# Corporate Governance and Its European Dimensions: Current Trends and Perspectives

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**"Good corporate governance is a duty." (Dutch Monitoring Committee on CG report 2013)**

**Summary:**

This paper is about corporate governance within EU. The ideas and comments embedded results of a research project on the issues of corporate governance from the perspective of EU integration and competitiveness. Field research, desk researches and statistical techniques have been employed. However, the author's personal experience was instrumental for the final tuning of the conclusions. This paper aims to shed light on the contribution of corporate governance (micro-level) to the macro processes within the EU. Drawing on modern views on corporate governance the author studies the EU perspective of corporate governance: the process of transforming the main principles of EU in a framework that encourages the establishment of EU standards of corporate governance. It is well known that through its system of principles and tools corporate governance adds value to the shareholders' wealth, and to the good standards of business, on one hand, and facilitates the removal of barriers to the free movement of capital. Through the lens of the soft law and self-regulation some differences in EU standards, on one hand, and the practice of corporate governance in US companies are discussed. The topics under ***observation*** determined ***the structure of the paper***: the introductory part is about the current understanding and theoretical views on corporate governance, the second part sheds lights on the national features and differences in corporate governance, the third part focuses on the European trends/ features of corporate governance and finally future developments are sketched.

**Key words**: corporate governance, models of corporate governance; regulation; soft law self- regulation; harmonization

**JEL Classification**: F15, G34

## 1. How to understand corporate governance

In modern times corporate governance is a well known phenomenon. Although views differ about its genesis, academia agrees on the fact that the corporation and the separation of the ownership from the control within the corporation triggered the establishment of the system

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of corporate governance. Property rights were decoupled. Control was lost by the shareholders. Gradually the owners laid down the foundations of the system of corporate governance: at the very beginning ***the fiduciary duties of directors/board members*** and managers: duty of care and duty of loyalty were a synonym of good corporate governance. Through the years corporate governance evolved and has now become ***a system of principles and tools for direct publicly traded or listed companies.***

### *1.1 Definitions and concepts*

Today corporate governance is considered to be one of the pillars of economic, political and social development on the national and global market arena. It contributes to the integrity of the capital market: improper corporate governance; badly functioning boards led to the collapse of BCCI (Bank of Credit and Commerce International), the Asian crisis and to the collapse of Enron, etc. Corporate governance is among 12 Key Standards for Sound Financial System.

At the end of the $20^{th}$ century international institutions agreed on the necessity to set up a ***system of principles and tools for good corporate governance. OECD launched Principles of corporate governance in 1999 and 2004***. The wisdom of high level experts offered globally applicable principles and standards. In our search for definitions and understanding of corporate governance it is worth referring to the OECD's explanation that says that it is "a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined" (OECD 2004). According to the above definition, corporate governance is about well-functioning boards, protection of shareholders, respecting, considering stakeholders and disclosure and transparency. Many countries including Bulgaria and the Bulgarian listed companies have adopted and implemented OECD principles.

A different view about corporate governance was offered by the American economists Schleifer and Vishny: "Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment" (Shleifer and Vishny, 1997 p.737). The focus is on the financial or capital market "dimensions" of corporate governance. I value and would like to offer a quite practical view: corporate governance is about the care for ownership.

### *1.2. Why does the business employ corporate governance*

Modern corporate governance practice relates to specific business structure – the corporation. Publicly traded companies implement the principles of corporate governance. Capital markets (national and international) require well performing companies, and a high level of disclosure and transparency. The listing rules of the stock exchanges set the norms and mechanics of corporate governance (CG). The mechanics of CG is determined by various trends - internal (ownership structure, corporate boards and M&A or market for corporate control) and the legal system (LaPorta, Lopez-de-Silanes, Shleifer, and Vishny

(1998). In other words the main principles and components of corporate governance are as follows: protection of shareholders rights; equal treatment of minority and foreign shareholders, considering their interests, disclosure of publicly required information and responsible boards. The focus is on knowledgeable and capable boards, independent directors and gradual rotation of board members. Ethical behavior and integrity of board members is a must. Corporate social responsibility is among the priority as well. In some jurisdictions principles are prescribed by law, in other the above principles and mechanics are determined by the laws and codes/ standards for corporate governance. "The country-level governance mechanisms include a country's laws and the institutions that enforce the laws, its culture and norms" (Aggarwal, R. Isil Erel, René Stulz and Rohan, 2007).

