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Corporate Governance of a Joint Stock Company (Models and Trends in Comparative Law and Practice)

Summary

In this article the author analyzes current legal solutions of corporate governance problems, with a special view to adequate solutions of comparative laws in developed countries. Corporate governance problem is especially obvious in listed companies limited by shares. The writer emphasizes several aspects in that field. Firstly, the author perceives that the trend of strengthening of enforcements rights in those companies before serious crisis, due to their obvious alienation from capital owners. Secondly, for that reason the author thinks that we are before one reversible process of strengthening democracy of these companies, which implies the strengthening of shareholders' general meeting position. Thirdly, tha author concludes that control of management is the most critical zone of corporate governance, where economy is alike, by its needs, to politics. Having in mind that problem, the writer analyzes the effects of some traditional ways of supervising the management, the possibilities of their adaptation according to the new needs (supervisory board, auditing, shortening of mandates, flexibility of recall, strengthening of shareholders' general meeting competence), as well as legal "profile" and possible effects of some new supervisory ways (independent directors, independent auditors, independent committees, general meeting trustees, strengthening of minority rights, take-over of major or significant capital stake, strengthening of management and executive directors responsibility, strengthening of transparency of business of companies limited by shares, especially of the listed ones, etc.). Lastly, the author contemplates

both advantages and disadvantages of, so called, "pure" unicameral or bicameral management system of companies limited by shares, as well as of some of their combined forms, with definitive conclusion that legislator should not impose only one management model, either unicameral (board of directors with executive directors) or a bicameral one (board of directors with executive directors and supervisory board), but that the choice of model should be left to companies limited by shares themselves (actually, to their shareholders) on the ground of their specific circumstances.

Key words: *Corporate Governance; Board of Directors; Supervisory Board; Independent Committiees; Mandate; Responsibility; Shareholders' General Meeting*

1. Principles of Distribution of Corporate Power

Structure of bodies - Organizational structure of a Board of Directors and a Management Board of a joint stock company (as well as of other ownership companies) is based on ownership, which practically means that a supreme "sovereign" of this company that incorporates "owners of the company" is a Meeting. As a body consisting of the stock company owners, the Meeting takes the highest position on the hierarchy of a joint stock company. However, this position is not the highest professional position in the company. Therefore, keeping for itself only some most important segments of the ownership managing function in the joint stock company, the Meeting creates the structure of other bodies that will perform managing and supervising functions and indirectly it creates the bodies in charge of the company management. In this way the *company managing and ownership functions are separated*, which is one of the important characteristics of a joint stock company that differentiates it from partnerships where these two functions are usually united in the same body, and very often in the same person. Sometimes it does not characterize the joint stock company without public subscription of capital, but it appears almost regularly in the joint stock companies with public subscription of capital.

Conditional hierarchy **-** The company Meeting, wanting to strengthen the expertise and professionalism in performance of the current managing function in a joint stock company, appoints a managing organ – Board of Directors, which reports to the Meeting. However, feeling not competent enough for the performance of professional control of the elected Board of Directors, very often the Meeting appoints a professional body at the same time – Supervisory Board that will perform such function competently and report to the Meeting. On the other hand, the elected managing body appoints the executive management body, reporting to the Board of Directors (as well as to the Meeting), with the purpose of performing executive functions in the field of management and representation. In this way, the professionally functional circle of the joint stock company bodies is formed, based on the ownership, highly respecting the factor of capital. Every body appears as sovereign and "the highest in the hierarchy" in its respective field, without the possibility that other body, even the one with the higher status in general, interferes with its work scope determined by the law or by-laws. This means that the hierarchy of bodies in a joint stock company exists only as conditional hierarchy, exclusively based on the status (appoint-

ment, dismissal), and not as functional hierarchy. Therefore, the conflicts over competence in a joint stock company created by market rules (just like in other commercial companies) occur relatively rarely.

Nature of work scope - As regards the nature of work scope of the joint stock company bodies (as well as of bodies of other companies), determined by the law or by-laws, i. e. the nature of their confinements and legal position of these bodies, in legal theory and legislative technique until recently there has been present *the abandoning of the mandate theory* (the Meeting gives the mandate to the Board of Directors, and the Board of Directors gives the mandate to Executive Directors), according to which the principal can at any time and even groundlessly cancel (revoke) the mandate. At the same time the model of *legal or statutory authority* has been promoted increasingly, the model that is connected to a certain body and irrevocable until the law or by-laws are amended. This establishes strong positions of every body in a commercial company. However, it seems that nowadays a new trend is emerging: *a combination of the mandate theory* (on the status level of appointment and dismissal at any time and without a justifiable or serious reason) and *the theory of legal and statutory authority* (original scope and its implementation). Parallel with this theory and legislative practice, it became accepted the theory on absence of hierarchy among the commercial company bodies, since every body is the only and "supreme" one within its scope determined by the law and by-laws. Today, this theory has been relativized on the status level, where the hierarchy is reaffirmed entirely.

The determined legal (and even statutory) scope should be considered imperative, so that only the body authorized (according to the law and by-laws) to make decisions on certain issues, depending on the nature of the object of decision and in accordance with the law and by-laws, should decide on delegation of decision-making to another body. This is how our Company Law regulates the delegation of authority from the Board of Directors to the Meeting.[1)] As regards the delegation of authority from the Meeting to the Board of Directors, it seems that within the legal scope it would be possible only for the decisions on the increase of capital (legal institute of approved – authorized capital), and within the statutory scope it would be generally possible in all the issues, but in accordance to the by-laws.

2. "Resurrection" of the Shareholders' Meeting

Work scope of the Meeting – Since the Meeting is a body of "the joint stock company owners", it is usually considered to be the highest body on the hierarchy of a joint stock company. However, taking into consideration the facts that the Meeting convenes rarely, that shareholders, especially minority shareholders, are mainly not interested in everyday activities of the company, as well as that they partly lack professional insight, it seems correct to notice that this "sovereign" is only "a lazy king, since he works only several hours a year".[2)] The theoretical omnipotence of the Meeting in reality more and more often proves

