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COMPARATIVE ANALYSIS OF THE ROLE OF MANAGEMENT IN HUNGARY AND FRANCE

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ABSTRACT

The thesis focuses on the topic of the role of management in Hungary and France. The aim of the research is to give a detailed and complete analysis on the factual and legal position of management within listed corporations of Hungary and France in order to find out, who has the control in the analyzed countries.

The analysis covers the countries' related legal provisions and their respective business practices as well. Both countries' internal and external control mechanisms are evaluated alongside with the ownership structure of the largest Hungarian and French companies.

The legal analysis demonstrates that management has high authority in both countries while their respective Corporate Laws have gaps and loopholes. The findings of this work emphasize that the practice does not always correspond to legislative intents and Corporate Governance recommendations. However, effective external and internal control mechanisms and monitoring can restrict managers' authority in both countries.

INTRODUCTION

One of the characteristics of modern corporations is the separation of ownership and management. Although the separation is advantageous for the corporation, it can be a source of manager opportunism. Managers usually try to control the company and serve their own interests. This concern is not new, as Adam Smith already highlighted this problem in 1776 : "directors … being the managers of other peoples' money than their own, it can not well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own".[1] The lack of efficient monitoring and control mechanisms over management in order to minimize their opportunism is still a problem, even these days.

The separation of ownership and control over the assets of public corporations is the theoretical cornerstone of the revolutionary monograph by Adolf Berle and Gardiner Means, "The Modern Corporation and Private Property". The authors emphasize – like Adam Smith –, that the interests of the managers often differ from the interests of the owners. This book became the foundational text of Corporate Governance.

Corporate Laws have gaps and loopholes regarding the control mechanisms and Corporate Governance rules are made to fill in those gaps. However, what is the notion of Corporate Governance?

Various definitions can be found:

> "Corporate governance…is the structuring of the control mechanisms, monitoring, and organization of a company or group of companies in a manner that satisfies owners' objectives, and the interests of other stakeholders as well."[2]

[1] Adam Smith, *Wealth of Nations*, (Glasgow ed. 1976) Vol 2: 741, quoted in Rostyslaw Soltis, Comparative Analysis of the Right of Shareholders to Control the Management of Corporation, CEU Legal Studies IBL L.L.M. short thesis, Central European University, 1997.

[2] Miklós Dobák, "Corporate Governance in Central and Eastern Europe," *Society and Economy* 28, no. 1 (2006): 27.

"…it compromises a country's private and public institutions, both formal and informal, which together govern the relationship between corporate insiders and those who invest in it."[3]

"Corporate governance is the system by which companies are directed and controlled. Boards of directors are 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 an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting."[4]

The complete definition of Corporate Governance is the mixture of all these elements. Corporate Governance is the complex system of roles and control mechanisms inside and outside the corporations in order to protect the interests of the various stakeholders.

The role of management and the separation of ownership and control are amongst the building blocks of Corporate Governance. These became object of extensive debate from the late 1990s because of large corporate failures and scandals like ENRON, Worldcom, Credit Lyonnais and Parmalat showed the loopholes in Corporate Law all around the world. The role of management became an increasingly popular topic for scholars since the outbreak of those scandals.

While the number of studies on US, German and UK Corporate Governance are relatively high[5], French and Hungarian solutions are rather unexplored. Although Hungary and France have different historical, sociological and financial backgrounds, many common gaps can be found in their Company Laws.

[3] Arnisa Gorezi, "Corporate Governance in Developing, Transition and Emerging Market Economies: Corporate governance and the credit crisis" (lecture, Central European University, Budapest, Hungary, February 19, 2009).
[4] The Committee on the Financial Aspects of Corporate Governance and Gee and Co. Ltd., 'The Financial Aspects of Corporate Governance' (Cadbury Report), p 15 at http://www.ecgi.org/codes/documents/cadbury.pdf (accessed March 3, 2009)
[5] For example: *A theory of the firm* from Michael C. Jensen, *The mechanisms of governance* from Oliver E. Williamson, *Corporate Governance Regimes: convergence and diversity* edited by Joseph A. McCahery, *International Corporate Governance: a comparative approach* from Thomas Clarke, Corporate Governance: political and legal perspectives edited by Mark J. Roe, *Comparative Corporate Governance: the state of art and emerging research* edited by Klaus J. Hopt and *Corporate Governance* from Robert A. G. Monks and Nell Minow.

The main concern is that managing bodies and executives have high authority in both countries, while no effective monitoring is present. Both country's legislators and stakeholders are mostly having the same problem of manager opportunism and they could learn from each other's failures by enacting laws that are more effective and providing better supervision. The current rules are not gapless and the practice of managerial behavior is not in line with the regulations.

The purpose of the present work therefore is to examine the topic of the role of management in Hungary and France. The current work will answer questions regarding what is the factual and legal position of management within listed corporations of Hungary and France in order to find out, who controls companies is the analyzed countries. To solve these questions, the aim of this research is to give a detailed and complete analysis on the role of management in both countries.

The literature about French Corporate Governance is narrow, concentrating mainly on Company Law and the impact of the Viénot reports and Bouton report on it. Difference between legal and factual role of managers is not emphasized in those publications. The main scholars that have written articles concentrating on French Corporate Governance are Jacques Delga, Michel Menjucq and Michel Storck. Some other remarkable authors like Mark J. Roe, Klaus J. Hopt, Robert A. G. Monks and Nell Minow devote chapters in their works for the situation in France and its comparison to Germany, UK and US, emphasizing the differences in those countries' Corporate Laws.

The Hungarian literature has an economic and classical management approach to the topic with few monographs and articles. It seems that the Hungarian legal scholars are neglecting this field although there were already two 'Recommendations' by the Budapest Stock Exchange, introducing higher standards for the management's conduct.

The only Hungarian book devoted to Corporate Governance is written by Ádám Angyal and gives a rather management than a legal approach on the issue. The other significant Hungarian scholar concentrating on the issue with the same approach is Miklós Dobák, having several articles on the role of management by an administrative aspect. Tamás Sárközy can be regarded as the creator of the Act IV of 2006 on Business Associations, and he was quite active in writing extensive comments on Hungarian Company Law in the past years, although he did not dedicate explicitly any of his works to Corporate Governance and the role of management.

Therefore, the current thesis will fill a scholarly gap by giving a detailed and complete analysis of the legal and factual role of management in Hungary and France. The research will contribute to a more detailed literature on both countries' Corporate Governance, helping practitioners and policy makers to widen their perspective on the issue of management.

