The interplay between corporate governance and company law

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STATEMENT OF RESPONSIBILITY

I declare that I am the author of this dissertation, which is an original and unpublished work that has never been submitted to another higher education Institution to obtain an academic degree or other qualification. I also certify that all citations are duly identified and that I am aware that plagiarism constitutes a serious lack of ethics, which may result in the annulment of this dissertation.

ABSTRACT

Keywords: European corporate governance, company law, corporate governance code, international law.

In modern economic conditions, joint-stock companies are one of the most popular forms of business activity. Corporate relations is a system of relations developing between the participants of the association (shareholders) and the management apparatus (management) separated from the shareholders, as well as between the management and other interested parties of such an association (employees, partners, government bodies, etc.) and being the result of a compromise of interests associations, its members and management.

In other words - each has its own specific interest, which induces to perform certain actions.

Corporate governance is management within the company including the entire unit, from the secretary to the shareholders. This rather broad concept of coordination covers not only those involved in corporate relations but also their rights and obligations and the role of everyone in the management system.

The basic issue underlying the corporate governance debate is the fundamental choice between two competing conceptions of the company (or theories of the firm):

On the one hand, there is the shareholder model, according to which the company is a private association of shareholders who come together and found a company with the intention of increasing their wealth. In this model, the clear primary responsibility of managers hired to run the company is to the shareholders, and their main task is to increase the value of the company.

This may be contrasted with the stakeholder model, according to which the company is a community in which shareholders are only one of a number of stakeholders. Stakeholders are groups that are closely linked to the company. One important stakeholder group, especially from the trade union perspective, is the employees.

As for corporate law, it is a right that helps in resolving any issues and regulates corporate relations.

Since the concept of corporate law and corporate governance are quite extensive. It is necessary to make a more detailed study of each and understand how they are interrelated.

CONTENTS

List of abbreviations

Anglo-US	— Anglo-American model
CEO	— The Chief Executive Officer
CG	— Corporate Governance
CJEU	— The Court of Justice of the European Union
EU	— European Union
EC	— European Commission
EECT	— European Economic Community Treaty
FRC	— Financial Reporting Council
ICGN	— The International Corporate Governance Network
OECD	— The Organization for Economic Co-operation and Development
SE	— The Societas Europaea
SEC	— The United States Securities and Exchange Commission
SOX	— Sarbanes-Oxley Act
SRD	— The Shareholder Rights Directive II
TEU	— The Treaty on European Union
TFEU	— The Treaty on the Functioning of the European Union

INTRODUCTION

Corporate relations is a system of relations developing between the participants of the association (shareholders) and the management apparatus (management) separated from the shareholders, as well as between the management and other interested parties of such an association (employees, partners, government bodies, etc.) and being the result of a compromise of interests associations, its members and management.

In other words - each has its own specific interest, which induces to perform certain actions (transactions). As a result of such actions, a person's interest is realized and a variety of relationships are formed - corporate relations.

In today's world of corporate relationships, the interplay between corporate governance and corporate law is one of the primary problems to be resolved. The most important factor is the existence of a conflict of interest between stakeholders and management, caused by the differences between their goals regarding the company or corporation. This, in turn, goes against established roles of both of these entities relating to the governance of a company or corporation.

Both on a national level and within the European Union, corporate law is more related to private law rather than public law, which forces the members of corporate entities to choose when making strategic decisions, whether to follow the corporate law or the internal governance structures established within each individual corporation.

Corporate relationships directly linked to governance can be divided into two types. The relationships between stakeholders and management and the relationships between management and other staff. The differing goals of all the participants cause the underlying structures of governance of the corporation to weaken and can expose the company to many different kinds of risks. These risks may include loss of trust between the corporation members, loss of revenue, clients,

Since the regulation of corporate relationships exists on both a national and an international level, it implies the existence of different documents to regulate the functioning of the corporation, despite the European Union having different directives and regulations and the corporate codex that should be used in the resolution of such issues.

In essence, the codes are there to bring remedy to various risks that are left open by company law.

Corporate governance can be defined as a set of rules and practices that are employed by the company to direct its decisions and actions. The board of directors is responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that appropriate governance structures are in place.

As for corporate law, it is a right that helps in resolving any issues and regulates corporate relations. Since the concept of corporate law and corporate governance are quite extensive. It is necessary to make a more detailed study of each and understand how they are interrelated.

Thus, the development potential of corporate governance requires a complex approach, one which demands the completion of different transversal activities. Seemingly, in the near future, the effectiveness of corporate governance will be mostly determined by the ability of a corporation to apply an integrated approach to resolving corporate tasks.

The paper will consider the concepts and main characteristics of corporate governance and corporate law, as well as the main directives and standards that are used in the European Union to regulate corporate relations.

In this work the works of different authors of Europe and CIS countries were used, because this question was studied not only in the territory of the European Union. There were also researched different sites, for example, the site of the European Union.

This paper consists of 3 chapters, an introduction and a conclusion. The first part describes corporate governance, the main characteristics and the concept, as well as corporate governance models and their main differences.

The second part of the thesis deals with EU corporate law. The main directives and documents that regulate corporate relations.

And in the third part the research on the need to adopt a unified code of corporate governance in the whole territory of the European Union is carried out.

1 CORPORATE GOVERNANCE

1.1 Definition of corporate governance

The creation and development of corporate governance reflect the evolution of the global economy. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure. Corporate governance is now widely used in practice, due to the increasing complexity and scale of management tasks, especially in large organizations and at the group level. Issues of corporate governance, which are the subject of a significant number of publications, are also actively discussed at scientific and practical conferences and professional events.

At the same time, it should be admitted that the concept of corporate governance is still not clearly defined, which causes difficulties in the interaction of specialists working in this field.

Corporate governance issues are most relevant for large enterprises and groups of companies, the important feature of which is that they are owned by one group of people (shareholders), but are directly managed by other people (directors and managers). Thus, property rights turn out to be separated from the functions of direct management, which causes the problem of trust in directors on the part of the owners.

Corporate governance is, first of all, a complex of relationships. The principles of corporate governance of International Finance Corporation contain the following definition of corporate governance: "Corporate governance is a complex of relations between the company's management, its Board of Directors, shareholders and other stakeholders." Corporate governance is also a structure through which the company's objectives and means of its achievement and monitoring are defined.

But each author gives his own concept. The corporate governance system can be defined as a set of actions for development, adoption, execution of decisions and control over their execution in legal entities.

Sir Adrian Cadbury in 1992 who chaired the Cadbury Commission that produced the Cadbury Report on Corporate Governance in the UK, claims that “corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals... the aim is to align as nearly as possible the interests of individuals, corporations, and society”.

N.R Narayan Murthy, Chairman of the Corporate Governance Committee, Indian Securities and Exchange Council (2003) believed that "the term 'corporate governance' can be defined broadly and narrowly. In general, many corporate governance codes do not even attempt to define what this term is. Importantly, corporate governance is a concept rather than a separate tool, and it includes a discussion of the company's governance and control structures, as well as the rules for the separation of powers between the company's owners, its board of directors, the executive body (management board, CEO) and employees, suppliers, customers and society as a whole. "

As we can see, the definitions which give above differ, but there is one very important similarity. All definitions emphasize that without the interaction of all parts of the corporate governance model it will not be possible to achieve management efficiency.

The main components of an effective company management system are the Management Board, the Board of Directors, the participation of employees in key decisions of the company (especially if the company has a system of joint decision-making), banks and creditors, independent audit and, of course, markets. As for markets, these are, first of all, the stock market and the corporate control market. As a rule, the corporate control market contributes to strengthening the efficiency of corporate governance rules and greater responsibility of directors to investors. Such components of the corporate governance system may take place in many developed countries, although in various combinations and forms. In particular, in recent years, governments and civil society organizations in a number of countries have been actively discussing the need to take into account a wide range of social issues and the needs of society as a whole (these aspects are most relevant for large companies). There are different definitions in the corporate governance literature, but they can all be divided into two groups. At the same time, it should be admitted that the notion of corporate governance still has no clear definition. The first group of definitions considers the actual behavior of corporations. And here, of course, the economic component dominants. The behavior of a corporation may include such issues as efficiency, financial structure, securities. The second group considers the sources of law, namely the specific legal rules that govern corporate legal relations.

There are also theories that allow us to distinguish two conceptual approaches to the essence of corporate governance: the concept of shareholders and the concept of participants. The concept of shareholders considers corporate governance in the narrow sense as a system of accountability of top managers to the shareholders of the company, while the concept of partners, on the contrary, attaches wide importance to corporate governance, designating it as a system of interaction between formal and informal relations of all stakeholders. That is why, in recent years, the term "stakeholders" has become widely used, and in the scientific literature as well, an interest that means "other stakeholders". (not only shareholders but also employees, contractors, etc.)

Usually, stakeholders are divided into three large groups:

1) internal stakeholders - managers and staff of the enterprise;

2) connected stakeholders - shareholders of the company, investors, creditors, clients, and suppliers;

3) external stakeholders - central and local authorities, society as a whole.

The concept of corporate governance includes a definition of different components:

Corporate governance:

- includes a system of external agency relations between business financiers (shareholders and creditors) and top managers (directors) of the company in order to reduce risks and increase the investment attractiveness of the business;

- includes a system of internal agency relations between the top management (directors) of the company and managers at lower levels, providing for the delegation of authority and responsibility (accountability/responsibility) and aimed at ensuring effective intra-corporate interaction;

- is aimed at ensuring sustainable development of the company (sustainability), including economic, environmental and social components;

- is inextricably linked to strategic management as the process of defining the goals of the company's development, forming strategies and management policies, as well as the practical implementation of strategies at the tactical level of management, including through a system of strategic planning and budgeting;

- recognizes the differences in the positions of different stakeholder groups, but at the same time contributes to the fullest possible satisfaction of their interests, based on the fact that the company's sustainable development is a common global goal for all stakeholders;

- is a complex concept and includes several interrelated aspects: regulatory and legal (legislation, standards, professional codes), organizational (the structure of the company and its management bodies, including the Board of Directors, regulations of external and internal management interactions), human resources (the system of advanced training of managerial personnel).

That's why it's important to understand and characterize the topic as a whole. What are the principles underlying corporate governance? We will consider from the first part of the definition, economic questions. The main elements that define the basic principles of corporate governance, taking into account the history of corporate relations.

Corporate governance is based on principles such as conducting the business with all integrity and fairness, being transparent with regard to all transactions, making all the necessary disclosures and decisions, complying with all the laws of the land, accountability, and responsibility towards the stakeholders and commitment to conducting business in an ethical manner.

There are different approaches to defining this concept. The authors highlight the agency theory, management theory, and social responsibility theory. The first one is the main popular and the mail important. The agency problem is one of the age-old problems that persisted since the evolution of the joint stock companies. It cannot be ignored since every organization possibly suffered from this problem in different forms. The principal is the person who owns the firm, while agents manage the business of the firm on behalf of the principal. These two parties reside under one firm but have different and opposite goals and interests, so there exists a conflict and this conflict is termed as the agency problem. The problem of agency relations between owners and managers for the first time began to acquire relevance at the turn of the XIX-XX centuries. As the emergence of large industrial enterprises, the management of which required the involvement of hired managers. The process of separation of property rights from the functions of the management of this property began. Previously, business owners themselves provided management of enterprises and control over their activities, but now the functions of current management have been transferred to hired managers, although the solution of strategic tasks was still the prerogative of the owners.

The theory of agency relations was developed in 1976 by American economists Michael Jensen and William Meckling in order to explain the relationships within corporations (Jensen and Meckling, 1976). Corporations are seen as a set of "contracts" between managers, shareholders and creditors, and other interested parties, with managers acting as agents and suppliers of financial resources acting as principals. Agency theory states that although individual team members act in their own personal interests, the well-being of each of them depends on the well-being of the other team members and the results of the team as a whole.

However, in the case of separation of property rights from management functions, the problem of agency relations arises. With the change in the time, the agency problem has taken different shapes and the literature has evidence about it. The presence of agency issues has been widely witnessed in different academic researches. The evidences found in different fields like accounting (Ronen & Balachandran, 1995; Watts & Zimmerman, 1983) finance (Fama, 1980; Fama & Jensen, 1983; Jensen, 1986), economics (Jensen & Meckling, 1976; Ross, 1973; Spence & Zeckhauser, 1971), political science (Hammond & Knott, 1996; Weingast & Moran, 1983), sociology (Adams, 1996; Kiser & Tong, 1992), organisational behaviour (Kosnik & Bittenhausen, 1992) and marketing (Bergen, Dutta, & Walker, 1992; Logan, 2000; Tate , 2010).

This theory helps in implementing the various governance mechanisms to control the agents' actions in the jointly held corporations. Berle and Means (1932) in their thesis found that the modern corporation of the USA was having dispersed ownership, and it leads to the separation of ownership from control. In a joint stock company, the ownership is held by individuals or groups in the form of stock and these shareholders (principals) delegates the authority to the managers (agents) to run the business on their behalf (Jensen & Meckling, 1976; Ross, 1973), but the major issue is whether these managers are performing for the owners or themselves.

Agency relations at the corporate level are not limited to the relations between shareholders and managers of an enterprise and may cover a wide range of groups of business participants. Thus, since the agents have their own interests that are different from those of the principals, the latter must make an effort to create an environment in which the actions of the agent in their own interest would also be in the interest of the principal.

The study of agency problem and its remedies is ongoing research in both the corporate and academic world. Eisenhardt (1989) highlighted that a proper governance system can relegate the agency conflict. He recommended two proposals to minimize the agency problem. The first one is to have an outcome-based contract, where the action of the agents' can be checked. Second, the principal needs to form a strong information structure, where the principal is aware of all the information about the agents' action and they cannot misrepresent the principals.

The situation where an individual acts in his or her own interests but is acting in the interests of the organization as a whole is called goal congruence.

Several researchers have documented certain remedies to the agency problem, which are cited below:

Managerial ownership: Granting of stocks to the agents increases their affiliation to the firm. Jensen and Meckling (1976) described that managerial ownership makes the manager work as the owner in the organization and concentrate on firm performance. By this, the interest of the owners' and managers' interests aligns.

Executive compensation: An inadequate compensation package may force the managers to use the owners' property for their private benefit. A periodic compensation revision and proper incentive package can motivate the managers to work harder for the better performance of the firm (Core, Holthausen, & Larcker, 1999) and by which the owners can maximise their wealth.

Debt: Increase in the debt level in the firm discipline the managers. The periodic payment of the debt service charges and principal amount to the creditors can make the managers more cautious regarding taking inefficient decisions that may hamper the profitability of the firm (Frierman & Viswanath, 1994).

Labor market: The effective managers always aspire for better opportunity and remuneration from the market and the market estimate the manager's ability by their previous performance (Fama, 1980). For this reason, the managers have to prove their worth in the firm by maximising the value of the firm and this increases the effectiveness and efficiency of the managers.

Board of directors: The inclusion of more outside and independent directors in the board (Rosenstein & Wyatt, 1990) may diligently watch the actions of the managers and help in making the alignment of the interest among the owners and managers.

Blockholders: A strong owner or concentrated ownership or the blockholders can closely monitor the behaviors of the managers and can control their activities to improvise the value of the firm (Burkart, Gromb, & Panunzi, 1997).

Dividends: The profit distribution as dividends leads to a decline in the agency conflict (Park, 2009). Dividend distribution decreases the internal funds, so the firm has to attract external funds to finance. For which, the managers need to make the firm perform better in order to allure the market participants. Dividend payout also resolves the agency conflict between the inside and outside shareholders (Jensen, 1986; Myers, 2000).