***1.3. Corporate governance - theoretical models***

To understand corporate governance we have to go beyond definitions and decode the theories about the corporate governance. One of the most popular theory is the theory about the agent and principal: the theory is prompted by the problems that are most often reported - problems about the conflict/conflicts between the owners and managers; conflict between the majority and minority shareholders; the unethical behavior of the board members. The theoretical construction "**agency theory**" and its authors M. Jensen and W. Meckling (1976)[1] explain the conflicts with the ones that emerge between the agent and the principal and from this perspective seek to resolve the problems "Agency theory is concerned with resolving problems that can exist in agency relationships; that is, between principals (such as shareholders) and agents of the principals (for example, company executives). The two problems that agency theory addresses are: 1.) the problems that arise when the desires or goals of the principal and agent are in conflict, and the principal is unable to verify (because it difficult and/or expensive to do so) what the agent is actually doing; and 2.) the problems that arise when the principal and agent have different attitudes towards risk. Because of different risk tolerances, the principal and agent may each be inclined to take different actions" (Jensen, M., W. Meckling, 1976). There are also benefits to separating ownership and control; otherwise such a structure is highly unlikely to have persisted as it has.

Why am referring to theory: theoretical models are elegant a way to offer knowledge and ideas. Some of the models are welcome, others are subject to criticism. But I would deliberately like to shed light on another concept that is used nowadays. It is related to the ***stewardship theory*** and the impact its ideas had on the developments of corporate governance within the EU. Stewardship theory is a theory according to which managers, left on their own, will indeed act as responsible stewards of the assets they control. The steward is an alternative of the agent: the steward an the stewardship theory are "UK made product". The steward was entrusted with a number of responsibilities for the entire household. Some authors focus on the loyalty and long-term service of the steward. These are the main arguments offered by proponents of stewardship theory. It was the global financial

[1] The views differ on the authorship of the agency theory: from A .Marshall to the 20th century schools of thought.

crisis and the search for new remedies that led to the revision of "stewardship concept." In UK a stewardship code was launched. Institutional investors have to comply with increasing norms of disclosure and responsible behavior in the governance of the investee companies (Stewardship Code, 2010). Gradually the concept crossed the Channel: it was reported that in the Netherlands a Stewardship code was in operation[2]. Or putting it in another way, the theories are very helpful with regard to understanding the essence of corporate governance, on one hand; on the other, they offer ideas that encourage new developments in the practice[3].

## 2. National models of corporate governance within EU Member States

Theoretical and conceptual observation serves to better ***understanding of state of the art of corporate governance in EU***. Within Europe it is easy to recognize the existence of two trends in the area of corporate governance: on one hand, it is the ***trend that is determined by the national economic, social and political traditions; on the other, it is the trend that is determined by the EU legal framework - directives, regulations, recommendations. In other words, it is the trend which can be referred to as a convergence trend.***

