CORPORATE GOVERNANCE: THEORY AND EMPIRICAL EVIDENCE ABOUT

THE STRUCTURES OF THE UNITED STATES AND GERMANY

by

ARIANE SCHROEDER

(Under the direction of Professor Dr. James S. Linck)

ABSTRACT

In this paper, I review the topic of international corporate governance, starting with a description of the fundamental agency problem, the separation between ownership and control in the public corporation. Relying primarily on recent literature, I then present an overview of the various internal and external mechanisms that may provide potential solutions to this agency problem. The purpose is to show the eminent differences in national corporate governance structures in the use of these mechanisms. Therefore, I look at the system of the United States and the system of Germany, which reveal significant dissimilarities. For a deeper understanding of the ongoing changes in the field of corporate governance, I provide a detailed look at the German structure and then compare it with the US. Finally, I present current developments and possible future research areas.

INDEX WORDS: Corporate governance, Agency problems, Internal and external mechanisms, Germany

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## DEDICATION

This thesis is dedicated to the greatest man ever – my father! I owe to him everything I accomplished in my life. He was always there for me and he is my own personal hero. I am the proudest daughter.

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TABLE OF CONTENTS

## CHAPTER 1

## INTRODUCTION

Corporate Governance has gained considerable attention during the last decades. Corporate Governance describes the different ways by which the stakeholders of a company can exercise control over the insiders of the firm and protect themselves against expropriation by management. This is necessary because of the agency problems that arise by the separation of ownership and control as first introduced by Berle and Means in 1932. Basically this means a manager may not always pursue the same interests as the shareholders, but put his personal benefits in front due to a lack of monitoring of his decisions. Therefore, corporate governance is an important mechanism to control agency problems.

Huge technological changes and ongoing globalization and deregulation have made this a global issue. Several surveys analyze the differences in corporate governance structures throughout the world, e.g., Shleifer and Vishny (1997), La Porta et al (1998), Coffee (1999) and Gilson (2000). Understanding national governance systems not only encourages debate about relative efficacy of the various systems, but also stimulates institutional changes in places where they are needed most. The dissimilarities in national corporate governance structures are not only shaped by efficiency, but also by history and politics. A comparison between the United Stated and Germany, for example, can reflect the significant variations that are possible in this area. Both vary substantially in terms of ownership concentration, the role of financial institutions, and control rights.

Ownership differs markedly between the United States and Germany. US firms generally have dispersed ownership, while large shareholders dominate in Germany. This may be due to the fact that shareholder protection is higher in the US. The American stock market plays a much more significant role than the German, its characteristics are higher liquidity and a strong market for corporate control, including hostile takeovers. In contrast, the German system focuses on the blockholders, especially banks, who play the most important role, whereas the individual shareholder is not as protected as in the US. Recent developments show a lot of changes in these structures and the topic of corporate governance in these structures is present in business and governmental decision-making.

The objective of this thesis is to provide an overview of different governance systems, primarily the United States and Germany, illustrate possible control mechanisms, and present recent developments. This will provide the reader a summary on various elements of corporate governance and introduce him to the debate around that theme. I focus primarily on the structure of public corporations.

Chapter two starts with a general introduction of agency problems between the owners of a company (the shareholders) and management (insiders). Chapter three deals with the mechanisms to control agency problems, namely internal and external corporate governance instruments as well as legal possibilities. The descriptions of these mechanisms represent the main basis for the further analysis of different governance structures. Chapter 4 provides more detailed information and characteristics about the governance systems in the United States along the guidelines presented in the previous chapter. Chapter five reviews German corporate governance and its specific features, providing an in depth look at existing mechanisms and an overview of current developments, recent legislation, and ongoing changes. Chapter six concludes with a summary comparison of these two corporate governance systems.

# CHAPTER 2

# AGENCY PROBLEMS

The separation between ownership and control is inherent in today's corporative structure and the cause for emerging agency problems. In 1976 Jensen and Meckling showed that a manager owning less than 100% of the residual cash flow rights of a company has different interests than outside shareholders. The latter want the value of their shares to be maximized, while the former may be more interested in his private benefits. Being a part of management may lead to other non-financial goals, prestige and power play a role, e.g., an unnecessary luxurious office. If this is not enhancing business relations than shareholders basically bear all expenses, as agency costs increase with a reduction of share value.

## 2.1 The Free-rider Problem

Protection against expropriation of their funds by management is difficult to achieve for the owners. Although the manager is bound by a contract, this is only an incomplete security, because it is not possible to write down all duties and the allocation of profits in advance, as future states are uncertain. Thus, the manager always ends up with substantial control rights. The main problems in this scenario are dispersed ownership and existing asymmetric information between shareholders and management, i.e., in most cases, as in the US where there are numerous single owners, stockholders are too small and poorly informed to exercise their monitoring rights. Not only is this an expensive project for the average shareholder, but he also lacks industry expertise to be an effective monitor. It is difficult for the investor to get important insider information he needs to judge the management’s decisions. Thus, the costs of exercising control are higher than the possible benefits for the shareholder.

This leads to the free-rider problem, where the individual owner has not enough incentives to pursue his rights and each shareholder hopes to free-ride on the benefits that another shareholder evokes through his monitoring efforts, which improves firm value and therefore the value for everybody. The fact that only one person bears the total costs but all others participate in the benefits is a barrier to an effective reduction of agency costs.

## 2.2 The Power of Management

The main result so far is that managers have the main control rights. This discretion about the investors’ funds leaves them with several possibilities of expropriation. First, there is the free cash flow problem, defined by Jensen (1986) as the cash flow generated by the corporation in excess of the amount needed to fund all positive net present value (NPV) projects. The allocation of this excess money can lead to interest conflicts between management and shareholders. The free cash flow can be paid out to investors, it can be reinvested in already existing projects or invested passively in financial securities. The owners as legitimate holders of the residual cash flow rights prefer to get paid. Investment in other projects means investing in non-positive NPV projects as by definition these have already been made, and individuals can undertake investments in financial securities on their own, fitting in their personal portfolio structure.

Furthermore, management can waste the money if it stays in the company and spend it for their own benefits rather than enhancing shareholder value. The manager might want to hold on to the money to take on projects, which seem favorable to him and boost up the amount of assets under his control, because he finds running a bigger firm is more prestigious, a value clearly improving only personal goals. Expropriation is even more likely when the manager has no equity stake in the firm. In this case, he has no incentives to increase firm value and there is a higher possibility he might pursue a value-reducing project on the costs of the shareholders.[1] So, separation of ownership and control can lead to a self-serving behavior by managers and a decrease in shareholder value.

Second, the opposite of the above can also be true, i.e., although managers have no equity stake, they can lose much more than a well-diversified shareholder, as they are invested not only with their financial but also their human capital. Therefore, he may look at investment projects more critically and conservative and forego some positive NPV projects, which may be worthwhile for the owners.

Finally, the maximization of firm value requires a good management, which is willing and able to run the firm well. An agency problem arises if an executive entrenches itself and stays on the job, although no longer competent or qualified, and it is obvious that an alternative management team could increase the value of the corporation. The resistance of being replaced might prove costly for the shareholders, as it reduces the

[1] See Jensen and Meckling, "Theory of the firm: Managerial behavior, agency costs, and ownership structure", Journal of Financial Economics 3, 1976

value of their investments. An event study by Johnson et al (1985) showed an increase in the stock price of a company after the sudden death of an executive. The largest raise happens in huge conglomerates with only small returns to investors, most likely due to the reason that the death of a powerful manager changes control, and improvements to the benefits of the shareholders are possible.

To sum up, due to the separation of ownership and control and a lack of monitoring, management may pursue goals that are inconsistent with value maximization and are to the detriment of the shareholders.

# CHAPTER 3

# CORPORATE GOVERNANCE MECHANISMS

Mc Kinsey and Company released a study in June 2000, indicating that 80% of investors in Europe and the United States would pay more for a well-governed corporation than for a poorly governed with comparable financial performance.[2] According to this survey, the premium investors are willing to pay is 18% in the United States and 22% in Germany, showing the importance for a company to pursue the goal to be such a well-governed firm.