The market for corporate control: The poor performing firm may be taken over by an efficient firm and the acquiring firm may eradicate the inefficient management (Kini, Kracaw, & Mian, 2004), which penetrates the managers to perform efficiently

In accordance with the management theory, directors act as executives with delegated powers, rights and duties, and they are subject to the same requirements as any decent person who acts for the benefit of others in a fair and honest manner on the basis of the law; the theory of social responsibility significantly expands the concept of a joint-stock company and includes employees, creditors, suppliers, consumers, and even society as a whole.

1.2 Three models of corporate governance

In each country, the corporate governance structure has certain characteristics or constituent elements, which distinguish it from structures in other countries. To date, researchers have identified three models of corporate governance in developed capital markets. The most popular are the Anglo-US model, the Japanese model, and the German model (European). Each model identifies the following constituent elements: key players in the corporate environment; the share ownership pattern in the given country; the composition of the board of directors (or boards, in the German model); the regulatory framework; disclosure requirements for publicly-listed stock corporations; corporate actions requiring shareholder approval; and interaction among key players.

The Latin American and African models, which are still in their infancy, have also been highlighted recently. Their specificity is conditioned by forceful methods of state intervention in the economy, lack of competent management, corruption, under development of labor relations.

1. The Anglo-US (Anglo-American) model assumes an unconditional priority of shareholders' rights (the "outsider" model), the main control is exercised through the capital market. The American model of corporate governance was formed in the conditions of a developed securities market. This model is focused on the preferential satisfaction of the financial interests of shareholders and is based on the monist principle or the principle of a board system. The UK and the US are characterized by a two-tier system of management bodies. Thus, according to the Companies Act 1985(England), the company is managed by directors, who, as a general rule, form the board of directors, as well as the general meeting of shareholders. In the same way, the management system of business corporations in the U.S. is structured: the board of directors and the general meeting of shareholders. The Board of Directors in the Anglo-American model of corporate governance forms various committees. In U.S. corporations, the key committee on the board of directors is the audit committee, which is not an advisory, but a supervisory body. Such functions were vested in it by the Sarbanes-Oxley Act of 2002, which tightened the reporting requirements for companies after the scandal with the energy concern Enron, whose managers falsified the reporting in order to inflate profits.

There is a causal relationship between the importance of equity financing, the size of the capital market and the development of a corporate governance system. The US is both the world’s largest capital market and the home of the world’s most-developed system of proxy voting and shareholder activism by institutional investors. Institutional investors also play an important role in both the capital market and corporate governance in the UK.

Members in the Anglo-US model include management, directors, shareholders (especially institutional investors), government agencies, stock exchanges, self-regulatory organizations and consulting firms that advise corporations and/or shareholders on corporate governance and proxy voting. Of these, the three major players are management, directors, and shareholders. They form what is commonly referred to as the "corporate governance triangle."

The relationship between the board of directors and shareholders is based on the concept of agency relations: directors are trustees (agents) of the shareholders and the corporation as a whole. Therefore, they are entrusted with fiduciary duties, which are traditionally divided into two categories: "duty of loyalty" and "duty of care".

The Anglo-US model, developed within the context of the free market economy, assumes the separation of ownership and control in most publicly-held corporations. This important legal distinction serves a valuable business and social purpose: investors contribute capital and maintain ownership in the enterprise, while generally avoiding legal liability for the acts of the corporation. Investors avoid legal liability by ceding to management control of the corporation and paying management for acting as their agent by undertaking the affairs of the corporation.

In addition, the Anglo-American model of corporate governance is characterized by such characteristics as low level of government interference in corporate affairs, small share of state ownership in corporations, position of the chief executive officer who traditionally heads the board of directors, and significant practice of friendly and hostile takeovers based on traditional mechanisms of approval and disapproval of takeovers by the board of directors.

The Anglo-American corporate governance model pays special attention to the responsibility of employees to the board of directors, which, in turn, is fully accountable to the board of shareholders. The efficiency of performing supervisory functions of the board of directors is influenced by the structure of the corporation's investors. If the circle of shareholders is limited, their representatives can join the board of directors and develop the most efficient and objective control systems. If the number of shareholders is large, they are represented by external directors who are not related to the corporation's management.

The American corporate governance model is characterized by the presence of standing committees on the boards of directors, whose task is to develop recommendations on the main decisions made by the board. The most frequently formed committees in corporate governance of this type are management, financial, audit, salary and public relations committees. The U.S. Securities and Exchange Commission (SEC) requires the mandatory presence of a remuneration and audit committee.

The corporation's board of directors is also responsible for electing the president, vice president, chief executive officer, and other positions provided for in the articles of association. The Chief Executive Officer (CEO), who reports to the board and to investors, has broad powers.

Positive aspects of the American corporate governance model:

- High level of private savings attraction, which is provided by the stock market.
- Shareholders' focus on finding high-return industries.
- The corporation's task is to ensure the growth of business value.
- The openness of corporations.

Negative sides of the American model of corporate governance:

- The high cost of raised capital (high dividends).
- Stock market activity leads to significant distortions in the real value of assets.
- There is no strict separation of management and control functions.

The interests of shareholders of corporations are most often represented by a large number of individual small investors, which strengthens the controlling function of the stock market.

The model has been extended to countries such as the USA, Australia, Great Britain, Canada, and New Zealand.

2. The German (continental) model is, first of all, a model of banking control, where banks and their representatives on the board of directors play a crucial role in the management of an enterprise ("insiders" model). This model, which is typical for many European countries (Scandinavian countries, Netherlands, Belgium, Austria, Czech Republic, etc.), is based on a clear separation of supervisory and administrative functions. It is considered that following the American model contributes to dynamism and the German model to sustainability. The German corporate governance model differs significantly from both the Anglo-US and the Japanese model.

Most German companies are part of an extensive network of cross-ownership of shares. This means that these corporations are shareholders of each other. The main element of such a network is banks and insurance organizations.

The Anglo-US model and the German corporate governance model are two opposing systems, between which there are many options, dominated by one system or another, reflecting the national characteristics of a particular country.

The development of a particular corporate governance model within a national economy depends largely on three factors:

- a mechanism to protect shareholders' rights;
- the functions and tasks of the board of directors;
- the level of information disclosure.

The German model take place in German and Austrian corporations. Some elements of the model also apply in the Netherlands and Scandinavia. Furthermore, some corporations in France and Belgium have recently introduced some elements of the German model.

There are three unique elements of the German model that distinguish it from the other models. Two of these elements pertain to board composition and one concerns shareholders' rights:

First, the German model prescribes two boards with separate members. German corporations have a two-tiered board structure consisting of a management board (composed entirely of insiders, that is, executives of the corporation) and a supervisory board (composed of labor/employee representatives and shareholder representatives). The two boards are completely distinct; no one may serve simultaneously on a corporation's management board and supervisory board. Second, the size of the supervisory board is set by law and cannot be changed by shareholders. Third, in Germany and other countries following this model, voting right restrictions are legal; these limit a shareholder to voting a certain percentage of the corporation's total share capital, regardless of a share ownership position

Shareholders in the German model have a crucial role to play in the strategic planning of the company's activities, focusing on maintaining a balance between the interests of all stakeholders and mutual responsibility.

Henri Fayol was a French mining engineer, mining executive, author, and director of mines who developed a general theory of business administration once formulated 14 management principles, which are considered to be the most important contribution to the development of management science in the 20th century. Thus, the most important feature of Western European corporate governance models is the system of participation of workers and employees in corporate governance.

Therefore, the main advantages of the German model of corporate governance are considered to be the principle of social interaction aimed at balancing the interests of all participants of corporate relations.

German banks, and to a lesser extent, corporate shareholders, are the key players in the German corporate governance system. In Germany, corporations are also shareholders, sometimes holding long-term stakes in other corporations, even where there is no industrial or commercial affiliation between the two. This is somewhat similar and very different from the Anglo-US model where neither banks nor corporations are key institutional investors.

The supervisory board appoints and dismisses the management board, approves major management decisions; and advises the management board. The supervisory board usually meets once a month. A corporation's articles of association set the financial threshold of corporate acts requiring supervisory board approval. The management board is responsible for the daily management of the company. The management board is composed solely of "insiders", or executives. The supervisory board contains no "insiders", it is composed of labor/employee representatives and shareholder representatives. The Industrial Democracy Act and the Law on Employee Co-determination regulate the size and determine the composition of the supervisory board; they stipulate the number of members elected by labor/employees and the number elected by shareholders.

The difference between the board of directors of the German model and the American model is in the two-tier structure, including the board of directors and supervisory board.

3. The Japanese model has a narrow scope of application - it is common only in Japan. The formation of this model of corporate governance was influenced by the Japanese culture and political and economic conditions in Japan in the post-war period. It is based on the principles of independence and social cohesion. The Japanese model is characterized by a high level of stock ownership by affiliated banks and companies; a banking system characterized by strong, long-term links between bank and corporation; a legal, public policy and industrial policy framework designed to support and promote "keiretsu" (industrial groups linked by trading relationships as well as cross-shareholdings of debt and equity); boards of directors composed almost solely of insiders; and a comparatively low (in some corporations, non-existent) level of input of outside shareholders, caused and exacerbated by complicated procedures for exercising shareholders' votes. The term was coined in the 19th century and was used until the 40s of the 20th century. It defined large family clans that controlled the largest financial and industrial syndicates. The post-war Japanese economy is characterized by demonopolization processes.

Keiretsu (a diversified corporation based on the principle of mutual shareholding) is characterized by the presence of its own banking system, a universal trading company, exchange of managers and mutual supply obligations. Such groups are formed around a large bank that provides the necessary financing for its participants, which prevents the emergence of hostility and acquisition processes. The role of banks in this model of corporate governance is so great that all enterprises are aimed at close cooperation with them.

Almost all Japanese corporations have a close relationship with the main bank. The bank provides its corporate client with loans as well as services related to bond issues, equity issues, settlement accounts, and related consulting services. The main bank is generally a major shareholder in the corporation. In the US, anti-monopoly legislation prohibits one bank from providing this multiplicity of services.

In the Japanese model, the four key players are the main bank (a major inside shareholder), affiliated company or keiretsu (a major inside shareholder), management and the government. Note that the interaction among these players serves to link relationships rather than balance powers, as in the case in the Anglo-US model. In contrast with the Anglo-US model, non-affiliated shareholders have little or no voice in Japanese governance. As a result, there are few truly independent directors, that is, directors representing outside shareholders.

In Japan, various informal associations (unions, clubs, professional associations) play an important role. They play an essential role in supporting friendly, trusting relationships and facilitating the exchange of information among the top management of the various companies that interact with each other. For financial and industrial groups, the most influential body of this type is the group's presidential council, which is elected monthly from among the presidents of the group's main companies. In an informal setting, important information is exchanged and key decisions are gently agreed upon. In the Toyota group of companies, for example, it is Kyoho-kai, which can be roughly translated as a "club for the prosperity of Toyota". The key element of the Japanese corporate governance model is the system of lifelong employment of personnel. Naturally, it does not fully cover the entire labor market in Japan, but the share of those who associate their entire working life with one company is about 50%. From a corporate governance perspective, it is a business culture where a sense of belonging, and an attitude towards the company as a family are actively cultivated and play an important role for the companies.

The role of the government in the Japanese economy is particularly strong (but the share of the public sector in the economy is insignificant).

It is a navigating and orienting force, but it is not a leading force, as shown in the following aspects:

- elaboration of the most promising directions of economic development and orientation of the economy in the indicated direction (the system of state programming, including the development of long-term forecasts and medium-term plans, is in operation);

- creation of infrastructure, assistance to industries and individual firms;

- To support relations both within and between individual companies, contributing to the growth of production efficiency and competitiveness of Japanese goods.

The board of directors of Japanese corporations is composed almost completely of insiders, that is, executive managers, usually the heads of major divisions of the company and its central administrative body. If a company’s profits fall over an extended period, the main bank and members of the keiretsu may remove directors and appoint their own candidates to the company’s board. Another practice common in Japan is the appointment of retiring government bureaucrats to corporate boards; for example, the Ministry of Finance may appoint a retiring official to a bank's board. In the Japanese model, the composition of the board of directors is conditional upon the corporation's financial performance.

Corporate governance in the Japanese model is distinguished by such factors:

- The concentration of ownership by large and medium-sized shareholders;
- Cross-holding of shares in corporations that are part of the keiretsu;
- The central role of banks in the functioning of the industrial group;
- The main task of Japanese industrial groups is to expand the sales market.

The drawbacks of the Japanese model are clanism and limited competition.

Japanese boards are generally larger than boards in the UK, in the US, and in the Germany. The average Japanese board contains 50 members.

Disclosure requirements in Japan are relatively stringent but not as stringent as in the US. Corporations are required to disclose a wide range of information in the annual report and or agenda for the AGM, including financial data on the corporation (required on a semi-annual basis); data on the corporation's capital structure; background information on each nominee to the board of directors (including name, occupation, relationship with the corporation, and ownership of stock in the corporation); aggregate date on compensation, namely the maximum amount of compensation payable to all executive officers and the board of directors; information on proposed mergers and restructurings; proposed amendments to the articles of association; and names of individuals and/or companies proposed as auditors.

Interaction among the key players in the Japanese model generally links and strengthens relationships. This is a fundamental characteristic of the Japanese model. Japanese corporations prefer that a majority of its shareholders be long-term, preferably affiliated, parties. In contrast, outside shareholders represent a small constituency and are largely excluded from the process.

1.3 Corporate Governance in the EU

The EU has a so-called "Package of Directives" which directly or indirectly affects the regulation of corporate governance within the European Union. As far as litigation is concerned, cases that are controversial have always affected not only management behavior, but also the board of directors and shareholders.

It is well known that there are three references to the definition of company law in the EU:

1) the location of the company;

2) the place of operation of the central management body;

3) place of activity

It is well known that the European Commission is proposing more and more options for improving company law. Such efforts of the European Commission are explained, first of all, by the desire to restore confidence in the stock market. To date, European companies whose shares are established on the U.S. stock exchanges, are required to comply with the strict requirements for financial reporting, which are imposed on them by the Sarbanes–Oxley Act 2002.

However, the Sarbanes-Oxley Act does not only contain financial reporting issues. For example, Article 402 of the Law prohibits foreign companies (EU companies) from granting personal loans to executives. According to Article 304 of the Law, "in case of improper reporting, the Chief Executive Officer of the company (CEO) and Chief Financial Officer (CFO) of the company are deprived of the right to receive so-called incentive payments for a period of 12 months". Article 303 of the Act “Improper influence on conduct of audits” prohibits "influencing in any way the company's auditors, including for the purpose of obtaining untrue audit opinions". A very important provision is Article 806, also known as the whistle blower-protection provision, prohibits any "officer, employee, contractor, subcontractor, or agent" of a publicly traded company from retaliating against "an employee" for disclosing reasonably perceived potential or actual violations of the six enumerated categories of protected conduct in Section 806 (securities fraud, shareholder fraud, bank fraud, a violation of any SEC rule or regulation, mail fraud, or wire fraud). The requirement contained in Article 406 of the Law “Code of ethics for senior financial officers” is directly related to the corporate governance of the company. According to this article, the issuer is obliged to indicate in its statements that it has adopted a Code of Corporate Conduct for the top management of the company.

Also worth mentioning is a special advisory body such as the European Forum on Corporate Governance. The establishment of such an advisory body was part of the Action Plan for Modernization of Corporate Laws and Improvement of Corporate Governance Standards in the EU, adopted in May 2003.