1. Company Law (Official Gazette of FRY, No. 29/96), Article 249, Item 2.

to be a mere liturgy or a mass. "One falls asleep when the area is totally obscure", concluded resignedly one western shareholder.[3] Nevertheless, strengthening of so-called institutionalized investors in contemporary conditions, that will also strengthen professional credibility of the Shareholders' Meeting, will lead into certain renaissance of this body, especially because it becomes a trend that also these investors turn from their passive position into position of active investors on the level of company management as well. In practice, instead of being a real managing body, this body becomes the body that controls the management body as well as the body for protection of shareholders. Although a joint stock company is formed by the individual will of every shareholder, which should be an indicator of its need for democracy in functioning and scope of its authorities, especially of the Meeting as the body of owners, it can still be said that formally this body in this sector either has not had a sovereign position until recently and has increasingly been succumbing to the needs of better efficiency (which requires strengthening of functions of the Board of Directors and Executive Directors). This was valid not only in the Anglo-Saxon legal system which applied the principle that the work scope of the Meeting is only that what is explicitly determined by the law and by-laws, but it has become valid more often in the continental law which for a long time has applied the principle that everything outside of the work scope of other company bodies (in accordance with the law and by-laws) is within the work scope of the Meeting. The assumption of the work scope has been giving more advantages to the Board of Directors and Executive Directors.[4] In our legal system the Chief Director is authorized for the assumption of the work scope.[5]

The assumption of the work scope – The Company Law introduces the so-called assumption of the work scope of the Chief Director (Chairperson of the Board of Directors and Director General). Accordingly, the Chief Director is authorized to decide about all issues that are not determined to be within the work scope of other bodies (practically the Meeting and the Board of Directors, since the Supervisory Board controls the legality of the management work) by the law, by-laws or other joint stock company general act. In the comparative law this assumption usually applies to the Board of Directors as such (although in small companies the Board of Directors can consist of one Director only).[6] The Board of Directors is authorized for everything that is not within the jurisdiction of the Meeting, since the Supervisory Board performs the control of the legality of the management work, and Director does not exist as a separate body, but according to the law itself he/she is a member of the Management Board – the Board of Directors. Even when laws do not contain this assumption, in the comparative law it is often regulated by the company

2. See: *Tunc*, Le droit anglais des sociétés anonyumes, Paris, 1978, p. 178.
3. *Guyon*, Droit des affaires, Paris, 1984, p. 292.
4. See : Code des obligations (1911, 1936, 1984, hereinafter: Swiss Law...), Article 721; *Tunc*, Le droit americain des sociétés anonymes, p. 124-127; *Tunc*, Idem. (for English law), p. 180-181; *Guyon*, Idem. p. 292-296 and 305-306.
5. Company Law, Article 265.
6. See: *Loose-Yelland-Impey*, Company Director, Bristol, 1993, p. 96-103; *Guyon*, Idem. p. 336-338; *Farrar*, Company Law, London and Edinburg,1988, p. 311-314; *Gower*, Principles of Modern Company Law, London, 1992, p. 147-153; Swiss Law, Article 721.

by-laws that the Board of Directors performs all jobs that are not, according to the law or by-laws, within the work scope of other company bodies (practically only of the Meeting, since the Director is not a separate body, but a member of the Board of Directors, and the Supervisory Board controls the legality of the management work).[7)]

However, it seems that the recent trend of abandoning of the so-called democratization of joint stock companies, which means strengthening of the shareholders-investors' authorities, and strengthening of so-called technocracy of decision-making in these companies, which means strengthening of managing-executive sphere of authority, slowly decreases. The need of fast decision-making remains indisputable, which supports the managing-executive sphere of authority, but it is very disputable the alienation of that authority sphere from shareholders as owners of the capital managed by that authority sphere. Therefore, it seems that the *process of democratization of joint stock companies is emerging* again, as well as a new renaissance ("resurrection") of the Shareholders Meeting: it seems that the assumption of work scope cannot be in the managing-executive sphere according to the logic of the law itself and without a special authorization by the Shareholders Meeting; a huge support of modern technology is needed for strengthening of the authority of the Shareholders Meeting: written voting without physical presence, voting by electronic mail, voting through local representative ("proxi"), etc. That affects also the sphere of expenses to which the shareholders themselves are very sensitive.

3. Models of Managing-Executive-Supervisory Bodies in Comparative Law

Structure of bodies – How to organize internally the structure of bodies in a joint stock company and which bodies to add to the Meeting as a kind of "passive sovereign", and which "active sovereigns" to appoint, is a dilemma that a joint stock company in every legal system and culture has been facing up to now. Basically, this dilemma, beside strengthening of the Meeting's authorities and its transformation into a kind of an "active sovereign" in a joint stock company, is a core of the inverted process of a special legal-business revolution launched under the name of "corporate governance". The real outcome of that revolutions is still being expected basically, although certain outcome directions can be perceived. However, they have one characteristic in common: *creation of active mechanism for controlling the alienation of managing-executive sphere of authorities from shareholders as owners of the capital that they manage*, the mechanism that is more preventive than posterior, the mechanism that with its real independance from the managing-executive sphere can be a guaranty of a real controller who activates his/her signal lamp in due time, the mechanism that scans the activity of the managing-executive sphere with the only right purpose: the interest of a joint stock company. Looking for the response to these

7. Rule on the assumption of the authority of the Board of Directors is explicitely stipulated in the Swiss Law: Code... Article 721. *Guyon* accepts the stand that the rule should be applied even when it is not determined by the by-laws, but when there is a gap in the work scope distribution - See: Idem. p. 336.

challenges the world legislative and business practice has so far constituted several organizational systems of this sphere of authority.

The first system (so-called one-tier system) had originally been the Anglo-Saxon legal system that was adopted in a considerable number of countries with the continental law system (France, Switzerland, Italy).[8] It is a system in which the managing function is performed by one or more persons (Switzerland, England, USA), or by the Board of Directors – (France), elected by the Shareholders' Meeting (Board of Directors).[9] According to this system the Board of Directors, among their members (Executive Directors) or partly among the company's permanent employees non-members, elects one or more Executive Directors for managing operatively the company business (Management - Executive Board of Directors).[10] Most often the Chairperson of the Board of Directors (appointed by the Board of Directors) is the Company Chairperson and the Chief Executive Officer (chairman-chief executive officer, president-directeur general). The members of the Board of Directors can be, with various differences, permanently employed in a company (Executive Directors) or persons who are not permanently employed in a company (Non-Executive Directors). Therefore, according to this system the function of the Board of Directors is partly realized on the collegial basis (sessions, collective representations), and partly on the individual executive basis (executive chairperson function, chief executive officer function, executive manager function, executive directors). In this system the supervisory body is not obligatory in a joint stock company (external, independent auditors perform the controlling function, partly also internal auditors or special auditors).