## 3.1 Internal control mechanisms

There are a variety of internal and external mechanisms supporting corporate governance, making it possible for firms to reduce agency costs and enhance firm value, which increases the willingness of investors to put money in the company.

### 3.1.1 The board of directors

Most corporations around the world are subject to requirements to fulfill a certain board structure. The tasks of such a board of directors is to monitor management closely on behalf of the owners, valuate executives' decisions concerning the improvement in firm value and be the communication link between shareholders and management.

[2] for details see the "Investor Opinion Survey on Corporate Governance" of McKinsey and Company, June 2000

Theoretically, in a public corporation this is a good institution for the individual shareholder, as he is too small to control management himself and can authorize other people to represent his interests. Practically however, it is questionable if the board members have enough incentives to do their job properly.

The board consists of executive directors, which are also part of the management team, and non-executive directors coming from outside the company. It is obvious that the former not really objectively control themselves and the latter may also be not very productive, although Rosenstein and Wyatt found that the stock price increases with the announcement of the appointment of an outside director. The position as non-executive member may depend on management, as they proposed him as a director and therefore he feels a certain loyalty. An outsider may also be too busy with other jobs to monitor management and finally, he may not have such a personal financial interest in the company that allows him to gain from performance improvements himself.

If the board is incapable of representing shareholders' interest, the shareholders can replace it through a proxy fight. This means, one shareholder sets up candidates for a new board and tries to persuade others to vote for these new candidates. Unfortunately, proxy fights do not happen very often, as they are costly, and the common shareholder is too small to undertake this fight and not willing to bear all the costs and share the benefits, which is described by the free-rider problem mentioned above. Additionally, it is very difficult to get enough votes because of dispersed ownership.

Beside these problems, a lot of studies have been made about structure and performance of the board of directors. Here, board size seemed to be of relative importance.[3] Smaller boards are more efficient, because they can operate more quickly and meet and discuss more easily than a huge number of people. Another characteristic is the independence of board members, i.e., the amount of outsiders on that board. As stated above, these are more effective in monitoring than members with business ties in that corporation.

Hermalin and Weisbach (2001) showed that both attributes lead managers to take actions more aligned with shareholders' interest and small boards with a greater proportion of outsiders are less reluctant to remove a poorly performing manager. Other findings of that study indicate a small outsider dominated board is better in acquisitions, as the members negotiate a better premium if their firm is acquired and also make better movements to acquire other firms. These findings suggest that board structure can be an important tool when measuring corporate governance.

### 3.1.2 Executive compensation contracts

Incentive contracts are a very common way to keep down agency costs, while inducing management to align their interests with those of the shareholders. These contracts can have different forms, such as share ownership or stock options. Typically, these contracts are a motivation for managers and tied to a performance measure that is correlated with the quality of his decisions.

Research on executive compensation focuses on the sensitivity of pay to performance. Understandably, the higher the reward for the manager the more is he willing to maximize shareholder value. The easiest way to achieve that, is through

[3] See Hermalin and Weisbach, "Boards of directors as an endogenously determined institution: a survey of the economic literature", Working paper, University of Pennsylvania, 2001

providing management with stocks or stock options. Evidence by Core et al (2001) suggests sensitivity is mainly realized through executive ownership of the firm's stocks and options, because the stock price falls if management announces a decision, which is not value maximizing for stockholders.

While stock ownership brings the interests of management and shareholders more in line, a too high ownership may have an adversely effect. Core et al (2001) showed in their study that firm performance increases with managerial ownership, but then starts to decrease again. Therefore, executive compensation is more important at lower levels of ownership, while higher ownership can entrench management.

Furthermore, executive compensation can also give the manager another opportunity for self-dealing. If negotiating with an uninterested board of directors, he can pursue the kind of contract that suits him most, because he knows the stock price will rise, or he even can maneuver accounting figures in a way that gives him more money.

Nevertheless, incentive contracts play an important role and help somewhat to reduce agency costs, but it is wrong to rely on them as a sole mechanism of corporate governance.

### 3.1.3 Large shareholders

Generally, a shareholder who owns more than 5% of a firm's common stock is defined as a large shareholder or blockholder. These blockholders can be individuals, other companies, and institutional investors. Such a large shareholder has enough incentives to monitor and influence the firm's action. As control rights are concentrated in the hand of fewer investors, it is easier to exercise them. A substantial blockholder has enough voting rights to put pressure on management and can, if necessary, even win a proxy fight easier. Furthermore, a substantial shareholder on the board of directors increases the chance of a change in control.[4]

La Porta et al (1998) find that large shareholders typically have control rights in considerable excess of their cash flow rights and thus, also they want to increase firm value, they may pursue private benefits of control as well. This may come at the expense of other shareholders, for example through accepting a greenmail offer or even trying to become management themselves. Evidence shows net private benefits of control, as blocks of shares trade at a premium to the exchange price.[5]

The cost of being a blockholder is that this investor is not diversified with his investments and therefore has a greater risk to bear, but this cost seems not to override the control effects. So, large shareholders and their possible monitoring power can play a crucial role in corporate governance.

### 3.1.4 Financial structure

The company's financial structure can reduce agency conflicts, depending on the amount of debt. Increasing debt in the firm limits the inefficiency of management and is a bonding mechanism in corporate governance. The manager is obligated to pay a certain amount of cash to the creditors to fulfill interest payments. This reduces the free cash flow problem discussed earlier, as the extra expense restricts the possibility to waste money for non-profitable projects. Furthermore, management is under greater pressure as ongoing payments have to be made regularly and thus, it needs to operate more

[4] See Holderness, "A survey of blockholders and corporate control", Economic Policy Review, 2001
[5] See Holderness, supra note 4

efficiently. But on the other side there are also costs in having too much debt, as the danger of bankruptcy increases and good projects are foregone, because covenants keep the firm from raising more funds.

Leveraged buyout transactions (LBOs) also show debt as an effective means in reducing agency costs. A LBO is a transaction largely financed by debt and the target, mostly taken private in that procedure, is a mature firm with high agency problems of free cash flow. Evidence provided by Kaplan (1989) suggests that these transactions are on average value increasing. The high level of debt from the LBO is only temporarily and reduced afterwards, but nevertheless, evidence is convincing that debt matters in corporate governance.

### 3.2 External control mechanisms

A takeover, in particular a hostile takeover, can improve operations of a firm and hence, reduce agency costs. In a takeover, a bidder makes a tender offer to shareholders of the target firm and if they accept it, the bidder gains control over the firm. Takeover targets are often poorly performing firms and if the takeover succeeds, the management is likely to be fired.[6] A takeover indeed creates value, on average, showing that the value of the acquiring firm and the target firm together is higher due to the merger.

A hostile takeover attempt is not only time consuming, but also costly for the bidder, as he normally has to pay a premium to acquire a controlling amount of stocks. Therefore, this mechanism is not effective when dealing with small deviations from maximum value. Furthermore, acquirers tend to overpay in a takeover, i.e., the premium

[6] See Shleifer and Vishny, "A survey of Corporate Governance", Journal of Finance 52, 1997

paid exceeds the increase in value due to the combination of the firms and the share price of the acquiring firm's stock falls.

Additional conflicts can arise when managers of the target firm use their control over the company to arrange for some defense tactics. Obviously, the target's management does not support a hostile takeover, as they face the unattractive possibilities to lose control over the firm and be replaced. One way for the manager is to sell off inefficient parts of the company or increase the amount of debt held by the firm to credibly commit not to waste free cash flow, as explained above. Both actions increase corporate value and therefore make it harder for the bidder to gain control, as he has to pay a higher premium.

Finally, there exists evidence suggesting that internal control mechanisms are stronger today and thus reducing the need for external control mechanisms.[7] If internal control mechanisms are active, like an outsider-dominated board of directors, the takeover market is weaker.