The European Commission is guided by the Action Plan for Modernization of Corporate Legislation and Improvement of Corporate Governance Standards in the EU countries when adopting relevant regulations. It should be noted, however, that almost 10 years after the adoption of the 2003 Action Plan, the 2012 Action Plan was adopted, the main objectives of which are, above all, the following:

- Increased transparency of companies,
- greater involvement of shareholders in the corporate governance system,
- Supporting the growth of companies and their competitiveness.

It is well known that the main instrument of harmonization of legislation is the *directive.* It should be noted that such a tool is actively used in the process of harmonization of corporate legislation. The legislation, which mainly regulates corporate legal relations, consists of directives.

International conventions as an instrument of unification have proven to be ineffective compared to directives and regulations. Regulations and directives directly regulate the rights and obligations of individuals. The unification of private law in international conventions makes it difficult to adapt to secondary law acts adopted within the European Union. Today, there are a number of company directives that establish "uniform rules for the activities of European legal entities on a wide range of issues, from creation and reorganization to the basic rules of financial reporting". Directives are called according to their serial numbers. The "Program for the Harmonization of the Laws of EU Companies" is the so-called Company Law package of directives. The directives that have come into force are amended and supplemented from time to time.

A very important issue regarding legal persons is the question of the legal capacity of a legal person. The 1st paragraph of Article 10 Directive 2009/101/EU states: «Acts done by the organs of the company shall be binding upon it even if those acts are not within the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs.” According to the Directive, the powers of the

public bodies may be limited only by law, but not by the shareholders of the society. Thus, the Directive is based on the priority of creditors' interests.
As you know, the Fifth Directive was supposed to regulate the company's management system. The draft of the Fifth Directive was created in the middle of the 80s of the last century, when "the EU bodies made an attempt to unify the rules governing relations within commercial partnerships, namely the rules on the internal structure of management of public companies, their competence, the participation of employees in the management of companies' affairs".

There are different systems of company management in the EU countries. It should be emphasized that the concept of "company management" is not synonymous with "corporate governance", as it has a narrower meaning. Company management is the activity of the management, which manages the current affairs of the company, and corporate governance is the interaction of a wide range of persons, including all stakeholders, in all aspects of the company. Corporate governance is a system of interaction that reflects the interests of the company's management bodies, shareholders, and stakeholders, and is aimed at maximizing profits from all activities of the company in accordance with applicable laws.

The Draft Fifth Company Law Directive provides for the procedure of preparation and holding of the general meeting, approval and audit of annual reports. The D raft Fifth Company Law Directive was based on a three-tier structure of bodies. However, Member States did not wish to introduce such provisions and, accordingly, to change the provisions of national legislation. This problem was resolved by Council Regulation (EU) No. 2157/2001. Apparently, there is no single model of corporate governance in the world. Thus, the SE Structure Regulation in section 3, "Structure of SE", took into account the peculiarities of the management systems of the joint-stock company - Anglo-American and Romano-Germanic and provided for the possibility of creating a duo and mono systems of bodies. Member States now had the right to choose between dualist and monist governance systems, as well as between different models of employee participation. Thus, through the adoption of the Fifth Directive, it is planned to resolve internal organizational issues.

1.3.1 How the company is managed in the EU

The Societas Europaea (European Company) is an additional legal form of organization to the existing national legal systems of the member states. First of all, it is beneficial for large companies with cross-border operations, as it significantly reduces the cost of establishing and maintaining subsidiaries in member states; it facilitates cross-border mergers, joint ventures, relocation and other cross-border operations. The Charter of SE regulates its creation, operation and termination. Other issues may be regulated by the national legislation of member states or constituent documents. The legal form of the European Company should provide European business entities with the opportunity to take advantage of all the advantages of the single internal market of the European Union, in particular, when doing business, as well as restructuring in several EU member states. The purpose of the SE is "to satisfy the urgent need of European legislators and business community to create a legal form of legal entity that allows business entities to carry out cross-border mergers and relocate the location of the official administrative center from one EU member state to another without resorting to the liquidation and re-registration procedure in another state".

The SE, according to the legislator's plan, should become an additional organizational and legal form of a legal entity, allowing to open a number of new opportunities for restructuring the activities of European enterprises.

Obviously, the SE Regulation is not a comprehensive document that regulates all aspects of the company's activities in the EU. This document is primarily a framework act because many issues are left to the discretion of the national legislator of the EU Member States.

In the light of the high-profile corporate scandals, corporate governance has become one of the main issues in corporate law. Countries resolve this problem in their own way: some adopt specific codes, while others ensure that the right is protected. Some EU member states prefer comprehensive solutions. The application of corporate governance codes is more relevant than ever to the European market in light of the different legal systems within the EU.

In addition to national initiatives, the EU has its own approach to establishing an effective corporate governance system. This approach is based on the creation of a single market. Between 1968 and 1989, the European Community adopted a number of directives and one fundamental Regulation in the field of corporate law. Proposals to the Fifth Company Directive and proposals for the European Company Charter included precise rules on internal corporate governance. However, the original idea of harmonization of different approaches in national law was rejected, including due to the increase in EU membership. Different views on the role of employees in the company made such harmonization impossible.

Corporate governance can be divided into two main systems. The question: "Which system is more effective?" is difficult to answer. Some experts believe that the UK's single-link management system can guarantee more intensive control, because control is more closely integrated into the company's decision-making system. On the other hand, in countries with a concentrated capital structure, intensive control is also needed. In any case, the existence of two different governance systems within the EU is considered the main difference in corporate governance among member states. With regard to the corporate governance code, at the European level, the adoption of a corporate governance code raises certain questions, as corporate governance codes within the EU are different: they have been introduced in different member states with their diverse culture, financial traditions and ownership relationships. At first glance, this may cause uncertainty and costs for both issuers and investors. However, a recent study by the European Commission has shown a growing convergence in this area among EU member states. As a result of these similarities, no differences can make it difficult to regulate corporate relations, including corporate governance codes.

The new approach of the European legislator was focused on mutual recognition of national legislation. However, the rejection by the European Parliament of the Acquisition Directive in 2001 caused many problems which the European Commission tried to solve through the creation of a High Level Group of Experts in Corporate Law ("High Level Group") in order to develop recommendations for the regulation of European corporate law. One of the measures aimed at regulating the corporate legal relations of the EU was the approximation of various national corporate governance codes of the member states. The Group made certain recommendations, including the inclusion of a clause on the state of corporate governance in the annual report of the company, additional disclosure of obligations related to corporate governance issues, strengthening the role of independent directors on the board of directors, additional rules regarding voting information and access to such information for shareholders.

However, the European Commission emphasized the special role of shareholders in the corporate governance mechanism of the company. As you know, shareholders are the main risk bearers of the company. The European Commission has shown that such initiatives are aimed at strengthening the rights of shareholders of companies that have access to trading on the stock exchange, and the problems and obstacles associated with voting in foreign branches of the corporation (cross-border voting) should be immediately removed.

The main document protecting the rights of shareholders is the 2007 Shareholders' Rights Directive. The Directive sets out the requirements for certain shareholder rights relating to voting at general meetings of shareholders of a company whose central management body is registered in the territory of a member state and whose shares are admitted to trading on a regulated market located or carrying out trading operations in the territory of a member state. Through this document, European legislation has sought to facilitate the exercise of voting rights by shareholders. The European legislator provides the minimum standards that aim to remove obstacles to voting in foreign affiliates. However, Member States may not apply such standards. The Directive states that the company guarantees equal treatment of all shareholders who are in equal standing with regard to participation and exercise of voting rights at the general meeting of shareholders. The Directive contains provisions which regulate the content of information on the convening of a general meeting of shareholders. Each shareholder has the right to appoint its own proxy, who may vote at the General Meeting of Shareholders on behalf of the represented shareholder. The power of attorney holder has the same rights as if the shareholder participated personally (in particular, the right to ask questions regarding the agenda).

Member States may also permit shareholders to appoint proxy holders electronically.

More innovative and important are the European proxy voting rules. In line with US practice, the European legislator has introduced the right of each shareholder to appoint any individual or legal entity as a proxy holder to attend and vote at a general meeting of shareholders on behalf of the shareholders. It should be noted that voting by proxy through securities account systems is also permitted. Pursuant to the Directive, proxy holders may be appointed electronically.

The financial crisis of 2008 revealed serious shortcomings in the corporate governance of financial institutions that played a certain role during the crisis. In order to respond quickly to the problem of excessive risks in credit institutions and eventually to the accumulation of such risks in the financial system, the European Commission launched the Green Paper on Corporate Governance in Financial Institutions in 2010. Although corporate governance in companies listed on a stock exchange through a listing procedure does not raise similar concerns, there are also some weaknesses. In particular, there is a perceived lack of shareholder interest in managing the company, compounded by the fact that the shares have not been owned by the shareholder for a long time. According to the 2012 Action Plan, "European corporate law is the cornerstone of the domestic market.

Two company management systems (models) coexist in Europe. Depending on the country, the companies whose securities are traded on the stock exchange establish a one-tier management system or a two-tier management system or a mixed management system. The European Commission recognizes the existence of such management systems. The structure of the board of directors plays a key role in the success of the company. The effective control of executive directors or independent directors on the governing body or supervisory boards leads to successful management in the company. In this respect, the diversity of viewpoints and competencies among board members is very important. This helps to understand the organization of business and affairs and, thus, enables the board of directors to question and object to management's decisions objectively and constructively. On the contrary, lack of diversity can lead to so-called "group thinking", which means less debate, fewer ideas and potentially less effective control of management or executive directors. The European Commission, encouraged by the results of the 2011 Green Paper consultations, believes that increased transparency about board policies could lead companies to reflect on ensuring such transparency and also to pay attention to the need for greater pluralism of opinions and ideas on boards of directors. This initiative will thus complement the special proposal to improve the gender balance among independent directors of companies whose securities are traded on the stock exchange.

The European Commission believes that such supervisory boards should provide for a broad discussion of the range of risks facing the company. Expanding the reporting requirements for non-financial parameters would help to create a comprehensive risk-

sharing system for the company, thus providing more strategic solutions to address such risks. An additional look at the non-financial aspects of a company's operations should help companies adopt their own sustainable and long-term business development strategies.
The quality of corporate governance reports issued by companies whose securities are traded on the stock exchange has been criticized. Corporate governance codes in the EU are built on a recommendation basis. This approach allows companies to deviate from certain recommendations of the applicable code, thus providing an explanation of why they have deviated from the relevant recommendations. However, such explanations provided by companies are incomplete and insufficient.

In 2011, a survey was conducted that asked: "Do stakeholders see the need for a pan-European mechanism to help issuers identify their shareholders in order to facilitate a dialogue on corporate governance issues? In addition, another question was asked: "Should this information be available to other investors? The absolute majority of respondents were in favour of such a mechanism. Both companies (business) and investors supported the mechanism. Some respondents considered the requirement of issuers to provide a discussion platform for shareholders on their corporate websites to be quite sufficient. Others were in favour of a comprehensive pan-European shareholder identification mechanism. As a result, it was agreed that EU member states were required to mutually recognize national mechanisms for recognition of the legal status of shareholders and, if necessary, to put in place certain transparency instruments that respected the minimum requirements for this.

It should be noted that the European Parliament supports the position that companies issuing registered shares should know the identity of their owners.

The European Commission believes that additional information on who owns shares in a company whose securities are traded on a stock exchange is the dialogue between the company and its shareholders, the subject of which may be corporate governance issues.

The European Commission believes that the interest of employees in the sustainability of the company is one of the elements of a well-functioning corporate governance system. Involvement of employees in the company's affairs may take the form of information, advice and participation in the supervisory board. Such involvement may also refer to forms of financial involvement, in particular when employees become shareholders of the company. The employee shareholding system is already a success in many member states. A study by the European Commission has shown that employee shareholding can play an important role in increasing the proportion of long-term shareholders.

1.3.2 Internal corporate governance

In accordance with the Draft Fifth Directive, the company can be organized in accordance with the two-link management system. Such a system includes an executive body and a supervisory board.

The Company is managed by an executive body (management) under the control of the Supervisory Board. Members of the executive body are appointed by the Supervisory Board. However, the members of the first executive body may be appointed in accordance with the company's charter. If there are more than one member of the Executive Body, the Supervisory Board determines which member of the Executive Body is responsible for human resources matters. The provisions of Article 3 of the Draft Fifth Directive are impartial with respect to national laws, according to which the appointment or dismissal of an executive body member may not be made against the will of the majority of the Supervisory Board members who have been appointed as employees of the company.

In companies employing on average less than the number of persons which the legislation of the member states cannot establish more than 1000, the members of the Supervisory Board are appointed by the General Meeting. For the purposes of this calculation, persons employed by the company's subsidiaries in accordance with the law applicable to that company shall be considered employees of that company. In the case of companies employing an average number of persons equal to or greater than 1,000, Member States shall ensure the participation of employees in the appointment of supervisory board members. However, as an alternative to the participation of employees in the appointment of supervisory board members, member states may ensure the participation of employees through a specific body representing the interests of the company's employees. At all times, Member States can ensure that the participation of employees does not take place in relation to the company if the employees of the company have expressed disagreement with such participation. Members of the first Supervisory Board may be appointed in the Articles of

Association. The Articles of Association may not grant the holders of certain categories of shares the exclusive right to nominate candidates for the majority of those members of the Supervisory Board appointed by the General Meeting. Members of the Supervisory Board are appointed 2/3 of the General Meeting of Shareholders and at least 1/3 of the Company's employees. Members of the Supervisory Board are also appointed by co-optation or election. However, the general meeting or a shareholder committee, which is appointed by that meeting or the employees' representatives, may object to the appointment of a certain candidate because he or she is unable to perform his or her duties.

The body representing the interests of employees has the right to receive information on the current state of affairs of the company, credit standing and investment plans. The body representing the interests of employees must be notified before the supervisory board approves a decision. If the Supervisory Board does not agree with the opinion expressed by the body representing the interests of the employees, it shall inform the body representing the interests of the employees of the reasons for such disagreement.

The body representing the interests of employees shall meet regularly, at least prior to each meeting of the supervisory board. The body representing the interests of employees shall be provided with information related to the agenda of the supervisory board meeting. At the request of the body representing the interests of employees, the chairman of the supervisory board, its deputy or a member of the executive body shall take this into account.

Employee participation in the management of companies may also be regulated by collective bargaining agreements that are concluded between the company or entity representing the company and the entity representing the employees. To the extent that employees are required to participate in the appointment of supervisory board members, Member States shall ensure that the following principles are observed:

1. Individual members of the Supervisory Board and representatives employees are elected according to a system of proportional representation, thus protecting the interests of the minority.

2. All employees should be able to participate in elections.

3. Elections should be secret.

4. Guarantee of free expression of will. Only natural persons may be appointed as members of the executive body. If the laws of Member States ensure that legal persons may be members of the supervisory board, such legal persons should appoint a permanent representative who will be an entity that appears to be a personal member of the supervisory board.A person may not be a member of the Supervisory Board and the Executive Body at the same time.

Members of the Supervisory Board shall be appointed for a certain period not exceeding six years. They have the right to be reappointed. In the case of companies employing an average number of persons equal to or exceeding 1000, the members of the executive body are appointed for a certain period of time, not exceeding six years. They also have the right to reappointment. Members of the Executive Body cannot set their own remuneration. The Executive Body may not establish remuneration for members of the Supervisory Board.