The second system (so-called two-tier system), the system of German law, that recent French legislation adopts alternatively to the first system, is based on the principle that in a joint stock company there are two boards (exceptionally in small companies one person can perform the function of the Board of Directors): Board of Directors in a narrow sense (Vorstand - directory) and Supervisory Board (Aufsichtsrat).[11] The Board of Directors in a narrow sense performs its managing functions partly on the collective basis (bringing deci-

8. La loi sur les sociétés commerciales (No. 66-537), Article 89 (hereinafter: French Law), Article 89-117; Swiss Law, Article 707-726. See legal-theoretical study on the Board of Directors Institute, see especially in *Gorlay*, Le conseil d'administration de la sociétés anonymes, thèse, Paris, 1971; for English law: *Tunc*, Idem. p. 107-124; for USA law; *Tunc*, Idem. p. 103-130. In general: *Loose-Yelland-Impey*, Idem.
9. Swiss Law, Article 707, 712 and 714; French Law, Article 89, 110 and 115; in England joint stock companies with public registration of shares have at least two directors (Chief and Second Director), and companies without public registration of shares have at least one director - *Charlesworth & Morse*, Company Law, London, 1995, p. 312-315.
10. See: *Guyon*, Idem. p. 311-348; *Hamel* and others, Droit commercial, Paris, 1980, p. 357-402; *Rodière*, Droit commercial, Paris, 1980, p. 193-212; *Cozian-Viandier*, Droit des sociétés, Paris, 1998, p. 235-272; *Farrar*, Idem. p. 297- 323; *Gower*, Idem. p. 138-164; *Pennington*, Company Law, London, 1995, p. 768-778; *Charlesworth & Morse*, Idem. p. 312-315; *Boyle & Birds'*, Company Law, London, 1995, p. 415-430; *Cannu*, La société anonyme a directoire, Paris, 1979; *Tunc*, Le droit anglais..., p. 107- 156; *Tunc*, Le droit americain..., p. 97-119; *Hamilton*, The Law of Corporations, Minnesota, 1991, p. 218-249.
11. *Aktiengesellschaft (* 1965, daqe: German Law...) Article 76-117; French Law... , 118-150.

sions at sessions, collective representations) and partly on the individual basis (individual representation, individual execution of decisions brought at sessions).[12)] Exceptionally in joint stock companies with smaller capital (determined by the law) the function of the Board of Directors can also be performed by one person – the only Director-General. In this system the Supervisory Board members are elected (and dismissed) by the Meeting and the Supervisory Board elects (and dismisses) the Board of Directors members. Croatia has also adopted this system.[13)] Certainly, in this system as well, beside the Supervisory Board, the controlling function is performed by an independent external auditor, but may also be performed by an internal auditor and sometimes a special auditor.

Finally, *the third system* adopts the By-Laws of European Company according to which a joint stock company can have *so-called one-level (one-tier) system* – Executive (Management) Board of Directors elected by the Shareholders' Meeting and *so-called two-level (two-tier) system* – Board of Directors and Supervisory Board; the Meeting elects the Supervisory Board and than the Supervisory Board elects the Board of Directors.[14)] This system is based on the *combination of the first and the second system* and it has been adopted in France (alternatively with one-tier model), Macedonia, Slovenia.[15)] The High level group of company law experts on a modern regulatory framework for company law in Europe supports the system of a joint stock company's free option, between so-called one-tier system and two-tier system of the organization of bodies of managing-executive-supervisory function in joint stock companies.[16)] Heading towards the adoption of new Law on Commercial Companies in Serbia, it seems most appropriate to choose exactly this model that suits best the needs of freedom to organize joint stock companies and the needs of shareholders. Possible correction of this model with obligatory two-tier model should be left to the financial sector and perhaps to the listed joint stock companies.

4. Status Issues

Election and cumulative voting – A voting system can be direct (when shareholder practically elects the entire Board of Directors with 51% of votes) or cumulative (when a relatively small percentage of capital can ensure the representation in this Board, which is especially convenient for minority shareholders – practically the shareholders with the right to vote dispose of the number of votes that equals the result derived from multiplica-

12. *Hamel-Lagarde*, Idem. Article 420; *Guyon*, Idem. p. 354. More Deatailed on Directory: *Cannu*, Idem. p. 33-122.
13. Croatian Law on Commercial Companies (1993), Article 244.
14. By-Laws of European Company, Councel regulation (EC), No 2157/2001, Article 38-51.
15. French Law..., Article 90 and 120. In literature it is written that in France, unlike the classical system with the Board of Directors, the new system with the Supervisory Board and Directory is not wide-spread because in twenty years since its introduction it has been accepted only in about 2,61% capital companies - see: *Cozian-Viandier*, Idem. p. 291; Slovenian Law on Commercial Companies (1993, 2001), Article 250; Macedonian Law on Commercial Companies (2002, hereinafter: Macedonian Law...), Article 301.
16. See: Report of the High Level Group, Brusseles, November 2002, p. 59.

tion of their shares or shares they represent with a number of the Board of Directors members being elected, and they can give all their votes to one candidate or distribute them to more candidates). Cumulative voting as a mode of protection of the minority shareholders' rights, which is especially important for institutional investors with a trend of turning from passive to active managing position, is also a creation of the Anglo-Saxon law and it increasingly enters continental legal systems, especially in the companies with a bigger number of shareholders.[17)]

Mandate and dismissal – In comparative law there is a uniform solution according to which the Board of Directors' members (Directors) are elected for the period determined by the by-laws within the maximal mandate period determined by the law, and it can vary from one to six years. It is also a general rule that the Board of Directors' members can be re-elected several times, without limitations.[18)] Although the determination of the mandate period is not particularly significant, given that the management (Directors) submits to the annual Shareholders' Meeting the *business reports* (followed by the auditors' report), whose acceptance means the verification of further work of the Board of Directors, and whose refusal usually results with the termination of mandate, it seems that under the influence of Anglo-Saxon practice there is a strong trend to adopt one-year mandate. Besides, it is the rule to be very flexible in the dismissal of the Board of Directors or certain members, from the legal aspect (and the aspect of practice).

The institute of dismissal of a Board of Directors member is regulated in accordance with the general legal principle that the election also determines the dismissal (which raises the problem of possibility of dismissal of members of the Board of Directors by the Meeting, if the Meeting did not elect them, but the Supervisory Board in a two-tier system). It can be said already that in comparative law the generally accepted principle is that the Board of Directors members can be dismissed at any time[19)], even without a valid

17. *Hamilton*, Idem. p. 182-202; *Tunc*, Le droit americain..., p. 105-107; Commercial Code of Japan, Article 256-3; In the French Law as well, it is possible to establish cumulative voting, so if the majority block has for example 75% of votes, and the minority 25%, it is still possible that according to the by-laws the minority block elects a member of the Board of Directors who becomes a member of a total corpus of this body. - See: *Guyon*, Les sociétés, Paris, 1993, p. 221; Macedonian Law (2002), Article 250; Law on Commercial Companies of Montenegro (2002), Article 42, Item 9.