### 3.3 Legal mechanisms

Another corporate governance mechanism for shareholders to defend themselves against expropriation by management is to appeal to the court. If they find their control rights to be violated, they can enforce these rights through legal manners. The effectiveness of this mechanism is discussed controversially, although it is generally accepted as an important means for the protection of the shareholders.

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[7] See Holmstrom and Kaplan, "Corporate Governance and merger activity in the US: making sense of the 1980s and 1990s", Working Paper, National Bureau of Economic Research, 2001

On the one hand, courts are reluctant to value the work of the management of a firm while ruling against it, even if there exists evidence, proving that bad decisions were made.[8] In the United States, courts only get involved when there are huge violations of investors' rights.

On the other hand, the usefulness of this mechanism depends on the legal system of the country. Beside the traditional view of differentiating between market-centered and bank-centered systems, La Porta et al (2000) suggest that the legal approach is the key mechanism to valuate corporate governance, as it manifests the protection of investors through the legal system. La Porta et al made a recent survey, finding that ownership structure, capital markets, financing, and dividend policy all depend on the extent to which investors, both shareholders and creditors, are legally shielded against expropriation by management. Laws and the quality of their enforcement are not only crucial to reduce agency costs, but also lead to more favorable terms of financing. When investor rights are well protected, the willingness to put money in companies increases. La Porta et al also showed an inverse relationship between the amount of such protection and ownership concentration in a country. Thus, a conflict between outside investors and controlling shareholders might appear. This shows, that the corporate governance structure depends on the country's legal system, i.e., the extent of existing laws limiting expropriation of shareholders.

[8] See Michael Jensen, "The modern industrial revolution, exit, and the failure of internal control systems", Journal of Finance 48, 1993

# CHAPTER 4

# CORPORATE GOVERNANCE IN THE UNITED STATES

Corporate governance systems differ significantly around the world. This chapter provides an overview of corporate governance in the United States and shows the characteristic features for that country.

## 4.1 Internal corporate governance mechanisms in the United States

Internal corporate governance mechanisms play a significant role in the United States. These mechanisms show the possibilities a company has to voluntarily subscribe to stronger shareholder protection.

### 4.1.1 The board of directors

Every US corporation is required to have a board of directors as described above. Shareholders elect the board members from the slate proposed by the management and give them the discretion to monitor actions of the management team on their behalf.

### 4.1.2 Executive compensation

Incentive contracts play a substantial role in the United States. It is very common to align management's interest with that of the shareholders with specific stock option plans, which count for a huge part in the payment of the manager. Stock options are the most important component of compensation.[9] Compared to other countries, the compensation through these plans is among the highest in the US.

### 4.1.3 Large shareholder and ownership concentration

Large shareholders can be an essential element of a corporate governance system, as shown above, but their appearance also depends on the degree of legal protection. La Porta et al (2000) find that firms in countries with strong investor protection do not have such a highly concentrated control than other countries.

Therefore, in the United States large shareholders are not so important and dispersed ownership is the common feature. Table 1 shows a comparison of ownership structure around the world. American households hold about 50% of the shares, which is a strikingly high figure, demonstrating the spread in shareholdings. On the other side, laws prohibit banks from holding shares of a firm and only pension funds have a higher amount, proving the insignificance of blockholders.

Small shareholders are widely protected, which is very important for younger firms, as they are able to raise money from small shareholders in the stock market easier than in most other countries.

## 4.2 External corporate governance mechanisms in the United States

Hostile takeovers are a common means of corporate control in the United States. Due to an active stock market with high liquidity, takeovers are a serious threat for companies and put pressure on the management team to perform well to be protected

[9] See Core, Guay & Larcker, “Executive equity compensation and incentives: a survey”, Working paper, University of Pennsylvania, 2001

against hostile bids. There are quite a number of successful takeovers in the American market, which show that they are a dynamic part of corporate governance in the US.

### 4.3 Stock market-centered capital market

Corporate governance is often seen on the basis of two major foundations – a stock market-centered capital market and a bank-centered capital market. The United States has a stock market-centered capital market, whose features are a large number of investors and a key role of hostile takeovers, whereas large institutional investors, like banks, only play a limited role. Given such an environment, equity markets in the US are well developed and a highly important and trusted measure for firm performance. Due to this characteristic, a market-centered approach leads managers to maximize short-term earnings as they are measured by the performance of the stock market.

### 4.3 Common Law

As explained above, the role of the legal protections is important to distinguish corporate governance systems. If courts shield shareholders and creditors, they are more willing to finance firms, because defending their rights by law is easy.

In practice, there are two major legal systems – common law and civil law. The United States as well as the United Kingdom and some other countries have their origin in the common law system. La Porta et al (2000) show that common law countries have the strongest protection of outside investors. One explanation for this security is that judges make legal rules based on preceding cases and following general principles. Using these guidelines, courts rule new cases and can expend them if they find unprecedented violations. The relative “freedom” in this jurisdiction makes management more cautious and limits somewhat the expropriation by insiders.

Another explanation is the lower involvement of the state in common law countries, i.e., the protection of private property is stronger evolved by history. In the United States, legal protection plays a crucial role in corporate governance, it is amongst the strongest of the world and investors heavily rely on it. This country has a broad system of rules: protecting minority rights, making transfers of shares easy, and allowing shareholders a range of possibilities to sue directors for any violations. Only creditors have relatively less security, as courts offer also an extensive bankruptcy protection of companies, shielding the management of the distressed firm against immediate liquidation by creditors.

# CHAPTER 5

# CORPORATE GOVERNANCE IN GERMANY

In contrast to the United States governance system, I will now present a closer and much more detailed look at the corporate governance characteristics in Germany. I will describe how corporate governance mechanisms work in this country, where the problems are, and what the current development is.

## 5.1 Internal corporate governance mechanisms in Germany

Internal mechanisms are more important in Germany than in the United States, as they are the only means of corporate governance, because of the weaknesses in the external markets.

### 5.1.1 Board structure

As opposed to the United States, a specific feature in Germany is the separation between a management board and a supervisory board. This so called two-tier board system is deeply rooted in German history and evolved in the late eighteens century. It is mandatory for stock corporations to have this structure.

#### 5.1.1.1 The management board

The management board consists completely of inside directors and its task is to represent and manage the company. The supervisory board appoints the management board members for a term of five years with the possibility of reappointment.

The German Stock Corporation Code obliges board members to take the interests of all stakeholders, such as shareholders, employees, creditors, and the general public into account. Thus, management is not solely required to act in the shareholders' interest and there is no duty to focus on the maximization of share value.

#### 5.1.1.2 The supervisory board

The supervisory board consists of 6 to 20 members, depending on the number of employees in the company. The average number is 13 members.[10] Each person can hold up to ten seats on different supervisory boards, while the average number is 2-3. All members of the supervisory board are outside directors, i.e., they may not serve on the management board as well. They are elected for a term of four years.

The important part in the composition of the supervisory board is labor participation. The employees choose one-third of the members of the supervisory board and the shareholder two-thirds, in stock corporations with more than 500 employees. Therefore, majority voting is still in the hands of the shareholders, while the employees have a more advising position.

In companies with more than 2,000 employees, the board structure is different. Employees appoint half of the members of the supervisory board and the other half are

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[10] See Baums, "Corporate Governance in Germany: System and current developments", Working paper no. 70, 1999, Universitaet Osnabrueck

representatives of the shareholders. There is an even weight of voting rights, but in the rare appearing event of a draw, the chairman of the board, who is selected by the shareholders, has the deciding voice. So practically, there is a slight majority for the shareholders and therefore, this structure is known as the quasi-parity co-determination. This specific feature of co-determination is a deeply rooted and strong part of Germany and is not questioned by any party in German politics.