Any agreement in which the company is a party and in which a member of the executive body or supervisory board has an interest (even if such interest is indirect) must be approved by the supervisory board. If a member of the executive body or supervisory board becomes aware that such circumstances exist, he or she shall inform both management bodies of the company. The general meeting must be informed of the sanctions and permits issued by the supervisory board. Absence of a sanction (permit) from the supervisory board or incorrect decision on approval of an agreement should not be directed against third parties, if the company proves that the third party knew or should have known that a sanction from the supervisory board was necessary. All members of the executive body and supervisory board should have the same rights and duties within the same management body of the company. All members of the executive body and supervisory board should perform their duties in the interests of the company, including the interests of shareholders and employees.

The Executive Body shall submit a written progress report to the Supervisory Board at least once every three months. The Executive Body must submit a draft annual financial statements and annual report to the Supervisory Board within five months following the end of each financial year. At the request of the Supervisory Board, the Executive Body shall submit a special report in respect of certain company matters or aspects thereof. The Supervisory Board has the right to take or direct all necessary actions.

The law or charter may provide that the supervisory board's control may also be performed for the effectiveness of other operations.

Members of the executive body may be excluded by the Supervisory Board. In their turn, members of the Supervisory Board may be removed from office at any time by the bodies or persons who have appointed such members of the Supervisory Board.

The legislation of member states may contain provisions relating to the civil liability of members of the executive body or supervisory board.

The laws of member states should contain provisions relating to the civil liability of members of the governing body or supervisory board in order to provide, at a minimum, compensation for damage caused to the company as a result of violations of the law or the articles of association or other illegal acts committed by members of such bodies in the performance of their duties. Each member of the body in question shall be collectively or individually liable without restriction. However, he or she may be released from liability if the person proves that he or she is not guilty of the wrongful act in question.

Legal proceedings on behalf of the company for the purpose of implementing civil liability measures may only be initiated by decision of the general assembly. Neither the law nor the articles of association may require more than an absolute majority of the votes of the shareholders participating in the general meeting of shareholders to pass such a resolution.

Legal proceedings on behalf of the company for the purpose of implementing civil liability measures may, in certain cases, also be initiated on behalf of the company by one or more shareholders.

1.3.3 External corporate governance

The Company should be managed by members of the executive body under the control of independent members of this body. Executive members of the Executive Body should be appointed by independent members of the Executive Body, acting as a majority, if necessary. However, executive members may be appointed in accordance with the Charter. If the Executive Body has more than one executive member, independent members, acting in a majority if necessary, should determine which of the Executive members of the Executive Body will be responsible for matters related to employee relations (personnel matters). In companies employing less than 1000 people, independent members are elected by the general meeting. Employee participation should be regulated in accordance with collective bargaining agreements concluded between the company or organization representing the interests of the company and the organization representing the interests of employees. According to Article 21h of the Draft Fifth Directive, employees' representatives have the right to receive regular information and consultations with the executive body of the company.

To the extent that the participation of employees in the appointment of independent members of the Executive Body is permitted, Member States should ensure that the following principles are observed:

- members of the administrative board and employees' representatives should be elected in accordance with the principles of proportional representation, thus ensuring the protection of minorities (minority shareholders);
- all employees should have the right to vote in elections
- the election must be a secret;
- guarantee of free expression of will.

1.4 General Meeting

In accordance with Article 22 of the Draft Fifth Directive, the General Meeting of Shareholders shall meet at least once a year. The Member States guarantee the right of one or more shareholders who satisfy the requirements of the Directive to call a general meeting and set the agenda. Prior to the convening of a general meeting, a notice of the convening of the general meeting must be published. Such notice shall contain at least the following information:

- the company name and location of the company;
- the place and date of the general meeting of shareholders;
- type of general meeting (ordinary, extraordinary);
- Requirements to be met for participation in the general meeting and voting;

- provisions of the Articles of Association regarding representation of shareholders;
- Agenda.

Also, in accordance with the Draft, the Member States guarantee that the shareholders may request the inclusion of one or more items in the agenda of the General Meeting of Shareholders. Requests for inclusion of new items in the agenda should be made seven days prior to the convening of the General Meeting of Shareholders. The relevant agenda items shall be published in the same manner as the notices on convening the General Meeting of Shareholders are published.

Every shareholder who meets the requirements specified in the law or the charter shall have the right to attend the general meeting of shareholders. Each shareholder shall have the right to appoint a person to represent him/her at the general meeting of shareholders.

It should be noted that the Draft Directive provides that each shareholder may appoint another shareholder to represent it (proxy advisor). Each shareholder participating in the general meeting of shareholders should have the right to receive appropriate information relating to the current affairs of the company, if such information is necessary, including for the discussion of a specific agenda.

1.5 Summary

Good corporate governance increases companies' access to external financing, which in turn helps to attract new investments and create new jobs. Good corporate governance reduces the risk of a financial crisis, which generally has serious economic consequences and improves relations with all stakeholders.

Several management systems (models) of the company coexist within the EU. Each member state, based on its own national interests, chooses this or that form of management of the company and then regulates this form of management through the adoption of a national regulation. According to the European legislator, the Fifth Company Directive was to become the basic document in the field of company management.

2 CORPORATE LAW IN THE EU

2.1 Definition and sources

Public relations that are formed in connection with the establishment and operation of a joint-stock company are different in nature and content, but in general they can be called corporate relations.

Corporate relations are formed between different participants of the joint-stock company - large shareholders, as well as between the management bodies of the company and its shareholders, between the company and state bodies responsible for state regulation.

Corporate relations are subject to regulation of corporate law. The question of the place and concept of corporate law is currently debatable in the science of commercial law. It should be noted that European Union law was originally established on the basis of general international law. The beginning of the development of European Union law is the adoption of three international constituent instruments: Treaties establishing the European Coal and Steel Community in 1951, Treaties of the European Economic Community and the European Atomic Energy Community in 1957.

Subsequent development of European Union law takes place through case law. This means that during the proceedings of the Court of Justice of the European Union. That is case law.

There are many different opinions on the place of European Union law. Some scholars believe that this branch of law is a part of the general international law, as the formation is based on a number of international agreements. It can also be seen as an integral part of the national law of states.

Corporate law is a sub-field of civil law, the norms of which are aimed at regulating public relations in the organization and activities of enterprises and organizations that are subjects of civil law. The word "corporate" comes from the Latin root, which means unification, corporation, society, union, joint efforts and the existence of common ground.

The term "corporate law" is understood in a broad and narrow sense. In a broad sense, corporate law is a set of legal norms regulating the legal status, operation and establishment of business associations and partnerships. In a narrow sense, corporate law is a system of rules established by the owner or administration of a commercial organization and regulating legal relations within the organization.

In addition, there are several related branches of law and concepts, such as commercial law, joint stock law, cooperative law, commercial law.

Corporate law has the following characteristics:

1) is a subsector of civil law, i.e. it has a significant degree of autonomy in relation to the civil law;

2) regulates public relations related to the creation, operation and legal status of economic entities, i.e. corporate relations;

3) consists of corporate norms united in institutions.

Corporate law regulates the issues related to the category of subject-matter of civil law, so corporate law cannot be recognized as an independent branch of law, which in no way diminishes its importance.

To date, corporate law is one of the most relevant areas of activity of legal services. This branch of European Union law is developing slowly and encounters great resistance, primarily due to serious divergences in the domestic legislation of the various member states.

Even a brief overview of the regulation of legal entities in the law of the European Union Member States will show the huge differences that still exist between national systems. It is also clear that such differences often prevent the formation of an EU internal market. A legal entity has legal capacity only if and to the extent that it is established in a particular national legal system.

This raises a number of traditional problems in the field of private international law: the lack of mutual recognition of legal persons, differences in their legal capacity, and finally, a variety of conflicts of interest that determine the nationality of legal persons. All of these problems are particularly relevant in the European Union, in the context of the internal market, where legal entities established under national laws should operate without discrimination.

The main role in the development and implementation of EU corporate law policy is played by political institutions: the Council of the European Union, the European

Parliament and the European Commission. Initially, an advisory procedure was applied to the adoption of directives under Chapter 3 of Article 58 of the EEC Treaty, which has now been replaced by a joint decision-making procedure. It is important to note that a qualified majority in the Council is sufficient for the adoption of the directive in the field of corporate law (Article 47 (3) Treaty on European Union, TEU. An opinion of the Economic and Social Committee is also required for the adoption of the decision. In the structure of the European Commission, the issues of corporate law, accounting and auditing are within the competence of the General Directorate for Internal Market Affairs. The Court of Justice of the European Communities has repeatedly addressed the problems of legal entities in its decisions, although the judicial practice on this issue is quite fragmented.

EU corporate law applies to commercial legal entities within the jurisdiction of one of the member states. The problem is that the concept and characteristics of a legal entity, as well as the range of entities covered by this concept, differ depending on the specific national legislation.

To determine the source of law of the European Union, it is necessary to use the "formal-legal" notion of the source of law. This notion of the sources of law in the domestic and foreign legal literature is, perhaps, the most common and most frequently used at present. At the same time, the source of law is understood as "a way of expressing and fixing the rule of law as the ideas about the proper or admissible in the objective reality or as the one where the rule of law is contained, the one from which practitioners draw knowledge about the norms of positive law.

Thus, the sources of law of the European Union can be defined as documents establishing the norms of law and external norms of law-making activities of the European Union.The legal definition of the sources of EU law is characterized by a certain ambiguity. At the time of the establishment of the European Communities, this approach was explained by the founding States. Firstly, they did not fully cover the actions of other states in the community. Second, the founding states viewed the European Community as a single, constantly evolving structure. All of this gives rise to the powers of all Community institutions, which in some cases allow them to exceed their powers. Third, it was extremely difficult to establish the range of sources of domestic law of the European Communities. As a result, community law sources have been moved away from the Court's remit.

This approach has striking similarities with the international practice in this area. For example, the Statute of the International Court of Justice contains a precise list of all the sources of law that the International Court of Justice applies to cases (Art. 38). In contrast, constituent treaties are limited to a rather imprecise formulation in which the International Court of Justice maintains the unity of European Community law in the interpretation and application of these treaties (Art. 164 of the EEC Treaty; Art. 136 of the Euratom Treaty; Art. 31 of the Treaty of Paris).

The sources of European Union law are very multifaceted and vary in structure and meaning. The system of sources of law contains various types of documents, such as regulations, contracts, court precedents. There are also such sources of law as customs, but in view of the circumstances they are not recognized in the law of the European Union.

It is not easy to classify the sources of law of the European Union. This is due to the fact that:

- The law of the European Union is influenced by both international law and national law, which in turn have specific and different sources of law and in principle differ from one another.
- The legal acts included in the system of sources of law of the European Union differ in their origin and each document has its own peculiarities.
- It is well known that all European Union countries have different legal systems. Many relate to the continental legal system. These are countries belonging to the Romano-Germanic legal family, where the main, primary and almost only source of law is the law; the rest belong to the common law system belonging to the Anglo-American legal family. The source system is dominated by a judicial precedent, the decision of the highest courts in a specific case, which is considered a model for the resolution of similar cases in the future.

Thus, moving on to the classification of sources of law of the European Union, it should be noted that they have long been divided into sources of primary law and sources of secondary law. The same classification is observed by the Court of Justice of the European Union.

The sources of primary law include the founding documents of the European Union. They are the basic and fundamental documents of the European Union.

Also, the system of sources of law of the European Union includes the case law. This is a right that has been developed as a result of the activity of the European Union courts. These sources of law also have supreme legal force and cannot be deviated from them. The sources of "primary law" are documents of a constituent, fundamental nature. They have the highest legal force in its system. Constitutive documents are agreements on the establishment of the European Union. Thus, it can be said that the primary sources of law come directly from the states and take the first place in the hierarchy of sources of the European Union. In turn, they create secondary law and define the criteria for its validity.

The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) are the two main sources of EU law.
It is also worth noting that the primary law covers not only the constituent treaties and the treaties annexed to them, but also contains the sources of unwritten law. These are generally recognized norms and principles of international law.

1. Primary law

The main sources of primary law are the treaties establishing the EU: the Treaty on the EU and the Treaty on the Functioning of the EU. These treaties set out the distribution of competences between the EU and the EU countries and describe the powers of the European institutions.

In addition to the primary law in European Union law, there is a secondary law, which is also called a derivative law. It is understood as "a set of legal acts adopted by the institutions and other bodies of the Union.

It is by means of regulations, directives and other acts of secondary law that the supranational institutions of the Union regulate social relations on issues within the competence of this integration organization.

The most common and important source of secondary law of the European Union is a normative act issued by its bodies on the basis of its constituent documents.
2. Secondary law

Secondary sources are legal instruments based on the treaties. Secondary law comprises unilateral acts and agreements. Unilateral acts can be divided into two categories:

- those listed in Article 288 TFEU: regulations, directives, decisions, opinions and recommendations;

- those not listed in Article 288 TFEU, i.e. ‘atypical’ acts such as communications and recommendations, and white and green papers.
- Conventions and agreements include:
- international agreements, signed by the EU and a country or outside organization;
- agreements between EU countries; and interinstitutional agreements, i.e. agreements between the EU institutions.

3. Supplementary sources of law

Supplementary sources are elements of law not specifically mentioned in the treaties. This category includes:

- case-law of the Court of Justice of the EU (CJEU);
- general principles of law — unwritten sources of law developed by the case-law of the CJEU. They have allowed the CJEU to implement rules in various areas that are not mentioned in the treaties.

As mentioned earlier, all sources of European law form a kind of hierarchy of sources of law, the place of which determines their mutual relationship in terms of legal force.

The top level is occupied by the sources of primary law and the decision of the courts based on them, while the bottom level is taken by the sources of secondary law. The hierarchy within the first group is determined on the basis of the axiom, which is that the special norm has an advantage over the general one.

1. The concept of the source of law in the general theory of the State and law is quite complex. It acquires a certain specificity due to the contradictory nature of the legal system of the European Union;

2. The system of European Union law sources is a three-stage phenomenon: primary sources, secondary sources and case law.

The sources of primary law are the three founding treaties: the Treaty on European Union of 1992. (Maastricht Treaty); Treaty on the Functioning of the European Union 1957; Treaty establishing the European Atomic Energy Community 1957. (Euratom Treaty). The sources of primary law also include other acts that are annexes to these constituent treaties.

The sources of secondary law are defined in the founding documents and cannot contradict them. These include directives, regulations, decisions, as well as recommendations and agreements. These sources have less legal effect, because they are derived from sources of primary law and are fully subordinate to them.

3. And the third step of the sources of law of the European Union is the case law, the so-called decisions of the Court of Justice of the EU, as well as the tribunals. It is worth noting that the courts of the European Union not only interpret the existing provisions, but also identify new legal norms. They also play an important role in the system of sources of law of the European Union, since many judgments and conclusions are made on the basis of case law.

2.2 Role of Corporate Governance Code in the European Union

In recent years, weak boards of directors, weak internal control and audit, lack of adequate disclosure and weak enforcement have led to financial crisis and major corporate scandals around the world. In response to this situation, a number of countries have adopted corporate governance codes, which have become one of the main tools to restore public and investor confidence in the market and prevent future financial crises. International standards and regional guidelines are designed to be applicable in countries that traditionally use common or civil law, with different levels of ownership concentration and governance models. This is why they are broad in scope and need to be translated into practical, concrete measures and recommendations that can be freely applied to the corporate sector of a country.

Corporate governance codes of practice are just one element of the legal environment in which business operates. They should not be confused with legal codes that constitute the legal framework, international standards or company charters. Codes of best corporate governance practices may exist in several forms. They may be general in nature, they may be drafted for a specific group of companies, or they may focus on a particular aspect of corporate governance, such as disclosure or board activities. While aiming to raise standards beyond the requirements of current legislation, codes of best practice are voluntary in nature, various incentive mechanisms can encourage companies to comply with the most important provisions of the code.