Corporate Law does not always give complete answers to all the questions related to the control mechanisms and effective monitoring of organizations and that is why governmental and non-governmental bodies have drafted and issued many Corporate Governance codes and recommendations throughout the world. Countries have their own codes and recommendations that reflect their particularities. The only widely accepted code that represents minimum standards of Corporate Governance is the OECD Principles of Corporate Governance of 1999 and its revised 2004 edition.

The OECD Principles require the predominance of shareholders' rights, equitable treatment of all shareholders and timely and accurate disclosure of all material information regarding the corporation. According to the OECD Principles, "the corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders."[6] These Principles were transferred to and introduced in member-states, including Hungary and France.

In France, the State still has influence over companies, and cross-holdings between corporations that are loyal to the administration are usual. From the privatization that was concluded under President Jacques Chirac, the plutocracy of France is forming a quasi web of interests. Families still have huge shares in companies like L'Oréal Group and PSA Peugeot Citroën. Many companies have ownership in each other and certain directors have multiple board memberships in large companies, for example Daniel Bouton who is member of the Board of Directors at Total S.A., Veolia Environemment and Chairman of Société Générale Group at the same time.

Another characteristic of French Corporate Governance is the same educational background of the majority of board members and managers. The famous *École nationale d'administration* (hereinafter referred to as: ENA) is the cradle of successful French politicians and directors. The economic and political life of France seems to be controlled with the selection and reproduction of its elite through this institution. Daniel Bouton's political and business carrier after graduating from ENA illustrates the influence of the State on the business elite and vice versa.

[6] Organisation for Economic Co-operation and Development, 'OECD Principles of Corporate Governance:2004'. http://www.oecd.org/dataoecd/32/18/31557724.pdf (accessed March 2, 2009).

Common educational background is also characteristic in Hungary.[7] Graduation at the Corvinus University of Budapest (former Karl Marx University of Economics) makes a significant relationship between board members of large Hungarian companies. More than half of the Board of Directors of MOL Group and OTP Group, and around one third of the Supervisory Board of both companies graduated from Corvinus University.[8]

Another attribute of Hungarian listed corporations – compared to the French listed companies- is the relatively high ownership of foreign investors and the extremely low State ownership. Interrelations between Boards and companies can also be noticed, but the ownership structures of Hungarian corporations are more dispersed than those of French corporations.

Management has great authority and Chairman-Chief Executive Officers are extremely powerful and determinant persons in both countries. Despite the different financial and sociological backgrounds, this phenomenon is often leading to the above-mentioned opportunism in Hungary and France. With the relatively same problems, both countries' legislators and stakeholders could learn from each other's good practices and failures.

The current thesis takes the historical, sociological and economical similarities and differences with the above-mentioned problems as a basis for a comparative analysis. The analysis covers the countries' relating legal provisions, the existing Corporate Governance reports, recommendations and their respective business practices as well.

[7] CEU Business School Working Paper, "Transferring Corporate Governance Codes: form or substance? Corporate Governance in Hungary." At http://www.Ceubusiness.org/content/rswp/Transferring%20Corporate%20Practices%20-%20Corporate%20Governance%20in%20Hungary.doc (accessed March 16, 2009).
[8] https://www.otpbank.hu/OTP_Portal/online/IR_Corporate_Governance.jsp (accessed March 3, 2009) ; http://www.mol.hu/en/about_mol/investor_relations/corporate_governance/ (accessed March 3, 2009).

The hypothesis of this work is that practice does not always correspond to legislative intents and Corporate Governance recommendations. The answer would be that better laws and more effective monitoring and enforcement are needed.

The paper consists of three chapters. For a better understanding of the theoretical background of the topic, the first chapter briefly explains the most important management theories and describes the control theory of Berle and Means. The second chapter gives an analysis on Hungarian and French provisions regarding the legal position of management by elaborating on the board structures, appointment and revocation rights and conditions, duties of the management and their decision making scope. The third chapter gives the reader an insight to the practical aspect of the topic by analyzing the ownership versus management problem of large Hungarian and French listed corporations.

CHAPTER 1: THEORETICAL PRINCIPLES OF MANAGEMENT

A number of different theories can be found to explain the role of managers and their relationship with the shareholders. Henri Fayol's classical management theory has still great impact on the thinking of managers, since he laid down the basic rules for managing organizations that are still valid today. The leadership theory is quite popular amongst professionals and it has an impact on the performance of managers throughout the world. The most important theory that is foundational for Corporate Governance is the control theory of Berle and Means. That theory explains the relationship between owners and managers and their respective effect on the conduct of companies. This chapter presents all those three theories and their impact on managerial thinking and legislation.

1.1 Fayol's classical management principles

Henri Fayol's General and Industrial Management has been one of the most influential monographs on modern management theories. He made the distinction between owners and managers of corporations in 1916 and outlined the main functions of the latter.[9] He created a system of rules that can be applied for managing large corporations even today.

[9] Henri Fayol, *General and Industrial Management (Ipari és általános vezetés),* trans. and ed. Sándor Kovács and Ernő Tari (Budapest: KJK, 1984):112-114.

According to his work, there are five main functions of management: planning, organizing, commanding, coordinating and controlling.[10] These core principles are still valid today nonetheless, that several works have been dedicated thereafter to the functions of management.[11]

According to Fayol's scholarly works, management skills can be mastered and the unity of command is important in organizations. As a managing director of a large French company, he viewed the situation from the top. He strongly believed that the science of management is applicable to all sorts of activities. Fayol also realized that top managers' work is requiring more knowledge on administration. Fayol's thoughts on the unity of command and centralization can be described as precursor for the theory of leadership.[12] Leadership theories are quite popular these days and they are elemental parts of the *curriculum* in most Schools of Management.

1.2 Leadership theories

Leadership is one of the most complex notions of the administrative theories[13] and is frequently associated with management, although the essence of the two concepts is different. While management is the way that people are managed and appropriate tasks are assigned to them, a leader shares belongingness with its team thus stimulating them to reach the set goals.[14]

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[10] Henri Fayol, *General and Industrial Management (Ipari és általános vezetés),* trans. and ed. Sándor Kovács and Ernő Tari (Budapest: KJK, 1984): 85-172.

[11] Amongst them, the two most revolutionary were Gulick's and Urwick's works and Mintzberg's theory. The formers POSDCORB theory (functions of managers are: planning, organizing, staffing, directing, coordinating, reporting and budgeting) was elaborated in "Papers on the Science of Administration" (1937). Henry Mintzberg's theory (interpersonal roles of managers are: figurehead, leader and liaison; informational roles are: monitor, disseminator, spokesperson; decisional roles are: entrepreneur, disturbance handler, resource allocator and negotiator) can be found in "The Nature of Managerial Work" (1973): 54-99.