The main functions of the supervisory board are the appointment and dismissal of managers, and the advising and supervising of management's activities. Further tasks concern the approval of annual statements, appointment of auditors, and the approval of basic transactions, such as important structural or strategic measures. Beside these functions, the supervisory board is not able to undertake legal actions against management and to force them to make specific decisions. The German law on stock corporations views management as the only responsible body for executive actions. The supervisory board can only threaten management with dismissal.

The efficacy of the supervisory board as a corporate governance instrument is not as high as it could be. There is no requirement for a regular meeting and therefore, monitoring is not as effective as it would be with a more constant control. A study of Arthur Andersen questioned 76 public corporations and revealed that only in a quarter of that companies the supervisory board controlled the work of management on a regular basis.[11]

[11] See Deutsche Boersen-Zeitung, "Maengel in der Corporate Governance", Volume 129, 2001, page 13

5.1.2 Executive compensation

Executive compensation is not common in Germany, performance-oriented pay is usually tied to figures given by the annual statement of accounts, e.g., the annual surplus. Offering market-oriented payments, like stock options, to management is a very recent trend. Only new legislation (see below) encourages the use of stock option plans and makes their design easier. Some large companies already have developed performance payment schemes, mainly based on convertible bonds, but issuance of stocks, options or convertible bonds to management still needs approval by the shareholders. Moreover, German courts have relatively strict requirements for incentive plans. There exists a general resistance to give managers what is seen as an excessive level of payment, people do not favor such high compensation schemes as used in the United States. Stock option plans also raise the fear of possible insider trading or stock price manipulation. Due to these reasons, shareholders (temporarily) stopped the use of stock option plans in some companies, denying their approval.

Nevertheless, executive compensation is gaining importance in German businesses as an important tool in corporate governance.

5.1.3 Large shareholders and ownership control

Ownership in Germany is highly concentrated and large shareholders dominate the stock market. As presented in table 1, banks and other non-financial companies hold around 53% of the shares, which is by far the highest number of all countries shown, and the amount of households is low at 16%.

Table 2 displays the results of another study concerning only German companies. It shows that for 85% of 171 industrial German quoted companies in 1990, there is at least one large shareholder, who owns more than 25% of the votes. The table also illustrates that other German industrial companies make up 27% of dominant shareholdings and another 20% for families, while German institutional investors, e.g., trusts and insurance companies, account for only 15%. The role of these institutional investors is much smaller than in the United States. The special role of banks in Germany is explained later.

Finally, a study presented by Boehmer (1998) shows that large shareholders control 77% of the median firm's voting rights. This corresponds to 47% of the market value of all firms listed in Germany's official markets. Boehmer reports that large shareholders are interested in maximizing the value of their shares, but as there is only a weak protection of minority shareholders in Germany, this maximization is not necessarily the same as the maximization of firm value. This depends on the extent they can extract transfers from small shareholders. German law effectively allows large transfers to blockholders when they own at least 75% of the votes. This amount needs not to come from one large shareholder, but can also be a composition of two or more substantial blockholders. Additionally, a 75% majority can in fact make a binding tender offer to minority shareholders below market value.[12]

These issues lead to the view that large shareholders are not necessarily acting on behalf of all shareholders to maximize their value of shares and they are not as effective as a monitoring mechanism in corporate governance as they could possibly be.

[12] Paragraphs 304, 320b AktG (German Stock Corporation Code)

#### 5.1.3.1 The role of the banks

Banks play a significant role in ownership and control of German corporations. In Germany, banks are universal banks, i.e., they have a part of commercial banking as well as investment banking. Thus, banks own securities and trade in the stock markets on their own behalf and simultaneously on behalf of their clients.

Boehmer (1998) showed that the top five banks and the top three insurance companies are closely related through direct ownership and voting control. Together, theses eight firms control over 14% of all listed firms, which corresponds to a market value of DM 147 billion. Table 3 reveals that the top five banks alone control DM 74 billion or 7.22% of the listed market value and shows the main targets controlled by this banks. The true value of control of these blockholders is even higher, as there are no requirements to report additional ownership links between them. Cross-ownership is very common among these firms and those five banks represent a very powerful voting block in Germany.

There are a variety of ways in which banks can exert control over companies, such as direct ownership of shares, as creditors of the firm, and as representatives on the supervisory board. As Boehmer (2000) states, one control opportunity of the banks alone is no need to worry, but the combination of all these sources is what deserves attention.

One further important tool when measuring bank control, regulated in German law, is the so-called proxy vote. Shareholders can name proxy agents as their representatives at the annual shareholder meeting. Commonly, shareholders deposit their shares with a bank and grant them general power of attorney with respect to all their shares, so the bank can represent them at the meeting. These proxy rights are very substantial and together with their own equity holdings and the votes of subsidiary investment funds, the banks cast on average more than 84% of all votes present at the meetings of the 24 largest stock corporations with widely dispersed ownership, as shown in table 4.[13] This fact leads to another essential way in which banks exert influence, the chairmanship of the supervisory board. Table 5 indicates that the top three banks in 1990 held a considerable number of board seats.

A further characteristic of the banks is their information advantage. They often have very detailed information about a company, due to the fact that they are also a creditor and have substantial information rights when granting a credit. Given this advantage, banks ought to be very effective monitors, but the question is, how much incentives they have to act on behalf of the shareholders. Because of the combined effect of proxy votes and membership in the supervisory board, the control rights of banks significantly exceed their interest in equity cash flow.[14]

Another important point is that banks typically have a higher amount of debt in a firm than equity, which makes it even harder to argue that banks will act in the interest of minority shareholders. Decisions maximizing the value of debt often simultaneously decrease the market value of equity. Thus, banks should try to find equilibrium between increasing the value of debt and decisions increasing the value of equity. Due to the larger size of debt in a firm, it is rational to believe that banks act primarily as creditors and therefore may have negative effects on equity value. As this is true for all banks, Baums and Fraune (1995) showed that, independent of the number of different banks on

[13] See Theodor Baums, "Corporate governance systems in Europe: Differences and tendencies in convergence", Working paper No. 37, 1996, University of Osnabrueck

[14] See Boehmer, "Business groups, bank control, and large shareholders: An analysis of German takeovers", Journal of Financial Intermediation 9, 2000

the board, they virtually always vote in favor of management proposals. Thus, the effectiveness of banks as monitors acting on behalf of the shareholders is questionable.

There are a lot of different surveys, dealing with the role of banks and their effectiveness in monitoring. One study by Boehmer (2000), measuring the influence of banks and their effect on the net present value of investment decisions, suggests that bank control does not imply better monitoring, which is to the disadvantage of minority shareholders. However, large blockholders with a controlling stake of less than 50% play a substantial role in monitoring, especially if banks are involved. Strictly speaking, this study shows bank involvement has a positive influence on the quality of decisions if the bank is only the second or third largest shareholder and does not hold the biggest stake. Thus, there is an improvement in shareholder wealth only if there is a force independent of the bank.

Another very recent study by Jenkinson and Ljundqvist (2001) states that, in contrast to the widespread assumption, banks in Germany do not provide more money for investments than in other countries and that the efficiency of monitoring is not as high as often believed.

#### 5.1.3.2 Financial structure in Germany

Creditor protection is a strong feature in Germany and the German law system shields creditors more than shareholders and investors. There exists a strong set of rules, requiring, for instance, that existing capital is protected against withdrawals or share repurchases, which are only possible under certain exceptions. In the case of illiquidity, management has to file for bankruptcy and the supervisory board or the shareholders have no say in this. These rules are not very efficient, as they do not help unsecured creditors well, but they restrict some of the corporate governance mechanisms.[15]

### 5.2 External corporate governance mechanisms in Germany

An efficient market for corporate control can provide incentives for managers to maximize shareholder value. Hostile takeovers are the most important part in the external market, as they reduce agency costs, but so far this market is virtually absent in Germany. Friendly takeovers via tender offers are as well rare and there are only a few spectacular cases, e.g., the merger of Daimler Chrysler or Thyssen Krupp. This fact is enhanced by German legislation, which prohibits the merger between a German company and a non-German company.