Corporate governance codes of practice are voluntary guidelines aimed at improving corporate governance practices in the context of a specific legal environment in the country and taking into account the specifics of doing business. Usually such codes are based on general principles and take into account the national peculiarities of the respective country. Such codes may vary in scope, focus and level of detail. They aim to restore investor confidence and support the investment climate. Such codes have been adopted in a large number of countries as a means of implementing international standards and adapting them to local conditions.

Typically, the environment in which corporations operate is complex. Corporate governance practices are influenced by a variety of laws and regulations, industry standards and directives, as well as internal company rules and regulations. Therefore, it is necessary to develop corporate governance codes, taking into account that they will become part of existing laws, regulations, principles and best practices.

Below are the standards that can have a direct impact on corporate governance practices:

- International laws (contracts, agreements, directives)

- National legislation (legal laws)

- regulations

- listing rules

- Standards, guidelines and codes of best practice

- main documents of the corporation (Articles of Association of the company)

- corporate rules and regulations

The diversity and complexity of legislation affecting corporate activity, especially at the national level, and its scope in many countries has expanded significantly over time.

As a result of a number of European corporate scandals in 2004, the European Commission issued a Directive 2004/109/EC – transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. The purpose of the directive is to improve the quality of information provided to investors about the company's operations and financial position, as well as changes in the shareholding structure. This measure is expected to enhance investor protection, enhance corporate trust and improve the functioning of the European capital market.

The directive is binding on all EU members and should be implemented within two years of its publication in the Official Journal in 2004.

This directive aims to improve information supplied to investors about issuers of securities admitted to trading on a regulated market, located or operating in an EU country. It requires EU countries to publish periodic financial information on their income throughout the financial year, in addition to continuous information concerning the possession of significant percentages of voting rights.

The transparency directive was amended in 2013 by Directive 2013/50/EU. This amendment seeks to:

- reduce the administrative burden which weighed on small and medium issuers, in order to improve their access to capital;
- improve the efficiency of the transparency system, particularly with regard to the publication of information on corporate ownership.

Directive 2013/50/EU had to be incorporated in EU countries' national law by 26 November 2015.

The audit of companies´ financial reports is the subject of both legislation and regulation through codes in Member States. Requirements on the external auditor´s independence (non-audit services, rotation of partners and firm) are usually being laid down in legislation. This is probably related to the public function of auditors and a breach of trust in that function resulting from the corporate scandals we have seen in the US and in Europe. In corporate governance codes the focus is often on the role of the audit committee and the relationship between it, the executives, the internal audit function and the external auditor. We see a development in which non-executives communicate with the external auditor in parallel with the executives. The division of roles and the consequences this has in practice will have to be established and it may be a while before a new balance has settled. It also may be that different balances will result for different (types of) companies. For these reasons it is appropriate that these matters are dealt with in codes, with flexible enforcement on the basis of comply or explain. The extent to which the internal auditing function is addressed varies significantly. In the US one aspect of internal audit has received full, if not too much attention: the internal control procedures related to financial reporting. Internal audit and control appears to be an area where, to the extent regulation is required, inclusion in a corporate governance code and enforcement on the basis of comply or explain is appropriate. As companies differ substantially from one to another, in terms of size, risk profile, organisational complexity and regulatory requirements on their operations, so must the internal audit and control function within those companies. Apart from this, in the area of internal audit and control often more than one solution may be acceptable and appropriate. Best practice could, and arguably should, certainly be developed, but in a flexible regulatory environment.

Codes or legislation

The key differences between the two approaches are that (i) codes based on comply or explain by definition offer flexibility, while legislation tends to become mandatory quickly (although not necessarily), (ii) codes are produced by or at least with a strong influence of business and its shareholders and (iii) codes can be amended more quickly if needed than legislation, which requires a full parliamentary process. The choices made by member states will not always be the same but some general observations can be made.

- Legislation is appropriate to ensure that the essential legal infrastructure is available and operates efficiently. An area where this is relevant for example is the infrastructure required to allow shareholders of listed companies to use their voting rights efficiently through systems of proxy voting or voting by correspondence. Legislation is also appropriate to set generally accepted minimum standards to which all should at least adhere.
- Disclosure requires legislation and not a flexible approach. The regulatory objectives of disclosure (giving investors sufficient information to make investment decisions, enhance accountability of boards, enable shareholders to make considered use of their rights) can only be achieved if and to the extent disclosure is really made. Where it is decided that disclosure makes sense, companies should not be able to explain why they do not disclose certain information.
- Codes based on comply or explain are more appropriate where different solutions exist to achieve certain governance goals and companies

require flexibility to adapt to their own 64particular circumstances. The functioning and structuring of boards is a key area where this is relevant.

- Codes are also appropriate for issues where market practices need to be developed and where they may change in the foreseeable future or where consensus is not complete, or where practices may need to vary from sector to sector.
- Codes are also appropriate where the outcome of regulatory interference is yet uncertain. When in doubt, regulation through code should take priority over regulation through legislation

The basis for corporate norms is specific standards of conduct of the corporation, in other words - guidelines for what the corporation should strive for, how to build relationships between members of the corporation and its management, how to effectively manage the corporation. The same standards can be used as a starting point for assessing and improving existing laws and regulations that make up the corporate law.

Various international organizations and investment funds have begun to develop and implement corporate governance codes to convince investors, shareholders, that corporations will act in the interests of all shareholders and provide them with the opportunity to obtain sufficient and timely information on the status of the corporation.

Such standards of corporate business conduct can be developed by the corporations themselves and their associations. For example, in 1994, the General Motors Board of Directors developed a set of guidelines and corporate governance issues to be followed by U.S. institutional investors.

One of the first "standards of corporate practice" is the Principles of Corporate Governance presented by the Organization for Economic Cooperation and Development (OECD). Several OECD committees participated in their preparation: the Financial Markets Committee, the Committee on International Investments and Transnational Enterprises, the Committee on Industry, and the Committee on Environmental Policy. The World Bank, the International Monetary Fund, the business community, investors, trade unions and other stakeholders contributed significantly to their development. The OECD principles were the first model set of standards and guidelines for corporate governance. They are not binding and are not intended to provide detailed prescriptions for national legislation. As stated in the introduction, " to achieve the highest sustainable economic growth and employment and arising standard of living in member countries, while maintaining financial stability, and thus to contribute to the development of the world economy”.

The recommendations in the OECD Principles are grouped into five sections: shareholder rights, equal treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency, and governance responsibilities. The main idea of these recommendations is that corporate governance should serve the interests of shareholders, primacy of shareholders' interests in the activities of joint stock companies.

By the end of 2002, international organizations, governments and companies had adopted about 90 corporate governance codes (a set of voluntary standards that establish and regulate corporate relations).

The content of the corporate governance codes is based on recommendations in such areas of corporate governance as holding the General Meeting of Shareholders, election and ensuring efficient operation of the Board of Directors, activities of executive bodies, disclosure of information about the Corporation, preparation and implementation of major corporate decisions (reorganization, major transactions), etc.

The purpose of such recommendations is to ensure that the activities of the corporation's bodies and the adoption of decisions that have a serious impact on the state of affairs of the corporation are carried out in such a way as to ensure that the rights and legitimate interests of shareholders and other stakeholders, such as employees, creditors, partners, local authorities, etc., are not violated.

The UK Corporate Governance Code (formerly known as the Combined Code) sets out standards of good practice for listed companies on board composition and development, remuneration, shareholder relations, accountability and audit. The code is published by the Financial Reporting Council (FRC).

The UK has been a major innovator in the development and dissemination of corporate governance codes. It was England that was one of the first countries to introduce the principle of «comply or explain».

The principle requires companies listed on a stock exchange to disclose whether or not they comply with the Code and, if not, why not. Such a system allows you to check the work of each company. Although there are differences of opinion on this principle. According to some experts, companies that comply with the provisions of the codes should not provide any explanation, thus eliminating any risk of possible inaccuracies in the explanation and application of appropriate liability measures. They believe that explanations should only be provided in the event of non-compliance with the Code. Another expert group rightly notes that the rule is as follows: "Provide an explanation if and how you are complying with the code, and an explanation if you are not complying with the code, why you are doing so and what alternatives you have. Companies should describe their corporate governance model and explain why they chose a specific formula that they believe could be better than any other formula proposed in the code. The methodology provides greater freedom for companies: in some countries, there is a perception that codes allow companies to change their governance as they see fit, and that codes will not restrict their freedom to seek other more effective corporate governance practices. After all, today's corporate governance is supported by independent directors, independent chairmen, audit committees, chief directors, etc., due to corporate governance practices.

It should be noted that many other countries have also adopted corporate governance codes based on the UK Code, but not all of them have this principle.

The application of corporate governance codes, most of which are largely voluntary in nature, is carried out under internal and external pressure. Typically, boards of directors of companies experience direct involvement in reporting on their activities and those of the company itself, as this gives their activities more significance and contributes to building trust in the board and the company. Boards of directors have become more serious about their role in this regard by establishing specialized management committees, developing separate provisions of the code, conducting self-assessment procedures and, in some cases, external (independent) assessment. In Europe, only a small number of companies still do not pay any attention to corporate governance issues. Surprisingly, the adoption of codes also takes place in companies with a high degree of ownership concentration. It is important to mention the activities of the corporate governance commissions, which, in addition to developing corporate governance codes, in some States also participate in monitoring and enforcing corporate governance regulations.

Corporate governance codes generally apply only to public companies, which are defined as companies whose shares are listed on a stock exchange or multilateral trading floors. Most codes mention that its provisions may also serve as a source of inspiration for non-public companies, usually using the legal address of the company as a connecting factor, but some codes also take into account the location of the trading activity.

In many countries, corporate governance codes are developed by commercial firms and their associations. In some cases, public authorities or institutions are not involved in the process, but in some other cases their contribution is very limited and takes the form of limited participation in the norm-setting body or in the norm-setting process. However, it is difficult to identify the support of public institutions that rely on self-regulation or their impact on the appointment of members of the regulatory body. Many codes are private but of public interest, so they are important to public authorities, which view them as alternatives to public regulation.

Conversely, codes developed by the securities market, as is the case in Portugal and Spain, where the creation of regulations is a state advantage and follow-up and verification activities are carried out as part of the monitoring of information disclosure in the annual report. In some cases, administrative sanctions will be applied for breach of the code, but it is clear that such sanctions are rarely imposed.

The importance of corporate governance codes depends in part on their authors. in certain legal systems, especially those where codes were created in the area of stock exchanges, representatives took the lead and the process of developing codes was led by their assistants. It appears that ministries have also been involved in some cases, but their impact is difficult to assess due to the large number of different opinions. In any case, the codes mainly reflect current issues and, as a consequence, mainly address issues that generate debate among boards of directors, management, as well as with shareholders or other stakeholders. Such problems may be explained by a decrease in trust in the political world. However, corporate governance codes should not be used as an alternative to state regulation: they introduce additional methodological principles primarily in relation to the internal functioning of companies and cannot be used to pursue policies that protect state interests.

National codes generally reflect the same approach and the same problems to be solved, although with little difference. The 1992 Cadbury Code was originally used as a model code, but then national differences prevailed. Over time, the process of developing codes has become more advanced, including public hearings based on a proposed or preliminary draft, feedback from hearings and consultations, and reasons for decisions.

The Corporate Governance Code is designed to make the system of public management more transparent and to demonstrate the public's commitment to the principles of good corporate governance, which is ensured through assistance:

- efficient work of the Board of Directors and executive bodies acting in the interests of the Company and its shareholders, as well as promoting sustainable growth of business value;
- proper information disclosure and transparency, as well as efficient risk management and internal control systems.
- responsible management of the company, carried out on the principles of accountability and ensuring real results;
- Improves the corporate reputation of the company. The reputation and image of the company are an integral part of its assets (although intangible assets). The adoption of a code of ethics is an effective way to emphasize that society follows the principles of good business conduct;
- Improves risk management and crisis management. Thanks to the code of ethics, managers and directors of the company can learn about the main problems before they develop into a crisis, as the code encourages employees to respond to ethical problems they face;
- Improves corporate culture and emphasizes the importance of corporate values. The Corporate Governance Code will facilitate the task of managing the company's employees in their daily work;
- Facilitates efficient interaction with stakeholders. It can also be used effectively in relations with society's stakeholders in times of crisis. The Code emphasizes the public's commitment to the principles of ethical

conduct and the fact that possible violations are just an exception to the rule;

- Avoids court proceedings. The Code, combined with the effective work of the Group, can help minimize the risk of litigation related to fraud, conflicts of interest, corruption, bribery and insider dealing.

As a result, in order to ensure the quality of corporate information, the codes provide for the establishment of a control system that includes both external audit and internal controls, as well as the necessary organizational measures to ensure the effective functioning of the control system. At the same time, corporate governance codes do not set out detailed rules for financial reporting or auditing, as these functions are assigned to relevant international and national standards.

2.3 Role of the European Parliament

Several schemes to improve the effectiveness of corporate governance codes have been developed and their adoption will depend on the legal, social and political environment in which they have been adopted and applied. It should be noted that there is no one-size-fits-all solution to the satisfaction of all States within and outside the European Union. When examining the content of the codes and the methods of their application, it is necessary to take into account the data of each country.

The European Parliament has been an important voice in corporate governance. The European Parliament generally shares with the Commission the awareness of the need for corporate governance reform to promote European economic growth and development and to preserve financial system stability. But in the European corporate governance debate, the Parliament—notwithstanding its multiparty constituency—has also assumed a voice in pressing for stakeholder rights, particularly for employees, and for corporate governance to support a wide range of social objectives. Parliament representatives have shown positive willingness to share and debate their views on governance, but there also appears to be a degree of mistrust that an institutional investor agenda can truly be compatible with a long-term approach to investment and the broader social concerns of stakeholders. The quality of Corporate Governance is one of the factors that influences the competitiveness of national economies and consequently of the European Union.While the European Commission is preparing technical notes for the new Commissioners and their staff to be appointed and while (potentially new) MEPs started their election campaigns, the ecoDa board, acting as "the European Voice of Directors", would liketo take the opportunity to address a number of corporate governance issues we consider important and relevant to the European Business Community for the coming years.

2.4 The main important Directives which regulated Corporate Law in EU

The main tool for harmonisation of national legislation on legal persons within the EU is the directives. In terms of regulation, the directives can now be grouped into the following groups: Disclosure and Capital Disclosure Directives (the First, Second and Eleventh Directives), Restructuring Directives (the Third, Sixth, Tenth and Thirteenth Directives), Financial Reporting Directives (the Fourth, Seventh and Eighth Directives). A separate place is occupied by the Twelfth Single-Stock Company Directive and one of the most recent corporate law documents, the Shareholders' Rights Directive. Directives developed and partially adopted over the next thirty years are referred to by their order of magnitude, reflecting the order of submission of prepared drafts.

Three main directions of harmonization of the legislation under Directive I of 1968 can be distinguished: the openness of the basic documents of the commercial partnership, the validity of the obligations of the partnership, the conditions and consequences of invalidity of the partnership itself - all these tasks are aimed at the greatest protection of the creditors of commercial partnerships with limited liability.

1. First Council Directive 68/151/EEC

First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others. Launched the harmonization of EU corporate law. In fact, the Directive addresses three groups of issues relating to the protection of third party interests. Firstly, the Directive defines the basic documents and the minimum amount of information to be provided when registering a company, as well as publication in the relevant official journal of the member state in which the company is registered. Secondly, the Directive regulates the validity of obligations assumed in the name of the company by its governing bodies. Third, the Directive contains an exhaustive list of cases in which the public may be declared invalid, as well as a number of provisions on the retroactive effect of such recognition.