18. The following laws prescribe a five-year mandate: Company Law, Article 69; German Law, Par. 84; Slovenian Law, Article 250; Croatian Law, Article 244. In France in the one-tier system a six-year mandate is prescribed (for first directors a three-year mandate), and in the two-tier system the mandate is four years for the Directory members and six for the members of the Supervisory Board (Law…, Article 122 and 134). In Switzerland first directors (indicated in the by-laws) have a three-year mandate, and succeeding ones up to six years (Law..., Article 708, Item 1.). In USA directors are practically elected for the period between two annual Meeting sessions (according to the by-laws it is possible to regulate a yearly rotation of a certain number of members) - *Tunc*, Le droit americain..., p. 106. In England practically the directors can be elected "a vie" or for a certain period of time, but it is not particularly significant because every annual Meeting session is the opportunity for verification of mandate - *Tunc*, Le droit anglais..., p. 109-110. One year mandate is an assumed mandate (unless otherwise regulated by the foundation act) in the Polish Commercial Companies Code (2002), Par. 202, as well as in the Macedonian Law..., p. 249.

(serious) reason, but the legislative systems differ in their practice on whether and when they recognize the damage compensation right to a dismissed person or the right to argue the validity of a dismissal decision.[20] However, it seems that there is a general trend in legislation to recognize only the damage compensation rights in accordance to concluded contract, in cases of unjustifiable dismissal. The mandating relation justifies this sanction: the one who gives orders (company) can always withdraw a given order, but the one who gets orders (Board member) is entitled to be compensated for the damage if the withdrawal was unfounded.[21]

The Company Law also prescribes a damage compensation right for dismissal "without justified reason" (but not the right on reassuming membership), in accordance to the concluded contract.[22]

It seems that English law regulates the institute of dismissal of the Board of Directors members in most details. Shareholders, according to this legal system, can dismiss the Board of Directors members by so-called regular decision of the Meeting at any time before the expiry of mandate, under condition that a Director who is being dismissed is allowed to speak at the Meeting session discussing a dismissal. There are three bases for dismissal of a Director (Board member): 1) bad management - misconduct, 2) incapacity for performing function - unfitness, 3) other cases, including illegal acting - wrongful trading.[23]

19. So in the German law the Board of Directors members can be dismissed by the Supervisory Board in the following cases: 1) serious or repeated violation of duty; 2) incapacity for regular performance of work scope; 3) distrust by the Shareholders' Meeting - German Law..., Article 84, Item 3; the same in the Croatian Law..., Article 244, Item. 2; and in the Slovenian Law..., Article 221, Item 1-4. and Article 241, Item 2. In the French Law the Board of Directors' members can be dismissed at any time by the Meeting's decision – French Law, Article 90, Item 2. The Swiss Law regulates this issue in the same way – Swiss Law..., Article 726, Item 1.
20. In the German law, as well as in the Croatian law, groundlessly dismissed Board of Directors member can dispute the validity of such dismissal before the court, which means that it is possible to restitute the membership. See: *Filipovic*, Foundations of the Commercial Legislation in Germany. Informative brochure, 3676 - 7/ 89, p. 8.; Croatian Law, Article 244. Item 2. However, the dominant solutions are the solutions on the right to damage compensation as the only right in accordance to the contract, and that is also the concept of our law; see Swiss Law, Article 726, Item 3.; according to the USA Law, if a Director has a work contract with the company (and not the contract on services) revocable "without sufficient reason" he/she is entitled to the damage compensation - *Tunc*, Idem. p. 118. In France in cases of dismissal without a valid reason the damage compensation is prescribed - *Guyon*, Idem. p. 352. It is interesting that the Slovenian law prescribed the dismissal wage in the amount of at least twenty four salaries, taken the amount of the last salary received, for the groundlessly dismissed Board of Directors member - Law..., Article 250, Item 2. The damage compensation includes the period until the mandate expiry in accordance to the contract concluded between the dismissed (revoked) Board of Directors member and a Director. This is explicitly stipulated by the Commercial Law of Yugoslavia from 1937, Par. 295, Item 4.
21. Law on Obligations, Article 765.
22. Company Law, Articles 71 and 263.
23. Companies Act 1985, p. 303-304; Finance Service Act 1986, The Insolvency Act 1985, Company Director Disqalification Act ("CDDA") 1986.

General misconduct, as the first basis of disqualification, includes the cases of constant violation of company's internal norms regarding the administration of business books and mistakes in business reports, or not delivering these reports to the registrar, as well as the violation cases in the field of foundation, advertising, managing and liquidation of company. This basis also includes Director's own mistakes of conduct, as well as failure to inform shareholders on existence of personal interest in relation to certain company business,[24] misuse of company loan for private purposes, etc.[25]

Unfitness, as the second basis of disqualification, is usually related to insolvency. However, opposite to the Government' suggestion to introduce automatic disqualification after initiation of a company liquidation, according to assumed guilt, the law accepted non-automatic solution and recognized the need of the establishing of Director's liability in this case as well, authorizing the court, and not the Shareholders' Meeting, to dismiss a Director. "Shadow Directors" have the same status as Directors. They are persons according to whose instructions company Directors work (excluding persons who give professional advice to Directors according to the contract on services, and not according to the work contract). It is interesting that court practice shows that sometimes a parent company can be considered "a Shadow Director". In implementing this basis the court practice is led by the interest of shareholders and creditors, and requests some other circumstance for proving misconduct, in order to avoid the aspect of punishment in dismissal (lack of commercial probity, complete unprofessionalism, abuse of position, violation of commercial moral code, etc.).