How do national economic, social and political developments shape the different types of corporate governance within EU? What are the major differences between the various practices? In ***the Anglo-Saxon system*** UK dominates a dispersed type of ownership, the high importance of the capital market for the national and global economy, the one-tier governance system: listed companies are governed by the boards of directors with many independent, non-executive directors. UK is among the trend setters of good corporate governance within EU and in the Commonwealth countries. In some member states capital market matters, ***but banks are the main source of financing***. The concentrated type of ownership leads to new territories of conflicts – the conflict between the majority and minority shareholders. The conflict arises "because the interests of controlling and minority shareholders are not aligned" (Enriques, L., P. Volpin, 2007). The two-tier system is a component of ***the continental model of corporate governance: the power is distributed among the owners (***Annual General Meeting); directors/ representatives of the owners (Supervisory Board) and the managers (Management Board). In Germany, Austria, Netherlands, the Nordic countries two tier system functions. In Germany the Law stipulates the inclusion of the employees in the Supervisory boards. The phenomenon is known as "co-determination" (Plessis, Du, J. 2012). Bulgaria and France are the two countries in which under the national jurisdiction the co-existence of two systems is permitted. The model is known as a hybrid model. Ex- socialist states are not isolated from the process of establishing the contemporary standard of corporate governance. It was the transition from the state-owned and planned economy to the market economy that led to the legislation ***and self-regulation*** in the domain of corporate governance. Privatization - voucher privatization on one hand, and privatization via M&A, on the other, laid the foundations for the integration of principles of

[2] Dutch Monitoring Committee on CG report 2013

[3] The range of views and concepts is broader. The theoretical observation is limited to a few theories that shape the modern practice of corporate governance in the EU Member countries.

corporate governance in the newly emerged market economies. The EU enlargement accelerates the acceptance of corporate governance in the Central and Eastern Europe. That process of the implementation of the norms of corporate governance in legislation and codes of corporate governance is successful. Just the opposite, the human factor, that is the members of the boards and managers, has to catch up. Habits die hard.

A ***different view*** on corporate governance models in Europe is one that Institute for Institutional Shareholders Services (ISS, USA) offer to investors: ***Anglo Saxon region*** - UK; Western Europe Region - Belgium, Luxemburg, Netherlands and France; ***Nordic Region***- Denmark; Finland, Norway and Sweden***; Southern European Region -*** Italy, Spain, Cyprus and Greece and ***Germanic Region*** - Germany, Austria and Switzerland. Ex-socialist economies are not in the focus**.**

The national models of corporate governance in the Member States are changing gradually. Irrespective of the national company laws that lay the foundations of corporate governance, the harmonization processes within the EU ***gradually*** removes the above differences between the Anglo-Saxon model and the continental model.

## 3. From national differences to convergence

The harmonization of the legal framework for corporate governance is a fact. Even though the aim of the paper is to trace the two trends, it also strives to answer the question: why does the business need the harmonization and how was the harmonization of norms in the domain of corporate governance launched.

### 3.1. *Why is corporate governance a sine qua non for the successful development of the European capital market and the integration, or how the second trend shapes corporate governance standards?*

Looking for evidence that will help answer the question why corporate governance is important for the integration within the EU takes us back to the second half of 20th century. It is the Rome Treaty that laid the foundations for the standardized norms for doing business including corporate governance, among others. According to the Rome Treaty (Articles 2 and 4), "**community has the task by establishing the Common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it. Article 3c reads (c) the abolition, as between Member States, of obstacles to freedom of movement for goods persons, services and capital**. Although the history of European integration is well known, I would like to point out that to the certain degree the state of the art of corporate governance within EU is determined by long-term activities of business and politicians. Throughout the years the establishment of unified standards for disclosure and for protection of shareholders rights ***has dismantled barriers to capital and has guaranteed its free movement***. Corporate governance is instrumental for the development of the Single market and for enhancing the transactions with capital.

The system works as follows: on one hand there are nationally bounded structures of corporate governance, on the other, ***directives and their respective transposing in the national legislation reshape some of the existing components of the nationally bounded*** structure ***or add new components***. Here are some examples: The Transparency Directive (2004) replaces and updates parts of existing EU legislation (the 'Consolidated Admissions and Reporting Directive'). The Directive established obligations for listed companies to improve the quality of information available to investors on companies' performance, their financial position, and changes in major shareholdings. Another Directive (2006/46/ EC), which amended the Fourth and Seventh Accounting Directives, set the requirement that listed companies should publish an annual corporate governance statement in compliance with the corporate governance code that is applied by the company. It is that directive that launched the ***unique process within member countries and marks the beginning of the implementation of the 'comply or explain' principle (C or E). The 'comply or explain' principle is not only about reporting but also about self- regulation /soft law/ and the ethical behavior of corporate boards.***[4]