The Directive includes among the documents of the company that must be published (Article 2):

- the articles of association and articles of association of the company, as well as any changes ;
- information on the representative and control bodies of the society, namely, the names of the persons appointed to these positions, their term and scope of office;
- financial reporting and accounting documents of the company for each financial year, including the amount of authorized capital and the number of shares paid for;
- information on the transfer of the legal address of the company, on the reorganization and liquidation of the company, as well as any court decisions on the invalidity of the company. In case of liquidation of a company the information on terms of termination of liquidation and names of appointed liquidators are subject to publication as well. At its own will, the company may publish other information.

Disclosure of the said information shall be carried out by way of: 1) Publication in the official publication of the respective state; 2) conducting official business for each company in the state register. A certified copy of such case or a part thereof shall be provided to any person upon a written request; 3) establishment of the necessity to include in the letterheads and other outgoing documents of the company the information on the legal form and location of the legal entity, as well as the number of the company's case and the name of the register in which it is located. Amendments made to the First Directive in 2003 provide for the disclosure of information on legal entities in electronic version.

2. Second Council Directive 77/91/EEC

Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

Council Directive of 13 December 1976 (77/91/EEC) decides on the establishment, maintenance and modification of the share capital of open joint stock companies. The Directive provides for the need to specify in the constituent documents of the company such information: its name, legal address, purpose of establishment, management and control bodies, basic information about the founders, the term of validity of the company (if it is limited), as well as the amount of costs that the company incurred in the process of its establishment. In addition, information related to the capital of the company is mandatory for publication: the amount of its charter capital; the amount of prepaid capital at the time of establishment; the number and nominal value of signed shares at the time of establishment of the company (hereinafter such information should be provided annually); the number of shares issued without indicating their nominal value, if such a possibility is provided for in national legislation; classes of shares; the number and conditions of conversion of registered shares and bearer shares, etc. (Articles 2, 3).

1. The Charter or other foundation act of the joint-stock company should enable any interested party to obtain basic information about the company and, in particular, the exact amount of its capital.

2. The importance of developing common rules for EU countries in order to maintain the size of the share capital - first of all, by prohibiting any payments to shareholders that could lead to a reduction of the company's capital below the amount set out in the articles of association, as well as by limiting the possibility for joint stock companies to acquire their own shares.

3. The importance of ensuring that when the share capital is increased or reduced in all EEC countries, the principle that the owners of the same type of shares should be under the same conditions and that the interests of the company's creditors should be protected in the event of a reduction in the share capital is ensured.

EU Member States may exempt the company from the need to obtain the consent of the General Meeting of Shareholders for the acquisition of its own shares, if this operation is intended to prevent serious damage to the company, or for the subsequent distribution of the acquired shares to employees.

In the same time, the directive established strict requirements for the procedure of increasing and decreasing the share capital. The right to increase the charter capital may be granted by the General Meeting to another body of the joint-stock company for a term not exceeding five years.

The second directive is mandatory only for open joint stock companies. However, some countries (e.g. the Netherlands and Belgium) have also extended the requirements of the Second Directive to closed joint stock companies.

The basic principle of the Directive is that a branch is subject to the law of the Member State in which it is registered, not the parent company. Thus, a Member State may require that the financial statements and reports of the branch be published in the language of that State (Article 4).

3. Third Council Directive of 9 October 1978 and Sixth Council Directive of 17 December 1982

Third Directive of 9 October 1978 (78/855/EEC) and the Sixth Directive of 17 December 1982 (82/891 /EEC) deals with the reorganization of commercial associations. The third directive sets out two possible ways of merging joint-stock companies: a merger in which all rights and obligations of the company are transferred to another company and a merger in which several companies terminate their operations without going through liquidation and their rights and obligations are passed on to a new company. In addition, the Directive provides guarantees for the protection of the interests of shareholders and creditors of the company, including the need to publish a notice to each of the companies involved in the merger procedure, the approval by the general meeting of the owners of each type of shares issued by the companies, and the provision of security for the claims of the company's counterparties. The decision to merge is made by the general meeting of shareholders of each company by a qualified majority, although the member state may provide in its legislation for the possibility of such a decision to be made by a simple majority if the owners of at least half of the company's share capital participate in the voting. In accordance with the provisions of Article 22 of the Merger Directive, a merger may be declared invalid only by a court of law and only on the following grounds: if the requirements of previous state control over the merger process have been violated; if the decision of the general meeting of shareholders under national law is invalid, void or disputed; or if the merger has not been completed in the appropriate legal form as required by national law. EU Member States, in accordance with Article 16 of the Directive, should take measures to protect the interests of creditors in mergers, in particular, they should ensure that the legality of mergers is verified by administrative or judicial measures, as well as establish the requirement for mandatory notarization of mergers.

The Sixth directive on the separation of open joint stock companies concerns the transfer of rights and obligations of the company to several companies, with the former company ceasing to exist without undergoing liquidation, the shareholders of the company that ceased to operate receive shares in the companies to which the rights and obligations were transferred, and the distribution of funds among shareholders does not exceed 10% of the par value of the shares to be redeemed. The sixth directive sets out a number of guarantees for shareholders and creditors of the company similar to those mentioned in the Third Directive and provides for the possibility of establishing a judicially supervised separation procedure that entitles the court to exempt the company from certain onerous formalities, subject to judicial review of the transaction. In general, the same principles that apply to the separation of companies as those set out in the Third Directive apply to mergers. In the distribution process, the company transfers its rights and responsibilities to more than one company. The Directive applies both to cases where the assets of a company that is divided are transferred to companies that already exist ("separation by takeover") and to cases where the assets are transferred to newly established companies ("separation by formation of new companies"), as well as to cases where the two options are combined. The rules of the Sixth Directive on the protection of shareholders practically reproduce such provisions of the Third Directive: the separation plan, its assessment by independent experts, the decision on the separation by the general meeting of each company, etc.

4. *Fourth Council Directive 78/660/EEC of 25 July 1978 and Seventh Council Directive 83/349/EEC of 13 June 1983 and Eighth Council Directive 84/253/EEC of 10 April 1984*

These Directives are aimed at unifying the rules for the preparation, verification and disclosure of financial statements of companies and form the so-called "European Accounting Code". The fourth annual reporting directive divides all companies into three types of companies, and depending on the type of company, the company's disclosure obligations are set out. The first type of company - large companies (which meet two of the following criteria: balance sheet currency - 8 million, annual turnover - 16 million, number of employees - more than 250) - are obliged to publish their reports in full. For the other two types of companies - medium-sized companies and small companies (two of the following three criteria must be met: balance sheet currency less than 2 million, annual turnover less than 4 million, number of employees less than 50) -

there are exceptions as well as more simplified forms to be published. The first articles of the Directive set out the basic principles for the preparation of financial statements. First of all, it is the principle of truthfulness and truthfulness of the assessment of the assets and liabilities of the company, its position in the market, as well as income and expenses for the reporting financial year. The annual report consists of the balance sheet, profit and loss account and management report.

The Directive also contains a reporting scheme, which, however, is not strictly mandatory for small and medium-sized enterprises. The Directive also sets out the criteria for determining the size of an enterprise. The publication of company reports is done in accordance with the First Directive. A number of provisions in the Reporting Directive and their publication are relaxed for small and medium-sized enterprises. The Seventh Accounting Directive sets out the specifics of accounting and reporting for companies belonging to so-called groups of companies in comparison with the rules set out in the Fourth Directive. The main distinguishing feature of this reporting is the elimination of duplication of assets and liabilities attributable to business transactions within the group of companies. The eighth Directive defines the requirements for persons who audit the financial statements of joint stock companies. The Directive establishes the necessary requirements for the educational level of auditors, their registration with the competent state bodies, compliance with the principles of independence and transparency of financial audits of companies.
The eighth Directive, which set out the requirements for licensing of persons entitled to audit, became invalid after the adoption of the new Auditor Directive No. 2006/43 in 2006. The new Auditor's Directive now defines not only the requirements for the qualification of the persons carrying out the audit of the financial statements, but also the procedure for carrying out the audit, the state supervision of the auditors' activity and guarantees of their independence from the audited companies.

5. Eleventh Council Directive 89/666/EEC of 21 December 1989

Concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State. The Directive sets out the requirements for the list of documents and information to be disclosed separately for subdivisions of companies registered in EU member states and for subdivisions of foreign companies established under the laws of non-EU member states. Since the separate subdivisions of foreign companies that are not legal entities are not subject to the First, Fourth, Seventh and Eighth Directives, one of the purposes of this Directive is to provide a similar level of protection for the interests of shareholders and creditors in relation to branches and representative offices of foreign companies.

6. Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989

A separate place among the EU regulations is occupied by the harmonization of the activities of legal entities, adopted in 1989. The twelfth Directive, concerning the establishment of companies with a sole participant, was adopted within the framework of the European Programme for the Support of Small and Medium-Sized Enterprises. The Directive obliged all member states to provide for such an institution as a limited liability partnership with a single participant in national law, although before that, in a number of states (in particular, Belgium, Great Britain, Greece, Italy) such companies could not be established. The twelfth Directive applies to limited liability companies. However, where a member state allows one person to joint-stock companies, it is obliged to apply the rules of the directive before such companies (Article 6).

The company of one person is obliged to register in the relevant register and publish the information that it has only one member. Member States may, however, make specific provisions in their national legislation and even impose sanctions in cases where one individual is the only participant in more than one company, and where one company is the only participant in another company (Art. 2). The sole participant performs the functions of a general meeting of participants, and the decisions that he or she makes must be made in writing.

The permanent changes that have been made to the Twelfth Directive have been consolidated by Directive 2009/102.

Each of the EU Member States is entitled to impose restrictions on the performance of one person as a sole participant in several companies, as well as to decide on the application of the provisions of this Directive to open joint stock companies.

7. The Shareholder Rights Directive II (SRD II)

The Shareholder Rights Directive II (SRD II) is a European Union (EU) directive, which sets out to strengthen the position of shareholders and to ensure that decisions are made for the long-term stability of a company. It amends SRD1 which came into effect in 2007, with the objective of improving corporate governance in companies whose securities are traded on the EU's regulated markets. The aim of the directive is to ensure the effective exercise of voting rights by the holders of voting shares at the general meeting of shareholders and to eliminate "technical" obstacles to voting. In particular, the directive provides for the possibility of written and electronic voting (Article 8), coordinates the regulations on the exercise of the right to vote through representatives (Articles 10, 11, 13), determines the procedure for notification of the meeting (Article 5), regulates issues related to the right of the shareholder to ask questions (Article 9), etc.

It also establishes specific requirements to encourage shareholder engagement, in particular for the long-term.

The requirements apply in relation to the:

- Identification of shareholders;
- Transmission of information;
- Facilitation of the exercise of shareholders rights;
- Transparency of costs;
- Public disclosure of information by institutional investors, asset managers, life insurers and proxy advisors; and
- Remuneration of directors and related party transactions.

SRD II also requires member states to ensure that institutional investors disclose to the public how their equity investment strategy is aligned with the profile, the duration of their liabilities, and how it contributes to the medium to long-term performance of their assets. SRD II mandates that shareholders must be given the right to vote on the company's remuneration policy and on the remuneration report at a firm's annual general meeting (AGM). The aim of this requirement is to try and create a better link between pay and the performance of company directors. SRD II sets out obligations applicable to an intermediary. Intermediaries will be required to facilitate a company's right to identify its shareholders and to also facilitate the exercise of shareholder rights. This is achieved by making the necessary arrangements to the shareholder without "undue delay" (i.e. provide voting forms to shareholders and/or registering votes with issuers, or putting a shareholder in touch with an issuer) so the shareholder can exercise their rights. The scope has also been extended to third country intermediaries (Non- EU firms holding EU shares for shareholders).

Thus, the EU practice in the field of corporate law has shown that, in general, any, including the most acute, disagreements between the legal systems of member states can be coordinated through the adoption of directives. The EU directives adopted in the field of corporate law have had a generally positive impact on the national law of member states. They have helped to improve the protection of company participants and third parties and have made the legal regulation of many important aspects of legal persons more similar and predictable.

However, through the difficulty of reaching a compromise among all member states, a number of important corporate law issues remain outside the scope of the overall framework. These are issues related to the structure of companies (the draft Fifth Directive has not yet been adopted); issues related to the activities of a group of companies (draft Ninth Directive); and the issue of liquidation of companies. A serious shortcoming of EU corporate law in the doctrine of European law is also the refusal to adopt an act that would directly ensure the exercise of freedom of movement, namely, the Directive on the relocation of the statutory seat of a company.

3 THE INTERPLAY BETWEEN CORPORATE GOVERNANCE AND COMPANY LAW

3.1 DIRECTIVE 2004/25/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on takeover bids

Norms on merges and absorption form complex legal institute as include provisions from various industries and subsectors of the right. The relations connected with absorption are regulated by norms of corporate law, the joint-stock right, right of securities market. There are also administrative standards of administrative and legal character.

Definition and differentiation of basic concepts: merge, accession, absorption, offer on absorption. These concepts are similar, but not similar. Besides, the concept of absorption (takeover) is more inherent in the European law, and the term Mergers & Acquisitions more свойствен the American practice and, moreover, is standard and widely interpreted.

The principal purpose behind the Takeover Directive1 in the eyes of the European Commission was to promote the integration of the national economies constituting the “Single Market” and to enhance the competitiveness of European industry as against non-European rivals by facilitating takeover bids, especially cross-border ones.

Directive 2004/25 of the EU on offers on absorption defines that according to Article 44 (2g) Contracts on creation and functioning of the EU it is necessary to coordinate the requirements about protection of interests of shareholders and the third parties shown by member states to the companies which are subject to the right of one of EU member states which securities are allowed to the address in the stock market in the state - the member for recognition of such measures equivalent in all EU.

This paper seeks to establish whether and, if so, to what extent the implementation of the Takeover Directive in the Member States has moved national laws (further) towards the position in which takeovers are available to a significant extent as a technique for ‘the development and reorganisation of European firms’. For this purpose, it focuses on one of the provisions in the Directive which was aimed at facilitating takeover bids, the board neutrality rule (BNR), contained in Article 9 of the Directive.

DIRECTIVE 2004/25/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on takeover bids- general characteristic:

a. Status of the directive. Binding on EU Member States, but a number of its provisions are not intended to be implemented as a binding norm.

b. The main purpose of the directive is to create a single market for corporate control. This is a continuation of one of the EU's freedoms - freedom of movement of capital.

c. The Takeover Directive is a compromise. The final version of the Directive has been debated for almost two decades, and as a result some key provisions are not mandatory.

The basic principles of the Takeover Directive:

a. Principle of protection of interests of minority shareholders. Within the meaning of the directive, an analogy can be drawn between minority shareholders and investors in the securities market.

b. The principle of the duty of the board of directors to act solely in the best interests of the company. It is emphasised that the interests of the company may not coincide with the interests of the major shareholders.

c. The principle of disclosure and avoidance of market manipulation. The person making the takeover bid should not facilitate speculation on rumours of a possible takeover, and the bid should be published in a manner that is as open and accessible to the company's shareholders as possible.

Optional paragraph’s of the Directive:

a. The rule of neutrality of the board of directors. This rule supplements the second principle mentioned above. The Board of Directors should not take any action to disrupt a takeover during the period of the takeover.

b. A takeover rule. Contrary to the practice of issuing shares with multiple voting rights, as well as shareholder agreements to voluntarily waive voting rights and/or to sell or assign shares in certain circumstances.

Collision rules in the Directive:

a. Choice of law applicable to a takeover offer - the law of no more than two EU member states may be applicable to a takeover,

b. Trade criterion as a determining factor in the selection of a regulatory authority competent in respect of a takeover.

