ředitel."* Ibid. Section 35.

[408] *Czech Capital Market Undertakings Act*. Section 121m(1).

3.6.3 Definition of the Role of CEOs in Czech Academia

CEOs in the Czech academic community are often perceived as senior employees below the board level to whom the operative business management of the company has been delegated.[409] Unlike in Germany or Austria, the opinion that the term CEO can be used interchangeably with the term chairperson of the management board is rather rare.[410]

Yet, the author would argue that Czech CEOs should be board members rather than senior employees. This view is supported by the reasons discussed in the following paragraphs.

The first and most important reason concerns the powers of the board and the possibility of their delegation. As regards internal governance powers, the board is primarily responsible for (i) day-to-day business management, (ii) fundamentals of business management and (iii) strategical and conceptual governance of the company.[411] Out of these three powers, only the day-to-day business management can be delegated outside the board, either horizontally to an individual director or vertically delegated to a person standing outside the board.[412] The remaining two powers cannot be entrusted to individuals other than directors.[413] Therefore, CEOs who are not appointed as directors have very limited powers compared to those who are also directors. CEOs who cannot intervene in fundamental questions of business management and strategical and conceptual governance of the company can hardly deliver a clear purpose, a coherent strategy and a long-term view to the company, as expected from CEOs by Fink in the quote at the beginning of this thesis.

The second argument relates in particular to two-tier boards. Suppose the company decides to vertically delegate a considerable amount of business management to senior management, including the CEO, standing outside the management board. In that case, the question arises, what should be the role of the management board? In the situation of not having any executive directors on the board, it would de facto create a three-tier board model, where the supervisory board controls the management board, the management board controls senior employees, and senior employees perform the business management. At the same time, this practice is emptying the

---

[409] HAVEL, B. et al. *Corporate Governance na Pomezí Zákona a Soft Law.* Prague: Wolters Kluwer, 2022, 276 p. ISBN 978-8076765573. p. 71. Or HURYCHOVÁ et al. (n 181). Foreword.

[410] BEJČEK, J. *O Střetu Zájmů Podnikatelů a Jejich Manažerů.* Právní Rozhledy 13/2004, 2004, pp. 492-405. p. 492. However, the article does not address CEOs directly. It only discusses managers as board members.

[411] CZECH REPUBLIC. *Judgment of the Supreme Court of 11th September 2019, Case No. 31 Cdo 1993/2019,* CZECH REPUBLIC. *Act No. 89/2012 Coll, Civil Code, as amended.* 2012. Section 163 and *Business Corporations Act 2012*. Sections 435(2) and 456(2).

[412] ČECH and ŠUK (n 402). pp. 112 ff.

[413] *Business Corporations Act 2012*. Section 435(2), CZECH REPUBLIC (n 411) *and* ŠTENGLOVÁ, I. et. al. *Akciové Společnosti.* Prague: C. H. Beck, 2023, 808 p. ISBN 978-8074009143. p. 576.

powers of the management board, which by law should be responsible for the business management of the company.[414] A parallel argument can also be presented for the unitary board companies, where, for example, in the UK, it is recommended that boards should have an appropriate combination of executive and non-executive directors to ensure a better information flow within the board.[415] Thus, a board composed only of non-executive directors would violate this principle and the most senior managers, such as the CEO, should be members of the board.

Thirdly, the view presented in Czech academic literature that CEOs are considered to be members of management separate from corporate bodies in a traditional corporate governance conception,[416] should be described as rather inaccurate. Although it is usually possible to appoint a CEO standing below board level, most researched countries consider the CEO to be an executive board member.[417] As stated, in Germany and Austria, the terms chairperson of the management board and CEO are used interchangeably. CEOs in the UK and USA are also usually board members.[418] In Sweden, the CEO is even a separate corporate body with comparable powers as the Czech management board.[419] On the other hand, some countries, such as Italy, consider CEOs to be senior executive employees who are subject to similar rules as the board.[420]

Fourthly, empirical research conducted by the author found that all companies listed on the PSE, which hold the position of CEO, appointed him as a board member, in most cases as a chairperson of the board.[421] This corresponds with the assumption that CEOs are very important figures within the company's organisational structure, which reflects in their legal status.

Finally, the appointment of the CEO as an employee cannot be recommended because of the controversial judgments of Czech courts on the validity of employment contracts of managers under Czech law, which are briefly introduced in the next section.

---

[414] *Business Corporations Act 2012*. Section 435(2).

[415] See Chapter 2.3.2.2.

[416] HAVEL et al. (n 409). pp. 71 ff. or FILIP, V. and LASÁK, J. In LASÁK, J. et al. *Zákon o Obchodních Korporacích. Komentář.* 2nd edn. Prague: Wolters Kluwer, 2021, 2628 p. ISBN 978-8075988812. Commentary on Section 396.

[417] See Chapter 2 or DAVIES, P. *Corporate Boards in the United Kingdom.* In DAVIES et al. (eds.) (n 49). p. 728.

[418] See Chapter 2.

[419] SKOG, R. and SJÖMAN, E. *Corporate Boards in Sweden.* In DAVIES et al. (eds.) (n 49). p. 728.

[420] BODLÁK, F. *Správní Rada Akciové Společnosti v České Republice a Itálii.* Obchodněprávní Revue 3/2015, 2015, pp. 65-89. p. 80.

[421] See Annex No. 1. The table shows that 23 out of 29 companies have CEO as a board member, 4 companies have not established the position of CEO and in 2 companies is the position vacant.

3.6.3.1 Excursus Into the Issue of Concurrent Functions

In the Czech company law, as described above, it is allowed that the board vertically delegate operative business management to the management below the board level under conditions of liability for selection, instructions and oversight.[422] Yet, the management is not considered to be a separate body within the organisational structure of the company. The legal status of management corresponds to senior employees.[423]

The concurrence of functions of a director and an employee and the possibility of carrying out the powers of the director in the position of an employee under a valid employment contract is the subject of endless legal disputes and academic debates.[424] This issue has been associated with Czech company law already since the 1990s and the former Commercial Code. There have been repeated turnabouts in question whether employment contracts of directors, for example, for the position of CEO, are valid or invalid.

Except for a short period of time when the former Commercial Code allowed to delegate of business management to individuals in an employment relationship with the company, the legislators left this question unanswered.[425] The issue has been addressed mainly by courts, which considered the concurrence of functions under the Business Corporations Act 2012 inadmissible.[426]

The situation has changed with the ruling of the Constitutional Court,[427] which was followed by judgments of other court instances.[428] The Constitutional Court ruled that the managerial employment contracts should be considered valid in the interests of the fundamental principles of private law, i.e. the principle of the free will of the contract parties and the principle of pacta sunt servanda. The Supreme Court established that the parties may agree that the Labour Code governs their contractual relationship, but only within the limits set by mandatory regulation of company law. Thus, the contractual relationship between the parties is not a performance of dependent work within the meaning of the Labour Code.[429]

---

[422] CZECH REPUBLIC (n 411).
[423] DĚDIČ and LASÁK (n 402). p. 2
[424] See for example CZECH REPUBLIC. *Judgment of the Supreme Court of 6th May 2006, Case No. 29 Odo 1773/2006* or VRAJÍK, M. *Vybrané otázky delegace exekutivy na vedoucí zaměstnance.* In HURYCHOVÁ and BORSÍK (eds.) (n 393). pp. 230 ff.
[425] *Czech Commercial Code*. Section 66d.
[426] CZECH REPUBLIC. *Judgment of the Supreme Court of 28th January 2015, Case No. 21 Cdo 1116/2014.*
[427] CZECH REPUBLIC. *Judgment of the Constitutional Court of 13th September 2016, Case No. I. ÚS 190/15.*
[428] CZECH REPUBLIC. *Judgment of the Supreme Court of 11th April 2018, Case No. 31 Cdo 4831/2017.*
[429] Ibid.

Although the court ruling has clarified some interpretation questions, the situation regarding concurrent functions is still unclear. Many questions remain unanswered and managerial employment contracts are still subject to litigations. The question has recently been addressed by the European Court of Justice in a preliminary ruling initiated by the Czech court. It determined that the practice of the Czech courts, which does not consider managers performing board tasks to be employees, conflicts with the EU law.[430] This ruling was followed by the Supreme Administrative Court, but at the same time, it raised further legal challenges.[431]

Some of the issues that still raise questions are the appointment and removal from the office, the remuneration, the duty to approve the contract by the competent body, implications of failure to exercise due care or compensation in the event of a work accident.[432] For these reasons of legal uncertainty, it can be only recommended that the board's duties are performed under a contract on the performance of an office of the director approved by the general meeting.

3.6.4 Position of CEOs in a Two-Tier Board Model

The traditional, and until 2014 the only available board model in the Czech Republic, is the two-tier board model. It is based on the German two-tier board model with minor modifications. The general meeting of shareholders has a stronger position than in Germany, as it appoints not only members of the supervisory board but also members of the management board unless this power is delegated to the supervisory board by the articles of association.[433]

3.6.4.1 Management Board

The first mandatory body is the management board, which is responsible for the business management of the company.[434] As in other countries, it is common and foreseen by law that operative business management will be divided by branches among individual directors based on a horizontal delegation of powers.[435] Each director is then responsible for his area of business management as well as for overseeing areas assigned to other directors.[436]

---

[430] EUROPEAN UNION. *Judgment of the Court of Justice of the European Union of 5th May 2022, Case No. C-101/21.*
[431] CZECH REPUBLIC. *Judgment of the Supreme Administrative Court of 20th July 2022, Case No. 10 Ads 262/2020.*
[432] LASÁK, J. In LASÁK et al. (n 416). Commentary on Section 59.
[433] *Business Corporations Act 2012*. Section 438(1).
[434] Ibid. Section 435(2).
[435] *Czech Civil Code*. Section 156(2).
[436] ČERNÁ, S. et al. *Právo Obchodních Korporací, 2nd edn. Prague: Wolters Kluwer, 2021, 656 p. ISBN 978-807598-991-8. p. 423.*

The Business Corporations Act 2012 provides that the management board has three members unless the articles of association state otherwise. Nothing legally prevents companies from establishing single-member management boards. Yet, a single-member management board is regarded as an improper corporate governance practice by CCGC 2018, which stipulates that the management board should have at least three members.[437] The consequence of a multi-member board of directors is the obligation to appoint a chairperson described below.[438]

3.6.4.2 Supervisory Board

The second mandatory body is the supervisory board, which is primarily responsible for the monitoring of the business affairs of the company. As a consequence of the adoption of modern corporate governance codes, its advisory function is also emphasised.[439] The members of the supervisory board are appointed primarily by the shareholders at the general meeting. In companies with more than five hundred employees, employees appoint one-third of the members of the supervisory board under the co-determination mode. There is also the possibility of linking the right to appoint members of the supervisory board to individual shares.[440]

Contrary to Germany or Austria, the supervisory board is not entitled to appoint members of the management board. This power belongs to the general meeting unless the articles of association provide otherwise.[441] Yet, a typical practice of large companies is to opt for the "German" governance model, where the supervisory board appoints members of the management board and approves their contracts on the performance of an office.[442]

The incompatibility of functions in the supervisory board and the management board applies. As in similar countries with a two-tier board model, management board members are barred from being concurrently members of the supervisory board and vice versa.[443] The insistence on a strict separation of management and supervision represents the main distinction between unitary and two-tier board models. In the case of the Czech Republic, where it is possible to choose between the two board models, this regulation puts companies with the two-tier board model at a disadvantage, as they do not have a choice to concentrate the powers in one body. However, the

---

[437] *CCGC 2018*. Principle 5.4.