The Directive on the Exercise of Shareholders' Rights (2007) focuses on the improvement of ***cross-border voting practices***. Under its provisions, minimum standards have been introduced to ensure that shareholders of companies whose shares are traded on a regulated market have timely access to relevant information in advance of general meetings and have the means to vote from a distance. In addition, there are provisions enabling shareholders to ask questions, place items on the general meeting agenda, and ultimately vote in correspondence: by telephone and through the Internet. As known in financial theory, the above-mentioned directive aims to minimize the information asymmetry and to facilitate cross-border trade or with regard to the pillars of EU - to facilitate free movement of capital.

The observation of the directives offers evidence that modern EU legislation on corporate governance determines ***harmonization and unification of certain norms of corporate governance***. Within the EU two trends co-exist: national models of corporate governance and harmonized rules. National bounded developments and EU bounded developments are not parallel and independent. On the contrary, evidence suggests that there is a substantial interdependence: although national traditions are strong, the EU trend is vital. Within the EU there is a "territory" in which a stronger unification of corporate governance rules exist, namely the "territory" of Societas Europea (SE).

### 3.2. European Company (Societas Europea - SE) and corporate governance norms[5,6]

A good example of the EU trends and the Europeanization of corporate governance are the European company

[4] The issue is discussed on the next pages of the paper.

[5] After over thirty years of intensive discussions and difficult negotiations since the non-adopted draft SE Regulation in 1970, on 8 October 2001 the European Council of Ministers formally adopted Council Regulation (EC) No 2157/2001 (hereafter referred to as the "SE Regulation") creating the Statute for the European Company (known by its Latin name Societas Europaea - SE) and Council Directive 2001/86/EC (hereafter referred to as the "SE Directive") supplementing the Statute for a European Company with regard to the involvement of employees. This legislation entered into force on 8 October 2004, the date on which, in principle, the new legal entity became available to companies conducting operations in more than one Member State of the European Union.
The purpose of adopting

[6] In Bulgarian Commercial Law there is a norm about SE - "evropeisko druzestvo"

and the norms that envisage the model of corporate governance in that company. ***What is European Company or Societas Europaea(SE)?*** "SE itself must take the form of a company with share capital, that being the form most suited, in terms of both financing and management, to the needs of a company carrying on business on a European scale. The purpose of adopting the SE Statute was to provide for "the creation, side by side with companies governed by a particular national law, of companies formed and carrying on business under the law created by a Community Regulation directly applicable in all Member States" [7,8,9]. Observations shed light on the fact that the most frequently used method of formation of an SE is the creation of a subsidiary of an SE, other methods often used include the conversion of a public limited-liability company, the creation of a joint subsidiary and the merger. Although practice exists the creation of a holding SE is very rare, though it should be pointed out that the structure of Porsche Automobile Holding is Societas Europea.

According to the regulation, two governance models are envisaged: one-tier and two-tier ones. It should be noted that involvement of employees in both models is required. A special Directive[10] envisages an optional regime of employees' participation: negotiation and broader representation (employee involvement from various company branches is envisaged). There is no provision that restricts the participation only to employees from the mother company's headquarters. However, the analysis of limited practice of acting SEs gives grounds to suggest arguments in favour of a unique model of corporate governance:

- Co-existence of two governance systems: one- and two-tier systems;
- Provisions that envisages a smaller number of corporate boards members than the national legal provisions;
- Article 39 (2) of the SE Regulation states that the Member States may provide that the member (s) of the management organ shall be appointed and removed by the general meeting (instead of by the supervisory board);
- Employee participation. The directive envisages several models of participation: employees' direct involvement in corporate boards (supervisory and administrative board); separate unit that institutionalizes employees participation;
- Provisions on protection for minority shareholders who oppose the transfer of the SE's registered office[11];
- According to the study of E&Y "as far as corporate governance is concerned, the SE statute appears to be generally more flexible than the domestic public limited-