Finally, the last basis of a Director's disqualification is wrongful trading – illegal acting (deception of creditors and other persons, including shareholders themselves). This, beside dismissal (discharge) can be the basis of both civil procedure (damage compensation) and criminal charges (especially in cases of liquidation).[26]

Basic duties - The Anglo-Saxon legal practice and theory emphasize so-called fiduciary duty of a member of the Board of Directors (loyality) that has several aspects of expression. Firstly, duty of professional attention as a business person and non-interference of court into estimation of opportuneness of business movements (business judgment rule).[27] Secondly, duty of not competing with the company one manages (non-competitive rule). Thirdly, prohibition of using economic chances in a company for personal interests. Fourthly, duty of conscientious and honest work in the company's interest and not working for any collateral aim. Fifthly, prohibition of making profit on information disposing as a Director in the form of buying company shares before their value increases or selling them before their value decreases (prohibition of abusing inside information). Sixthly, impartiality in voting in the Meeting and the Board of Directors (Management Board) when a Di-

24. Companies Act 1985, p. 317.
25. Companies Act 1985, p. 330.
26. See: *Farrar*, Idem. p. 301-310; *Charlesworth & Morse*, Idem. p. 373-384; *Gower*, Idem. p. 153-158; *Pennington*, Idem. p. 717-725; *Boyle & Birds*, Idem. p. 431-441.
27. See about this rule in multi-volume edition on American courts practice: Block, Barton, Radin, The Business Judgment Rule, Aspen Law &Business, 5th edition.

rector owns shares of the company he/she manages. Seventhly, duty of not putting oneself into position in which one's duties and own interests (primarily financial) are in coflict. Eighthly, concluding own contracts with a company (on credit, guaranty, sale, services ...) under special conditions (approval from the Meeting or the Supervisory Board). Ninethly, duty of loyalty to a company. And tenthly, duty of skills.[28)] Members of the Board of Directors and the Board of Executive Directors, are in a way company (commercial company) trustees, but they are not trustees of individual shareholders.[29)] Their position is even more powerful than a position of trustee (a person to whom the management of another's property is entrusted), because their mission is not only to manage, but also to improve, reproduce, enlarge.[30)]

Inspired by the philosophy of these standards of the Anglo-Saxon law, business and court practice, our Company Law also adopted the institute of the "company interest" - members of the Board of Directors and the Board of Executive Directors perform their functions in the interest of a joint stock company and in managing business they act in good faith. In the English court practice it is considered that a Board member (Directors and the Board of Directors) has fiduciary duty towards a company only when he/she acts and decides in that capacity, but not when he/she votes in the capacity of the Meeting shareholder.[31)] It is also considered that the company Meeting can ratify the Board of Directors' act that is not within its scope of authorities, but is within the company authorities.[32)] It is also interesting the attitude that a member of the Board of Directors and the Board of Directors does not have fiduciary duty towards individual shareholders, but towards the company.[33)] However, members of the Board of Directors and the Board of Directors can have fiduciary duty towards individual shareholders, but only as their agents.[34)] Although these standards are legal standards of Anglo-Saxon legal practice that are not integral part of continental legal tradition, which in this respect recognizes only legal standard of conscientiousness and a business person's good faith, it seems that they should be introduced in our legal system more than our existing Law have somehow timidly done, so that our business persons and judges of specialized courts could get used to them and act accordingly, taking into consideration that these standards has increasingly been characterizing legislations and practices of continental Europe.[35)]

Property liability – Since the liability of the members of the Management Board and Board of Directors for damage (financial – property liability) refers to the *management*

28. See: *Tunc*, Le droit americain... p. 137-162; *Tunc*, Le droit anglais..., p. 131-146; *Farrar*, Idem. p. 324-380; *Gower*, Idem. p. 147-153; *Pennington*, Idem. p. 778- 818; *Charlesworth & Morse*, Idem. p. 319-366; *Boyle & Birds*', Idem. p. 449- 490 .
29. *Ivamy*, Company Law, London, 1978, p. 230. and 233.
30. *Tunc*, Le droit americain..., p. 130.
31. Case: Northern Counties Securities Ltd. v. Jakson & Steeple Ltd- Chansery division, in: *Sealy*, Cases and Materials in Company Law, London, Dublin, Edinburgh, 1992, p. 174-176.
32. Case: Grant v. United Kingdom Switchback Railwais Co - Court of Appeal, u: *Sealy*, Idem. p. 192.
33. Case: Percival v. Wright - Chancery Division, u: *Sealy*, Idem. p. 249-250.
34. Case: Allen v. Hyatt - Privy Counceil, u: *Sealy*, Idem. p. 250-251.
35. On these tendencies see most often quoted: Report of the High Level Group.

fault (faute de géstion - Business Judgment Rule - Business Judgment Doctrine), which is more the question of opportuneness than legality, with the ongoing endless discussion about its nature (contracual or not), it should be pointed out that in comparative law it is rather mutable field. Taken into consideration its relative inefficiency, it is quite benign as a sanction in comparison to criminal responsibility or dismissal.[36] It is interesting that some legal systems also develop the institution of insurance of property liability of the Management Board and Board of Directors (insurance fidelity).[37]

Number of members – Determination of a number of the Board of Directors members is basically regulated in different ways in comparative law. The approach of the French law is that in a joint stock company the Board of Directors should always be a collegial body (therefore to have minimum of three and maximum of twelve members, and in case of merging up to twenty four members).[38] Second opinion, from the German law, is that the Board of Directors can consist of one or more members, depending on the amount of capital fixed by the law.[39] Third opinion is from the Swiss law and it allows complete freedom of determination of the Board of Directors members to the company's constitutive act. The number of members can be one or more.[40] In some legal systems a number of members depend on whether a company has the Supervisory Board or not, and it is prescribed that the Board of Directors has at least three members if a company does not have the Supervisory Board.[41] Finally, certain new legal documents relate a number of the Board of Directors members to the number of shareholders.[42]

Executive Directors versus Non-Executive Directors – The Anglo-Saxon legal practice has developed approach and practice in which managing-executive function in a joint stock company, except in small companies, is basically performed by two boards: Board of Directors and Board of Executive Directors or Officers (Management Board). This practice has been increasingly introduced into continental legal systems or it has been accepted in business practice within legislative limits.[43] Members of the Board of Directors are elected by the Shareholders' Meeting, while the members of the Management Board are elected by the Board of Directors. In accordance to that, the members of the Board of Directors who have the status of members with work contract in a joint stock company can be members of the Board of Executive Directors (Management Board) – Executive Directors, while the members of the Board of Directors who are not company employees and have special contract on services with the company, cannot be elected members of the

36. See: *Guyon*, Idem. p. 452-460; *Ivamy*, Idem. p. 234-240; *Pennington*, Idem. p. 805-810; *Cozian-Viandier*, Idem. p. 278-282; *Farrar*, Idem. p. 381- 408; *Hamilton*, Idem. p. 310-369.
37. For USA Law : *Tunc*, Le droit americain..., p. 236-262; for English Law: *Tunc*, Le droit anglais, p. 146-156.
38. French Law..., Article 89.
39. German Law..., Par. 76.
40. Swiss Law...,Article 707; Polish Commercial Companies Code (2002), Par. 368, Item 2; Croatian Commercial Companies Law (1993), Article 239, Item 1.
41. Slovenian Commercial Companies Law (1993, 2001), Article 246, Item 2.
42. Draft of the Company Law of the Legal Initiative for Central and Eastern Europe (2001), Article 134.
43. French Law No. 2001-420 (Amendments 2001), Article 104-109; Macedonian Law..., Article 244-247.