[438] *Business Corporations Act 2012*. Section 44(3).

[439] *CCGC 2018*. Principle 7.1.

[440] *Business Corporations Act 2012*. Sections 447 ff.

[441] Ibid. Section 438(1).

[442] See for example: ČEZ, a.s. *Articles of Association effective from 30th June 2022* [online]. 2022. Available from: https://www.cez.cz/cs/pro-investory/korporatni-zalezitosti/stanovy-cez-a.-s.-ucinne-od-30.-cervna-2022-160388 [Accessed 28th April 2023]. Art. 18.

[443] *Business Corporations Act 2012*. Section 448(4).

solution should be pressure on the separation of executive and non-executive roles in the unitary board model rather than allowing a combination of these roles in a two-tier board model.[444]

Similar to Germany, the retiring chairperson of the management is sometimes appointed as the chairperson of the supervisory board.[445] This practice weakens the separation of managerial and supervisory functions and the independence of the supervisory board. Therefore, it should be recommended to avoid this practice. If a company nonetheless decides to appoint the former chairperson of the management board as the chairperson of the supervisory board, it should be explained and rationalised to shareholders and other stakeholders.

3.6.5 Position of CEOs in a Unitary Board Model

As explained above, the Czech Republic decided to join the countries that give shareholders the freedom to choose the organisational board model based on their preferences. Since the unitary board model is not inherent to Czech law and the enacted legislation was not flawless, a number of interpretation questions arose, especially regarding the relationships between the various actors of the company.[446] The version of the Business Corporations Act, which is in force since 2021, enacted an option to designate a true unitary board with the board of directors as the only mandatory body. The amendment fortunately clarified many of these questions.

The current state of legislation follows foreign models and combines business management and supervision of business affairs in the board of directors.[447] Division into executive and non-executive members is not regulated by law, but CCGC 2018 recommends that the power of the board of directors should be divided between executive and non-executive directors and at least half of the directors should be non-executive.[448]

Due to the small market of companies in question and the short period since adopting the new legislation, the question of CEO and chairperson duality has not been subjected to much discussion. Záděra concluded that Czech boards can decide between the two models, either they can combine the positions of CEO and chairperson of the board, or they can separate these roles

---

[444] For more details see Chapter 3.3.
[445] See for example Mr. Roman in ČEZ, a.s. In MINISTRY OF JUSTICE OF THE CZECH REPUBLIC. *Úplný výpis z obchodního rejstříku společnosti ČEZ, a.s.* [online]. 2023. Available from: https://or.justice.cz/ias/ui/rejstrik-firma.vysledky?subjektId=59933&typ=UPLNY [Accessed 15th May 2023].
[446] DĚDIČ and LASÁK (n 402).
[447] *Business Corporations Act 2012*. Section 456(2).
[448] *CCGC 2018*. Principle 8.6.

for the reasons described in previous sections of this thesis.[449] More attention to the separation of the roles was given in the CGCs, which are analysed below in Chapter 3.6.8.

3.6.6 Appointment and Removal of the Chairperson of the Board

If the board consists of more than one director, it is legally obliged to appoint a chairperson.[450] The majority of Czech legal doctrine concludes that the provision has a mandatory character as a status question.[451] However, there is no sanction if the chairperson is not appointed. There is even one company listed on the PSE with a multi-member management board without an appointed chairperson.[452] Eichlerová argues that companies may derogate from the provision if it is in their interest.[453] According to the author, the mandatory obligation to appoint the chairperson seems unsuitable for regulating such private law relationships. It should have rather a non-mandatory nature with the possibility of modification and explanation by the company.[454] Hence, in spite of the fact that appointing a chairperson to a multi-member board is good practice, it should work as a non-mandatory provision with the possibility to departure.

The chairperson is appointed by a simple majority of votes of the directors from among themselves, i.e. chairperson must be a board member.[455] Unlike in Germany and Austria, the chairperson is not appointed by the supervisory board under the default regulation. Yet according to the prevailing view, this provision is non-mandatory and the articles of association may specify a different procedure for the appointment of the chairperson, such as an appointment by the supervisory board[456] or shareholders at the general meeting.[457] This position was also supported by the explanatory memorandum to the amendment of the Business Corporations Act 2012, which however referred to a regulation not passed by the legislators in the final version.[458]

---

[449] ZÁDĚRA, F. *Některá Specifika Právní Úpravy Statutárního Orgánu v Nadnárodních Společnostech.* Právní Rozhledy, 11/2012, pp. 390-411. p. 400.

[450] *Business Corporations Act 2012*. Section 44(3).

[451] LASÁK, J. In LASÁK et al. (n 416). Commentary on Section 44.

[452] See Pilulka Lékárny a.s. In MINISTRY OF JUSTICE OF THE CZECH REPUBLIC. *Úplný výpis z obchodního rejstříku společnosti Pilulka Lékárny a.s.* [online]. 2023. Available from: https://or.justice.cz/ias/ui/rejstrik-firma.vysledky?subjektId=882431&typ=UPLNY [Accessed 15th May 2023].

[453] EICHLEROVÁ, K. *Jednatelé – Kolektivní, nebo Individuální Orgán?* Rekodifikace & Praxe, 3(7), 2015, pp. 32-37. p. 36.

[454] For the situation in Germany see Chapters 3.4.4.1 ff.

[455] *Business Corporations Act 2012.* Sections 44(3) and 440(1).

[456] FILIP, V. and LASÁK, J. In LASÁK et al. (n 416). Commentary on Section 439.

[457] For example in Sweden. DAVIES, P. et al. *Boards in Law and Practice: A Cross-Country Analysis in Europe.* In DAVIES et al. (eds.) (n 49). p. 10.

[458] CZECH REPUBLIC (n 404). p. 36.

A contrary view on the mandatory nature of the provision could be inferred from the unifying opinion of the Supreme Court, which classified competencies and decision-making processes of corporate bodies as status questions which under Czech law have generally mandatory nature.[459] This conclusion is also supported by the fact that the regulation of cooperatives, unlike the regulation of companies, explicitly states that "*the board appoints its chairperson … unless the articles of association state that he is appointed by the members' meeting.*"[460] The author is inclined to the majority view of the non-mandatory character of the provision. The provision shall have rather a non-mandatory character in the interest of the principles of private law and the intentions of the legislators stated in the explanatory memorandum.

The term of the office is not limited by law or CCGC, but the chairperson can be removed from the office under the same conditions as he was appointed. Unlike in Germany or Austria, the general rule is that the chairperson may be removed at any time, even without providing any reasons, unless the articles of association or internal rules of procedure provide otherwise.[461]

3.6.7 Legal Status of the Chairperson of the Board

The common administrative responsibilities of the chairperson usually include chairing management board meetings and coordinating the activities of the management board as a whole.[462] The chairperson often convenes board meetings, sets their agenda, and invites all the participants. If the chairperson chairs a specific board meeting, he must sign the minutes from the meeting.[463] The chairpersons of the management and supervisory board should also coordinate the cooperation between the two boards.[464]

In practice, the chairperson can chair the general meeting of shareholders, but to perform this role, he must be elected by the shareholders on an ad hoc basis.[465] As regards procedural legal status, the chairperson acts on behalf of the company before the court.[466] Other powers of the

---

[459] CZECH REPUBLIC. *Opinion of the Supreme Court of 13th January 2016, No. Cpjn 204/2015*. p. 2.
[460] *Business Corporations Act 2012*. Section 708(2).
[461] ŠTENGLOVÁ et. al. (n 413). p. 420.
[462] FILIP, V. and LASÁK, J. In LASÁK et al. (n 416). Commentary on Section 439.
[463] *Business Corporations Act 2012*. Section 440(2).
[464] *CCGC 2018*. Principle 7.1.1.
[465] KOMISE PRO CENNÉ PAPÍRY. *Kodex Správy a Řízení Společností Založený na Principech OECD 2004* [online]. 2004. Available from: https://www.mfcr.cz/cs/archiv/transformacni-instituce/agenda-byvaleho-fnm/sprava-majetku/kodex-spravy-a-rizeni-spolecnosti-corpor/kodex-spravy-a-rizeni-spolecnosti-zaloze-14620 [Accessed 18th November 2022]. Annex No. 3.
[466] CZECHOSLOVAK SOCIALIST REPUBLIC. *Act No. 99/1963 Coll, Civil Procedure Code, as amended.* 1963. Section 21(1).

chairperson may be laid down in the articles of association or the rules of procedure of the management board.

In terms of executive powers, the most important is the chairperson's casting vote. The chairperson shall have a casting vote unless the articles of association provide otherwise.[467] This provision may be derogated either by no one having a casting vote or by giving a casting vote to a person other than the chairperson.[468]

Otherwise, the management board is a collegial body that decides by majority vote.[469] It is evident that creating directors of different categories is impossible. It is not allowed to give some directors more votes than others or give some directors a right of sole decision, as this would be a clear violation of the principle of collegiality.[470]

An issue which is not clear is the question of a veto vote. It can be determined that unanimous consent of all directors is necessary to adopt a decision, which would create a de facto veto vote for all directors. It appears that Štenglová maintains the view that a veto vote of its kind is permissible, as she states that it can be determined that a specific director must vote in favour of a certain decision in order for it to be passed.[471] With this view agrees in principle Lasák, who adds that directors have a veto vote on matters that fall within their assigned range of operation in the context of the horizontal delegation of powers.[472] It seems there is consensus that a vote of a particular director might be required to pass a specific decision. Yet, this should not work to the advantage of the chairperson. It would be contrary to the principle of collegiality to grant the chairperson with ultimate veto vote for all board decisions.

3.6.8 Development of the Role of CEOs in Corporate Governance Codes

The Czech Republic adopted three codes of corporate governance in its history. Firstly, the Corporate Governance Code based on the OECD Principles was adopted in 2001. This was followed by a revised CCGC in 2004, which was likewise based on updated OECD Principles. After that, the Czech Republic did not follow the practice of other countries that regularly updated their corporate governance codes. The new Corporate Governance Code prepared by the non-profit organisation Czech Institute of Directors, was introduced only in 2018. This is also the latest

---

[467] *Business Corporations Act 2012.* Section 44(3).
[468] LASÁK, J. In LASÁK et al. (n 416). Commentary on Section 44.
[469] *Business Corporations Act 2012*. Section 440(1).
[470] ŠTENGLOVÁ, I. In ŠTENGLOVÁ, I. et al. *Zákon o Obchodních Korporacích. Komentář.* 3rd edn. Prague: C. H. Beck, 2020, 1336 p. ISBN 978-8074007996. Commentary on Section 440.
[471] Ibid. Commentary on Section 440.
[472] LASÁK, J. In LASÁK et al. (n 416). Commentary on Section 449.

version of the CCGC, which has not been revised since and is in force to date. At this point, it is worth mentioning that the CCGC would deserve to be brought up to date, especially in light of the major amendments to the Business Corporations Act 2012 outlined above. Amendments to legislation make it difficult to interpret some provisions of CCGC 2018 that no longer correspond to the applicable law.[473]

The CCGC 2001 included Provision 1.7, which recommended that the management board should have "*a strong independent non-executive element*".[474] This element should be represented by "*a senior respected person*", which should ensure that the power of decision is not concentrated in the hands of a single person. The provision also stated that if the company decides to combine the roles of CEO and chairperson, it should publicly justify the rationale of this decision. This provision was clearly inspired by the UK Combined Code,[475] which was a push for the separation of roles since the 1990s under the influence of the Cadbury report.[476] It can be inferred that the preferred way in most large companies under the CCGC 2001 would be to separate the roles.