[7] E&YStudy on the operation and the impacts of the Statute for a European Company(SE)-2008/S 144-192482/Final Report December 2009

[8] COUNCIL REGULATION (EC) No 2157/2001 of 8 October 2001
on the Statute for a European company (SE)

[9] 369 SEs were registered in 20 EU / EEA Member States as at 15 April 2009. In relation to these SEs 19 Member States have been registered locations of an original SE incorporation, whilst 21 Member States have been registered locations of an SE at least at one point during its life. (E&Y Study on the impacts of the Statute on the operation and impacts of the Statute for European Company(SE) -2008/S144-192482/Final Report December 2009

[10] Directive 2001/86/EC (hereafter referred to as the "SE Directive") supplementing the
Statute for a European Company with regard to the involvement of employees.

[11] Art. 8 (5) EC Regulation

liability company statute. This is due to the fact that many options provided by the SE Statute have been adopted by the Member States and lead to a result that provides more options or is in other ways less rigid than that provided by their own law" [12].

Although the practice is limited the response about the efficacy of this unique model of corporate governance differs: the model offers more flexible options for countries with a two-tier system and co-determination provisions, on the one hand, and for countries in which the one-tier system is not in place for public limited-liability companies, on the other, for countries with a hybrid system of corporate governance, as well for the countries with a one-tier system of corporate governance, the model does not offer advantages. The above statement improves the understanding of the geographic allocation of SE (369)[13] within the EU member States – 91 of the SE are registered in Germany, 138 in the Czech Republic. Observations encourage conclusions that the attractiveness and the degree of application of SE depends on the balance between the regulation of SE and national regulations for the companies in the member countries[14].

Nevertheless SE is among the drivers that contribute to the free movement of capitals and goods within the EU and to the cooperation and integration processes among European companies. The above analysis and current practice confirm the preliminary assumptions that the SE and the Directive on employees involvement add new options and unknown alternatives for corporate governance.

## 4. CG: soft regulation and self-regulation within EU member countries

Corporate governance "refers to that blend of law, regulation, and appropriate voluntary private-sector practices which enables the corporation to attract financial and human capital" (Ira M. Millstein Senior Partner, Weil, Gotshal & Manges LLP).

### *4.1 How to understand the role of soft law and self- regulation*

Another unique feature of corporate governance within the EU is "***soft law or soft regulation". Supranational co-ordination of non- legal aspects of Member States***' systems of corporate governance is sufficient and is increasingly achieved by means of "soft law" such as recommendations and exchanges of good practice" (Johnston, 2009, p.343). The "soft law" approach towards corporate governance could be seen as a ***compromise*** between the EC position to standardize the rules of corporate governance and the positions of member countries to protect their national legislative norms on corporate governance. A typical example of the above approach is the national code for corporate governance. All member states reported that the majority of the national listed companies observe the laws and adhere to the Codes[15]. Corporate governance codes are voluntary and it is at the companies' discretion to

[12] Study on the operation and the impacts of the Statute for a European Company(SE)-2008/S 144-192482/Final Report December 2009 p. 11
[13] ibidem p. 17
[14] Ibidem p. 17
[15] According to the information of BSE 53 listed companies declare that they implement National Corporate Governance Code(www.bse.com)

implement them. Corporate governance codes include essential recommendations for the management and supervision of listed companies and standards for good and responsible governance. Yet designed in accordance with the diversified systems of corporate governance in the Member States, the codes are built on generally accepted norms. An unbiased observation on the codes in question revealed "the trend of unification" in the national standards of good practice. Soft law and the respective mandatory norms about disclosure of the efficiency of the codes' implementation set another trend of convergence of the EU rules in the area of corporate governance. It is the Directive 2006/46 EC that stipulates the disclosure procedures. This Directive is conceived as 'Comply or Explain' (article 46 A). The transposition process led to a unified legal practice across the EU: national laws and the codes prescribed the same principle. The above developments encourages both the trend of protection of national status quo in the area of practicing corporate governance and the trend of the convergence of that practice at the company level in EU Member States.