Implementation of Directive 2004/25/EC concerning proposals about a takeover in EU member states.

1. General information on the implementation of the Directive in Europe:

- Deadline is up, the Directive has not been implemented. Just over half of the EU Member States have met the two-year deadline set by the Directive. By early 2007, 8 countries had not implemented the Directive. Currently, all states have adopted implementing regulations.
- Regulators - Takeover Panel in the UK and securities market regulators in other countries. This is based on historical reasons - the Takeover Committee has existed in the UK for many years and supervised the application of The City Code, which has no analogue in Europe.

Consequences of a compromise in developing the provisions of the Directive:

Optional and mandatory provisions of the Directive - the principle of separation - allow for a critical reduction in the ability of companies to counteract acquisitions.

The rule of reciprocity in the application of the optional rules set out in the Directive as a major failure of the Directive, in line with the official position of the European Commission. On the other hand, such a rule allows guaranteeing the same "rules of the game" for European and non-European companies in the acquisition market.

European states' position on mandatory offer thresholds, compulsory and compulsory redemption rights. A voluntary offer in German law as a public offer to buy the company's shares, but not as a takeover offer per se.

Implementation of the rule of neutrality of the board of directors. Example of France and Germany. Implementation of the seizure rule. Example of France and Germany: Creating additional barriers to takeover in France simultaneously with the implementation of the Directive. Warrant issuance strategies (shareholder warrants and white knight warrants).

The main objective of the Directive has not been achieved. Position of the European Commission. On the one hand, the implemented norms of the Directive create a more even legal regulation within the EU. On the other hand, there is no real unity to talk about.

The owners of the Corporation are legally distinct shareholders who hold different numbers of shares. The corporation is managed directly by employees (top managers) who may not own any shares. This creates a conflict of interest. Each of the parties pursues its own goals: shareholders are interested in increasing the price of shares, increasing dividends; top managers want to receive a high salary, bonuses, a social package, and a solid position. In order to resolve the conflict of interest, there is a need to create rules that are equally recognized and observed by both parties, which has led to the emergence of corporate governance.

That corporate governance is not a passing fad but a very crucial new subject for all companies; crucial for economic reform; crucial to restore confidence in capital markets; crucial for long term economic growth and investment.

The main problem of the continuing lack of quality of corporate governance is the formal implementation of many principles reflected in the Code, which are of a voluntary nature, and the actual failure to comply or incomplete compliance with the rules not directly prescribed by law. Moreover, in a number of serious corporate conflicts or violations of shareholders' rights, unscrupulous shareholders or companies try to use even those opportunities that are clearly in violation of the law, but are difficult to counteract by the regulatory body or other shareholders due to imperfect approaches to their interpretation in practice, lack of sanctions or technical issues.

Corporate governance developments take place not only in corporate governance codes, but that in many Member States important legislative changes to company law have been made as well. In order to understand corporate governance developments in member states it is not enough to just look at the various codes that have been produced. What is actually included in a corporate governance code in a Member State to a very large extent depends on the contents of the company law legislation in that Member State. In order to understand where corporate governance developments in Europe are heading, we should not only focus on the various corporate governance codes that are introduced and amended, but also on changes in legislation. And what is indeed included in corporate governance codes often can only be understood properly if one relates also to the underlying company law legislation. What is included in codes and what in legislation is one of the key decisions to be taken in regulating corporate governance.

3.2 The main risks and the resolutions

The problem of conflict of interests of participants in corporate relations arises at the moment of making a decision to establish a corporation and "accompanies" all its further activities. The practical significance of types of conflict of interest and corporate conflict is expressed by the variety of types of legal conflicts, as well as the need to classify them in order to identify the best response methods in a particular new situation. Despite the fact that corporate conflicts have an objective basis, their high level is dangerous for the corporation. Companies that have internal contradictions are not attractive to investors and are easy targets for raiders. Stakeholder engagement is important for understanding the most priority issues of concern to stakeholders (shareholders, investors, analysts, employees, local communities, media, regulators, government, etc.). This helps to increase the effectiveness of strategy development and key decision making. Stakeholder engagement on key financial and non-financial issues plays an important role in building trust and confidence in the company. At the same time, participants in corporate relations should be aware that no law, even the most perfect one, can solve the problem of conflicts to the fullest extent. Legislators cannot objectively provide for the full diversity of conflict situations and give the only correct resolution to each of them. Therefore, most of the corporate law norms are of a dispositive nature. Positive norms allow the corporation's members to fix in their charters a variant of legal regulation of certain actions and procedures that will ensure a balance of interests within the company.

The list of persons whose interests come into conflict with the interests of a legal entity depends on its organizational and legal form and main type of economic activity. At the same time, there is a group of persons whose interests are constantly faced with the interests of a legal entity, regardless of its characteristics. Founders of the legal entity, members of its management bodies, employees of the legal entity that have employment relations with it, and creditors. The self-interest of these persons arises from the desire to obtain financial benefits. However, it is not possible for all persons to benefit at the same time, which is why conflicts are created. The main reason for the manifestation of contradictory interests of various entities related to the corporation's activities is the moment of distribution of its income.

A serious problem of modern relations in the management of companies is the conflict of interests between their owners (shareholders, participants) and managers. The reason for this problem lies in the separation of property from management. Managers, as a rule, are not owners of managed companies. Although during the last decades there have been attempts to increase the interest of managers by involving them in ownership relations (provision of shares, stakes, etc.).

However, one of the main objectives of a company's activity is to protect the rights of those persons on whose funds it exists - its owners. Joint stock companies have the most complete system of protection of the owners' interests. Shareholders use the following mechanisms to protect and secure their interests:

- participation in the board of directors;
- provision of a power of attorney for voting at the general meeting of shareholders;
- operations on the stock market.

Participation in the Board of Directors

The Board of Directors makes strategic decisions on the Company's development (except for decisions within the competence of the General Meeting of Shareholders). However, in addition to that, one of its functions is to control the observance of the shareholders' interests. Therefore, boards of directors of Western companies consist of economically uninterested persons or representatives of shareholders. Representation of company management on boards of directors is, as a rule, limited.

Stakeholders' interests may be completely different from those of management. Therefore, it is important for management to obtain as many proxy votes as possible so as not to lose control over decision-making and to gain an advantage over "hostile" groups when voting. To do so, it is necessary to satisfy the interests of shareholders and enjoy their trust.

Transactions on the stock market. If shareholders are dissatisfied with the actions of the management, they can sell their shares on the stock market or directly to the interested investor. The investor concerned may buy out a controlling stake in the company from the shareholders and dislodge an undesirable or inefficient management. A change of ownership generally carries with it an element of uncertainty for the company's management. Therefore, good-faith managers are interested in satisfying the interests of existing owners and maintaining their loyalty over the long term.

However, it should be noted that the sale of the company's shares by its shareholders is not always connected with the dissatisfaction of the shareholders' expectations.

The risks that can be left open by company law:

1. Risk that directors do not have much oversight on management:
2. Risk of deficient governance of financials and other disclosures:
3. Risk of inefficient human resource and remuneration practices:
4. Risk of inefficient governance of non-financial matters, controls and disclosures

Depending on the business area, business environment, development strategy and other factors, the company may face different types of risks. However, there are common goals that need to be supported by an effective management process. Typically, the main goal of a company's risk management system is to improve performance, reduce losses and maximize returns.

In its elementary form, the problem of corporate governance comes down to the creation of mechanisms that are designed to ensure that the interests of shareholders are safeguarded in a situation where information relevant to decision-making (both current and strategic) is distributed asymmetrically in favor of managers pursuing their own interests, provided that they retain the ability to make decisions on the use of the company's assets. At the same time, managers are expected to have a comparative advantage in making professional decisions.

Corporate governance rules and credit rating agencies are taking a stronger role in corporate risk by forming policies that address risk management policies. These emerging trends are forcing boards to assess past organizational exposures to risks. Economic trends also demand boards to be forward-thinking with regard to overseeing current financial risks and exposures to minimize the impact of financial crises. As a result, along with the task of implementing corporate governance procedures and guidelines, a company's board of directors is expected to take a leading role in overseeing risk management structures and policies. What needs to be understood, though, is that there is no way to eliminate risk, nor would any enterprise be well-served by attempting to do so. However, it is important for directors to take steps to be well-informed as to the company's risk profile, to discuss and evaluate risk scenarios and to satisfy themselves on an ongoing basis as to the adequacy of management's efforts to address material risks. The goal should not be to eliminate risk, but to make sure that risks are understood and appropriately managed; the management team is responsible for managing the risks, while the board of directors' role should be one of oversight.

Historically, corporate Boards of Directors have held the responsibility of risk management oversight, ensuring that risk management processes are clearly defined and appropriately enacted. Their role in managing risk has been to provide guidance and leadership on matters that impact the strategic direction of a company or its public image. In this traditional view management is left with the responsibility of actual risk assessment and mitigation, including issue resolution. But in today's fast-paced and social-media driven world, the speed at which a risk can turn into a widely publicized issue means Board members must now provide both tactical and strategic supervision over risk management as part of their membership.

1. Risk that directors do not have much oversight on management:

Usually the management always have much information which is disproportionate to the information at the board's disposal. In cases where the directors are incompetent or beholden to management, they cannot perform proper governance roles.

2. Risk of deficient governance of financials and other disclosures: The causes of deficiencies are often a lack of independence or experience.

Board members, executive directors, managers, and stakeholders know that there are strategic advantages to taking risks and that realizing growth requires some degree of risk. While managing complex business transactions, managers struggle to strike a balance between adding value while managing risks.

Corporate Governance Code: In this regard, governance codes require the chairman to be independent and also call for the majority of directors and various board committees to be in place. Expertise requirement to the board is one of the recommendations put forward to cater for the above risk.

3. Risk of inefficient human resource and remuneration practices:

4. Risk of inefficient governance of non-financial matters, controls and disclosures

Both the law and practicality continue to support the proposition that the board cannot and should not be involved in actual day-to-day risk management. Directors should instead, through their risk oversight role, satisfy themselves that the risk management policies and procedures designed and implemented by the company's senior executives and risk managers are consistent with the company's strategy and risk appetite; that these policies and procedures are functioning as directed; and that necessary steps are taken to foster an enterprise-wide culture that supports appropriate risk awareness, behaviors and judgments about risk and recognizes and appropriately escalates and addresses risk-taking beyond the company's determined risk appetite. The board should be aware of the type and magnitude of the company's principal risks and should require that the CEO and the senior executives are fully engaged in risk management. Through its oversight role, the board can send a message to management and employees that comprehensive risk management is not an impediment to the conduct of business nor a mere supplement to a firm's overall compliance program. Instead, it is an integral component of strategy, culture and business operations.

The use of the Board of Directors in the management system ensures a number of benefits for the company. But, perhaps, the main ones are such major years as making more informed decisions, reducing the level of risks of the company's activity, the possibility of substitutions in case of departure of any of the managers, the emergence of new ideas, the activation of participants, the formation of a more creative environment, better coordination of actions, mutual understanding, the creation of conditions for the formation of corporate culture, etc. All this, in the end, contributes to the increase of investment attractiveness of the company, formation of its competitive advantages, increase of stability and overall efficiency.

The main problems of the Boards of Directors can be summarized as follows:

- Insufficient awareness of the Boards members about the state of affairs in the company;

- A large amount of information materials that are sent to the Board members a short period before the meeting. This creates objective difficulties in the work of the Board - members of the Board are unable to process a large amount of information in a short period of time;

- Insufficient qualification of the Council members, who often do not possess the knowledge and skills necessary for effective work in the Council;

- Relationships between members of the Board, often representing different groups of shareholders, who are sometimes opposing parties;

- Mismatch between the actual role of the Board and the company's needs, internal conditions and company level;

- Lack of activity on the part of external members of the Board, particularly on the part of government representatives in the management bodies of joint stock companies;

- Mismatching interests of different groups of corporate relations participants represented on the Board of Directors.

- inconsistency of requirements to the Board of Directors and expectations of participants of corporate relations.

The concentration of property in the hands of the company's directorate is gradually increasing. Therefore, a number of questions arise involuntarily. In whose interests are decisions made in corporations: managing companies or their owners? How to build incentive programs for directors to improve corporate governance efficiency?

Owners often have no idea how to assess the quality of managers' work. In this case, top managers often use their position, which gives them the opportunity to pursue their interests. As a result, there is a problem of asymmetry of information. It is possible to eliminate or at least reduce this problem by developing a system of motivation for top managers to increase their willingness to act in the interests of the firm.

3.3 The possibility of unifying the differing codexes of law into a single, harmonized codex of governance

Today, almost every public company is regulated by the requirements of one or another corporate governance code typical for the country where the shares of the corporation are traded. For example, in the USA the SOX (Sarbanes-Oxley Act of 2002) law is in force, in Great Britain - the Combined Code, in Germany - the German Code. In addition, there are codes covering entire groups of countries. For example, the Corporate Governance Principles of the Organization for Economic Cooperation and Development (OECD) are intended for all 30 OECD member states, while the Euro shareholders Principles cover all EU countries.

Corporate governance codes should establish clear rules for disclosure in public companies, increase transparency of firms, and provide additional control over financial reporting and the use of corporate assets. This means that, in practice, the implementation of any of the above codes requires a public company to establish risk management and internal control systems that are designed to minimize financial fraud and protect the firm's assets from abuse, theft and misappropriation. The fundamental international standards of corporate governance are the OECD Principles of Corporate Governance, the ICGN General Principles of Corporate Governance (which largely repeat the principles of the OECD), and the Europoean Shareholder Group Guidelines on Corporate Governance (which detail the OECD principles for specific companies and countries).

The main objective of corporate governance is to fully take into account the requirements of all stakeholders involved in the life of a public company. In general, these are management, shareholders, employees, regulators, society, etc. However, in practice, corporate governance focuses mainly on the problem of relations between the firm's management and investors. Moreover, all modern corporate governance codes are aimed at protecting the interests of shareholders, as from the very beginning it is believed that the company's management is much closer to its property, assets and financial statements, and, consequently, may abuse its provisions to the detriment of investors. Thus, today, corporate governance and its basic principles, enshrined in a number of codes, are aimed at protecting investors through deep and broad control over the reporting and assets of a public company.It is important to note that not all corporate governance codes are binding today, but the codes of other European countries (Great Britain, Russia) are not raised to the rank of regulations, so that corporations may ignore some of their provisions. At the same time, there are a number of incentives that encourage public companies to voluntarily implement the codes. First of all, public companies seek to improve their reputation in the eyes of the public, investors and financial analysts, and the best way to do so is to improve the quality and efficiency of corporate governance.

Euroshareholders' Corporate Governance Guidelines were adopted by the European Shareholders Group in 2000. The principles of Euroshareholders are based on the principles of the OECD and are aimed at improving the rights and influence of shareholders. The aggravation of the situation in the corporate business in the USA and Europe at the beginning of the XXI century due to manipulation of financial reporting data and fraud has shown the lack of effectiveness of regulatory norms and the need to review corporate governance practices and standards.

The Euroshareholders Code should improve the rights and influence of shareholders. As far as national legal systems allow, the authors of the Euroshareholders Code have tried to describe their point of view on various corporate governance issues in as much detail as possible. In particular, the Code states that the company's executive directors are responsible for the establishment and effective functioning of the internal control system. It should be noted that this Code is non-binding in nature, but it is recommended to be applied in the countries and corporations of the European Union.