The CCGC 2001 also addressed the issue of the legal status of the CEO as an employee, which runs through the Czech company law history like a red thread.[477] It criticised the common practice in many companies, where the supervisory board met very infrequently, once or twice a year, and the management board was de facto the supervision body. The management board appointed its own management (including the CEO), who were not members of the management board and worked only in positions of regular employees, thus were not directly accountable to shareholders and other stakeholders.[478] This practice was regarded as highly problematic, as it was not transparent and contradicted the OECD Principles of Corporate Governance 1999.[479]

Along with the revision of the OECD Principles Corporate Governance in 2004, a new version of CCGC 2004 was published. The CCGC 2004 once again drew attention to the problems identified in its previous version, i.e. (i) separation of the roles of CEO and chairperson is considered good practice and combing of the roles should be publicly explained, and

---

[473] CZECH REPUBLIC. *Act No. 33/2020 Coll, Amending Act No. 90/2012 Coll, Business Corporations Act.* 2020 and HURYCHOVÁ (n 181). p. 273.

[474] KOMISE PRO CENNÉ PAPÍRY. *Kodex Správy a Řízení Společností 2001* [online]. 2001. Available from: https://www.mfcr.cz/cs/archiv/transformacni-instituce/agenda-byvaleho-fnm/sprava-majetku/kodex-spravy-a-rizeni-spolecnosti-corpor/kodex-spravy-a-rizeni-spolecnosti-zaloze-14620 [Accessed 24th March 2023].

[475] COMMITTEE ON CORPORATE GOVERNANCE (n 39). Principle A.2.1.

[476] COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE (n 2). Principle 4.9.

[477] See for example PICHRT, J. and TOMŠEJ, J. *Ještě k Souběhům Funkcí. In EICHLEROVÁ, K.* et al. (eds.) *Rekodifikace obchodního práva – pět let poté. Svazek I. Pocta Stanislavě Černé.* Prague: Wolters Kluwer, 2019, 544 p. ISBN 978-80-7598-427-2. pp. 293-302.

[478] KOMISE PRO CENNÉ PAPÍRY (n 474).

[479] OECD. *Principles of Corporate Governance 1999* [online]. 1999. Available from: https://one.oecd.org/document/C/MIN(99)6/En/pdf [Accessed 25th March]. Chapter 5.

(ii) delegation of business management to employees as described in the previous paragraph is highly problematic and caused many judicial litigations.[480] The issue of concurrent functions was further elaborated by explaining that the director's duties cannot be performed on the basis of an employment contract, but the directors could conclude an employment contract with the company for activities that do not fall within the scope of business management of the company.[481]

Moreover, the CCGC 2004 addressed as welcomed the amendment of the Commercial Code[482] which introduced unlimited liability of directors de facto, i.e. CEOs who are not members of the management board and have only entered into an employment contract with the company.[483] If it were not for this amendment, managers would only be liable for up to four and a half multiple of their monthly salary as regular employees under the Labour Code.[484]

3.6.8.1 Czech Corporate Governance Code 2018

A revised private CCGC, reflecting the amendments to the Czech company law as well as the OECD Principles 2015 and EU law, was published in 2018. The CEO is defined as the "*executive officer of the company (výkonný ředitel společnosti)*" and as an officer (*ředitel)* is also labelled "*any other person under the direct management authority of the relevant appointed body of the company to whom that body has delegated a substantial part of it is management authority.*"[485] It seems that the first part of the definition encompasses CEOs as board members and the second part CEOs standing below the board level to whom the board has delegated the business management of the company.

The CCGC 2018 is silent on the position of the chairperson as well as on the separation of the roles of chairperson and CEO. Yet, it includes a provision stating that "*the management board should create and enforce a proper and effective organisational structural framework of the company.*"[486] Moreover, Principle 5.1.3 of the CCGC 2018 provides that "*the management board should ensure that its decision will not be adopted under the influence of one member, a small group of members or unacceptable influence of other persons.*"[487] These provisions are

---

[480] KOMISE PRO CENNÉ PAPÍRY (n 465). Chapter VI.
[481] Ibid. Annex No. 3.
[482] *Czech Commercial Code*. Section 66(6).
[483] KOMISE PRO CENNÉ PAPÍRY (n 465). Annex No. 3.
[484] CZECH REPUBLIC. *Act No. 262/2006 Coll, Labour Code, as amended.* 2023. Section 257(2)
[485] In original wording: "*...jakož i jakákoli další osoba v přímé řídící působnosti příslušného voleného orgánu společnosti, na kterou tento orgán delegoval podstatnou část své řídící působnosti*." In *CCGC 2018*. Definition of terms.
[486] In original wording: "*Představenstvo by mělo zajistit vytvoření a uplatňování řádného a účinného organizačního uspořádaní společnosti.*" In *CCGC 2018*. Principle 5.2.
[487] Ibid. Principle 5.1.3.

unfortunately too vague to determine whether it could also mean the separation of the roles of CEO and chairperson as good practice. Since the CCGC 2018 is inspired by German and Austrian CGCs,[488] which do not deal with the separation of CEO and chairperson roles, the author finds this rather unlikely. A methodology for the CCGC 2018, which should further clarify the provisions of the CCGC 2018, is being prepared but unfortunately has not been released yet.[489]

Nevertheless, the CCGC 2018 includes one provision on the separation of roles within bodies in companies with a unitary board structure. It reads as follows: "*The chairperson of the board of directors should not simultaneously hold the position of the statutory director of the company.*"[490] There is a certain parallel to the separation of CEO and chairperson, as the statutory director could be considered a similar body with similar legal status as the CEO. The statutory director was, in particular, responsible for the day-to-day business management of the company same as the CEO in the traditional CEO model.[491] However, this provision is now obsolete because of the amendment to the Business Corporations Act 2012.[492] This amendment abolished the position of the statutory director and left the board of directors as the only statutory body in the company with a unitary board structure. Perhaps, it could be inferred that as a consequence of the aforementioned amendment to the Business Corporations Act 2012 and the obsolete provision of the CCGC 2018, the CEO should be one of the executive directors and the chairperson one of the non-executive directors. This would be in the interests of the proper and effective organisational framework of the company.

3.6.8.2 Recommendations for the Future Czech Corporate Governance Code

In the author's view, it would be desirable to include an explanation of the fundamental differences between unitary and two-tier board organisational structures in the revised CCGC. This should include a provision either, (i) recommending the separation of roles of CEO and chairperson in unitary board structure companies which corresponds with the separation of management and supervision in two-tier board companies, or (ii) adopting alternative measures. For a more detailed rationale for this provision, see particularly Chapters on the UK and the USA.

---

[488] *CCGC 2018*. Introduction.

[489] Ibid. Foreword.

[490] In original wording: *"Předseda správní rady by neměl být současně statutárním ředitelem společnosti"*. In *CCGC 2018*. Principle 8.1.3.

[491] *Business Corporations Act 2012*. Section 463(4) and DĚDIČ, J. and LASÁK, J. *Monistický Systém Řízení Akciové Společnosti: Výkladové Otazníky (2. Část).* OR 4/2013, pp. 97-118. p. 108.

[492] CZECH REPUBLIC. *Act No. 33/2020 Coll, Amending Act No. 90/2012 Coll, Business Corporations Act.* 2020.

These countries are model examples of the practice of unitary board governance and have a high number of companies with separate chairperson and CEO roles.

It can be welcomed that the CCGC 2018 contains the standard recommendation on the separation of executive and non-executive directors and their independence.[493] Furthermore, the CCGC 2018 recommends the establishment of board committees, which play a significant role in good corporate governance.[494] On the contrary, the legal institute of the lead director is not included in the CCGC 2018. The introduction of the lead director is based on the recommendation of OECD Principles and can be proposed especially in companies which combine the roles of CEO and chairperson.[495] In such cases, the lead director can contribute to reducing the agency costs and moral hazard of powerful CEOs and chairpersons.[496]

Regarding the two-tier board companies, the CCGC 2018 does not include a provision on a problematic practice of chair swapping between the position of the chairperson of a management board and the position of the chairperson of a supervisory board. It should be regarded as an improper corporate governance practice as it weakens the supervisory board's independence and monitoring role. Therefore, the recommendation should be that the retiring chairperson of the management should not immediately become the chairperson of the supervisory board. In case of non-compliance, the decision to divert from the recommendation should be justified.

3.6.9 Case Study on the Separation of the Roles of CEO and Chairperson of the Management Board in Companies Listed on the Prague Stock Exchange

To determine whether the rules in books work in action, the author conducted a case study on the practice of 29 companies listed on the PSE on the prime market, standard market and START market. The survey was conducted on companies listed on the PSE, recognising that some companies operating in the Czech market have chosen foreign exchanges to trade their shares. The entire table is attached as Annex No. 1 of the thesis.

The first general remark is that for a majority of companies, there is a lot of space for improvement in their corporate governance reporting. Many surveyed companies do not publish their corporate governance and remuneration reports on their websites, making it more

---

[493] *CCGC 2018*. Principles 8.6 ff.
[494] Ibid. Principles 9.1. ff.
[495] OECD (n 46). p. 51.
[496] For more information see Chapter 2.3.2.1.

complicated to find relevant information for their investors and the general public. When the companies publish the reports, they often do not comply with all the legal requirements.[497]

To sum up the findings relevant to this thesis:

1. The majority of companies opted for a two-tier board model, which has a longer tradition in the Czech Republic. The sample includes twenty-five two-tier board companies (eighteen Czech two-tier board companies, two Austrian two-tier board companies, two Slovak two-tier board companies, two two-tier board SEs and one Dutch two-tier board company). As far as unitary board companies are concerned, four companies opted for the Czech unitary board model. This finding confirms the assumption that the two-tier board model remains the conventional board organisational model in the Czech Republic.
2. If the company establishes the position of CEO, it is occupied by one of the directors. There is no single surveyed company which would appoint a CEO standing outside the board. Twenty-three out of twenty-nine companies appoint the CEO from within the board, and the remaining six companies do not operate with a CEO position. The author considers this to be a good practice because, as described in more detail in Chapter 3.6.3, the appointment of a senior employee as a CEO and conferring more supervisory powers on the board has its limitations under the Czech legal environment.
3. The companies often combine the positions of CEO and chairperson. As far as the CEO and chairperson duality is concerned, it is not as emphasised in the Czech Republic as in the Anglo-American world. Yet, with the expansion of unitary board companies, more attention should be paid to this issue.

   Firstly, regarding the two-tier board companies, fifteen companies appointed the same person as the CEO and chairperson, and two companies decided to separate the positions of CEO and chairperson. The rest of the companies either do not have a chairperson (three companies) or do not operate with the position of CEO (five companies). As explained in the thesis, the management board is responsible for the business management of the company in a two-tier board model. Therefore, it is common that the positions of CEO and chairperson are combined. This is not unsettling from the

[497] See for example Kofola ČeskoSlovensko a.s. *Remuneration report of Kofola ČeskoSlovensko a.s. 2021* [online]. 2022. Available from: https://investor.kofola.cz/en/investor-2/reports-and-presentations/financial-reports [Accessed 8th May 2023]. Even though Kofola ČeskoSlovensko a.s. published the remuneration report, it does not meet the legal requirements. The remuneration report does not list the individual members of the management board and supervisory board. Also, HAVEL et al. (n 397). p. 186.

corporate governance perspective as a separate body is responsible for the non-executive monitoring function – the supervisory board.