Board of Executive Directors – Non-Executive Directors. The members of the Board of Executive Directors perform operating jobs of company management (day to day business), and it is understandable that in principle they cannot be members of the Board of Directors (especially external members). Since members of the Board of Directors appoint members of the Management Board and since the Management Board members report to the Board of Directors and the Board of Directors reports to the Shareholders' Meeting, it would be logical that the majority of the Board of Directors members are not members of the Management Board or that Non-Executive Directors constitute the majority in the Board of Directors. On the other hand, Non-Executive Directors should be Directors independent from the Board of Directors, and also from the Executive Directors who are members of this Board, but who are at the same time members of the Board of Directors, so that in this way they can assume certain controlling function in relation to the Executive Directors (both in the capacity of the Board of Directors members and in the capacity of the Management Board members). Finally, Non-Executive Directors should be differentiated from Directors who do not have financial or other business interest in certain business with a joint stock company (non-interested directors), position in which Executive Directors can find themselves (this is especially important because such jobs in which there is such an interest after disclosing detailed information can be approved only by the Board of Directors members who do not have such interest in that particular job, assuming that they form a decision-making quorum, and if not the approval can be given by the Shareholders Meeting).

Board of Directors Chairperson versus Chief Executive Director - In western, especially in Anglo-Saxon legal theory and practice, there has been a huge legal and organizational – business discussion on whether the Board of Directors Chairperson can and should be the Chief Executive Director at the same time (Chairman/Chief Executive Director/Officer - Chairman/CEO).[44)] Although the arguments for separation are rather strong the USA experience shows that in more than 80% of cases the Board of Directors Chairperson is a Chief Executive Director at the same time.[45)] Following such experiences, the solution of the French reformed Company Law should be appreciated. This law explicitly regulates that the Board of Directors Chairperson can (but does not have to be) Chief Executive Director, and if these two functions are performed by two different persons than the Chief Executive Director is an Executive Director who does not have to be (but can be) the Board of Directors' member.[46)] Therefore, law and economics are not like religion offering universal answers to all questions of contemporary world.

44. The British Code of Best Practice (Report of the Committee on the Financial Aspects of Corporate Governance and the Report of the Committee on Director's Remuneration) dated 1992 did not recommend the division of these functions. In spite of that, certain researches show that in the majority of big companies it has been done, being considered that power is too concentrated when these functions are performed by one person. See: Shaw, The Cadburi Report-Two years Later, in: Hopt, Comparative Cororate Governance, Walter de Gruyter-Berlin-New York, 1997, p. 37.
45. See: Vincke, The Corporate Governance in Belgium, in: Hopt, Idem. p. 133-134.
46. French Law (2001), Article 107.

Remuneration/award – The issue of remuneration (salary - income, participation in profit, compensation of expenses, other payments: insurance premium, commissions, incentives and other payments) to the Board of Directors' member is not uniformly regulated in comparative law. There are most differences in the regulation of possibilities of participation in the company profit, which can be paid entirely, partially or in shares.[47)] Our law recognizes to the Board of Directors' members the right to all the forms of compensation, except the right to participate in profit (recognized right to incentive award could not be considered the right to participation in company profit).[48)] It is a general rule that the remuneration to the Board of Directors' members is connected to two principles: the first one is a degree of members' tasks (on this basis the difference can be made between those professionally employed in a company as Executive Directors and those non-professional members who are Non-Executive Directors) and the second one is a financial state of a company (which is the basis for reducing determined remuneration and changing the decision of the Meeting or the Supervisory Board - depending on which one is a nomination body - on remuneration and changing of the contract accordingly, and in cases of insolvency it is the basis for return of payments received as incentives in the last year, but not of other payments, upon the request of creditors and/or shareholders).[49)] It is especially interesting the

47. The right of participation in profit is recognized by: Croatian Law (Law…, Article 247), Slovenian Law (Law..., Article 253), German Law (Law..., Par. 87); Italian Law recognizes this right to the Board members who work professionally in a company, so-called Executive Directors (right to salary and to participation in profit), while it does not recognize this right to so-called Non-Executive Directors (Board members who are not employed in a company), but it recognizes other rights to them, determined by the by-laws and decision of the Meeting as nomination body (Commercial Law, 1942, Article 2389); French Law regulates that the Board of Directors members are entitled to a fixed remuneration or to a remuneration for presence at a session ("jetons de présense"), but they are not entitled to participate in profit ("tantieme") - Law..., Article 108; in Swiss Law remunerations for the Board of Directors members are determined by the by-laws or the Meeting decision, with the right to participate in profit, to a fixed amount and for the presence at sessions (these modes are usually combined), but if there is participation in profit it has to be mentioned in the management report for the annual Meeting (Law.., Article 677.; in the Law of USA so-called Executive Directors, members of the Board employed as professionals in a company usually have a significant fixed remuneration determined by the decision of the Meeting, while the Board members who are Non-Executive Directors also have fixed remuneration which is significantly lower (*Tunc*, Le droit americain..., p. 108.); in the English Law the Board members are entitled to reimbursement of expenses and to fee for presence at Board sessions, and so-called Executive Directors with professional executive functions in a company are entitled also to special remuneration in accordance to the contract (the same right have, also, so-called Non-Executive Directors who are not employed in a company as professionals, but who provide certain important service for company, such as consulting or similar, in accordance to the contract, while Non-Executive Directors who are not contracted by the company and who do not provide some special service for the company, do not have such right) - *Gower*, Idem. p. 158-159; *Loose* and others, Idem. p. 390-394; *Pennington*, Idem. p. 747-754.
48. Company Law, Articles 269-270.
49. Compare: Company Law, Articles 270 and 271; Croatian Law, Article 247 and 251; Swiss Law... stipulates the return of the participation in profit in last three years based on unfounded enrichment..., Article 679.

fact that in this field the Anglo-Saxon law, which is a creator of rules of payment to the Board of Directors' members partly in participation in profit and partly in shares, has been increasingly abandoning this rule and turning towards clear separation of the payment bases: share ownership and contract on services (management contract). The Board of Directors' members as shareholders are in the same position as other shareholders, and the Board of Directors' members who perform that duty in accordance to the special contract base their financial rights on that contract and one of them is not the right to participation in profit in the form of free shares. There are many reasons for this: preventing conflict of interests, preventing use of privileged information, equality of shareholders, avoiding confusion of different legal grounds, preventing certain manipulations in practice, etc.