[12] Henri Fayol, *General and Industrial Management (Ipari és általános vezetés),* trans.and ed. Sándor Kovács and Ernő Tari (Budapest: KJK, 1984):57-84.

[13] Gyula Bakacsi, *Organizational Behavior and Management (Szervezeti Magatartás és Vezetés)* (Budapest:KJK, 1996):183.

[14] Rustam Jamilov, "think business", *Trans-national Voice* CEU Business School Student Journal 1, no. 1 (2008): 12.

Several leadership models describe various parts of the puzzle.[15] Amongst them, John Kotter's manager-leader model[16] is the closest to the functional and legal role of management and thus serving the purpose of this thesis.

1.2.1 Kotter's manager-leader model

Management and leadership are complements of each other according to John Kotter's model.[17] A successful executive shall be a manager and a leader in one person. The executive shall navigate between these roles while working. The outcome of a successfully fulfilled manager role is the efficiency of the organization and the smooth conduct of business. By contrast, the leader concentrates on the necessary changes of the organization. Constant challenges force organizations to change and adapt to new technological, financial and market situations. Only those executives are successful who manage an effective organization that can recognize the necessary changes and adapt well to new situations.

Kotter distinguishes three basic tasks for executives that are accomplished in different ways by the two roles. An executive shall set the goals, allocate resources to those goals and ensure that the goals will be reached. A manager makes plans, roadmaps and allocates budgets when (s)he sets the goals, whilst a leader is developing a vision for the future and establishing a direction. Visions and plans walk hand in hand, because the former sets the aims, while the latter elaborates on the practical details to achieve those aims.[18]

[15] For an extensive presentation of these models *See*: Gyula Bakacsi, *Organizational Behavior and Management (Szervezeti Magatartás és Vezetés)* (Budapest:KJK, 1996):183-224.
[16] John P. Kotter, *A force for change: how leadership differs from management* (New York: Free Press, 1990).
[17] Ibid.
[18] Ibid, at 35-49.

Managers allocate resources to the organization's goals in a forceful way by organizing and staffing according to Kotter. The leader persuades people to reach the goal by explaining its importance and the methods for reaching it and by its personal charisma. Managers by contrast make the necessary organizational system to reach the goals.[19] The basic difference between leadership and management in the execution is that managers push people to reach the goals by problem-solving techniques and control, while leaders motivate, inspire and give credit for the achievements.[20]

The main divergence between the managing and leadership role according to Kotter, is that the former concentrates on the internal efficiency and the smooth conduct of the organization, while the latter focuses on effectiveness and constantly successful changes. The two roles can be used in different situations, thereby ensuring the maximum potential performance of organizations. Therefore, a good manager with developed leadership skills will succeed at corporations.

Leadership theories and management principles are used to describe the required abilities and competences of an ideal manager. An ideal manager shall use his best effort to maximize shareholder value and ensure the sustainable development of the corporation. In fact, managers are not always fulfilling the wishes of owners and are prone to conduct the corporations' business according to their own interests. The control theory of Berle and Means tries to emphasize the separation of ownership and control at large corporations and its consequences.

[19] John P. Kotter, *A force for change: how leadership differs from management* (New York: Free Press, 1990): 49-61.
[20] Ibid. at 61-77.

1.3 Theory of Corporate Control

Adolf A. Berle, a lawyer and Gardiner C. Means, an economist analyzed several American public corporations in the 1930s and came to the conclusion in their famous book that those corporations no longer fulfill the requirements of the classical model where the owners control the management.[21] "As the ownership of corporate wealth has become more widely dispersed, ownership of that wealth and control over it have come to lie less and less in the same hands."[22]

The authors distinguish five major types of control: control through almost complete ownership, majority control, control through a legal device without majority ownership, minority control and management control.[23] The first type is self-evidentiary. When certain decisions require qualified majority, the second type can be problematic, however it still provides an extensive control.

Control through legal device can be exercised by the so-called 'pyramiding'[24] or by the issuance of non-voting stocks or by organization of a voting trust. When a majority of votes is held in a trust, the trustees have almost complete control, even without ownership.[25] Minority control can be exercised when the ownership is dispersed through attaching enough votes in proxy fights.

[21] Adriaan F.M. Dorresteijn and Cornelis de Groot. "Corporate Governance Codes: Origins and Perspectives." In *European Company Law in Accelerated Progress,* edited by Steef M. Bartman, 31-59. Kluwer Law International, 2001.
[22] Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (Reprint Edition, New Jersey:Transaction Publishers, 1991): 66.
[23] Ibid. at 67-84.
[24] It means a majority ownership in one corporation that owns the majority of shares of another and so on. The effectiveness of this device can be accelerated by issuing bonds and non-voting preferred stocks in those intermediate companies, therefore only a fraction of stock owners could vote.
[25] *See* Berle, supra note 20 at 69-75.

The fifth type, management control can be exercised when "ownership is so widely distributed that no individual or small group has even a minority interest large enough to dominate the affairs of the company."[26] Election of the Board of Directors is usually made by proxy committees in those companies because of this widely dispersed ownership structure. The existing management usually appoints the proxy committee; therefore, they can remain in position or select their successors.[27]

We can make the conclusion from those findings that the real control is in the election of the Board of Directors. Whoever has the power to dictate the members, has the control, because these members would be loyal to his interests. When the board members are not loyal or mismanaging the company, shareholders can replace them with more convenient persons.[28]

One can also find out that ownership concentration ratio and control are in line with each other. If ownership is widely dispersed in a huge enterprise and management is concentrated then it can lead to manager opportunism. According to certain studies, ownership concentration ratio differs in many countries.[29] Corporations can still be controlled effectively under dispersed ownership structures with the rise of institutional investors, who often vote together.

Although the data collected by Berle and Means are outdated, certain building elements of their theory is still valid today. The divorce of ownership and control and their comments on management seems to endure the test of time.

[26] *See* Berle, supra note 20 at 78.
[27] Ibid at 82.
[28] The removal power varies significantly under different jurisdictions from the 'without cause' solution of France to the three-fourth voting shares rule of Germany.
[29] Mark J. Roe, *Corporate Governance: Political and Legal Perspectives*, ed. Mark J. Roe (London: Edward Edgar Publishing Limited, 2005): 19.

Their work inspired generations of scholars and legislators. It caused many changes in legislations in favor of shareholders. Corporate Governance has been developed on their theory and more effective internal and external monitoring mechanisms were introduced in order to protect stakeholders' interests and minimize management opportunism.

The next chapter shows the legal answer for the confrontation of ownership and management in Hungary and France. Both countries' regulations regarding appointment and revocation of managers and their duties and rights are examined in order to find out how the theoretical principles of management and control are implemented into the legal system and whether the emerged problems are solved.