European countries have tightened their enforcement of legislation in this area. In 2004, a special advisory body to the European Commission, the Europea Forum on Corporate Governance, was established, consisting of experts representing issuers, investors, regulators, auditors and academia. At the national level, the activities of joint-stock companies and the protection of the rights of owners and investors are regulated not only by legislation, but also by standards, which are expressed in the adoption of special codes of best corporate governance practices. To date, more than 100 documents have been adopted in the world setting standards in this area.

In 2010, the Company developed a document "Conclusions and Recommendations on Best Corporate Governance Practices, Supplementing the Principles". The aim is to help companies and governments to overcome deficiencies in corporate governance and to better apply the OECD Corporate Governance Principles. Taking into account the latest recommendations of the OECD, the International Corporate Governance Association (International Corporate Network) adopted a new version of the general principles of corporate governance ICGN in 2009. In 2010, the organization also submitted a document entitled "Global Corporate Risk Oversight Guidelines". The new version of the 2016 G20/OECD corporate governance principles is aimed at both financial and non-financial companies whose shares are traded on the open market. The principles can also become a useful tool for improving corporate governance in companies whose shares are not listed on the stock exchange. Policymakers in any country are interested in raising awareness of the state of corporate governance in all companies.

In 2010. The European Commission adopted the Green Paper on Corporate Governance for Financial Corporations and Remuneration Policies, the provisions of which are consistent with the OECD recommendations. Work is continuing on a corporate governance document for all listed companies regarding shareholder rights, distribution of responsibilities between shareholders and the board, board composition and corporate social responsibility. National corporate governance codes are amended to take these recommendations into account.

Thus, active work is being done to clarify and concretize corporate governance standards at both international and national levels. However, it is possible to regulate the activity of companies, and in some cases it is necessary to regulate it strictly.

However, in our opinion, it would be much more practical to create a single corporate governance code that would be applicable to all EU member states. This is what European integration is all about, including in terms of legislation. From the point of view of harmonization, the creation of such a document is not too time-consuming. As it will be based on many codes and principles. In our opinion, the advantages will prevail. An important element of corporate governance is to influence the economy of the country, thus attracting investors or, conversely, discouraging them from doing so, as each model has its own peculiarities, the creation of a single set of rules will somehow infringe on the rights of others. However, the following advantages should be noted:

- Distinguishing the rights and obligations of all participants in corporate relations
- uniform protection of investor rights
- Ensuring maximum control over the Company's financial activities in order to protect the rights and legitimate interests of shareholders.

However, there are some disadvantages:

- Insufficient practice and experience in solving cases. That is, there are gaps due to different management systems that cannot be addressed by the same rule of law
- Harmonization of national legislation with regard to new international standards

Thus, the creation of a single document will greatly facilitate the issue of corporate relations from the practical and theoretical sides.

CONCLUSIONS

As regulators, legislators, directors, and practitioners seek to understand and articulate corporate governance practices and make decisions about their implementation and improvement, the issue of clarity becomes even more important when countries decide to strengthen their requirements. This can be addressed by clarifying the requirements in more detail, based on principles, or by strengthening compliance mechanisms. It is clear that in most countries the challenge is to comply with the basic requirements and to ensure that this is done in a principled manner.

As part of awareness-raising and in order to address differences in a number of countries, the "respect or explain the cause of non-compliance" regime is supported by additional legislation. The most important components of the OECD Corporate Governance Principles (the role of the board of directors, board committees and independence of directors) have been in the spotlight since the very first version of the document was published in 1999 (and revised in 2004). However, many countries have "outgrown" the OECD principles, as evidenced by new requirements in many developed countries and in many developed markets. OECD could consider adopting minimum principles that should ideally be introduced in all countries (whether or not they have stock exchanges) and providing easier access to clearer guidance on their application.

In a situation where decisions on the design, definition and implementation of corporate governance requirements in each country are driven by political, legal, economic, social and cultural particularities and there is no one formula, it makes sense to continue to use internationally recognized corporate governance standards. According to the results of investigation, all European countries have corporate governance codes (or their equivalents).

The degree of mandatory compliance with corporate governance codes varies from country to country. While developed countries and markets are more likely to adopt codes that are more principles-based, developing countries and markets are seeking to adopt codes that are mandatory.

A wide range of corporate governance tools are used across and within countries, and a wide range of documents (including company laws, listing rules, codes, best practice guides and various legislation) are used to implement the requirements in Europe. As far as the European Union is concerned, this is a large number of directives and regulations that try to harmonize the rules.

There are slightly more management requirements in instruments based on principles ("comply or explain the cause of non-compliance", voluntary compliance), which indicates their ability to meet more clearly defined requirements than legislation. The existence of multiple instruments increases the risk of conflicting requirements and the result is confusion in practice.

In turn, the main objective of our work is to clarify the relationship between corporate law and corporate governance in the European Union.

Based on the work done, we can say with sure that corporate law is a set of rules and regulations for regulating corporate relations. It is corporate relations and corporate law that is the main conflict of laws issue in the current legislation of the European Union. However, corporate governance by its nature is based on the rules of corporate law, which in turn facilitates the application and use of principles and norms in practice. In this research we have set a goal to find out how these two main parts interact. It should also be added that there is also a question of conflict of interest between participants of corporate relations, and which of these participants has an advantage.

And who really runs the companies, the shareholders or directors, and how exactly the managers share their duties and privileges, the issue has been disclosed as follows: the privileges in voting and making the most important decisions depend on the structure of the company and the main documents. However, it should be noted that even the management documents in practice do not perform their functions properly, due to several factors, namely: lack of education of people, lack of awareness and proper failure to comply with all the rules that are spelled out in the basic laws of the company.

The ability of the board of directors to make independent judgments about the company's performance is a fundamental requirement for effective corporate governance. The ability to question decisions and seek assurance that the company's actions are consistent with its goals and ethical values is considered a critical function of the board of directors and, in particular, of its independent members. The key component of independence to be considered is the role of the Chairman and CEO. It is recognized that these positions should be separated in order to make decisions more independent and to prevent the concentration of too much power in the hands of one person. Another area for improving markets is the clearer definition of the roles and responsibilities of independent directors. The UK is a leader in this area, where the role of non-executive directors is defined in detail in the Recommendations on the Efficiency of the Board of Directors issued by the Financial Reporting Board. Clearly defining the functions and responsibilities of the board of directors is another integral component of the corporate governance system. This takes into account both the fiduciary responsibilities of the directors and their authority to manage the company's operations and make decisions regarding its strategic, financial and operational goals.

It should be noted that the creation of a single corporate governance code would greatly simplify the corporate governance procedure not only for countries, but also for people. Each country has its own code and its own rules, which they try to adhere to and comply with, but they are only optional in nature, as well as directives that are designed to regulate corporate relations issues, but have a recommendatory character, as it has already been said that it is not necessary to resolve this issue.

And it is the idea of creating a single document that would regulate corporate relations and be binding, for example, in the form of regulations or a single code. In this document, all EU countries could include all exceptions and additions that they have in their national legislation on this issue. This would fill in all the gaps and answer all emerging questions on corporate governance.

Of course, since the regulation of companies' rights is a private issue, it is necessary first of all to base on the structural part of this company. Because each type of legal entity has its own details and exceptions. The emergence of new changes and the increasing complexity of accounting and financial reporting rules and standards, coupled with the ongoing risk of fraud and manipulation of results, make independent oversight of financial reporting increasingly important.

It is the good idea to create a single code of corporate governance in the European Union that will regulate the existence of all principles and norms and will give results for all countries.

BIBLIOGRAPHY

Books, articles, and surveys:

1. Action Plan: European company law and corporate governance 2012 // Mode of access:http://eurlex.europa.eu/legalcontent/EN/ALL/?uri=CELEX:52012DC070.
2. Baumst T. European Company Law Beyond the 2003 Action Plan // Law Working Paper No.81/2007; European Business Organization Law Review, Vol. 8, 2007.
3. Berle, Adolf, and Gardiner Means. 1932. The Modern Corporation and Private Property. Piscataway, NJ: Transaction Publishers.
4. Bauer R. , R. Braun and G. Clark. The Emerging Market for European Corporate Governance: The Relationship between Governance and Capital Expenditures / available at ssrn.com. – 2007.
5. Bataeva B.S., 2013. Rol fondovih rinkiv v sovershenstvovanii korporativnogo upravleniya I korporativnoi sotsialnoi otvetstvennocti [The role of stock markets in improving corporate governance and corporate social responsibility]. Izvestia uralskigi gosudarstvennogo universiteta [News of the Ural state University of Economics]. т. 1 (45). URL, Mode of access: https://cyberleninka.ru.
6. Baskin, J., and K. Gordon. 2005. “Corporate responsibility practices of emerging market companies.” A Fact Finding Study. OECD Working Paper on International Investment 2005/03. Paris: Organisation for Economic Co-operation and Development.
7. Benn, S., and D. Dunphy. 2007. Corporate Governance and Sustainability.Oxford: Routledge.
8. Berle Jr.A., Means G. The Modern Corporation and Private Property. — Macmillan, New York, 1932
9. Boston University. 2011. Corporate Governance for Sustainability. Boston: Boston University Pardee Center.
10. Brenkert, G. 2004. Corporate Integrity and Accountability. Thousand Oaks, California: Sage Publications Inc.
11. Casson, J. 2013. “A review of the ethical aspects of corpoate governance regulation and guidance in the EU.” Occasional Paper No. 8. London: Institute of Business Ethics (IBE).

12. Company Law and Corporate Governance Mode of access// https://ec.europa.eu/info/business-economy-euro/doing-business-eu/company-law-and-corporate-governance_en.
13. Cerioni L. and Keay A. Corporate Governance and the Corporate Objective in the European Communuty // EBLR 405. – 2010.
14. Crane, A., and D. Matten. 2010. Business Ethics: Managing Corporate Citizenship and Sustainability in the Age of Globalization (3rd edition). Oxford: Oxford University Press.
15. Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)//Mode of access: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R2157:EN:HTML
16. Dementieva F.G., 2011. Osnovi korporativnogo upravleniya. Uchebnoe posobie. [Fundamentals of corporate control. study guide]. Moscow
17. Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (Text with EEA relevance) Mode of access //: http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=JMn6Tdpb1J1rK3JldqyGXBRQc2tf4Dd577wWlM3lGGPjkSpvCv2t!1663296880?uri=CELEX:32009L0101.
18. Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law Mode of access // https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32017L1132
19. Directive 2004/25/EC of the European Parliament of 21 April 2004 on takeover bids//Mode of access // https://eur-lex.europa.eu/LexUriServ/LexUriServ.do/
20. Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights ,Mode of access // https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1212 /
21. Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, Mode of

access//https://eurlex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A32007L0036/

22. Doyle, David P. 2014. “The EU Corporate Governance Legislative Environment.” In A Practical Guide to Corporate Governance, 5th ed. Edited by Mark Cardale. London: Sweet & Maxwell and International Finance Corporation. 2015. “A Guide to Corporate Governance Practices in the European Union.
23. European Parliament , Mode of access : http://www.europarl.europa.eu/portal/en
24. Entin L.M. EU Law . European Company Law / L.M.Entin . – M.:, 2011. – p.960.
25. Financial Reporting Council. 2015. “Developments in Corporate Governance and Stewardship 2014): www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Developments-in-Corporate-Governance-and-Stewardsh.pdf.
26. First proposal for a Fifth Directive concerning the structure of public limited companies and the powers and obligations of their organs, OJ 1972, C 131/49. See also Amended proposal of 20 November 1991 for a Fifth Directive based on Article 54 of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs, COM (91) 372 final.
27. João Cunha Vaz “A OPA e o Controlo Societário - A Regra de Não Frustração”, Almedina 2013
28. Grundmann S. European Company Law / S. Grundmann. – Intersentia, 2006.
29. Globalizing Corporate Governance: Convergence of Form or Function Ronald J. Gilson The American Journal of Comparative Law, Volume 49, Issue 2, 1 April 2001, Pages 329–358
30. Grayson, D., and A. Hodges. 2004. Corporate Social Opportunity! Seven Steps to Make Corporate Social Responsibility Work for Your Business. Sheffield, England: Greenleaf Publishing
31. Guidotti R. The European private company: the current situation // German law j. Wash., 2012. Vol. 13.N 3.10.
32. Gupta A. L3cs and B corps: new corporate forms fertilizing the field between traditional for-profit and non-profit corporations // N.Y. j. of law & business. N.Y., 2011. Vol. 8.
33. Hommelhoff P. The European private company before its pending legislative birth // German law j.Wash., 2008. Vol. 9. N 6

34. International Finance Corporation. 2008. “European Union Approach to Corporate Governance” (February)
35. Hopt K.J. Comparative Company Law / The Oxford Handbook of Comparative Law, Oxford, Oxford University Press 2006, 1161.
36. A Guide to Corporate Governance Practices in the European Union :Mode of access:https://www.ifc.org/wps/wcm/connect/c44d6d0047b7597bb7d9f7299ede9589/CG_Practices_in_EU_Guide.pdf?MOD=AJPERES
37. High Level Group of Company Law Experts. 2002. Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe) Mode of access: www.ecgi.org/publications/documents/report_en.pdf.
38. Jungmann C. The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board Systems, ECFR 4/2006, 426.
39. Kapystin A.Y. The law of European union:, 2013. – p.387.
40. Kaveshnikov N., 2015. Metodi upravlenija v Evropeiskom souse [Governance practices in the European Union]. Mirovaya economica i megdunarodnie otnosheniya [World economy and international relations]. No 8
41. Kornack D. The European private company - entering the scene or lost in discussion? // German law j.Wash., 2009. Vol. 10. N 8.8.
42. Lieder J. The German supervisory board on its way to professionalism // German law j. 2010. Vol. 11. N2.
43. Lannoo K. A European perspective on corporate governance // Journal of Common Market Studies, 1999. 280.
44. Li D., Moshirian F., Nguyen P., Tan L. Corporate governance or globalization: What determines CEO compensation in China? // Research in international business and finance. N 21 (2007). P. 47
45. Monks R.A., Minow N., Corporate Governance. – Oxford: Blackwell Publishers, 2005
46. Pagano, Marco, and Paolo F. Volpin. 2005. "The Political Economy of Corporate Governance." American Economic Review, 95 (4): 1005-1030.
47. Pannier M. and Rickford J. Corporate Governance Disclosures in Europe // EBLR 975. – 2005

48. Ratnatunga, J. Mohamed Ariff Towards a Holis-tic Model of Corporate Governance / J. Ratnatunga. http://www.cmawebline.org/jamar-v3-1-editorial.pdf
49. Sokolova M. I., 2006. Korporativnaya strategiya i korporativnoe upravlenie [Corporate strategy and corporate governance]. Upravlenie korporativnumi finansami [Corporate finance management]. No 4.
50. Shpakiva L.V., Barulina E.V. Megdunarodnue standarti finansovoi otchetnosti [International Financial Reporting Standards]. Institut problem predprinimatelstva [Institute of problems of entrepreneurship]. URL: https://www.ippnou.ru.
51. Tricker R. Is director independence so important. Corporate Governance. 06.12.2019. URL: http://corporategovernanceoup.wordpress.com.
52. The Sarbanes–Oxley Act of 2002 // Pub. L. 107-204, 116 Stat. 745.
53. The Draft Fifth Company Law Directive.
54. The Shareholder´s Rights Directive 2007.
55. The Interplay between Corporate Governance Issues and Litigation: What Is Corporate Governance and How Does It Affect Litigation? By H. Stephen Grace, John E. Haupert and Susan Koski-Grafer
56. What is corporate governance? Mode of access:// https://economictimes.indiatimes.com/money-you/what-is-corporate-governance/articleshow/3995278.cms?from=mdr/