5. Monitoring of Management

Strengthening the authority of the Shareholders' Meeting – Assuming that there is an indisputable need, in accordance to the initiated discussion on "corporate governance" process (*ENRON* is just a top of iceberg that happened in conditions of insisting on independent external auditors and their auditing reports related to the management's financial reports for the Shareholders' Meeting), to improve the position of shareholders and their protection in relation to evident processes of some kind of alienation and all sorts of privatizations of managing-executive spheres of authority in a joint stock company, which strengthens the relevance of dispersed shareholding even more, than the major question is how to do that. That way is multi-dimensional, but all the dimensions can be brought down to one: strengthening instruments and techniques for monitoring of the managing-executive authority sphere (economic scene reminds us here irresistibly of political scene!). One of those directions is certainly the strengthening of monitoring itself by the Shareholders' Meeting through various legal institutes, and other directions are related to issues of other controlling institutes: Supervisory Board, independent directors, independent committees, independent external auditors, internal auditors, special auditors or minority experts, etc.

The Shareholders Meeting can strengthen its monitoring function through several legal mechanisms: extending its scope (especially approval for legal jobs above certain value and approval for disposing of the company's property above certain value, as well as giving approval for legal jobs with the conflict of interests between members of the Board of Directors or Management Board and a company); cumulative voting that affirms minority of shareholders can have that function directly or by informative position as members of the Board of Directors or the Board of Executive Directors for those shareholders, especially for institutional investors; shortening of mandate period; simplifying the dismissal of members of the Board of Directors and Board of Executive Directors; better transparency of managing business of joint stock companies and strengthening the request for disclosure of business reports and other reports that show true business situation of a joint stock company to shareholders and third persons (the Company Law here has to refer a great deal to the Stock Exchange Law and Securities Law – regulatory and self-regulatory)[50]; improve system of informing shareholders, strengthen minority shareholders' rights to initiate pro-

cedures of engaging special auditors or minority's experts for reviewing certain business decisions and submitting reports to the Meeting; transparency of appointing the Board of Directors and the Management Boards's members, etc.

Supervisory Board (Yes or No) – Depending on the organizational system of a joint stock company, the Supervisory Board is either an obligatory body or not (terminological confusion of often naming members of this body "Supervisory Directors" also in the Anglo-Saxon practice should be avoided). As mentioned, the Supervisory Board is an obligatory body in a two-tier system and combined system of organizing a joint stock company (system combined of one-tier and two-tier systems when a two-tier system is chosen), while in a one-tier system it is not obligatory[51]. Today there is a general trend of abandoning the Supervisory Board as obligatory body and limiting it to an optional body, depending on the will of shareholders, except partly in the listed joint stock companies or in financial organizations. According to our practice up to now, although the Supervisory Board was basically an obligatory body in our medium-sized and big joint stock companies, it can be claimed with certainty that it has not accomplished its mission. A question that certainly deserves attention of both professional and business public is whether this is a sufficient reason for transforming this body, entirely or mainly, into the system of optional bodies (except in financial organizations and listed or all open joint stock companies), now when we are approaching the adoption of new Law. Especially when we have undoubtedly completed the identification of the cause of the "corporate governance" revolution and it is one of the institutes which are instruments of controlling function of managing and executive sphere of authority for shareholders.

Independent Directors (External Directors) and Independent Committees – The second part of the discussion about Executive/Non-Executive Directors is a question whether Directors should be independent Directors or not. It means that Non-Executive Directors equal the concept of independent Directors, but they do not equal the concept of Directors who do not have their business interest in certain business. American Legal Institute recommends that companies with more than 2.000 shareholders or with assets that value more that 100 million dollars should have the majority of external - independent Directors, unless the majority of voting shares in that company is owned by one person or a family or a control group, and also recommends that all open companies should have at least three external – independent Directors.[52] The Rules of the London Stock Exchange of Listing and Quotation also require that listed companies have more than a half of independent Directors in relation to a controlling shareholder, the one who has 30% of votes or controls the

50. On tendencies in this field in the European law see: Report of the High Level Group..., p. 33-34. and 45-47.
51. The solution in the Slovenian Law is specific – the Supervisory Board is obligatory in cases when there is one of these conditions: 1) when company capital exceeds determined amount, 2) when company has more than 500 employees, 3) if it was founded by public invitation, 4) if company shares are admitted at the stock exchange, 5) if a number of shareholders who own registered shares does not exceed 100 (Law..., Article 261).
52. American Law Institute (ALI). See: Devesa, Les administrateurs independants, Revue de droit des affaires intenationales (1994), 543-566.

election of a number of members of the Board of Directors who can provide the majority of votes in that body.[53] However, the requirement of the majority of independent members (by Executive Directors or controlling shareholder/s) in the Board of Directors has not been widely spread in the continental Europe so far, but the requirement of existence of at least minimum of such members in listed companies (usually two) has. On the other hand, it seems that this requirement has somehow been transformed into the requirement for existence of independent committees appointed by the Board of Directors, with the majority of independent members (who can be independent members of the Board of Directors and/or other independent persons as well). It is usually required for listed companies (possibly even wider – for all open companies) to have three obligatory committees: Audit Committee (which, in a certain sense, is a transmission between independent external auditors and the Board of Directors when the Supervisory Board does not exist), Nomination Committee (which basically prepares proposals for all nominations in the Board of Directors and Executive Board and even wider, for the management in general) and Remuneration Committee (which prepares proposals for remuneration and awards for the members of Board of Directors and Executive Board, as well as for employees).

This suggestion for improvement of EU regulations was accepted by the High Level Group for Reforming EU Company Law.[54] This group also suggested the definition of independence (of Directors or Committee members):

- persons (family members and persons related to them) who are not employed in a company or had not been employed five years before being appointed Non-Executive or Supervising Directors;

- persons (family members and persons related to them) who do not receive any remuneration for consulting or for anything else from a company or its Executive Directors;

- persons (family members and persons related to them) who do not receive any remuneration from the company which is dependant on his/her performance (for example guarantors for acquisition of shares or other securities);

- persons (family members and persons related to them) who, in the capacity of Non-Executive or Supervising Directors of a company, supervise the Executive Director who is a Non-Executive Director or a Supervising Director in other company or who is otherwise related to both;

- persons (family members and persons related to them) who are controlling shareholders, who work independently or jointly, or their representatives (for this purpose a controlling shareholder is a shareholder who owns, independently or jointly with other persons, at least 30% of a company's joint stock capital).[55]

53. Yellow Book, Chapter 3, Par. 3.12. The Conference Board of Europe points out that in the USA about 94% of joint stock companies has majority of independent external members of the Board of Directors. See: Vincke, Idem. p. 135-141.
54. Report of the High Level Group.., p. 59-62.
55. Report of the High Level Group.., p. 62-63. According to some narrow definitions an independent Director is a person who does not have any financial interest or other kind of relation with a company or its Board of Directors or Management Board. See: Devesa, Idem. p. 543-566.