Secondly, regarding the unitary board companies, only a small research sample of four companies is available. Interestingly, each of these companies differs in its approach to the matter.

As an example of good practice can be assessed the company FIXED.zone a.s., which appointed two different individuals to the positions of CEO and chairperson. This corresponds with good corporate governance standards to separate the roles of CEO and chairperson known from countries with a tradition of unitary board companies.

The HARDWARIO a.s. company combines the roles of CEO and chairperson in one individual and no justification for this decision is available in its corporate governance reports. Although it is allowed to combine the two roles as one size approach does not fill all, the reasons for this decision should be provided.

The AtomTrace a.s. company does not operate with the term CEO and only appointed the chairperson of the board. This is most likely based on the fact that the CEO position is not enshrined in Czech law.

In terms of corporate governance, the worst approach takes the COLOSEUM HOLDING a.s. company. The board of this company has only one member, who is also the CEO. This approach can be described as an example of bad practice. The company does not comply with the recommendation of the CCGC 2018 that the board should have at least three members.[498] All executive and non-executive powers are concentrated in one person. There is an apparent lack of checks and balances to constrain the powerful CEO of the company. The management of the company is non-transparent for shareholders and potential investors because the sole director has a conflict of interest of being not only in charge of the business management but also of overseeing the business affairs.

3.6.10 Summary of the Legal Status of CEOs and Chairpersons in the Czech Republic

German law had historically the most significant influence on Czech company law. The only possible organisational board model was the two-tier board model. It establishes two mandatory bodies, the management board as the executive body and the supervisory board as the non-

---

[498] *CCGC 2018*. Principle 8.5.

executive body. The recodification of Czech private law followed the concept known from the SEs. It allowed shareholders to opt for a unitary board model known from the Anglo-American world. The managerial and supervisory roles are combined in one body – the board of directors. As the unitary board model is gaining popularity, more attention must be paid to the consequences of the concentration of powers in a single body.

Similarly, as in Germany or Austria, the position of CEO is not inherent in the Czech legal system. The regulation of the legal status of CEOs is not contained in the Business Corporations Act 2012. It is implemented in Czech regulation mainly through EU law. A dual definition of CEO was adopted from the Second European Shareholder Rights Directive. On the one hand, it includes a CEO as a member of the management board or board of directors and, on the other hand, a CEO standing outside the board, which is defined as "*a natural person, that is directly subordinate to the management body of the company and to whom solely has that body delegated business management of the company at least to the extent of the day-to-day management*".

The author examined the reasons, why having a CEO as a board member should be the preferred approach. These arguments include: (i) limited delegation of business management is allowed under Czech law, (ii) emptying the powers of boards if the most senior managers are not board members, (iii) the comparison of the practice of other countries, (iv) findings of empirical research conducted by the author and (v) the legal uncertainty in the question of the validity of management employment contracts under Czech law.

Under Czech law, more attention is paid to the legal regulation of the chairperson of a board. The chairperson of a management board is often at the same time the CEO of a company. Unlike in Germany or Austria, the two terms are not perceived as synonyms in the Czech Republic. The Business Corporations Act prescribes an obligation to appoint a chairperson to multi-member boards. There is no consensus on whether the provision is of mandatory nature, the author is inclined to the view that it is not. Unlike in Germany or Austria, neither the directors nor the chairperson, are appointed by the supervisory board under the default regulation. The prevailing academic view, with which the author agrees, is that the articles of association can determine a different appointment procedure. The role of the chairperson has mainly an administrative character. However, the chairperson has a casting vote in the board's decisions and under certain circumstances a right of veto.

The Czech Republic has adopted three corporate governance codes in its history. The first was adopted in 2001, the second in 2004 and the last one in force at the time in 2018. The first two CCGCs contained provisions recommending the separation of roles of CEO and chairperson or at least having a strong independent non-executive element on the board. The CCGC 2018 does not

have an explicit provision on the separation of roles. It only recommended that the positions of the chairperson of the board and the statutory director should not be combined. However, the amendment to the Business Corporations Act abolished the position of statutory directors and this provision is now obsolete.

The author suggested potential recommendations for revision of the CCGC. These include (i) a recommendation to highlight the differences between the corporate governance of unitary and two-tier board models, (ii) a recommendation to separate the roles of CEO and chairperson of the board under the unitary board model or adopting alternative measures to avoid concentration of power in the hands of one individual and (iii) a recommendation to avoid chair-swapping between the positions of a chairperson of a management board and supervisory board in two-tier board companies.

Finally, the author conducted a case study on the practice of companies listed on the PSE. The main findings are that (i) the majority of companies operate under the two-tier board model, (ii) one of the board members serves as a CEO if the company operates with the position of CEO, and (iii) the companies do not pay much attention to the separation CEO and chairperson roles. These roles are separated only in three companies from the sample.

Conclusion

This thesis sets out to answer the research question of whether there is a universal legal status of the CEO applicable worldwide, and if not, to identify what connecting and distinguishing features are relevant in different jurisdictions. The background of the proposed research question is the fact that irrespective of their definition, CEOs represent integral components of the board organisational structure of companies around the world. Already from the beginning of the 20th century, the importance of hired professional managers was growing due to the separation of ownership and control of companies. The shareholders were no longer able to manage all company affairs themselves. The extensive delegation of power to managers also brought new unforeseen problems. As explained by the agency theory, the motivation of shareholders differs from that of hired managers. Managers have the tendency to abuse their powers and pursue their own interests instead of serving in the best interests of the managed companies. To battle omnipotent managers a number of legal strategies were introduced. In addition to rules and standards, more attention was given to setting incentives in the form of rewards and trusteeships, emphasising the appointment and removal rights, giving more decision powers to stakeholders, or making use of the possibility to enter or exit the relationships with the company.

The growing number of regulations make the legal status of CEOs a very complex question. The argument is present that there is considerable convergence between the approaches to board governance across the world. It is true for the ultimate goals to be achieved but not for the ways of getting to these objectives. The goal is a well-functioning board organisation with effectively distributed powers. However, different jurisdictions deal differently with regulating relationships within companies, which is understandable given the cultural, social and historical background. Therefore, to answer the first research question: there is no universal legal status of CEOs applicable worldwide.

This thesis examines two main approaches to the legal status of CEOs. The first group are Anglo-American common law countries with a long tradition of a unitary board model. The UK and the USA are countries where only one statutory body is established – the board. Therefore, companies must deal with the concentration of management and supervisory powers within one board. To address the potential conflicts of interest, boards in Anglo-American countries are typically composed of an appropriate combination of executive and non-executive directors. This issue mirrors the legal status of CEOs, as the main question is whether the CEO, as an executive director responsible for the business management of the company, should also be the chairperson of the board, which is considered a non-executive position. In the past, it used to be common to

combine both positions. Yet, this practice has been criticised in recent history for reasons examined in this thesis. As a consequence, even in the USA, which was the main representative of countries combining the roles, the majority of companies separate the positions of CEO and chairperson. Nevertheless, the matter is not clear cut, and even though most jurisdictions recommend separating the roles, it is usually based on a non-mandatory provision with the possibility of non-compliance when rationalised.

The second analysed group are traditionally two-tier board companies in Continental Europe. The tradition of the CEO is not ingrained in Austria and Germany. Although the regulation and commentaries on the legal status of CEOs in continental European countries are less comprehensive than in the Anglo-American world, it is evident that the position of CEO or chairperson has its place within a modern organisational framework of companies. CEOs are perceived as the highest executive directors and members of the management board. The issue of CEO and chairperson duality is not significant in two-tier board companies, as management and monitoring powers are separated by virtue of the two-tier board structure. If generalised, CEOs in a unitary board model correspond to chairpersons of the management board in a two-tier board model, and the roles of chairpersons in a unitary board model align with the chairpersons of the supervisory board in a two-tier board model. Concurrent membership in the management board and the supervisory board is prohibited, which implies the emphasis on the separation of management and supervisory functions in a two-tier board model. The pressure to separate the positions of CEO and chairperson in a unitary board model can be regarded as one of the converging features of the two board models, which aims to create an independent accountable board structure without a large concentration of power at the top of the hierarchy.

At times, the question is asked whether the Anglo-American CEO model should be followed in Continental Europe. This proposal is generally to be rejected as inappropriate for the unique European legal environment. In the European context, the main importance of the CEO lies in his non-executive powers, such as the coordination of the work of the management board. The executive powers distinguish CEOs in Continental Europe from their counterparts in the US or the UK, as European CEOs are only inter pares among other directors. This is based on fundamental principles of company law in Continental Europe – equality, collegiality and joint liability of all directors. Nevertheless, there are ways to differentiate the chairperson from other directors, ranging from a casting vote to a right of sole decision on matters decided by the management board. Yet, the powers of CEOs are still limited, as they are not allowed to give instructions to other directors or exercise control from a position of superiority.

The final part of the thesis is devoted to another country in Continental Europe – the Czech Republic. Despite the fact that the company law in the Czech Republic is under the strong influence of other Continental European countries, the adopted recodification of private law has allowed the companies to opt for a unitary board model. The Czech Republic, as a country with small and underdeveloped capital markets, does not give adequate attention to some corporate governance issues. This concerns for example the definition of CEO implemented from the Second EU Shareholders Rights Directive, which seems inappropriate and unenforceable for the practice of companies. This problem stems from the fact that, unlike in Germany or Austria, the term CEO is not considered synonymous with the term chairperson of a management board. Therefore, a dual conception of CEO exists in the Czech Republic, as the CEO can be either one of the board members (often the chairperson) or a senior employee standing below the board level. This raises many interpretative questions in practice. In the thesis, it is argued that it is preferable to appoint one of the board members as the CEO.

Another issue which should be addressed in more detail in the CCGC is the role of CEOs within the unitary board companies, where more attention should be paid to issues known from countries with the tradition of unitary board models. Revised CCGC should reflect the amendment of the Business Corporations Act 2021. It would be desirable to recommend separating the roles of CEO and chairperson in unitary board companies. If companies decide to combine the two roles, they should justify their decision and put checks and balances in place to offset the CEO and chairperson duality. It is correct that the current CCGC 2018 recommends the establishment of board committees and the division of directors into executive and non-executive, but it would be appropriate to also work with the concept of a lead director. Moreover, the introduced problem of chair-swapping in two-tier board companies should be addressed in the revised CCGC to avoid conflicts of interest.

To conclude, the increasing globalisation of capital markets and the liberalisation of international trade have created an environment favourable to the convergence of approaches to corporate governance. However, the fundamental differences between the legal systems based on historical, social or cultural context will not allow a uniform approach to the legal status of CEOs in the near future. Nevertheless, this does not preclude each jurisdiction from seeking the features most fitting to its system and adopting those elements to its legal environment. This thesis aims to depict these good and bad corporate governance practices worldwide and to propose their adoption in other legal systems if effective.