Furthermore, the existence of highly concentrated ownership and the strong characteristic of co-determination make a hostile takeover attempt more difficult to achieve. Such a takeover is practically impossible without the support of large blockholders.[16] However, Jenkinson and Ljungqvist (2001) find despite the absence of hostile tender offers for German Corporations, the building of hostile stakes is a common means of gaining control. They found 17 cases over a period of 8 years where hostile stakebuilding took place, which may not be significant, but the number of companies facing the risk of a hostile acquisition may be much higher in Germany.

In another study, Boehmer (2000) analyses German takeovers and finds firms that are majority-controlled by financial institutions complete the worst takeovers. He concludes that majority-control increases the likelihood of decisions against

[15] See Manfred Balz, ”Corporate Governance in Germany”, OECD Conference paper, 1999
[16] See Ekkehart Boehmer, “Corporate governance in Germany: Institutional background and empirical results”, 1999, Working Paper, Humboldt University Berlin

maximization of shareholder value, independent if the majority shareholder is a financial or non-financial investor. Furthermore, it is intriguing to see the German characteristics of strong management and weak shareholders leading to more value-reducing acquisitions.

### 5.3 Bank-centered capital market

As already mentioned, banks provide a significant share of finance and governance to German firms. The therefore existing bank-centered capital market enables insiders to manage the company in the long run.

In the 1980s, bank-centered governance was seen to be advantageous, because of long-term investment and the ability of banks to avoid financial distress for firms with liquidity problems. In the 1990s, with some political turbulence, as the collapse of the Japanese economy, more analysts supported the stock market-centered governance, criticizing the over-lending by banks and the lack of necessary reorganization. John Coffee (1999) states that stock markets have the advantage of a more objective system of external monitoring and can react faster to changes in the economic environment.

However, the distinction between these two markets has expanded to a more accurate analysis about the quality of the legal system, the legal approach that is explained above.

## 5.4 Civil Law

Germany counts as a civil law country, so investor protection is not as high, although this judicial system received the best scores on efficiency.[17] In civil law countries, legislature makes the laws and judges have no freedom in their ruling, but are supposed to strictly follow the statutes. Therefore, if there are ways of expropriation of outsiders, which are not specifically forbidden by the statutes, a manager can use them without fearing a court decision. So, the characteristic of this legal system is a very broad line of rules, which a smart insider can get around of. Furthermore, as long as management can prove a business purpose courts do not prohibit self-dealing transactions. Basically, civil law is associated with stronger government intervention and a weaker protection of private property than common law.

Theodor Baums (1999) showed that court decisions are comparatively rare under German law, although there is an upward tendency in the last years. Small individual shareholders are not as protected as in other countries, because a single shareholder does not have the right to take actions against management on behalf of the company. Only a minority with at least 10 per cent of the company's stock can do so, which is a significant amount in a big firm. Another problem is that these shareholders not only have to bear all their own costs, but also the expenses of the other party and the company if the case is dismissed by court.

[17] See La Porta, Lopez-de-Silvanes, Shleifer & Vishny, "Investor Protection and Corporate Governance", Journal of Financial Economics 58, 2000

## 5.5 Review and recent developments

Only recently, the term of corporate governance gained considerable attention in Germany. Corporations as well as government are working on the implementation of guidelines to improve shareholder protection. Thus, there currently is a lot of movement in this area.

### 5.5.1 Critical review

As illustrated, the main characteristics of the German corporate governance environment are a highly concentrated ownership, the presence of large shareholders, and a specific role of the banks.

Many surveys analyze this system of German governance, but exactly how efficient or important large blockholders are is not yet fully known, as for a lot of information about the complete structure of ownership there are no sufficient disclosure requirements. For example, the German Corporate Code obliges a company to disclose an engagement exceeding 25% or 50% of the voting rights of another company, and the German Commercial Code specifies that a company must publish a shareholding of more than 20% of another company in their annual report. But intriguingly, neither requirement applies to shareholders who are not incorporated. Additionally, there does not have to be a public announcement or immediate notification of the bidder shareholders in a takeover. The availability of information to shareholders and the general public is further limited, as there is no disclosure of board memberships and the salaries and bonuses of the management in the annual report of a company. It is very difficult for shareholders to get this information, beside the importance concerning appropriate investment decisions.

Although there are new laws, such as the new securities trading law (WpHG) of 1995, disclosure regulations are still very weak and not sufficient. A study by Boehmer (1999) reports that the implementation of the law is not very effective and additional reporting is required for banks' proxy votes, non-listed firms, and business groups who have a majority in each other. Neither needs to be reported to the public at the moment, which makes it hard to get a full view of ownership structure and the distribution of control rights.

Disclosure and transparency still have to be improved in German financial markets. An investor needs to know detailed information about a firm to value his investment and he further wants to know who has control of the company. Only then can the investor make proper decisions and be safe against insider trading and expropriation. Right now, there is an information asymmetry between small individual shareholders and large blockholders, such as banks, as they can access information much more easily.

Due to these circumstances, Germany is characterized by a low stock market capitalization compared to other economies. In 1993, only 664 of the about 3,000 stock corporations were listed. Lannoo (1993) found that market capitalization corresponds to 25% of GDP in Germany, while it is 70% in the United Stated concerning the NYSE and 132% in the United Kingdom. Table 6 gives an overview of these figures and shows that market capitalization in Germany is comparably low, so the German equity market is relatively illiquid and volatile. This means, the market is not sufficient to generate the equity capital needed by corporations and therefore, Germany has to rely more on debt financing.

This all shows that the German corporate governance structure still has some leaks concerning reduction of agency costs. The individual investor cannot be sure that decisions are made in his favor and the company's goal in fact is to maximize shareholder value. However, some large companies try to change their policy, as the stock market gains importance, and they try to credibly commit to their shareholders that they are working with a value-maximizing goal. As a consequence, corporations seeking external capital can voluntarily go into legal systems that are more protective of minority shareholders. This can be done, for example, by subscribing to stricter accounting rules, such as the US-GAAP, which require more disclosure. As of today there are eighteen big German companies listed as ADRs on the New York Stock Exchange, which therefore needed to change their accounting rules to a higher standard of disclosure. Although this action is expensive to forego, it proves to be value enhancing for the firm and therefore calms shareholders. A study by Miller (1998) shows a positive market impact for firms that decide to cross-list in an international capital market. Such a listing is a binding commitment to follow shareholders' interest, despite the possibilities given under German law.

Finally, the feature of co-determination plays a significant role, too. Labor participation is a very strong part in Germany and a change in that area is virtually not possible. Co-determination can restrict a company in global competition and may present a barrier, especially for the financing of younger firms. The primary investors can possibly not gain majority control in a supervisory board with a high number of worker participation, which is essential for them to exercise their control rights, given the risk of putting their money in a new start-up firm. Coffee states the wide-spread believe that "co-determination cripples the German board as a monitoring body"[18], because of the strong influence and participation rights granted to the workers.

### 5.5.2 Recent developments and new legislation

Historical and political origins of a country play a crucial role in the evolution of corporate governance systems. German banks, for instance, have been powerful for a long time, starting at the end of the 19th century with support of the state. Given their significant role in the economy, they have the authority to discourage the implementation of new disclosure rules and other protection of minority shareholders, thus keeping their rights down. Banks do not want rivals and try to slow down developments in that area. Nevertheless, the German financial environment underlies rapid modifications and there is a general recognition among politicians that the "bank-centered finance is hindering German economic development".[19] Changing the banks' status and power is still an enduring process, but first adjustments are on their way and new laws already implemented.

The lack of transparency and regulation in Germany (and other European countries) are no secrets and with the background of some corporate difficulties and bankruptcies in the 1990s, there was a EU Transparency Directive, which led to the implementation of the German Securities Trading Act (WpHG) in 1995. The European Union started with an initiative to harmonize and promote the financial markets of the member states. As a consequence, the German Federal Securities Supervisory Office (BAWe) was established, all which led to an increase in publication requirements.