CHAPTER 2: LEGAL POSITION OF MANAGEMENT

This chapter examines the legal position of management of public companies in Hungary and France. Berle and Means define management as “that body of men who, in law have formally assumed the duties of exercising domination over the corporate business and assets.”[30] According to these authors, standards of managerial conduct are the legal link between owners and managers.[31] The strength of ownership control over the corporation – and over management- depends on the enforceability of these standard duties.

Three main rules of conduct exist under common law according to Berle and Means: a decent amount of attention towards business, fidelity to the interest of the corporation and at least reasonable business prudence.[32] One would certainly add managers’ information duty towards the Board and the shareholders in order to make the business activities transparent. These four rules exist in Hungary and France as well.

In order to find out whether those rules are fulfilled, we must first define management. Then the conditions of their appointment and revocation will be presented. Finally, their duties and decision-making scope will be analyzed. These components will draw up the legal picture of management. The whole chapter is based on the provisions of the Hungarian Act on Business Associations and the French Code de Commerce.

[30] Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (Reprint Edition, New Jersey: Transaction Publishers, 1991): 196.
[31] Ibid.
[32] Ibid. at 197.

2.1 Board models of Hungary and France

The technical term for managers under Hungarian Law is executive officers. According to the Hungarian Act IV of 2006 on Business Associations, management means the passing of decisions that are necessary in connection with the company's operations and not reserved to the shareholder meeting under the memorandum of association.[33] On the other hand, French law regulates the Board of Directors as an organ that is authorized to deal with all business matters and issues that are not reserved to the shareholder meeting and not prohibited by the memorandum and the articles of association.[34]

Both countries' Corporate Law enables public limited companies to opt for a single tier Board of Directors, or two-tier board with separate Supervisory Board. In addition, the French Law on New Business Regulations (hereinafter referred to as: NRE)[35] introduced a third default structure for the single tier board. The function of Managing Director and Chairman of the board is separated under that third structure. The separation was adopted to ensure more transparency and better control over the management; however many large CAC 40[36] listed companies still have the traditional and powerful Chairman-Managing-Director ('président-directeur-général', hereinafter referred to as: PDG).[37]

[33] Act on Business Associations, Section 21 para 1.
[34] Code de Commerce, Article L225-35.
[35] Nouvelles Régulations Économiques: Loi no 2001-420 du 15 mai 2001.
[36] It is the benchmark of the French stock market index. This consists of the 40 most significantly capitalized companies listed on the Paris stock exchange.
[37] For example, GDF SUEZ, France Telecom and Vivendi.

The Management Board manages Hungarian public limited companies under the two-tier board system and the Board of Directors manages the company under the unitary board system.[38] The Management Board under the two-tier system has minimum three and maximum eleven members, all natural persons.[39] The Board of Directors under the unitary system consist of minimum five, maximum eleven members who are all natural persons, except when the articles of association provides for workers participation.[40]

The Board of Directors under French law shall consist of at least three and at most eighteen members under the unitary board system. Contrary to Hungarian law, a legal personality can be appointed as director as long as it nominates a permanent representative to act on behalf of its principal.[41] French Management Board under the two-tier system can consist at most of five members. When the company's shares are traded on a regulated market, that number can be increased to seven. If the public company's share capital is below 150 000 euros, the management functions can be exercised by a single person.[42]

Both countries' law emphasizes that the Supervisory Board supervises the Executive Board's management of the company. French Supervisory Boards shall have at least three, but not more than eighteen members, while Hungarian public limited companies can have between three and fifteen. Members of the Supervisory Board are not involved in the operation of the company.

One can conclude that only the managing board under the two-tier system and the Chairman alongside the executive officers of the single tier system are engaged with the operation of the corporations' business. Therefore, the Supervisory Board and the non-executive members of a unitary board shall not be regarded as managers.

[38] Act on Business Associations, Section 21 para 5.
[39] Ibid, Section 243 para 1.
[40] Ibid, Section 309 para 1.
[41] Code de Commerce, Article L225-20.
[42] Ibid, Article L225-58.

We can add that the senior officers and the heads of different departments are doing the real day-to-day management of corporations in both countries, but neither country's Corporate Law rules regulate their status in depth. Instead, the legal status of directors is regulated in depth.

The directors have general powers, exercise approval rights and decide important issues while executives run the day-to day management.[43] Separate rules are applicable for the directors of the unitary board and the Management Board under both jurisdictions. Therefore, the following sections will show the two board structures of Hungary and France separately. The subsequent sections will present the election and dismissal criteria and the powers and duties of Chairmen and directors.

2.2 The Board of Directors under Hungarian and French Law

The unitary board was introduced in Hungary as an optional model with the Act IV of 2006 on Business Associations. Before that, the two-tier board model was the only applicable management structure. However, the two-tier model remained as influential as before.

The French two-tier board model was introduced in 1966.[44] The traditional board model is still the unitary board in France, although more than twenty percent of CAC 40 companies have opted for the two-tier model.[45] Inspired by the second *Viénot report* of 1999, the NRE introduced a third type, by splitting the functions of PDG between the Chairman and the chief executive officer. This third option is the new default structure in the Code de Commerce.

[43] Vüsal Quafarov, *Supervision over Management in Public Companies in France and the USA*, CEU Legal Studies IBL L.L.M. short thesis, Central European University, April 2006: 10.
[44] Jean-Pierre Le Gall and Paul Morel, *French Company Law* (Second Edition, London: Longman Group, 1992): 96.
[45] Klaus J. Hopt and Patrick C. Leyens, "Board Models in Europe-Recent Developments of Internal Corporate Governance Structures in Germany, the United Kingdom, France and Italy," *European Company and Financial Law Review* 1, no. 2 (2004): 156.

2.2.1 Election and dismissal of members of the Board of Directors

2.2.1.1 Appointment and revocation of members of the Board of Directors in Hungary

Under the applicable Hungarian law[46], directors are appointed by the general meeting except for the first board, which is set up in the articles of association. The Chairman is elected from the members of the Board of Directors by the board itself under both systems, unless it is provided in the articles of association that it is elected directly by the general meeting.[47]

Any person who has been sentenced to imprisonment for commission of crime cannot be director, until (s)he is relieved from the related legal consequences.[48] "Any person who has been banned by a … court verdict from accepting an executive office … [or banned from its relating profession] … cannot serve as director for the term of the ban."[49] A person who served as an executive officer during a winding up of a business association cannot be executive officer for another business association for two years in Hungary either.[50]

The directors should all be natural persons, except when the articles of association provides for workers' participation. Executive officers are elected for a fixed term of maximum five years, unless the memorandum for association provides otherwise.[51]

[46] Act IV of 2006 on Business Associations
[47] Act on Business Associations, Section 243 para 1.
[48] Ibid, Section 23 para 1.
[49] Ibid. Section 23 para 2.
[50] Ibid. Section 23 para 3.
[51] Ibid. Section 24 para 1.