It should be pointed out that the interrelation between the soft law and legal provisions brought about another phenomenon - self-regulation. The Directive 2006/46 EC stipulates that companies themselves should disclose information under the C or E principle. In the annual reports listed companies have to inform the markets and the shareholders about the degree to which they follow or they depart from the provisions of the Codes for Corporate Governance European dimensions of corporate governance is about ***relationship between the regulation and self- regulation.*** The corporate governance framework for listed companies in the European Union is a "combination of legislation and soft law" (corporate governance codes). "Corporate governance codes built upon essential recommendations for the management and supervision of listed companies and standards for good and responsible governance." While corporate governance codes are adopted at the national level, the EU legislation on company reporting (Directive 2006/46/EC) promotes their application by requiring that listed companies refer in their corporate governance statement to a code and that they report on its application on a 'comply or explain' basis". (EC memo 2012 )

What is Comply or Explain principle: listed companies themselves have to evaluate and report on their CG practice or more specifically they have to report on the compliance with GG standards in the Codes. The deviations have to be reported and explained. This means in practice that a company choosing to depart from a corporate governance code has to explain which parts of the corporate governance code it has departed from and why it has done so. Therefore, the 'Comply or Explain" (C or E) approach provides companies with the necessary flexibility to adapt their corporate governance to their specific situation. This approach only works if companies that depart from these codes provide sufficient explanations as to why they do so. A survey conducted among the Bulgarian listed companies revealed that the majority reported that they stick to C or E (79%). However, some companies did not provide explanation about the deviations from the norms of Corporate Governance Codes (12%). A small group of respondents reported they have not introduced the C or E practice (chart No.1)

There are a lot of discussions and studies on the efficacy of the Codes. A key issue that has been debated in the academic literature is whether these codes are really effective in prompting better governance by favouring the actual adoption of best practices. Different streams of literature have found mixed evidence on this issue[16,17]. Being from a country that dismantled the planned economy and started to build market economy I always hold the view that Comply or Explain is not ***a formal reporting procedure***. My point is that it concerns market ***democracy and awareness and ethical behavior of the members of corporate boards***. My practical experience

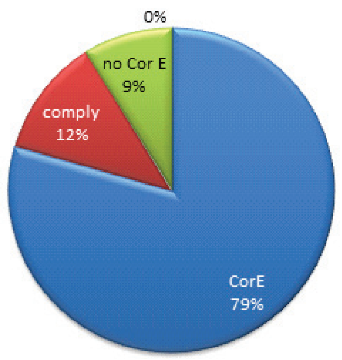


*Fig. 1. Comply or Explain: the Bulgarian Case*

*Source: Boeva, B., V. Pavlova, Korporativno upravlenie – realnost I perspektivi v usloviyata na integrirane na bulgarskite firmi v strukturite na Edinniya Vutreshen Pazar, Universitetsko izdatelstvo Stopanstvo, S. 2012*

in Bulgaria and work on various projects in ECA countries made me confident that the ***excellent balance*** is: ***prudent regulation and responsible self- regulation***. There is not a single answer. In Bulgaria there was an interesting case in 2011: one listed company reported a high level of compliance with national CG Code in its annual report. A few months later both the company and one of its listed daughter companies reported financial problems. It was not a scandal of the dimensions of the one in Parmalat (Italy) or Enron (US). Still it exposed the negative side of the formal implementation of C or E. Box ticking is not C or E.

Although at both the EU level and at the level of member countries efforts are being made to improve the implementation of the C or E principle, the formal attitude to its implementation is still a concern (Bianchi, 2010).

In other words, the question is how much state and how much market? There is no final answer about the optimal ratio. Views differ. Both integration objectives and national specificity matter. Some researches offer valuable statements to the above questions: "While some shareholder-favorable company-level corporate governance practices increase valuation in any legal regime, strong legal investor protection has a negative performance effect on well-governed companies and a neutral effect on poorly-governed ones" (Bruno, V., St. Classens, 2007). Corporate scandals in Europe prompted the ***revision*** of the balance between regulation and self-regulation. To a certain degree it was the crisis that impacts the post-crisis design of the interplay between the regulation and soft law within the EU. Future plans envisage that both approaches should be preserved. The balance in their relationship is difficult to forecast.