List of Abbreviations

board	board of directors or management board
CCGC 2018	Czech Corporate Governance Code 2018
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CGC	code of corporate governance
company	for the purposes of the thesis joint stock company
EU	European Union
GCGC 2022	German Corporate Governance Code 2022
IFC	International Finance Corporation (WB Group)
LSE	London Stock Exchange
OECD	Organisation for Economic and Co-operation Development
OECD Principles	G20/OECD Principles of Corporate Governance 2015
PSE	Prague Stock Exchange
SE	societas Europaea, European Company
SEC	Securities and Exchange Commission
SOX	Sarbanes-Oxley Act
UK	United Kingdom of Great Britain and Northern Ireland
UK CGC 2018	UK Corporate Governance Code 2018
USA or US	United States of America

Reference list

1 Monographs

1. AFSHARIPOUR, A. and GELTER, M. (eds.) *Comparative Corporate Governance.* Cheltenham: Edward Elgar Publishing, 2021, 544 p. ISBN 978-1788975322.
2. ARTMANN, E. and KAROLLUS, M. (eds.) *Kommentar zum Aktiengesetz*. 6th edn. Wien: MANZ Verlag, 2018, 1116 p. ISBN 978-3214083328.
3. BAINBRIDGE, S. M. *Corporate Governance after the Financial Crisis*. Oxford: Oxford University Press, 2012, 270 p. ISBN 978-0199772421.
4. BÄLZ, U (ed.) *Münchener Handbuch des Gesellschaftsrechts*. 5th edn. Munich: C.H.Beck, 2020, 19950 p. ISBN 978-3406748004.
5. BAUMS, T. *Bericht der Regierungskommission Corporate Governance: Unternehmensführung – Unternehmenskontrolle – Modernisierung des Aktienrechts.* Köln: Verlag Dr. Otto Schmidt, 2001, 366 p. ISBN 978-3504385484.
6. BERLE, A. A. and MEANS, G. C. *The Modern Corporation and Private Property.* 10th print., New Jersey: Transaction Publishers, 2008, 380 p. ISBN 978-0887388873.
7. BOWEN, H. V. *The Business of Empire: The East India Company and Imperial Britain, 1756-1833.* Cambridge: Cambridge University Press, 2006, 304 p. ISBN 978-0521089821.
8. CADBURY, A. *Corporate Governance and Chairmanship: A Personal View.* Oxford: Oxford University Press, 2002, 268 p. ISBN 978-0199252008.
9. CHEFFINS, B. *The Public Company Transformed.* Oxford: Oxford University Press, 2018, 402 p. ISBN 978-0190640323.
10. CHEW, D. and GILLAN, S. (eds.) *U.S. Corporate Governance*. New York Chichester, West Sussex: Columbia University Press, 2009, 320 p. ISBN 978-0231148573.
11. ČECH, P. and ŠUK, P. *Právo Obchodních Společností: V Praxi a pro Praxi (Nejen Soudní)*. Prague: Bova Polygon, 2016, 373 p. ISBN 978-8072731770.
12. ČERNÁ, S., ŠTENGLOVÁ, I. and PELIKÁNOVÁ, I. (eds.) *Právo Obchodních Korporací*, *2nd* edn. Prague: Wolters Kluwer, 2021, 656 p. ISBN 978-8075989918.
13. DAVIES, P., HOPT, K. J., NOWAK, R. and SOLINGE, G. (eds.) *Corporate Boards in Law and Practise: A Comparative Analysis in Europe*. Oxford: Oxford University Press, 2013, 818 p. ISBN 978-0198705154.
14. DAVIES, P., WORTHINGTON, S. and HARE, CH. *Gower: Principles of Modern Company Law*, 11th edn. London: Sweet & Maxwell, 2021, 1294 p. ISBN 978-0414088115.
15. DAVIES, P. *Introduction to Company Law*, 3rd edn. Oxford: Oxford University Press, 2020, 393 p. ISBN 978-0198854920.
16. DIGNAM, A. and LOWRY, J. *Company Law*. 8th edn. Oxford: Oxford University Press, 2014, 522 p. ISBN 978-0198704133.
17. DORALT, P., NOWOTNY, CH. and KALSS, S. (eds.) *Kommentar zum Aktiengesetz.* 3rd edn. Vienna: Linde Verlag, 2021, 3782 p. ISBN 978-3707334647.
18. DUNNE, P. *Running Board Meetings: How to Get the Most from Them.* 3rd edn. London: Kogan Page Publishers, 2007, 164 p. ISBN 978-0749449742.
19. ECKERT, G. and SCHOPPER, A. (eds.) *AktG-ON Kommentar zum Aktiengesetz.* Vienna: MANZ Verlag, 2021, 1598 p. ISBN 978-3214021208.
20. EICHLEROVÁ, K., ČECH, P., JOSKOVÁ, L., PATĚK, D., PELIKÁN, R. and TOMÁŠEK, P. (eds.) *Rekodifikace Obchodního Práva – Pět Let Poté. Svazek I. Pocta Stanislavě Černé*. Prague: Wolters Kluwer ČR, 2019, 544 p. ISBN 978-8075984272.

21. FLECKNER, A. and HOPT, K. (eds.) *Comparative Corporate Governance: A Functional and International Analysis.* Cambridge: Cambridge University Press, 2013, 1141 p. ISBN 978-1139177375.
22. FREEMAN, R. E. *Strategic Management: A Stakeholder Approach.* Boston: Pitman, 1984, 276 p. ISBN 978-0-27-301913-8.
23. GOETTE, W., HABERSACK, M. and KALSS, S. (eds.) *Münchener Kommentar zum Aktiengesetz.* 5th edn. Munich: C.H.Beck, 2019, 1728 p. ISBN 978-3406772108.
24. GORDON, J. and ROE, M. J. (eds.) *Convergence and Persistence in Corporate Governance.* Cambridge: Cambridge University Press, 2004, 382 p. ISBN 978-0511665905.
25. GORDON, J. and RINGE, W. G. (eds.) *The Oxford Handbook of Corporate Law and Governance.* Oxford: Oxford University Press, 2018, 1248 p. ISBN 978-0198743682.
26. HABERSACK, M. *Gutachten E zum 69. Deutschen Juristentag: Staatliche und Halbstaatliche Eingriffe in die Unternehmensführung.* Munich: C.H.Beck, 2012, 106 p. ISBN 978-3-406-63074-3.
27. HAVEL, B., LASÁK, J., PIHERA, V., ŠTENGLOVÁ, I., GŘIVNA, T. and BOHUSLAV, L. *Corporate Governance na Pomezí Zákona a Soft Law.* Prague: Wolters Kluwer, 2022, 276 p. ISBN 978-8076765573.
28. HÖLTERS, W. and WEBER, M. (eds.) *Aktiengesetz: AktG*. 4th edn. Munich: Vahlen and C.H.Beck, 2022, 2959 p. ISBN 978-3800663576.
29. HOPT, K. J., WYMEERSCH, E., KANDA, H. and BAUM, H. (eds.) *Corporate Governance in Context: Corporations, States, and Markets in Europe, Japan, and the US.* Oxford: Oxford University Press, 2005, 922 p. ISBN 978-0199290703.
30. HURYCHOVÁ, K. and BORSÍK, D. (eds.) *Corporate Governance.* 1st edn. Prague: Wolters Kluwer, 2015. 280 p. ISBN 978-8074786549.
31. HURYCHOVÁ, K., TRUBAČ, O. and VRAJÍK, M. *Odměňování Exekutivy Akciových Společností.* Prague: Wolters Kluwer ČR, 2017, 360 p. ISBN 978-8075528407.
32. JOHNSTON, A. *EC Regulation of Corporate Governance.* Cambridge: Cambridge University Press, 2009. 400 p. ISBN 978-0511770753.
33. KALLS, S., FROTZ, S. and SCHÖRGHOFER, P. (eds.) *Handbuch für den Vorstand.* Vienna: Facultas, 2017, 1514 p. ISBN 978-3708913653.
34. KERSHAW, D. *Company Law in Context: Text and Materials.* 2nd edn. Oxford: Oxford University Press, 2012, 944 p. ISBN 978-0-19-960932-1.
35. KOCH, J. *Aktiengesetz: AktG.* 23rd edn. Munich: C.H.Beck, 2023, 2743 p. ISBN 978-3406797538.
36. KRAAKMAN, R., ARMOUR, J., DAVIES, P., ENRIQUES, L., HANSMANN, H., HERTIG, G., HOPT, K., KANDA, H. and PARGENDLER, M. *The Anatomy of Corporate Law: A Comparative and Functional Approach.* 3rd edn. Oxford: Oxford University Press, 2017, 281 p. ISBN 978-0-19-872431-5.
37. KREMER, T., RINGLEB, H. M., LUTTER, M. and WERDER, A. *Kommentar zu Deutschen Corporate Governance Kodex.* 8th edn. Munich: C.H.Beck, 2021, 489 p. ISBN 978-3406738364.
38. LASÁK, J., DĚDIČ, J., POKORNÁ, J. and ČÁP, Z. (eds.) *Zákon o Obchodních Korporacích. Komentář.* 2nd edn. Prague: Wolters Kluwer, 2021, 2628 p. ISBN 978-8075988812.
39. LORSCH, J. W. and MACIVER, E. *Pawns or Potentates: The Reality of America's Corporate Boards.* Brighton, Massachusetts: Harvard Business Review Press, 1989, 224 p. ISBN 978-0875842165.
40. MONKS, R. and MINOW, N. *Corporate Governance,* 5th edn. New Jersey: John Wiley & Sons, 2011, 512 p. ISBN 978-0470972595.

41. SMITH, A. *The Wealth of Nations*. London: Ward Lock, 1838, 765 p. ISBN Not Assigned.
42. SPINDLER, G. and STILZ, E. (eds.) *Kommentar zum Aktienrecht.* 5th edn. Munich: C.H.Beck, 2022, 6690 p. ISBN 978-3406784408.
43. STEINBERG, M. I. *The Federalization of Corporate Governance*. Oxford: Oxford University Press, 2018, 328 p. ISBN 978-0199934546.
44. ŠTENGLOVÁ, I., DĚDIČ, J., LASÁK, J., PIHERA, V., LÁLA, D. and JOSKOVÁ, L. *Akciové Společnosti*. Prague: C. H. Beck, 2023, 808 p. ISBN 978-8074009143.
45. ŠTENGLOVÁ, I., HAVEL, B., CILEČEK, F., KUHN, P. and ŠUK, P. *Zákon o Obchodních Korporacích. Komentář.* 3rd edn. Prague: C. H. Beck, 2020, 1336 p. ISBN 978-8074007996.
46. WIETHÖLTER, R. *Interessen und Organisation der Aktiengesellschaft im Amerikanischen und Deutschen Recht*. Karlsruhe: C. F. Müller, 1961, 362 p. ISBN Not Assigned.
47. WRIGHT, M., SIEGEL, D. S., KEASEY, K. and FILATOTCHEV, I. (eds.) *The Oxford Handbook of Corporate Governance*. Oxford: Oxford University Press, 2013, 830 p. ISBN 978-0199642007.