Executive officers may be reelected and may be freely removed from their office by the shareholders' meeting at any time, even without cause.[52] This is an extremely powerful tool in the shareholders' hand to control management, especially in companies with large blockholders.

The contract of an executive officer shall also end upon:

- Expiration of the term of appointment;
- Occurrence of any statutory grounds for disqualification;
- Resignation;
- His/Her death.[53]

The memorandum for association can allow the general meeting to appoint one or more so-called assistant managers to support the executive officers in their work. Assistant managers administer the corporation's business according to the executive officers' instructions.

The majority of board members shall be independent, unless the articles of association provides for a higher percentage.[54] The majority criterion does not apply if the corporation is a controlled company in a recognized group of companies.[55] The main requirement of independence is that the person is holding an office only with the corporation as a member of the board.

A member of the board shall not be held independent if:

- (S)He is an employee of the public limited company or was an employee of it in the last five years from the termination of that employment;
- Providing services to the company or its executive officers for consideration as an expert or other similar service provider;
- Shareholder of the company controlling at least thirty per cent of the votes, whether directly or indirectly, or is a close relative or a domestic spouse of such person;
- Close relative of any –non independent- executive officer or executive employee of the corporation;
- Entitled to receive financial benefits based on his board membership if the company operates profitably, or receives any other form of remuneration from the company apart from the salary for his board membership, or from a company that is affiliated to the public limited company;
- Engaged in a partnership with a non-independent member of the public limited company in another business association on the strength of which the non-independent members attains control;

[52] Act on Business Associations, Section 24 para 2.
[53] Ibid, Section 31 para 1.
[54] Ibid, Section 309 para 2.
[55] Ibid, Section 309 para 4.

- Independent auditor of the company, or an employee or partner of such auditor, for three years from the termination of such relationship;
- Executive officer or executive employee of a business association, whose independent board member also holds an executive office in the public limited company.[56]

This list of non-independency criteria is non-exhaustive; therefore, any by-law or even the articles of association can set further standards, although drafters of these documents usually do not include any further criteria regarding independency. Therefore, I think that it is necessary to lay down stricter standards in order to enhance the independence of independent board members. However, Hungary is in fact a relatively small market for directors, thus there always will be common educational, family, business and ideological backgrounds for directors.

As a result, it is questionable to call for real independent directors, while most of directors have the common social network. Furthermore, non-executive directors are usually elected on the recommendation of the board, so it is almost evident that they will likely serve the interests of the board members. The legislators shall certainly fill in the gap regarding independent directors in the future.

2.2.1.2 Appointment and revocation of members of the Board of Directors in France

French Law[57] provides that the directors are appointed by the constitutive shareholders' meeting or by a routine shareholders' meeting.[58] The first board members and auditors shall be designated in the memorandum and articles of association. Board members' term of office

[56] Act on Business Associations, Section 309 para 3.
[57] Code de Commerce.
[58] Code de Commerce, Article L225-18.

cannot exceed six years in case of ordinary appointment and three years when they are appointed in the memorandum and articles of association.

Each director shall own a number of the company's shares that is prescribed in the memorandum and articles of association.[59] This requirement is also applicable to the members of the Supervisory Board under the two-tier model.[60]

The directors are eligible for re-election, unless otherwise specified in the memorandum and articles of association. If the number of directors falls below the legal minimum, the board shall make call for a special shareholder meeting to fulfill the vacancies or make provisional appointments upon the subsequent approval of the shareholder meeting.[61] If the board fails to make the required actions, then any interested party may apply for the court to appoint a proxy who will call together a general meeting.

Identically to Hungarian Law, directors can be dismissed at any time with a routine shareholders' meeting.[62] This fact gives a presumption that the shareholders control directors in both countries. The presumption appears to be true under a concentrated ownership structure, but the contrary is accurate when ownership is dispersed. The last Chapter shows whether the ownership structure in the observed countries really enable shareholders to dismiss directors at any time.

The memorandum and articles of association must specify an age limit for all directors or for a certain percentage of the board. No more than one-third of directors can be aged over seventy in the absence of this specification. No such age limit exists under Hungarian Law. This lack of

[59] Code de Commerce, Article L225-25.
[60] Ibid, Article L225-72.
[61] Ibid, Article L225-24.
[62] Ibid, Article L225-18.

age limit plus the endless possibility to re-elect directors, could lead to a lack of fresh spirit and new thoughts in the board.

This could cause more inter-dependence of board members and thus lead to manager opportunism. Therefore, the Hungarian legislator is proposed to add an age limit for at least certain percentage of the board. However, this gap can be also filled with explicit provisions regarding age limits in the memorandum and articles of association, alongside with by-laws.

Another phenomenon is that directors usually have multiple seats in different companies. This can give more power into the hands of directors, because the more directorships they have, the more personal power they have. Furthermore, they cannot fully concentrate on the matters of their companies whilst they have multiple appointments. Therefore, the legislator decided to restrict the number of parallel directorships that a person can have at the same time.

According to Code Commerce, no natural person shall hold more than five directorships at the same time. This rule does not apply for directorships of controlled companies. According to Hungarian Law, an executive officer cannot serve as executive officer for another company with the same main business activity, except when the articles of association enables it, or the shareholder's meeting has given its consent for it. Hungarian Law does not maximize the numbers of directorships since 2006, but it would be highly recommendable to reintroduce such regulations because of the high number of board interlocks.

The number of employee-directors cannot exceed one-third of the board in France.[63] When employee-owner share value represents more than 3% of the share capital, one or more directors shall be elected on the proposal of the employee-owners. Memorandum and articles of association may specify that the employees elect a maximum one-third of the Board of Directors.

[63] Code de Commerce, Article L225-22.

Hungarian Law does not specify any threshold for the representation; hence, only companies with more than two hundred full-time employees are obliged to set the number of employee-representatives in the articles of association.[64]

The notion of independent director does not exist in the Code Commerce. French Corporate Governance codes have been calling for the requirements of independent directors from the two Viénot reports through the Bouton report to the latest 2009 AFG Recommendations on Corporate Governance. Although many CAC 40 companies formally declare the majority independence of their board members, in fact independent directors are not legal reality in France.[65]

The 2009 AFG Recommendations stress that at least one-third of board members shall be free from conflicts of interest. It gives the detailed criteria of independent board members.[66] These criteria are stronger than those set by Hungarian Law, although the Recommendations are soft law which does not have a binding nature.