[16] Bianci, M Comply or explain? Investor protection through Corporate Governance Codes GI Finance Working Paper N°. 278/2010, March 2010
[17] RiskMetrics Group et al., (2009), "Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States", study commissioned by the European Commission. 2008

### 4.2. Self -regulation: the binding female quota example

A good example of self-regulation is the attitude to ***the female quota*** for the boards. During the post-crisis efforts to improve corporate governance some EU politicians initiated a course of changing the structure of the boards of publicly traded companies. It was the crisis that disclosed the lack of competence among board members and the lack of prudence in decision making. The saying what if Lehman brothers were sisters is not a joke. The crisis and its aftermath led to the above initiatives. Ex-president of France Mr. Sarkozy managed to pass a legal/binding norm for women quotas in the corporate boards - 20 percent and later on 40 percent. Commissioner V. Reding launched a campaign including a Draft Directive on the binding quota of women in corporate boards. And it was the reaction of the business community, academia and politicians that revealed the divergence of the self-regulation and regulation. The directive means changing the laws in the member countries. Still as was mentioned above opinions differ. The difference is not about quotas. Opinions diverge over ***how much state and how much private business***. One of the best examples is a cartoon in *The Financial Times* that echoed the debate on the binding quotas.

### 4.3. EU model of self regulation and C or R: is the model universal and are there common approaches on the both side of the Atlantic Ocean

It is well known that corporate governance is an Anglo-Saxon product and to a certain degree it could be classified as a ***culture borrowing*** by continental Europe. From the perspective of contemporary business and globalization the above statement is of no interest. Irrespective of different ownership patterns within EU and the United States, a high level of the integration of global financial markets including the dual listing of the companies on the both sides of the Atlantic (on the stock exchanges in Europe and on the NYCE and NASDAQ) contribute to ***the mutual approach*** towards the regulation of the these markets. It is the global financial crisis that prompted the standardized initiatives of EU and the United States on the regulation of capital flows.

In the attempt to find further evidence to answer the above question[18] it should be noted that corporate governance is strongly regulated in the United States. On one hand there are the laws that have introduced the modern practice of capital market regulations (the Securities and Stock Exchange Act of 1935); on the other, there are laws that show the efforts of US law makers to correct some mistakes in companies' behavior: Sarbanes Oxley Act (SOX2002), Dodd Frank Act(2010). SOX envisage the improvement of the disclosure and the performance of the audit committees. The collapse of the energy giant Enron revealed the serious problems of disclosure and SOX foresees new higher requirements in this domain. The Dodd Frank Act or the Consumer Protection Act is a post-crisis legislative initiative that aims to restore the regulation of hedge funds, which was introduced in the regulation of credit rating agencies and the measures to protect the consumers of financial services. The new era of regulation does not eliminate self-regulation, which is a distinct

[18] See the title of this part of paper.

feature of US capital market developments and corporate governance. As mentioned in the very beginning, legislation co-exists with self-regulation. In the United States there are different rules and guidelines that empower market participants to oversee the practice of corporate governance. The US Stock exchanges (NYCE and NASDAQ) set special requirements about corporate governance with regard to listing rules: independent directors, audit committees, and other authorities. The guidelines for corporate governance are among the priorities of the US business associations: the Principles of ALI (American Law Institute) about corporate governance (1994), the Principles of Corporate Governance (2010) of the Business Roundtable (BRT); the report of the National Association of Companies Directors (NACD in 2011), Conference Board's recommendations (Corporate Governance Handbook: Legal Standards and Board Practices, 2009)[19]. However, publicly traded companies comply with the afore-mentioned laws and the rules, and there have been attempts to elaborate a mutual approach to corporate governance principles. Among the post-crisis initiatives was the elaboration of the Key Agreed Principles to Strengthen Corporate Governance for US Publicly Traded Companies[20]. Observations revealed that the Principles distilled the essence of the above mentioned guidelines[21]. Although the Principles meet the standards of good corporate governance practice, the research exposed that US publicly traded companies abide by the principles that the stock exchanges and the laws envisage. The C or E principle in ***its EU format is not in use*** [22].