6. *Quo Vadis* Corporate Governance?

Transitional and/or European approach – It is difficult not to be European in the field of company law in a time and environment where it has already become a standard. However, being European in this area would definitely mean letting down the mission of science, which is an organized doubt and a well-arguing critical juror. On the other hand, being European in this field and at this time does not mean that one knows unreservedly what one truly wants, since *inter alia* in the field of company law EU finds itself in important crossroads with common doubt as to which extent and in what pace the legal institutes of the Anglo-Saxon legal system, developed in different environment and under different circumstances, should be transplanted into European legal sphere. There is no doubt that the market of investments (capital and securities) becomes more and more uniform and that, *inter alia*, company law, stock exchange law, securities law, competition law and liquidation law have to be increasingly harmonized, in order to enable the development of that market and not to be its opponents. However, being aware of its limitations and risks of its market and environment, determined in its intention to incorporate many institutes of the Anglo-Saxon legal system into its legal sphere,[56] EU launches its movements of changes in three speeds: short-term, medium-term and long-term.[57]It should not be forgotten that the company law reform, whose integral part is the legal institute of corporate governance itself, depends a great deal on how much law and technical resources are really close enough in our environment: whether it is realistic to hold the Shareholders' Meeting sessions without their physical presence or the Board of Directors sessions most often without direct simultaneous technical communication of all its members, whether it is realistic to oblige all joint stock companies to have their websites, whether all technical obstacles are solved in order to fulfill all legal requirements for electronic voting, whether in this moment we need bearer shares, whether Serbia has enough staff for fulfilling the obligation of the majority of independent (external, non-executive) Directors in the Board of Directors of all joint stock companies, whether it is realistic to prescribe the obligation of having at least three committees (audit, remuneration, nomination) in all joint stock companies and the majority of independent Directors in them, whether disclosure rules are realistic for all joint stock companies in this moment or only for the listed ones, etc. The profile of the new Law on Commercial Companies will also depend on response to these questions from technical aspect. The regulation of the corporate governance institute will depend on it a great deal as well. In any case, one thing is certain: legal profile of the Company Law is considerably conditioned by technical profile and therefore, it is not possible to have final laws that regulate commercial companies, especially the companies of capital. This is proved by the initiated big reform of the company laws of the EU member states, initiated by the Report of the High Level Group...[58], as well as of the countries who in some way or another tend to become EU members.[59] With its new Law on Commercial Companies

56. See, for example, for institutes of wrongful trading and director's disqualification - Report of the High Level Group, p. 126.
57. See: Report of the High Level Group.., p. 125-131.

Serbia has to accept that direction adequately[60], which cannot be only European or only transitional, but both European and transitional, whether we want it or not.

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CORPORATE GOVERNANCE акционарског друштва (модели и трендови у упоредном праву и пракси)

Резиме

У овом раду аутор критички анализира постојећа законодавна решења проблема корпорацијског управљања, посебно имајући у виду решења релевантних упоредних закона развијених земаља. Проблем корпорацијског управљања посебно је актуелан у котираним акционарским друштвима. Неколико аспеката из ве области аутор посебно актуелизује. Прво, аутор констатује да је тренд јачања управно-извршне сфере власти у овим друштвима пред озбиљном кризом са становишта евидентног отуђивања од власника капитала. Друго, аутор сматра да се отуда налазимо пред једним реверзибилном процесом поновног јачања демократизма ових друштава, што по својој логици захтева јачање позиције скупштине акционара. Треће, аутор заузима став да је најкритичнија зона корпорацијског управљања контролна зона управно-извршне власти, где се економија, по ко зна који пут, по сличности процеса приближава истим потребама у политичкој сфери. У том смислу, аутор анализира домете неких "старих" института мониторинга управно-извршне сфере власти, могућности њихове адаптације новим потребама (надзорни одбор, ревизор, скраћивање мандата, флексибилност опозива, јачање ингеренција скупштине акционара), као и правни профил и могуће домете неких нових института мониторинга (независни директори, независни комитети, независни ревизори, повереници скупштине, јачање права мањинских акционара, преузимање значајног или већинског пакета акција, јачање одговорности управе и извршних директора, јачање института

58. See where the French Commercial Companies Law is presently in: Nouvelles regulation economiques, Loi p. 2001-420 of 15th May 2001.
59. Russian Law on Joint Stock Companies (1995, 1996); Slovenian Law on Commercial Companies, Uradni list RS (Official Gazette of RS), p. 30-1298/93 and 45-2548/2001; Polish Commercial Code (2001, 2002.); Bulgarian Commercial Law (2003); Law on Commercial Companies of Montenegro, Official Gazette of the Republic of Montenegro, No. 6/2002; Czech Commercial Code (1992, 2002); Croatian Law on Amendments to the Law on Commercial Companies (1993, 2003).
60. On trends in Australian law see: Cassady, Concise Corporations Law, Deakin University, 2001; on trend in Canadian law see: VanDuzer, The Law of Parterships and Coprorations, Concord, Ontario, 1997. On trends in comparative law see especially: Hopt, Comparative Corporate Governance, Walter de Gruyter-Berlin-New York, 1997; Hopt, Capital Markets and Company Law, Oxford, 2003.

транспарентности пословања акционарских друштава, посебно котираних и слично). Најзад, аутор анализира и предности и недостатке тзв. чистих једнодомних или дводомних система управе акционарских друштава, као и неких њихових мешовитих форми, са коначним закључком да законодавац не би требало да намеће један модел управе, било једнодомни (управни одбор са извршним директорима) или дводомни (управни одбор са извршним директорима и надзорни одбор), већ би требало да препусти самим акционарским друштвима (практично акционарима) да изаберу, полазећи од свих својих специфичности, модел који сматрају да њима највише одговара.

Кључне речи: *корпоративно управљање, управни одбор, надзорни одбор, независни комитети, мандат, одговорност, скупштина акционара*