The Board of Directors elects the Chairman of the board amongst its members.[67] Only natural persons can serve as Chairmen. The term of his/her office corresponds to his office as director and the Board of Directors can dismiss him/her at any time, even without cause.[68] The age limit of Chairman is sixty-five years in the absence of contrary provision in the memorandum and articles of association.

[64] Act on Business Associations, para 38.
[65] Jacques Delga, "Corporate Governance and Independent Directors: The Independent Director in France?," International Company and Commercial Law Review 15, no 1. (2004):1-6.
[66] Association Francaise de la Gestion Fiancière, Recommendations on corporate governance 2009, p 16 at http://www.afg.asso.fr/upload/3/Fichier980.pdf (accessed March 13, 2009).
[67] Code de Commerce, Article L225-47.
[68] Ibid.

As I have mentioned above, the NRE introduced in 2001 the option to separate the positions of Chairman and General Manager. The Board appoints the General Manager.[69] A person can be General Manager of only one listed public company.[70] The board can appoint assistant general managers on the proposal of the General Manager.[71] The Board can dismiss the General Manager and the assistant general managers at any time, even without cause.[72] The memorandum and articles of association shall provide for the maximum number of assistant general managers, which cannot exceed five.

2.2.2 Rights and duties of members of the Board of Directors

2.2.2.1 Rights and duties of the members of Board of Directors in Hungary

According to the Act on Business Associations, executive officers' rights and duties are governed either by employment regulations or by their personal service contracts. Executive officers shall discharge their duties independently and the shareholders cannot instruct them.[73] They have to comply with the legal regulations, memorandum of association and the resolutions of the shareholders' meeting during their activities.

[69] Code de Commerce, Article L225-51-1.
[70] Ibid, Article L225-54-1.
[71] Ibid, Article L225-53.
[72] Ibid, Article L225-55.
[73] Act on Business Associations, Section 22 para 4.

Executive officers must treat business secrets as confidential.[74] Upon shareholder request, executive officers shall provide information regarding the affairs of the company and allow inspection of its books and documents.[75] If they fail to provide the requested information, then the concerned shareholder may require the court of registry to instruct the executive officer to comply.

The Act CXX of 2001 on the Capital Market prescribes all listed company's regular and extraordinary information disclosure regarding their business and financial status.[76] Regular information disclosure occurs by yearly and half-yearly reports and annual accounts. When such event occurs that may concern the value of the company's securities, extraordinary information disclosure shall take place within one day.

The company is represented vis-à-vis third parties, courts and authorities by the executive officers.[77] This means that the executive officers can act on behalf of the company. However, the right of representation can be restricted or divided between executive officers by the articles of association.[78]

"Executive officers shall conduct the management of the business association with due care and diligence as generally expected for persons in such positions … and [shall] give priority to the interests of the business association."[79] "In the event of any imminent threat for the business association's insolvency, … [it shall] conduct the management of the business association giving priority to the company's creditors."[80]

[74] Act on Business Associations, Section 27 para 1.
[75] Ibid, Section 27 para 2.
[76] Act on the Capital Market, Section 54 para 1 and Section 55 para 1.
[77] Act on Business Associations, Section 29 para 1.
[78] Ibid.
[79] Ibid, Section 30 para 2.
[80] Ibid, Section 30 para 3.

"The … board shall exercise its rights and duties as an independent body."[81] It shall approve its rules of procedure and provide for the division of responsibilities and competences amongst the directors.

The board decides about business issues as a body while their members have the right to represent the company according to the memorandum and articles of association. The unitary board fulfills management and the supervisory duties at the same time.

The board is responsible for presenting the annual report of the company. It shall also prepare a report on management, financial situation and business policy of the corporation and present it to the shareholders' meeting at least once a year or by the period set out in the memorandum.[82] The board shall also determine that the books of the company are kept according to the rules.[83]

The Board of Directors calls the general meeting.[84] Key data regarding the annual report and the board's report must be published fifteen days before general meeting alongside with a summary of proposals relating to the items of agenda.[85]

The Board of Directors shall give the necessary information to the shareholders regarding the issues placed on the agenda of the general meeting. It must call for a general meeting in eight days period for the protection of equity capital in the occurrences set forth at Section 245 of the Hungarian Act on Business Associations. The general meeting decides on dividends upon the proposal by the Board of Directors.

[81] Act on Business Associations, Section 243 para 2.
[82] Ibid, Section 244 para 2.
[83] Ibid, Section 244 para 3.
[84] Ibid, Section 232 para 2.
[85] Ibid, Section 304 para1.

The general meeting's agenda is usually set by the Board of Directors or the Chairman. With the creation of a certain order of issues on the agenda, they can assure that their interests are fulfilled. For example, they would put on the issue of board members' re-election right after the presentation of the detailed annual report if the latter were excellent.

Board of Directors of public limited companies that are listed on the Budapest Stock Exchange (hereinafter referred to as: BSE) are required to present the company's Corporate Governance and management report to the annual general meeting.[86] This report shall demonstrate any derogation from the latest BSE Corporate Governance Recommendations[87]. However, these recommendations have no mandatory nature and the non-compliance is not sanctioned.

Another duty of the Board of Directors or its representative is to keep the register of shareholders.[88] The articles of association may render the transfer of shares to the consent of the company. In that case, the Board of Directors is competent to give the consent unless the articles of association contain articles to the contrary.[89] This is an enormous power in the hands of the management, because they may disapprove the transfer of shares if the new owner would be against their interests.

This list of rights and duties is not exhaustive because Hungarian Company Law is permissive regarding management. All rights and duties that are specified by Hungarian Law regarding the public limited company and not assigned to any other organ of the company are allocated to the hands of the management.

86 Act on Business Associations, Section 312.
87 Budapest Stock Exchange, "BSE Corporate Governance Recommendations 2008." http://www.ecgi.org/codes/documents/hungary_cg_recommendations_2007_en.pdf (accessed March 17, 2009).
88 Ibid, Section 202 para 1-2.
89 Ibid, Section 205 para 2.

The memorandum and articles of association alongside with by-laws can provide for the exact duties of all organs of the company. Nonetheless, it requires very high drafting skills and large compromises to effectively reduce the authority of the Board of Directors.

Executive members of the board are involved into the day-to-day business of the company and they have the exact data and information regarding the business. Their knowledge of the information is an advantage compared to the shareholders, thus, information flow problems may occur.

Information providing requirement of Hungarian Company Law is not effective because of lack of out-of-court enforcement mechanisms and slow court procedures. Therefore, the management's extra knowledge regarding the actual flow of business creates a competitive advantage against shareholders.

