

The Impact of Sustainability on the Decision-making of a Member of a Governing Body

Abstract

This master's thesis analyses the impact of sustainability on the decision-making processes of members of governing bodies, with particular emphasis on their duty to act with due managerial care under Section 159 of the Civil Code.

The first chapter of this thesis defines the legal framework for sustainability and distinguishes the concepts of CSR (Corporate Social Responsibility) and ESG (Environmental, Social, and Governance). It also outlines the sub-areas of sustainability - environmental, social, economic, and corporate governance dimensions, which should be approached with equal importance.

The second chapter delves into the prerequisites for sustainability-focused decision-making. It provides an overview of the legal framework governing sustainability within various legal instruments, including both direct obligations that incorporate sustainability considerations and incentives such as tax reductions and other benefits aimed at fostering a transition to sustainable business practices. This section offers a non-exhaustive overview of relevant legal provisions in the Czech legal system while also reflecting on sustainability requirements in foreign jurisdictions. In this context, it addresses the potential for effective breaches of the law when statutory sustainability requirements conflict with business interests. Additionally, it examines the advantages and disadvantages of adopting sustainability measures, presenting key evidence for assessing their effectiveness and potential benefits to companies. Transitioning to sustainability is presented as not only an opportunity for innovation and enhanced competitiveness but also a challenge due to the financial demands of compliance with regulatory requirements and integrating sustainability into business strategies.

The third chapter, which forms the core of the thesis, explores in detail how sustainability influences the day-to-day decision-making of governing body members in light of their duty to act with due managerial care. This standard requires directors to act in the best interest of the company. While the primary interest of a capital company is typically to generate profit, the company may also pursue broader social and environmental objectives depending on its chosen corporate governance model. The thesis emphasizes the importance of avoiding short-termism, which prioritizes profit maximization, in favor of long-term interests that promote the company's prosperity and stability. These long-term interests align closely with the principles of sustainability. The analysis also includes the delegation of sustainability-

related tasks to experts, given the complexity of the field and the growing regulatory demands at both national and EU levels. This chapter concludes by discussing the consideration of public interest in sustainability as part of the decision-making process. This includes embedding sustainability into the company's memorandum of association, resolutions of the supreme body, shareholder activism influencing corporate direction, and the voluntary adoption of sustainability measures by governing body members.

Finally, the fourth chapter analyzes the Corporate Sustainability Due Diligence Directive (CSDDD) and its implications for due diligence in sustainability. Particular attention is given to its impact on corporate autonomy, including concerns over restrictions on forming business relationships, selecting direct or indirect business partners, and the financial burden associated with implementing the directive's direct obligations.

Key words: Sustainability, Director's Duties, Duty to Act with Due Managerial Care