2 Articles

1. BEJČEK, J. *O Střetu Zájmů Podnikatelů a Jejich Manažerů*. Právní Rozhledy, 13/2004, 2004, pp. 492-405.
2. BEZZENBERGER, T. *Der Vorstandsvorsitzende der Aktiengesellschaft.* Zeitschrift für Unternehmens- und Gesellschaftsrecht, 25(4), 1996, pp. 661-673.
3. BODLÁK, F. *Správní Rada Akciové Společnosti v České Republice a Itálii.* Obchodněprávní revue, 3/2015, 2015, pp. 65-89.
4. BOIVIE, S., WITHERS, M. C., GRAFFIN, S. G. and CORLEY, K. G. *Corporate Directors' Implicit Theories of the Roles and Duties of Boards*. Strategic Management Journal, 42(9), 2021, pp. 1662-1695.
5. BOYD, B. K. *CEO Duality and Firm Performance: A Contingency Model.* Strategic Management Journal, 16(4), 1995, pp. 301-312.
6. BRANCATO, C., TONELLO, M. and HEXTER, E. *The Role of US Corporate Boards in Enterprise Risk Management.* The Conference Board Research Report No. R-1390-06-RR. 2009, 41 p.
7. BRICKLEY, J. A., COLES, J. L. and JARRELL, G. *Leadership Structure: Separating the CEO and Chairman of the Board.* Journal of Corporate Finance, 3(3), 1997, pp. 189-220.
8. CHEFFINS, B. R. and REDDY, B. V. *Thirty Years and Done – Time to Abolish the UK Corporate Governance Code.* Journal of Corporate Law Studies, 2022, pp. 1-40.
9. CHEFFINS, B. R. *Corporate Governance since the Managerial Capitalism Era*. Business History Review, 89(4), 2015, pp. 717-744.
10. CHEFFINS, B. R. *The Rise of Corporate Governance in the UK: When and Why*. Current Legal Problems, 68(1), 2015, pp. 387-429.
11. DAHYA, J., GARCIA, L. G. and BOMMEL, J. *One Man Two Hats: What's all the commotion!* Financial Review, 44(2), 2009, pp. 179-212.
12. DAHYA, J., LONIE, A. A. and POWER, D. M. *The Case for Separating the Roles of Chairman and CEO: An Analysis of Stock Market and Accounting Data.* Corporate Governance: An International Review, 4(2), 1996, pp. 71-77.

13. DAILY, C. M. and DALTON, D. R. *CEO and Board Chair Roles Held Jointly or Separately: Much Ado about Nothing?* Academy of Management Perspectives, 11(3), 1997, pp. 11-20.
14. DAVIES, P. and HOPT, K. J. *Corporate Boards in Europe – Accountability and Convergence.* The American Journal of Comparative Law, 61, 2013, pp. 301-375.
15. DĚDIČ, J. and LASÁK, J. *Monistický Systém Řízení Akciové Společnosti: Výkladové Otazníky (1. Část).* OR 3/2013, 2013, pp. 65-81.
16. DĚDIČ, J. and LASÁK, J. *Monistický Systém Řízení Akciové Společnosti: Výkladové Otazníky (2. Část).* OR 4/2013, 2013, pp. 97-118.
17. DEUTSCHER ANWALT VEREIN. *Stellungnahme zum Grünbuch der EU-Kommission vom April 5th, 2011: Europäischer Corporate Governance-Rahmen KOM*. Die Neue Zeitschrift für Gesellschaftsrecht, 24(6), 2011, pp. 936-941.
18. DODD, E. M. *For Whom are Corporate Managers Trustees?* Harvard Law Review, 45(7), 1932, pp. 1145-1163.
19. EICHLEROVÁ, K. *Jednatelé – Kolektivní, nebo Individuální Orgán?* Rekodifikace & Praxe, 3(7), 2015, pp. 32-37.
20. FALEYE, O. *Does One Hat Fit All? The Case of Corporate Leadership Structure.* Journal of Management & Governance, 11(3), 2007, pp. 239-259.
21. FAMA, E. F. and JENSEN, M. C. *Separation of Ownership and Control.* The Journal of Law and Economics, 26(2), 1983, pp. 301-325.
22. FELTL, CH. *Der Vorstandsvorsitzende der Aktiengesellschaft.* Wirtschaftliche Blätter, 25(5), 2011, pp. 229-239.
23. FINKELSTEIN, S. and D'AVENI, R. A. *CEO Duality as a Double-Edged Sword: How Boards of Directors Balance Entrenchment Avoidance and Unity of Command.* Academy of Management Journal, 37(5), 1994, pp.1079-1108.
24. FLEISCHER, H. *Corporate Governance in Europa als Mehrebenensystem.* Zeitschrift für Unternehmens- und Gesellschaftsrecht, 41(2-3), 2012, pp. 160-196.
25. HANSMANN, H. and KRAAKMAN, R. *The End of History of Corporate Law.* Georgetown Law Journal, 89(2), 2001, pp. 439-468.
26. HAVEL, B., LASÁK, J., PIHERA, V. and ŠTENGLOVÁ, I. *Czech Corporate Governance in the Light of Its History and the Influence of the G20/OECD Corporate Governance Principles*. European Business Organization Law Review, 24, 2022, pp. 167-200.
27. HOFFMANN-BECKING, M. *Vorstandvorsitzender oder CEO?* Neue Zeitschrift für Gesellschaftsrecht, 16(1), 2003, pp. 745-750.
28. HOFFMANN-BECKING, M. *Zur Rechtlichen Organisation der Zusammenarbeit im Vorstand der AG.* Zeitschrift für Unternehmens- und Gesellschaftsrecht, 27(3), 1998, pp. 497-519.
29. HOPT, K. J. *The Dialogue Between the Chairman of the Board and Investors: The Practice in the UK, the Netherlands and Germany and the Future of the German Corporate Governance Code Under the New Chairman.* Revue Trimestrielle de Droit Financier, 3, 2017, pp. 97-104.
30. HURYCHOVÁ, K. *Princip Say on Pay v Připravované Unijní Legislativě.* OR 3/2017, pp. 65-83.
31. JENSEN, M. C. and MECKLING, W. H. *Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure.* Journal of Financial Economics, 3(4), 1976, pp. 305-360.
32. JOHNSON, L. P. and MILLON, D. *Recalling Why Corporate Officers Are Fiduciaries*. William and Mary Law Review, 46(5), 2005, pp. 1597-1654.

33. JUNGMANN, C. *The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board System.* European Company and Financial Law Review, 3(4), 2006, pp. 426-474.
34. KIARIE, S. *Non-Executive Directors in UK Listed Companies: Are They Effective?* International Company and Commercial Law Review, 18(1), 2007, pp. 17-23.
35. KRAUSE, R., SEMADENI, M. and CANNELLA, A. A. *CEO duality: A review and research agenda.* Journal of Management, 40(1), 2014, pp. 256-286.
36. LEVY, L. *Separate Chairmen: Their Roles and Compensation.* The Corporate Board, 14(79), 1993, pp. 10-15.
37. LIPTON, M. and LORSCH, J. W. *A Modest Proposal for Improved Corporate Governance.* The Business Lawyer, 48(1), 1992, pp. 59-77.
38. LORSCH, J. W. *America's Changing Corporate Boardrooms: The Last Twenty-Five Years.* Harvard Business Law Review, 3(1), 2013, pp. 119-134.
39. MARTIN, CH. *Das U.S. Corporate Governance System – Verlust oder Vorbildfunktion?* Neue Zeitschrift für Gesellschaftsrecht, 20(3), 2003, pp. 948-951.
40. OWEN, G. and KIRCHMAIER, T. *The Changing Role of the Chairman: Impact of Corporate Governance Reform in the United Kingdom 1995-2005.* European Business Organization Law Review, 9(2), 2008, pp. 187-213.
41. REDDY, B. V. *Thinking Outside the Box – Eliminating the Perniciousness of Box-Ticking in the New Corporate Governance Code.* Modern Law Review, 82(4), 2019, pp. 692-726.
42. ROBERTS, J. and STILES, P. *The Relationship Between Chairmen and Chief Executives: Competitive or Complementary Roles?* Long Range Planning, 32(1), 1999, pp. 36-48.
43. SCHMID, M. M. and ZIMMERMANN, H. *Should Chairman and CEO be Separated? Leadership Structure and Firm Performance in Switzerland.* Schmalenbach Business Review, 60 (2), 2008, pp. 182-204.
44. SEGRESTIN, B., JOHNSTON, A. and HATCHUEL, A. *The Separation of Directors and Managers: A Historical Examination of the Status of Managers.* Journal of Management History, 25(2), 2019, pp. 141-164.
45. TUGGLE, CH., SIRMON, D. G., REUTZEL, CH. R. and BIERMAN, L. *Commanding Board of Director Attention: Investigating How Organizational Performance and CEO Duality Affect Board Members' Attention to Monitoring.* Strategic Management Journal, 31(9), 2010, pp. 946-968.
46. VON HEIN, J. *Die Rolle des US-Amerikanischen CEO gegenüber dem Board of Directors im Lichte Neuerer Entwicklungen.* Recht der Internationalen Wirtschaft, 48(7), 2002, pp. 502-509.
47. VON HEIN, J. *Vom Vorstandsvorsitzenden zum CEO?* Zeitschrift für das Gesamte Handelsrecht und Wirtschaftsrecht, 166, 2002, pp. 464-502.
48. WICKE, H. *Der CEO im Spannungsverhältnis zum Kollegialprinzip-Gestaltungsüberlegungen zur Leitungsstruktur der AG*. Neue Juristische Wochenschrift, 60(52), 2007, pp. 3755-3758.
49. ZÁDĚRA, F. *Některá Specifika Právní Úpravy Statutárního Orgánu v Nadnárodních Společnostech.* Právní Rozhledy, 11/2012, pp. 390-411.

3 Internet Sources

1. BERKSHIRE HATHAWAY. *Shareholder Letter 2014* [online]. 2014. Available from: https://www.berkshirehathaway.com/letters/letters.html [Accessed 10th April 2023].
2. CAMBRIDGE DICTIONARY. *Meaning of Chief* [online]. 2023. Available from: https://dictionary.cambridge.org/dictionary/english/chief [Accessed 10th April 2023].

3. COATES, J. *Protecting Shareholders and Enhancing Public Confidence through Corporate Governance* [online]. 2009. Available from: https://corpgov.law.harvard.edu/2009/07/30/protecting-shareholders-and-enhancing-public-confidence-through-corporate-governance/ [Accessed 10th April 2023].
4. COMITATO CORPORATE GOVERNANCE. *Italian Corporate Governance Code* [online]. 2020. Available from: https://www.borsaitaliana.it/comitato-corporate-governance/codice/2020eng.en.pdf [Accessed 11th April 2023].
5. COMMITTEE ON CORPORATE GOVERNANCE. *Final Report January 1998 (Hampel Report)* [online]. 1998. Available from: https://ecgi.global/code/hampel-report-final [Accessed 18th November 2022].
6. COMMITTEE ON CORPORATE GOVERNANCE. *The Combined Code – Principles of Good Corporate Governance and Code of Best Practice* [online]. 1998. Available from: https://www.frc.org.uk/getattachment/53db5ec9-810b-4e22-9ca2-99b116c3bc49/Combined-Code-1998.pdf [Accessed 8th February 2023].
7. COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE. *Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Report)* [online]. 1992. Available from: https://www.frc.org.uk/getattachment/9c19ea6f-bcc7-434c-b481-f2e29c1c271a/The-Financial-Aspects-of-Corporate-Governance-(the-Cadbury-Code).pdf [Accessed 12th December 2022].
8. CZECH INSTITUTE OF DIRECTORS. *Kodex Správy a Řízení Společností ČR* [online]. 2018. Available from: https://www.cginstitut.cz/wp-content/uploads/2018/12/Kodex-2018.pdf [Accessed 18th November 2022].
9. CZECH STATISTICAL OFFICE. *Tabulka počtu jednotek v registru ekonomických subjektů podle převažující činnosti a vybraných právních forem* [online]. 2022. Available from: https://www.czso.cz/csu/czso/organizacni-statistika-4-ctvrtleti-2022. [Accessed 6th March 2023].
10. ČEZ, a.s. *Articles of Association effective from 30th June 2022* [online]. 2022. Available from: https://www.cez.cz/cs/pro-investory/korporatni-zalezitosti/stanovy-cez-a.-s.-ucinne-od-30.-cervna-2022-160388 [Accessed 28th April 2023].
11. DEUTSCHE BANK. Annual Report 2022 [online]. 2023. Available from: https://investor-relations.db.com/reports-and-events/annual reports/index?language_id=3 [Accessed 25th March 2023].
12. DEUTCHE BANK. Geschäftsbericht 2022 [online]. 2023. Available from: https://investor-relations.db.com/reports-and-events/annual-reports/index?language_id=3 [Accessed 25th March 2023].
13. DODD, CH. *Committee Report on the Restoring American Financial Stability Act of 2010* [online]. 2010. Available from: https://www.congress.gov/congressional-report/111th-congress/senate-report/176/1 [Accessed 7th April 2023].
14. EUROPEAN COMMISSION. *Green Paper: The EU Corporate Governance Framework* [online]. 2011. Available from: https://op.europa.eu/en/publication-detail/-/publication/3eed7997-d40b-4984-8080-31d7c4e91fb2/language-en [Accessed 15th March 2023].
15. FINANCIAL REPORTING COUNCIL. *Guidance on Board Effectiveness* [online]. 2018. Available from: https://www.frc.org.uk/getattachment/61232f60-a338-471b-ba5a-bfed25219147/2018-guidance-on-board-effectiveness-final.pdf [Accessed 12th December 2022].
16. FINANCIAL REPORTING COUNCIL. *Review of Corporate Governance Reporting* [online]. 2022. Available from: https://www.frc.org.uk/getattachment/6a896f6b-8f4a-4a19-8662-f87a269ffce3/Review-of-Corporate-Governance-Reporting_-2022.pdf [Accessed 27th April 2023].