We can conclude that the Board of Directors has diversified and strong rights that somehow outbalance their duties. The 2006 Act on Business Association "reflected the priorities of senior corporate management, easing corporate management's ability to manage its shareholders."[90] Only soft law – the BSE Corporate Governance Recommendations- suggests the division of the tasks between the managing body and the management and only these recommendations give possible solutions to prevent manager opportunism.

[90] CEU Business School Working Paper, "Transferring Corporate Governance Codes: form or substance? Corporate Governance in Hungary." At http://www.Ceubusiness.org/content/rswp/Transferring%20Corporate%20Practices%20-%20Corporate%20Governance%20in%20Hungary.doc (accessed March 16, 2009).

2.2.2.2 Rights and duties of the members of Boards of Directors in France

Board of Directors in France is authorized to deal with all business matters and issues that are not reserved to the shareholder meeting and not prohibited by the memorandum and the articles of association.[91] It defines corporate policy and ensures the implementation of that policy.

The Board of Directors has the power to act on behalf of the company and its actions are binding upon the company. Its members have the right to inspect and verify the activities of management and the Chairman or the General Manager shall give them all appropriate information to fulfill this task.[92]

These rules give the reader an anticipation that the Board of Directors' function is to guide and supervise the company. According to certain scholars, the NRE law reduced the management duties of the board.[93] This might have happened because of the second *Viénot* report's call for separated management powers. The Board of Directors makes its decisions as a managing organ on its sittings.

The company's memorandum and articles of association shall set up the rules regarding the convening and deliberations of the board.[94] The Chief Executive has the right to ask the Chairman to convene the Board of Directors for a specified agenda.[95] Deliberations are valid only if at least half of the members are present.

[91] Code de Commerce, Article L225-35
[92] Ibid.
[93] Michel Storck, "Corporate Governance à la Française-Current Trends," European Company and Financial Law Review 1, no. 1 (2004):45.
[94] Code de Commerce, Article L225-36-I
[95] Ibid.

Unless the articles of association call for a larger majority, decisions are taken on a simple majority of the members present. The Chairman has a casting vote whenever the votes are split if the memorandum and articles of association does not have contrary provisions.[96]
Identically to Hungarian Law, the Board of Directors calls the shareholders' meeting and presents the annual accounts. These duties give the same concerns that were described above at 2.2.2.1 and could lead to manager opportunism.

As mentioned above at 2.2.1.1, the Board of Directors decides the appointment, dismissal and remuneration of the Chairman, General Manager and assistant general managers. Agreements between the corporation and its General Manager, assistant general managers, directors, and large shareholders[97] are to be approved by the Board of Directors.[98] The Chairman organizes and oversees the work of the board and the management of company and reports it to the general meeting.[99]

The day-to-day business requires prompt decisions and the General Manager has the necessary powers in France to act accordingly. The General Manager with the executive officers and assistant general managers do the real management of French companies. They have widespread authority.

[96] Code de Commerce, Article L225-37
[97] Holding at least 10% of the voting rights.
[98] Code de Commerce, Article L225-38.
[99] Ibid, Article L225-51.

"The general manager shall be invested with the most extensive powers to act on behalf of the company in all circumstances."[100] The general manager is authorized to deal with all business matters and issues that are not reserved to the shareholder meeting or to the Board of Directors.[101] (S)He represents the company vis-à-vis third parties and his/her actions are binding upon the company.

The Board of Directors determines assistant general managers' powers with the agreement of the General Manager. Assistant general managers have the same powers as the General Manager regarding third parties. Therefore, they have full representation rights.

Identically to Hungarian Law, rights and duties that are specified by French Law regarding the public limited company and not assigned to any other organ of the company are allocated to the management. General Managers have supreme rights under French Law and if their position were combined with being Chairman, then it would create an incomparably powerful status for them.

French Law has even fewer regulations regarding the management under the unitary board system than Hungarian Law. One can state that the 2006 Hungarian Act on Business Associations has more details regarding the management of public corporations under the unitary board model. However, observing the companies' memorandums and articles of associations alongside with the by-laws can only give us some insight into the real procedures. In conclusion, we can state that both countries' managers have extensive powers that are barely controlled effectively by legal means. As we observed the unitary board structure of both countries, we can turn to the other governance model in order to cover all possibilities.

[100] Code de Commerce, Article L225-56.
[101] Ibid.

The two-tier board model is the traditional structure for Hungarian public companies. Its feature is that the management and supervisory functions are divided amongst the two boards. French companies can opt for the two-tier board since 1966 but the unitary board model is still used by most public corporations. The next section will show the characteristics of this model under both legislations to give a complete view regarding the legal position of management.

2.3 Two-tier boards under Hungarian and French Law

2.3.1 Hungarian two-tier board structure

In Hungary, a two-tier board traditionally heads public limited companies, whilst the unitary board model is also optional. Under the two-tier structure, the Management Board administers the company and the Supervisory Board monitors the actions of management. The Hungarian Corporate Law has long been influenced by German Law and that is why the two-tier structure is the basic model for public limited companies. This subsection will show the additional characteristics of the two-tier board model compared to the unitary model to avoid repetition.

Appointment and revocation of Management Board members and the Chairman is identical to the rules of the unitary board model. Although Supervisory Board members may appoint and revoke them under a private limited company, this rule does not apply to public limited companies.[102] Therefore, Management Board members are appointed and revoked by the general meeting except for the first board, which is set up in the articles of association. The Chairman is elected from the members of the Board of Directors by the board, unless it is provided in the articles of association that it is elected directly by the general meeting.

[102] Act on Business Associations, Section 37 para 1.

Requirements of independency are not applicable to the members of the Management Board. In contrast, the Supervisory Board shall act as an independent body.[103] This requirement was set up because of the separated management and supervisory functions. The rights and duties of the members of the Management Board are equal to those of the Board of Directors, except to those that are conferred to the Supervisory Board. Therefore, it is worth to review the specifications and competences of Supervisory Board in order to see the complete picture.

Supervisory Board members are appointed and revoked by the general meeting, except for the first board, which is set up in the articles of association. The Supervisory Board consists of minimum three, maximum fifteen natural persons.[104] Unless otherwise is provided in laws or in the memorandum and articles of association, the Supervisory Board shall elect a Chairman and a Deputy Chairman from its members. It has a quorum when two-third of its members or at least three members are present.[105] Its resolutions are passed with simple majority.

Supervisory Board members shall act in person and cannot be instructed.[106] They may attend sessions of the general meeting in a consultative capacity. The Supervisory Board may request information from the executive officers and executive employees.[107] The requested information shall be provided in the manner and within the time limit that was set up in the memorandum of association.

[103] Act on Business Associations, Section 34 para 2.
[104] Ibid, Section 34 para 1.
[105] Ibid, Section 34 para 2.
[106] Ibid, Section 34 para 3.
[107] Ibid, Section 35 para 2.