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[18] See Coffee, 1999, supra note 16

[19] See Jeffrey Gordon, "Deutsche Telekom, German Corporate Governance, and the Transition Costs of Capitalism", Columbia Business Law Review, 1998

After that, the law for control and transparency (KonTraG) has been implemented in 1998, with regulations to enhance corporate management and control. It contains improvements of the work of the supervisory boards, supports transparency, and strengthens the position of shareholders and other regulations. In this year, Germany was the only European country that legally implemented the rule of one share one vote (except for the still existing preferential shares). This law shows first changes in German corporate governance.

At the same time as the implementation of the WpHG, the International Accounting Standards Committee (IASC) developed a set of international accounting standards with higher disclosure requirements that make cross-border financings and listing in global stock markets easier.

In May 2000, after the huge breakdown of Philipp Holzmann AG, a large German company, the government set up a committee with the task to analyze possible deficits of the German system of corporate management and control. Additionally, there are several private organizations dealing with the improvement of corporate governance in Germany, even before the formation of this government committee.

In January 2000, the Frankfurter initiative presented a "Code of Best Practice" for all German quoted companies, where the basics of the KonTraG and some OECD ground rules were integrated. Furthermore, in August 2000, the Berlin initiative issued a "German Code of Corporate Governance" (GCCG), where especially the work of the board of directors was reviewed. Other organizations made some proposals for enhancement of the KonTraG, which government followed and as a consequence built two new government committees, one for “Corporate Governance and the Modernization of Corporate Law” and another to develop a “German Corporate Governance Code”.

To sum up, there are a lot of different organizations trying to change and improve corporate governance, and even government is working in that area. The “Code of Best Practice” was among the first and it was discussed on several shareholder meetings and in academic literature with a generally positive feedback.

There is a growing awareness of German companies on the importance of corporate governance, and some companies come forward with their own corporate governance standards, containing more than the legally required minimum. A recent study made by Pellens et al (2001) deals with corporate governance regulations and makes an empirical analysis about the DAX 100 corporations. One result shows 95.6% of all questioned companies think that it makes sense to regulate corporate governance in form of such codes. While only 8.9% of them have already implemented such corporate governance rules, another 44.8% of the companies have decided to participate in the near future. Additionally, when asked about the relevance of corporate governance regulations on the stock prices, 85.3% answered they expect a positive effect on stock prices.

Regulations are one part of the improvements, the introduction of the “Neuer Markt” in Germany was another. Basically, this was the first step to make it easier for new and small start-up companies to raise equity and an encouragement for equity markets to develop. The Neuer Markt is a segment of the Frankfurt Stock Exchange and can be compared to the NASDAQ in the United States. Firms wishing to list on this market must fulfill the requirement to comply with international accounting standards and therefore greater disclosure. These stronger constraints on the companies led to an increasing number of initial public offerings in Germany.

There is a change in corporate governance mentality and current legislation is a good start to enhance transparency in Germany, but this is only the beginning and yet insufficient to solve all problems.

# CHAPTER 6

# CONCLUSION

This thesis describes the characteristics and differences of corporate governance systems in different countries. The goal of corporate governance is to reduce agency problems, which arise by the separation of ownership and control in public firms or other agency relationships. The objective is to get managers to work towards the best interests of the shareholders, i.e., to maximize shareholder value.

There are several key mechanisms, which work to reduce these agency problems and to better align shareholder's interest with that of management. Nevertheless, corporate governance is not always completely effective, a useful implementation of the various mechanisms also depends on ownership concentration, capital structure, and board structure.

In the United States, ownership is relatively dispersed and there is an extensive system for the security of minority rights. Creditors have relatively fewer rights, because of the strong bankruptcy protection of companies. In sum, the US have a widespread ownership and a highly efficient stock market with high liquidity and an active corporate control market.

In Germany, there is a high ownership concentration. Large blockholders dominate the market. In particular, banks play an important role, as they often control over a quarter of the votes in major companies.[20] The German corporate governance system has relatively weak protection of minority shareholders, whereas the protection of creditors is deeply rooted and allows them much stronger rights. Small shareholders play an insignificant role in the market, which is therefore characterized by less liquidity. Most importantly, the German market lacks transparency that generates sufficient corporate control systems. Also, hostile takeover bids are virtually absent in Germany.

New developments, driven by the increasing global integration of capital markets, generate changes in the corporate governance systems. Especially in Germany, there are new regulations for the stock market, banks and corporate management. For example, banks are reducing their stakes in companies, due to tax changes and the shifting role of corporate governance. There is a stronger emphasis on shareholder value. Together, those features will probably increase the number of hostile takeovers as shown in the study by Jenkinson and Ljungqvist (2001). There are a lot of other points suggesting change in the corporate governance environment, including the reduction of legal obstacles for stronger executive compensation, dispersed ownership, and hostile takeovers. These elements concern all parts of the various corporate governance mechanisms and are basically moving the German system in the general direction of the United States model.

On the other hand, the US corporate governance system has its weaknesses. Given the permanent pressure of competition in the markets, the American system is changing as well, and some developments are moving towards the German system, such as the growing number of large shareholders.

[20] See Shleifer and Vishny, "A survey of Corporate Governance", Journal of Finance 52, 1997

To sum up, there is no best corporate governance system. Most likely, both systems will converge in some ways. The key of efficiency lies within the analysis of the correlation of the different corporate governance mechanisms. Some individual governance instruments, like hostile takeovers or executive compensation plans, help to reduce agency costs on the one hand, but on the other hand they also produce opportunity costs in form of increasing agency costs in some other part. For instance, mechanisms for a stronger control of management by the shareholders can increase agency problems between shareholders and creditors. These side effects have to be considered and can be reduced through a skillful combination of different corporate governance mechanisms. It is important that the elements are complements of each other and all work together for the greatest effectiveness.

Today, there is still no sufficient understanding of the possible interactions of the various corporate governance mechanisms with each other and their economic environment. Therefore, a challenge for future research is the analysis of the efficiency of changes in the corporate governance structure by political and economic forces. In particular, it would be interesting to analyze the costs and benefits of the influence of large shareholders, since there is a resistance in the United States against blockholders, whereas they dominate corporate governance in Germany. For an objective comparison of these different structures much more research is needed. The topic of corporate governance includes a great variety of areas, which would be interesting to explore and many are the subject of ongoing research.

Lastly, corporate governance is important in today’s business, but it alone cannot promise the success of a company. Its mechanisms are a way to support proper business decisions and provide some control. Ongoing developments will likely improve corporate actions, but the real success is still in the hands of a capable and talented manager.

## REFERENCES

**Balz**, Manfred, “Corporate governance in Germany”, OECD Conference paper, 1999

**Baums**, Theodor, “Corporate governance in Germany: System and current developments”, Working paper no. 70, University of Osnabrueck

**Baums**, Theodor, “Corporate governance systems in Europe: Differences and tendencies of convergence”, Working paper no. 37, 1996, University of Osnabrueck

**Baums**, T. and C. Fraune, “Institutionelle Anleger und Publikumsgesellschaft: Eine empirische Untersuchung”, *Die Aktiengesellschaft, 40,* 1995, pp, 97-112

**Becht**, Marco and Ekkehart Boehmer, “Transparency of ownership and control in Germany”, Working paper, 1999, Humboldt University Berlin

**Berle**, A. and G. Means, “The modern corporation and private property”, New York: MacMillan, 1932

**Boehmer**, Ekkehart, “Business groups, bank control, and large shareholders: An analysis of German takeovers”, *Journal of Financial Intermediation, 9,* 2000, pp. 117-148

**Boehmer**, Ekkehart, “Corporate governance in Germany: Institutional background and empirical results”, Working paper, 1999, Humboldt University Berlin

**Boehmer**, Ekkehart, “Who controls Germany? An exploratory analysis”, Working paper no. 71, 1998, Humboldt University Berlin