17. FINANCIAL REPORTING COUNCIL. *The Combined Code on Corporate Governance* [online]. 2003. Available from: https://www.frc.org.uk/getattachment/edce667b-16ea-41f4-a6c7-9c30db75bb0c/Combined-Code-2003.pdf [Accessed 12th December 2022].
18. FINANCIAL REPORTING COUNCIL. *The UK Corporate Governance Code* [online]. 2018. Available from: https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf [Accessed 18th November 2022].
19. FINK, L. *Letter to CEOs: The Power of Capitalism* [online]. 2022. Available from: https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter [Accessed 18th January 2023].
20. GUYTON, P. *Wirecard-Betrug vor Gericht: Duell der Pleitenbanker* [online]. TAZ Verlags- und Vertriebs GmbH. 2022. Available from: https://taz.de/Wirecard-Betrug-vor-Gericht/!5900770/ [Accessed 17th February 2023].
21. GREENBURY, R. et al. *Director's Remuneration Report (Greenbury Report)* [online]. 1995. Available from: https://www.ecgi.global/code/greenbury-report-study-group-directors-remuneration [Accessed 23rd March 2023].
22. HIGGS, D. et al. *Review of the Role and Effectiveness of Non-Executive Directors (Higgs Report)* [online]. 2003. Available from: https://webarchive.nationalarchives.gov.uk/ukgwa/20121212135622/http://www.bis.gov.uk/files/file23012.pdf [Accessed 12th December 2022].
23. IFC and LAO SECURITIES COMMISSION. *Guidelines on Corporate Governance for Listed Companies* [online]. 2021. Available from: https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/resources/guidelines_reviews+and+case+studies/guidelines+on+corporate+governance+for+listed+companies [Accessed 17th February 2023].
24. INTERNATIONAL SHAREHOLDER SERVICES. *Proxy Voting Guidelines: Benchmark Policy Recommendations* [online]. 2022. Available from: https://www.issgovernance.com/policy-gateway/voting-policies/ [Accessed 30th April].
25. KOMISE PRO CENNÉ PAPÍRY. *Kodex Správy a Řízení Společností 2001* [online]. 2001. Available from: https://www.mfcr.cz/cs/archiv/transformacni-instituce/agenda-byvaleho-fnm/sprava-majetku/kodex-spravy-a-rizeni-spolecnosti-corpor/kodex-spravy-a-rizeni-spolecnosti-zaloze-14620 [Accessed 24th March 2023].
26. KOMISE PRO CENNÉ PAPÍRY. *Kodex Správy a Řízení Společností Založený na Principech OECD 2004* [online]. 2004. Available from: https://www.mfcr.cz/cs/archiv/transformacni-instituce/agenda-byvaleho-fnm/sprava-majetku/kodex-spravy-a-rizeni-spolecnosti-corpor/kodex-spravy-a-rizeni-spolecnosti-zaloze-14620 [Accessed 18th November 2022].
27. MINISTRY OF JUSTICE OF THE CZECH REPUBLIC. *Final Report of the Regulatory Impact Assessment* [online]. 2022. Available from: https://justice.cz/web/msp/ke-stazeni [Accessed 29th April 2023].
28. MINISTRY OF JUSTICE OF THE CZECH REPUBLIC. *Úplný výpis z obchodního rejstříku společnosti ČEZ, a.s.* [online]. 2023. Available from: https://or.justice.cz/ias/ui/rejstrik-firma.vysledky?subjektId=59933&typ=UPLNY [Accessed 15th May 2023].
29. MINISTRY OF JUSTICE OF THE CZECH REPUBLIC. *Úplný výpis z obchodního rejstříku společnosti Pilulka Lékárny a.s.* [online]. 2023. Available from: https://or.justice.cz/ias/ui/rejstrik-firma.vysledky?subjektId=882431&typ=UPLNY [Accessed 15th May 2023].
30. MONITORING COMMITTEE CORPORATE GOVERNANCE CODE. *The Dutch Corporate Governance Code* [online]. 2016. Available

from: https://www.mccg.nl/publicaties/codes/2016/12/8/corporate-governance-code-2016-en [Accessed 18th November 2022].

31. NYSE. *Corporate Governance Guide* [online]. 2014. Available from: https://www.nyse.com/publicdocs/nyse/listing/NYSE_Corporate_Governance_Guide.pdf [Accessed 25th November 2022].
32. OECD BUSINESS SECTOR ADVISORY GROUP ON CORPORATE GOVERNANCE. *Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets* [online]. 1998. Available from: https://www.oecd-ilibrary.org/industry-and-services/corporate-governance-improving-competitiveness-and-access-to-capital-in-global-markets_9789264162709-en [Accessed 29th March 2023].
33. OECD. *Corporate Governance Factbook 2021* [online]. 2021. Available from: https://www.oecd.org/corporate/corporate-governance-factbook.htm [Accessed 20th March 2023].
34. OECD. *Corporate Governance and the Financial Crisis: Key Findings and Main Messages* [online]. 2009. Available from: https://www.oecd.org/corporate/ca/corporategovernanceprinciples/43056196.pdf [Accessed 12th December 2022].
35. OECD. *G20/OECD Principles of Corporate Governance* [online]. 2015. Available from: http://dx.doi.org/10.1787/9789264236882-en [Accessed 18th November 2022].
36. OECD. Methodology for Assessing the Implementation of the G20/OECD Principles of Corporate Governance [online]. 2017. Available from: https://doi.org/10.1787/9789264269965-en [Accessed 18th March 2023].
37. OECD. *Principles of Corporate Governance 1999* [online]. 1999. Available from: https://one.oecd.org/document/C/MIN(99)6/En/pdf [Accessed 25th March].
38. ÖSTERREICHISCHER ARBEITSKREIS FÜR CORPORATE GOVERNANCE. *Österreichischer Corporate Governance Kodex* [online]. 2021. Available from: https://www.corporate-governance.at/uploads/u/corpgov/files/kodex/corporate-governance-kodex-012021.pdf [Accessed 18th November 2022].
39. PRAGUE STOCK EXCHANGE. *Official Price List* [online]. 2023. Available from: https://www.pse.cz/en/market-data/statistics/official-price-list. [Accessed 6th March 2023].
40. REGIERUNGSKOMMISSION DEUTSCHER CORPORATE GOVERNANCE KODEX. *Deutscher Corporate Governance Kodex 2017* [online]. 2017. Available from: https://www.dcgk.de/files/dcgk/usercontent/de/download/kodex/170424_Kodex.pdf [Accessed 14th March 2023].
41. REGIERUNGSKOMMISSION DEUTSCHER CORPORATE GOVERNANCE KODEX. *Deutscher Corporate Governance Kodex* [online]. 2022. Available from: https://www.dcgk.de/de/kodex/aktuelle-fassung/praeambel.html [Accessed 18th November 2022].
42. SPENCER STUART. *2022 U.S. Spencer Stuart Board Index* [online]. 2022. Available from: https://www.spencerstuart.com/-/media/2022/october/ssbi2022/2022_us_spencerstuart_board_index_final.pdf [Accessed 12th December 2022].
43. THOMAS, D. and AGNEW, H. *UK Companies Prepare for Battle With Investors Over Executive Pay* [online]. 2022. Financial Times. Available from: https://www.ft.com/content/a9e06f16-53a6-4d90-9e88-bc8119e0308d. [Accessed 13th February 2023].
44. UK SECRETARY OF STATE. *Model Articles for Public Companies* [online]. 2013. Available from: https://www.gov.uk/guidance/model-articles-of-association-for-limited-companies [Accessed 11th April 2023].

45. U.S. SECURITIES AND EXCHANGE COMMISSION. *SEC Charges Samuel Bankman-Fried With Defrauding Investors in Crypto Asset Trading Platform FTX* [online]. 2022. Available from: https://www.sec.gov/news/press-release/2022-219 [Accessed 17th February 2023].

4 Legislation and Codes of Conduct

1. AUSTRIA. *Stock Corporations Act, as amended.* 1965.
2. COUNCIL OF THE EU. *Regulation No 2157/2001 on the Statute for a European Company, as amended.* 2001.
3. CZECH AND SLOVAK FEDERAL REPUBLIC. *Act No. 513/1991 Coll, Commercial Code, as amended.* 2013.
4. CZECHOSLOVAK SOCIALIST REPUBLIC. *Act No. 99/1963 Coll, Civil Procedure Code, as amended.* 1963.
5. CZECH REPUBLIC. *Act No. 256/2004 Coll, Capital Market Undertakings Act, as amended.* 2022.
6. CZECH REPUBLIC. *Act No. 33/2020 Coll, Amending Act No. 90/2012 Coll, Business Corporations Act.* 2020.
7. CZECH REPUBLIC. *Act. No. 627/2004 Coll, European Company Act*. 2004.
8. CZECH REPUBLIC. *Act No. 89/2012 Coll, Civil Code, as amended.* 2012.
9. CZECH REPUBLIC. *Act No. 90/2012 Coll, Business Corporations Act, as amended.* 2012.
10. CZECH REPUBLIC. *Act No. 262/2006 Coll, Labour Code, as amended.* 2023.
11. EUROPEAN COMMISSION. *Recommendation 2005/162/EC on the Role of Non-Executive or Supervisory Directors of Listed Companies and on the Committees of the (Supervisory) Board. 2005.*
12. EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2013/36/EU on Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms, Amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.* 2013.
13. EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2014/95/EU Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups.* 2014.
14. EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2014/56/EU Amending Directive 2006/43/EC on Statutory Audits of Annual Accounts and Consolidated Accounts.* 2014.
15. EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2017/828 Amending Directive 2007/36/EC as Regards the Encouragement of Long-Term Shareholder Engagement.* 2017.
16. EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2019/1151 Amending Directive 2017/1132 as Regards the Use of Digital Tools and Processes in Company Law.* 2019.
17. EUROPEAN PARLIAMENT and COUNCIL OF THE EU. *Directive 2022/2464 Amending Regulation 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU as Regards Corporate Sustainability Reporting*. 2022.
18. GERMANY. *Co-Determination Act,* as *amended*. 1976.
19. GERMANY. *Commercial Code, as amended*. 1900.
20. GERMANY. *Stock Corporation Act, as amended.* 1965.
21. GREAT BRITAIN. *Companies Act, as amended.* 2006.