## 5. Future developments in the corporate governance status quo within EU Member Countries

The global financial crisis and the shortcomings that surfaced in the economies of Member States prompted new initiatives in the domain of corporate governance. In the attempt to achieve smart, sustainable and inclusive growth in the next 10 years (Strategy Europe 2020) attention is paid to other priorities such as improvement of the regulatory framework for European enterprises. "By strengthening their smart regulation instruments, EU Member States and the union should guarantee that legislation is well-designed, proportionate, regularly reviewed and does not cause unnecessary burdens. The achievement of the administrative burdens reduction targets remains a priority" (Europe 2020).

However, Europe 2020 provides a systemic view about the future trends in business regulation as there is an EC document that targets the future of corporate governance in the next programming period. An action plan was launched in 2012 (12.12 2012). On one hand it mirrored the macro objectives that Strategy Europe 2020 set, on the other - ***the lessons learned from the crisis*** and the recommendations of

[19] One has to mention the recommendations that have been launched by institutional investors: The California Public Employees' Retirement System ("CalPERS") is the largest U.S. public pension fund, with assets totaling $225 billion spanning domestic and international markets as of January 6, 2012. The Global Principles of Accountable Corporate Governance ("Principles") create the framework by which CalPERS executes its proxy voting responsibilities. ; Teachers Insurance and Annuity Association – College Retirement Equities Fund ("TIAA-CREF"), a private pension fund, is the largest U.S. pension fund with assets of more than US$450 billion under management. TIAA-CREF encourages companies in which it invests to observe its corporate governance policies, as set forth in its "Policy Statement on Corporate Governance" (1997, most recently revised March 2011 – 6th Edition). It is noteworthy to mention that The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") that represents more than 11 million workers has developed their guidelines on good corporate governance practice: The AFL-CIO Proxy Voting Guidelines. have been developed to serve as a guide for the managers of some of their trust.

[20] See NACD Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies, 2008

[21] See Comparison of Corporate Governance Principles &Guidelines: United States, Weil, Goshall, Millstein, 2012 Weil

[22] Consultations with representative of US academia and business community

the business and various stakeholders (Green Paper, 2011). The plan impacts the priorities of EU legislation about corporate governance, on one hand, and on the future of corporate governance per se. The document regards the future developments of corporate governance as developments that could add value to the Strategy goals: smart growth, inclusion. The EU company law and corporate governance rules for companies, investors and employees must be adapted to "the needs of today's society and to the changing economic environment. European company law and corporate governance should make sure that companies are competitive and sustainable. The focus is on disclosure, shareholders rights and shareholders engagement. The crisis revealed that short termism and the lack of interest in the governance of the companies leads to improper activities of company management and activities that are in favour of the owners". The action plan sets measures to encourage responsible long-term investors by strengthening transparency rules for institutional investors on their voting and engagement policies. Shareholder engagement (or "stewardship") aims to promote the long-term success of companies. Effective engagement benefits companies, shareholders and the economy as a whole. The future trends in the area of corporate governance will be ***shaped by increasing companies' transparency on board diversity, risk management policies and remuneration policies. Regulation and self-regulation will continue to shape the framework for good corporate governance.***

In line with the goals of the paper it is worth emphasizing that future plans about corporate governance ***aim at the further development of the capital markets***. Finally the examined measures will preserve the co-existence of national models and EU convergence trend. As mentioned above and as evidence suggests, good corporate governance should add value to the competitiveness of companies and countries (Boeva. B. V. Pavlova, 2012; Global Competitiveness Report 2013/2014).

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