**Coffee**, John C. Jr., “The future as history: The prospects for global convergence in corporate governance and its implications”, Working paper no. 144, 1999, Columbia University School of Law

**Core**, J.E., W. Guay and D.F. Larcker, “Executive equity compensation and incentives: a survey”, Working paper, 2000, University of Pennsylvania

**Denis**, Diane K., “Twenty-five years of corporate governance research… and counting”, *Review of Financial Economics, 10,* 2001, pp. 191-212

**Franks**, Julian and Colin Mayer, “Ownership and control of German corporations”, *Review of Financial Studies,* 2000

**Franks**, Julian and Colin Mayer, “Bank control, takeovers and corporate governance in Germany”, *Journal of Banking and Finance, 22,* 1998, pp. 1385-1403

**Gilson**, Ronald J., “The globalization of corporate governance: Convergence in form or function”, Working paper no. 174, 2000, Columbia Law School

**Gordon**, Jeffrey, “Deutsche Telekom, German Corporate Governance, and the Transition Costs of Capitalism”, *Columbia Business Law Review, 185,* 1998

**Hart**, Oliver, “Corporate governance: some theory and implications”, *The Economic Journal, 105,* 1995, pp. 678-689

**Hermalin**, B.E. and M.S. Weisbach, “Boards of directors as an endogenously determined institution: a survey of the economic literature”, *Economic Policy Review,* 2001

**Holderness**, C.G., “A survey of blockholders and corporate control”, *Economic Policy Review,* 2001

**Holmstrom**, B. and S.N. Kaplan, “Corporate governance and merger activity in the US: making sense of the 1980s and 1990s”, Working paper, 2001, National Bureau of Economic Research

**Jenkinson**, Tim and Alexander Ljungqvist, “The role of hostile stakes in German corporate governance”, *Journal of Corporate Finance, 7*, 2001, pp. 397-446

**Jensen**, Michael, “The modern industrial revolution, exit, and the failure of internal control systems”, *Journal of Finance, 48,* 1993, pp. 831-880

**Jensen**, Michael, “Agency costs of free cash flow, corporate finance, and takeovers”, *American Economic Review, 6,* 1986, pp. 323-329

**Jensen**, Michael and William Meckling, “Theory of the firm: Managerial behavior, agency costs, and ownership structure”, *Journal of Financial Economics, 3,* 1976, pp. 305-360

**Johnson**, W.Bruce, Robert Magee, Nandu Nagarajan and Harry Newman, “An analysis of the stock price reaction to sudden executive deaths: Implications for the management labor market”, *Journal of Accounting & Economics, 7,* 1985, pp. 151-174

**Kaplan**, Steven, “The effects of management buyouts on operating performance and value”, *Journal of Financial Economics, 24,* 1989, pp. 217-254

**Kose**, John and Lemma W. Senbet, “Corporate governance and board effectiveness”, *Journal of Banking and Finance, 22,* 1997, pp. 371-403

**Lannoo**, K., “Corporate Governance in Europe”, Center for European Policy Studies, Working paper no. 12, 1995, Brussels

**La Porta**, Rafael, Florencio Lopez-de-Silvanes, Andrei Shleifer and Robert Vishny, “Investor protection and corporate valuation”, Working paper, 2001, Harvard University

**La Porta**, Rafael, Florencio Lopez-de-Silvanes, Andrei Shleifer and Robert Vishny, “Investor protection and corporate governance”, *Journal of Financial Economics, 58,* 1999, 2000, pp. 3-27

**La Porta**, Rafael, Florencio Lopez-de-Silvanes, Andrei Shleifer and Robert Vishny, “Corporate ownership around the world”, Working paper, 1998, Harvard University

**La Porta**, Rafael, Florencio Lopez-de-Silvanes, Andrei Shleifer and Robert Vishny, “Law and Finance”, *Journal of Political Economy, 106,* 1993, pp. 1113-1155

**Miller**, D., “The market reaction to international cross-listings: Evidence from Depository Receipts”, *Journal of Financial Economics, 51,* 1998, pp. 103-123

**Pellens**, Bernhard, Franca Hillebrandt and Bjoern Ulmer, “Umsetzung von Corporate-Governance-Richtlinien in der Praxis: Eine empirische Analyse der DAX 100-Unternehmen”, *Betriebs-Berater, 56*, 2001, pp. 1243-1250

**Prowse**, S., „Corporate governance in an international perspective: A survey of corporate control mechanisms among firms in the US, UK, Japan, and Germany”, NYU Salomon Center 4, Blackwell Publishers, Cambridge, Massachusetts

**Rosenstein**, S. and J.G. Wyatt, “Outside directors, board independence, and shareholder wealth”, *Journal of Financial Economics, 26,* 1990, pp. 176-191

**Shleifer**, Andre and Robert W. Vishny, “A survey of corporate governance”, *The Journal of Finance, 52,* 1997, pp. 737-783

**Shleifer**, Andre and Robert W. Vishny, “Management entrenchment: The case of manager-specific investments”, *Journal of Financial Economics, 25*, 1989, pp. 123-140

**Shleifer**, Andre and Robert W. Vishny, “Large shareholders and corporate control”, *The Journal of Political Economy, 94*, 1986, pp. 461-488

**EASD** (European Association of Securities Dealers), “Corporate governance principles and recommendations”, May 2000

**GCCG** (German Code of Corporate governance), Berlin Initiativkreis, June 2000

## APPENDIX

Table 1: Structure of ownership concentration in different countries

| Share Ownership (%) | Germany | NL | UK | US |
|---|---|---|---|---|
| - households | 16.6 | 20.0 | 17.7 | 50.2 |
| -non-financial enterprises | 38.8 | 9.6 | 3.1 | 14.1 |
| -banks | 14.2 | 0.7 | 0.6 | 0.0 |
| -investment funds | 7.6 | 1.5 | 9.7 | 5.7 |
| -pension funds | 1.9 | 7.9 | 34.2 | 20.1 |
| -insurance companies | 5.2 | 5.5 | 17.2 | 4.6 |
| -government | 3.4 | 0.0 | 1.3 | 0.0 |
| -foreign shareholders | 12.2 | 54.8 | 16.3 | 5.4 |
| Ownership of largest shareholder | | | | |
| greater than 25% | 85 | – | 13 | – |
| greater than 50% | 57 | 22 | 6 | – |

Source: John Coffee Jr., "The Future as History: The prospects for global convergence in corporate governance and its implications", Working paper 144, Columbia University School of Law, 1999

Table 2: Ordinary share stakes in excess of 25%, 50% and 75% for the largest 171 German industrial quoted companies in 1990

**Table 1: Ordinary share stakes in excess of 25%, 50% and 75 % for the largest 171 German industrial quoted companies in 1990**

| | >25% | >50% | >75% |
|---|---|---|---|
| A. Companies with a widespread shareholding[1] | 14.6% | 42.7% | 77.8% |
| B. Companies with a large shareholder | 85.4% | 57.3% | 22.2% |
| the largest shareholder being ... | | | |
| 1. Another German company | 27.5% | 21.1% | 9.9% |
| 2. An insurance company | 1.8% | 0.0% | 9.9% |
| 3. A trust/an institutional investor | 12.9% | 6.4% | 1.8% |
| 4. A family group | 20.5% | 16.4% | 5.3% |
| 5. A foreign company[2] | 9.9% | 8.8% | 5.3% |
| 6. A bank | 5.8% | 0.0% | 0.0% |
| 7. The German State | 1.2% | 1.2% | 0.0% |
| 8. Other German authorities | 3.5% | 2.9% | 0.0% |
| 9. A foreign state | 0.0% | 0.0% | 0.0% |
| 10. Unknown | 2.3% | 0.6% | 0.0% |
| **Total**[3] | 100.0 | 100.0 | 100.0 |

Notes: [1] Acompany is widely held, if it has no shareholder holding of at least 25% of its voting capital.

[2] Including foreign holding companies.

[3] Discrepancies in the total may to due to rounding errors.