22. UNITED STATES. *Public Law 107-204, Sarbanes-Oxley Act, as amended*. 2002.
23. UNITED STATES. *Public Law 111-203, Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended. 2010.*

5 Case Law

1. CZECH REPUBLIC. *Judgment of the Constitutional Court of 13th September 2016, Case No. I. ÚS 190/15.*
2. CZECH REPUBLIC. *Judgment of the Supreme Administrative Court of 20th July 2022, Case No. 10 Ads 262/2020.*
3. CZECH REPUBLIC. *Judgment of the Supreme Court of 11th April 2018, Case No. 31 Cdo 4831/2017.*
4. CZECH REPUBLIC. *Judgment of the Supreme Court of 28th January 2015, Case No. 21 Cdo 1116/2014.*
5. CZECH REPUBLIC. *Judgment of the Supreme Court of 6th May 2006, Case No. 29 Odo 1773/2006.*
6. CZECH REPUBLIC. *Judgment of the Supreme Court of 11th September 2019, Case No. 31 Cdo 1993/2019.*
7. EUROPEAN UNION. *Judgment of the Court of Justice of the European Union of 5th May 2022, Case No. C-101/21.*
8. Salomon v Salomon & Co Ltd., 1897, 13 LQR 6.

6 Other Sources

1. CZECH REPUBLIC. *Explanatory Memorandum to the Business Corporations Act (Act No. 90/2012)*. 2012.
2. CZECH REPUBLIC. *Explanatory Memorandum to the Draft Law No. 33/2020, which Amends the Act No. 90/2012, Business Corporation Act, as amended by the Act No. 458/2016.* 2018.
3. CZECH REPUBLIC. *Opinion of the Supreme Court of 13th January 2016, No. Cpjn 204/2015.*
4. GRUBER, M. *Personal Consultation*. 10th December 2022.
5. JOHNSTON, A. *Current Issues in Company Law and Corporate Governance*. 6th December 2019. University of Sheffield. Lecture.

Annex No. 1 – Case Study on the Separation of the Roles of CEO and Chairperson in the Companies Listed on the Prague Stock Exchange

The data in the table were obtained by the author from multiple sources. As the main source were used the annual and remuneration reports of examined companies. As additional sources, data from commercial registers or from the websites of the PSE and the examined companies were examined. The data is valid as of 25th March 2023.

Organisational structure of companies traded on the PSE							
No.	**Name of the company**	**Board model**	**Market Type**	**Chairperson**	**CEO**	**Is CEO a member of the board?**	**Separation of the roles of CEO and chairperson**
1	Colt CZ Group SE	SE two-tier	Prime	Jan Drahota	Jan Drahota	✓	✗
2	ČEZ, a.s.	Czech two-tier	Prime	Daniel Beneš	Daniel Beneš	✓	✗
3	Erste Group Bank AG	Austrian two-tier	Prime	Willi Cernko[1]	Willi Cernko	✓	✗
4	Kofola ČeskoSlovensko a.s.	Czech two-tier	Prime	Jannis Samaras	Jannis Samaras	✓	✗
5	Komerční banka, a.s.	Czech two-tier	Prime	Jan Juchelka	Jan Juchelka	✓	✗
6	MONETA Money Bank, a.s.	Czech two-tier	Prime	Tomáš Spurný	Tomáš Spurný	✓	✗
7	Tatry mountain resorts, a.s.	Slovak two-tier	Prime	Igor Rattaj	Non-existent		
8	VIENNA INSURANCE GROUP	Austrian two-tier	Prime	Elisabeth Stadler	Elisabeth Stadler	✓	✗
9	E4U a.s.	Czech two-tier	Standard	Petr Bína	Non-existent		
10	ENERGOAQUA, a.s.	Czech two-tier	Standard	Miroslav Kurka	Oldřich Havelka[2]	✓	✓
11	Phillip Morris ČR a.s.	Czech two-tier	Standard	Andrea Gontkvičová	Andrea Gontkovičová	✓	✗
12	Photon Energy N.V.	Dutch two-tier	Standard	Non-existent	Georg Hotar	✓	
13	RMS Mezzanine, a.s.	Czech two-tier	Standard	Boris Procik	Boris Procik	✓	✗
14	SAB Finance a.s.	Czech two-tier	Standard	Ondřej Korecký	Non-existent		
15	TOMA, a.s.	Czech two-tier	Standard	Miroslav Ševčík	Vacant[3]		
16	WOOD SPAC One a.s.	Czech two-tier	Standard	David Tajzich	David Tajzich[4]	✓	✗
17	AtomTrace a.s.	Czech unitary	Start	Georg Hotar	Non-existent		
18	Bezvavlasy a.s.	Czech two-tier	Start	Aleš Hudeček	Aleš Hudeček	✓	✗
19	COLOSEUM HOLDING a.s.	Czech unitary	Start	Non-existent[5]	Jan Mužátko	✓	✗
20	eMan a.s.	Czech two-tier	Start	Jiří Horyna	Michal Košek	✓	✓
21	FILLAMENTUM a.s.	Czech two-tier	Start	Martina Vítková	Vacant[6]		
22	FIXED.zone a.s.	Czech unitary	Start	Marek Douda	Jan Moravec	✓	✓
23	GEVORKYAN, a.s.	Slovak two-tier	Start	Artur Gevorkyan	Artur Gevorkyan	✓	✗
24	HARDWARIO a.s.	Czech unitary	Start	Alan Fabik	Alan Fabik	✓	✗
25	KARO Leather a.s.	Czech two-tier	Start	Pavel Klvaňa	Pavel Klvaňa	✓	✗
26	M&T 1997, a.s.	Czech two-tier	Start	Roman Ulich	Roman Ulich	✓	✗
27	Pilulka Lékárny a.s.	Czech two-tier	Start	Non-existent[7]	Petr Kasa	✓	
28	Prabos plus a.s.	Czech two-tier	Start	Juraj Vozár	Juraj Vozár	✓	✗
29	Primoco UAV SE	SE two-tier	Start	Non-existent[8]	Ladislav Semetkovský	✓	✗

Explanatory notes:

1) In consistency with Austrian practice, the English version of the annual report introduces Willi Cernko as the CEO of the company and the German one as the *Vorstandsvorsitzender*, which can be translated as the chairperson of the management board.
2) The position corresponding to the CEO is described as a person responsible for direct operational business management.
3) The position of the CEO is described in the annual report, but it is not occupied.
4) The position of the CEO is called the managing director.
5) The company has only one member of the board, who is the CEO (Jan Mužátko). Hence it cannot appoint a chairperson.
6) The CEO resigned and a successor was not appointed.
7) Even though the company has two members of the management board, it has not appointed a chairperson.
8) The company has only one member of the management board, who is the CEO (Ladislav Semetkovský). Hence it cannot appoint a chairperson.

The Legal Status of CEOs in the Corporate Governance of Czech and Foreign Joint Stock Companies

Abstract

CEOs play a crucial role in corporate governance, and understanding their legal status is fundamental to board organisation practices. This thesis aims to map the question of the legal status of CEOs, with a focus on regulatory approaches to CEOs and chairpersons of the board in different regions. The research established two main approaches to regulating CEO's legal status. On the one hand, the approach of Anglo-American countries is presented in this thesis by two main representatives – the UK and the USA. The common board organisational model is a unitary board model for which it is typical to combine management and supervisory powers in the board of directors. This is also reflected in the legal status of the CEO, as one of the main issues addressed is the CEO and chairperson duality and its consequences on corporate governance. On the other hand, the different approach taken by the countries in Continental Europe is analysed. Germany and Austria are introduced as countries known for a compulsory two-tier board model. In contrast to the Anglo-American world, the position of the CEO is not embedded in the countries of Continental Europe. The problem of CEO and chairperson duality is not present because the role of the CEO as a member of a management board is by law incompatible with the membership in a non-executive supervisory board. The final part of this thesis is devoted to the author's domestic law in the Czech Republic. Although the Czech legal environment is historically shaped by the law of other countries in Continental Europe, as a consequence of adopting new private law legislation, the mandatory two-tier board structure was abandoned, and Czech companies can choose the organisational board structure. This situation has brought new challenges to the legal status of Czech CEOs, such as the CEO and chairperson duality in unitary board companies, that have yet to be overcome. This thesis aspires to provide valuable insight into board organisation practices and to contribute to the ongoing debate on effective regulatory board models of corporate governance.

Keywords: CEO, chairperson of the board, corporate governance

Právní Postavení Generálního Ředitele (CEO) v Rámci Správy a Řízení Českých a Zahraničních Akciových Společností

Abstrakt

Generální ředitelé mají zásadní roli v rámci správy a řízení společností. Porozumění regulaci jejich právního postavení je základem pro pochopení organizace statutárních orgánů společností. Tato diplomová práce si klade za cíl zmapovat otázku právního postavení generálních ředitelů se zaměřením na právní přístupy k otázkám generálních ředitelů a předsedů statutárních orgánů napříč různými jurisdikcemi. Výzkum stanovil dva hlavní přístupy k úpravě právního postavení generálních ředitelů. Na jedné straně stojí přístup angloamerických zemí, který je v rámci diplomové práce představován dvěma hlavními zástupci – Velkou Británií a Spojenými státy americkými. Tradičním způsobem uspořádání orgánů společností je pro ně monistický systém. Pro monistický systém je typické kombinovat řídící a kontrolní pravomoci v rámci jednoho orgánu – správní radě. To se odráží i v právním postavení generálního ředitele. Jedním z hlavních diskutovaných témat je kombinace funkcí generálního ředitele a předsedy správní rady. Na druhé straně je analyzován rozdílný přístup v zemích Kontinentální Evropy. Německo a Rakousko jsou představeny jako země s tradičně povinným dualistickým modelem uspořádání společností. Na rozdíl od angloamerického světa, není role generálního ředitele zemím v Kontinentální Evropě vlastní. Otázka kombinované pozice generálního ředitele a předsedy statutárního orgánu zde zpravidla není přítomna, protože pozice generálního ředitele jako člena představenstva je ze zákona neslučitelná s členstvím v nevýkonné dozorčí radě. Závěrečná část diplomové práce je věnována vnitrostátnímu právu v České republice. Přestože české právní prostředí je historicky formováno pod vlivem ostatních států Kontinentální Evropy, byla prostřednictvím rekodifikace soukromého práva opuštěna povinná dualistická struktura uspořádání společností. České společnosti si mohou zvolit mezi monistickým a dualistickým systémem uspořádání. Následkem této situace jsou nové, dosud nedostatečně adresované výzvy v právním postavení českých generálních ředitelů, jako je například kombinace funkcí generálního ředitele a předsedy správní rady ve společnostech s monistickým systémem uspořádání. Tato diplomová práce si klade za cíl poskytnout čtenářům vhled do problematiky praxe organizace statutárních orgánů a tím přispět k probíhající diskusi o efektivnosti modelů správy a řízení společností.

Klíčová slova: generální ředitel, předseda statutárního orgánu, správa a řízení společností