Source: Franks/Mayer, “Ownership and control of German corporations”, 2000

Table 3: Stakes and voting blocks held by the five banks controlling the greatest market value

The sample consists of all 430 firms and 835 shareholders reporting voting control to the BAWe by September 1996. Each cell reports the sum and the mean of each variable. *Directly controlled* refers to direct stakes, *controlled* refers voting blocks held by the individual stakeholders. *Market value* refers to the market value of all equity. Data on blockholders come from BAWe (1996) and is supplemented by data from KSD.

| Shareholders (number of direct stakes, voting blocks included in calculations) | Main targets controlled (voting blocks in listed firms exceeding DM 300 million market value, sorted by decreasing market value) | Blockholders | Market value of direct stakes in Mn. DM | Market value of controlled voting blocks in Mn. DM | Voting blocks as % of the market value of all 430 listed corporations |
|---|---|---|---|---|---|
| Deutsche Bank (24, 27) | Daimler Benz, Allianz, Münchner Rück, Frankfurter Hypo, Südzucker, Linde, Bayerische Vereinsbank, Metallgesellschaft, Heidelberger Zement, Karstadt, Ph. Holzmann, AMB | Allianz 5% | 31288 | 31688 | 3.09 |
| Dresdner Bank (11, 14) | Allianz, Münchner Rück, Deutsche Hypo, OLB, Heidelberger Zement, AMB, Hamburghyp, Bilfinger & Berger, Metallgesellschaft | Allianz 22%, Nona VV 10%, Vermo VV 11% | 18027 | 19595 | 1.91 |
| Bayerische Vereinsbank (9, 9) | Allianz, Münchner Rück, Vereins- und Westbank, BEB, Nürnberger Hypo, Süddeutsche Bodencreditbank | Viag 7%, Bayernwerk 7%, Deutsche Bank 5% | 14839 | 14839 | 1.44 |
| Commerzbank (8, 8) | Rheinhyp, Linde, Karstadt | none | 3975 | 3975 | 0.39 |
| Bayerische Hypo (6, 6) | Allianz, Württemberger Hypo | Allianz 23%, Münchner Rück 6%, | 3905 | 3905 | 0.38 |
| Sum (58, 64) | | | 72033 | 74001 | 7.22 |

Source: Boehmer, "Who controls Germany? An exploratory analysis", 1998

Table 4: Voting rights[a] of banks in shareholders meetings of the 24 largest stock corporations with widely dispersed ownership in 1992

Source: FIBV, Federation of European Stock Exchanges and European Economy

| No. | firm | presence (%) | own holdings | subsidiary investm. funds | proxies | all |
|---|---|---|---|---|---|---|
| 1 | Siemens | 52,66 | | 9,87 | 85,61 | 95,48 |
| 2 | Volkswagen | 38,27 | | 8,89 | 35,16 | 44,05 |
| 3 | Hoechst | 71,39 | | 10,74 | 87,72 | 98,46 |
| 4 | BASF | 50,39 | 0,09 | 13,61 | 81,01 | 94,71 |
| 5 | Bayer | 50,21 | | 11,23 | 80,09 | 91,32 |
| 6 | Thyssen | 67,66 | 6,77 | 3,62 | 34,98 | 45,37 |
| 7 | VEBA | 53,40 | | 12,62 | 78,23 | 90,85 |
| 8 | Mannesmann | 37,20 | | 7,76 | 90,35 | 98,11 |
| 9 | Deutsche Bank | 46,79 | | 12,41 | 82,32 | 94,73 |
| 10 | MAN | 72,09 | 8,67 | 12,69 | 26,84 | 48,20 |
| 11 | Dresdner Bank | 74,59 | | 7,72 | 83,54 | 91,26 |
| 12 | Preussag | 69,00 | 40,65 | 4,51 | 54,30 | 99,46 |
| 13 | Commerzbank | 48,23 | | 15,84 | 81,71 | 97,55 |
| 14 | VIAG | 69,68 | 10,92 | 7,43 | 30,75 | 49,10 |
| 15 | Bayr. Vereinsbank | 55,95 | | 11,54 | 73,15 | 84,69 |
| 16 | Degussa | 73,26 | 13,65 | 8,65 | 38,35 | 60,55 |
| 17 | AGIV | 69,96 | 61,19 | 15,80 | 22,10 | 99,09 |
| 18 | Bayr. Hypo | 68,87 | 0,05 | 10,69 | 81,38 | 92,12 |
| 19 | Linde | 60,03 | 33,29 | 14,68 | 51,10 | 99,07 |
| 20 | Deutsche Babcock | 37,30 | 3,22 | 11,27 | 76,09 | 90,58 |
| 21 | Schering | 37,42 | | 19,71 | 74,79 | 94,50 |
| 22 | KHD | 69,60 | 59,56 | 3,37 | 35,03 | 97,96 |
| 23 | Bremer Vulkan | 52,09 | | 4,43 | 57,10 | 61,53 |
| 24 | Strabag | 67,10 | 74,45 | 3,62 | 21,21 | 99,28 |
| average | | 58,05 | 13,02 | 10,11 | 60,95 | 84,09 |

[a] in % of the votes present; including voting rights of bank-controlled investment funds

Source: Baums/Fraune, "Die Aktiengesellschaft", 1995/7, 102f.

Table 5: Personal direct interlocks between firms and banks
(both out of the group of the 100 largest enterprises)

| Rank | Year | Bank (B) | Number of the firms | |
|---|---|---|---|---|
| | | | into whose supervisory board B sent its managers | which sent their managers into the supervisory board of B |
| 14 | 1990 | Deutsche Bank | 35 | 2 |
| 20 | 1990 | Dresdner Bank | 19 | 1 |
| 23 | 1990 | Commerzbank | 16 | 4 |
| 36 | 1990 | Bayerische Vereinsbank | 3 | 2 |
| 52 | 1990 | Bayerische Hypotheken- und Wechselbank | 2 | 4 |
| 73 | 1990 | Westdeutsche Landesbank | 5 | 1 |
| 93 | 1990 | DG Bank - Deutsche Genossenschaftsbank | 5 | 0 |

Source: Neuntes Hauptgutachten der Monopolkommission, Bundestags-Drucksache 12/3031, at p. 228-232.

Table 6:
Domestic listed companies by country and their total market value at the end of 1993

| Country | Capitalisation | | Domestic Listed Companies |
|---|---|---|---|
| | in Ecu mn | % of GDP | |
| B | 69,526 | 38.6 | 165 |
| DK | 35,504 | 30.6 | 206 |
| D | 409,610 | 25.1 | 664 |
| GR | 10,738 | 17.1 | 130 |
| F | 404,926 | 37.9 | 726 |
| IRL | 15,259 | 38.9 | 53 |
| I | 128,056 | 15.1 | 242 |
| L | 17,170 | 195.1 | 56 |
| NL | 162,356 | 61.5 | 239 |
| P | 10,432 | 16.3 | 89 |
| ESP | 105,675 | 25.9 | 374 |
| UK | 1,065,515 | 132.4 | 1,927 |
| **EU12** | 2,434,766 | 44.3 | 4,871 |
| AUS | 25,178 | 16.3 | 111 |
| SF | 20,922 | 29.7 | 57 |
| SWE | 95,095 | 59.7 | 197 |
| **EU15** | 2,575,961 | 43.8 | 5,236 |
| CH | 240,812 | 113.9 | 215 |
| N | 24,332 | 27.8 | 120 |
| JAPAN | 2,672,638 | 73.8 | 1,667 |
| US-NYSE | 3,752,446 | 70.3 | 1,788 |
| US-NASDAQ | 703,827 | 13.2 | 4,310 |

Note: Listed companies include main and parallel markets; listed companies and market capitalization do not include investment trusts, listed unit trusts and UCITS; the data refer to the main market of the states mentioned, except for Germany, where it covers the federation of German exchanges.

Source: Baums, "Corporate Governance in Europe: Differences and tendencies of convergence", 1996