Decision regarding the acceptance of the annual report can only be made in the possession of the written report of the Supervisory Board.[108] The Supervisory Board shall call an extraordinary general meeting and propose its agenda, when the activity of the management is contrary to law, to the memorandum of association or to by-laws according to the Supervisory Board's adjudication.[109]

One can conclude that the Supervisory Board has extensive supervisory functions that are relatively strong. The Management Board's authority is more controlled under the two-tier system and the separation of management and supervisory functions are clear under this model. The supervisory functions under the unitary board model are rather blurred, because no separate organ is conferred with the duty to monitor the management.

To sum up the role and functions of management under Hungarian Law, we can state that managers have extensive powers that are unbalanced without effective control and supervision on them. Only soft law is intended to give the required balance, and without sanctions or efficient enforcement, this kind of regulation is relatively ineffective.

2.3.2 French two-tier board structure

The two-tier board model in France is optional and in fact not used extensively. Although it has many basic similarities with the unitary board, some distinctions can be made regarding the appointment and revocations of Management Board members and their powers.

[108] Act on Business Associations, Section 35 para 3.
[109] Ibid, Section 35 para 4.

The Supervisory Board appoints the members of the Management Board.[110] When a single person exercises the rights and duties of management, (s)he is called "sole managing director". All members of the management must be natural persons and they cannot be chosen from the shareholders.

The general meeting can dismiss members of the Management Board, or if that is provided in the memorandum and articles of association, the Supervisory Board can dismiss them as well.[111] If the dismissed member of the Management Board has an employment contract with the company, then that contract is not terminated automatically as an effect of dismissal. The memorandum and articles of association shall set the term of the members of managing board's office between two and six years.[112] In the absence of such provisions, the term shall be four years.

The management has the widest powers to act on behalf of the company.[113] Its actions are binding upon the company. The Chairman has the right to represent the company vis-à-vis third parties.[114] The memorandum and articles of association may empower the Supervisory Board to give the same powers to one or more managing directors.[115] The management exercises its powers within the limits of purpose of the company and subject to the Supervisory Board's and the shareholders' meeting's powers.[116] Therefore, identically to Hungarian Law, it is worth reviewing the Supervisory Board's legal status in order to be able to evaluate the two-tier board model.

110 Code de Commerce, Article L225-59.
111 Ibid, Article L225-61.
112 Ibid, Article L225-61.
113 Ibid, Article L225-64.
114 Ibid, Article L225-66.
115 Ibid.
116 Ibid, Article L225-64.

The Supervisory Board's function is to permanently monitor the management.[117] The memorandum and articles of association may require the Supervisory Board's authorization of certain significant acts of the management.[118]

The sale of real property, the total or partial assignment of equity holdings, the provision of sureties, security, endorsements and guarantees are all requiring the authorization by the Supervisory Board unless the company is financial or banking institution.[119]

The Supervisory Board can carry out all inspections and verifications that it considers appropriate, and it may request insight into any document.[120] The Management Board has to present a report to the Supervisory Board at least once in each quarter of the financial year. The Management Board shall also present the annual accounts and reports for verification to the Supervisory Board before rendering it to the shareholders' meeting.[121] The Supervisory Board presents its observations regarding all the reports by the Management Board and the accounts to the shareholders' meeting.

Agreements between the corporation and any member of the managing board or the Supervisory Board or any large shareholders[122] are to be approved by the Supervisory Board.[123] Members of the management and non-corporate members of the Supervisory Board are not allowed to get any loan from the company or pledge of security or guarantee from the company for any obligations that they may contract to third parties.[124]

[117] Code de Commerce, Article L225-68.
[118] Ibid.
[119] Ibid.
[120] Ibid.
[121] Ibid, Article L225-68.
[122] Holding at least 10% of the voting rights.
[123] Code de Commerce, Article L225-86.
[124] Ibid, Article L225-91.

To sum up the status of the Supervisory Board under French law, we can state that it has wide monitoring powers and it can impede those actions of the executive board that would be detrimental to the company. This right of the French Supervisory Boards makes them relatively stronger in comparison with the Hungarians. A well-drafted by-law alongside with a wisely composed Supervisory Board allows controlling the management's actions, as we will see in 3.3.

The powers of the Management Board are similar to the Hungarian regulations. However, the Management Board's obligation to file quarterly reports and the requirement of the Supervisory Board's approval for certain acts implies a greater control over management under the French two-tier board model. These are the points where Hungarian Law shall be modified or amended.

French Law imposes great powers and high authority on managers, especially on the General Manager and on the Chairman. If the two positions are held in one hand, it gives incomparable supremacy to that person. Hungarian Law does not give that high authority explicitly to the General Managers. Nevertheless, because of all unassigned rights and duties are in the hands of management, Hungarian general managers and members of managing organs have vast powers.

The following chapter will give a practical insight to the role of management in the observed countries. The application of hard and soft law in Hungary will be introduced through last year's struggle between OMV and MOL where the management proved itself to dominate the company. Application of French Law alongside with the various recommendations and best practices will be introduced through an examination of different CAC 40 companies' governance system.

CHAPTER 3: MANAGEMENT IN PRACTICE

Legal provisions traditionally reflect the compromises of a certain date. No law can be perfect and regulate every possible occurrence. This is true for Corporate Laws as well, that is why Corporate Governance codes, and recommendations are made. However, formal declaration of compliance with soft law not always means material fulfillment of these rules.

Hungary and France have different backgrounds; however, their laws equally give an extensive autonomy to the public limited companies' management. Privatization in Hungary created an extremely low state ownership with a foreign-majority ownership structure. Foreigners were holding more than half of the share capital of the top 100 companies and 72% in the top 50 financial institutions of Hungary in 2006.[125] The three largest BSE listed corporations, Magyar Telekom, MOL and OTP also have foreign majority in their ownership structure.

While Deutsche Telekom has 59.21% ownership through a holding in Magyar Telekom[126], the two other company's ownership structure is rather dispersed.[127] Dispersed ownership structure with wide management powers can give the control to the management's hand. The first part of this chapter will examine the governance structure of the three largest BSE listed corporations alongside with the lessons of the OMV-MOL struggle, in order to evaluate whether the companies are in full compliance with the hard and soft law of Hungary. The OMV-MOL case will present how the management finds the gaps in the Corporate Law system and use them for their interests.

[125] Hungarian Tax and Financial Control Administration and Hungarian Chamber of Commerce and Industry, "Top 100: 2007," at http://www.apeh.hu/data/cms39539/TOP_100.pdf (accessed March 17, 2009).
[126] See at http://www.telekom.hu/investor_relations/magyar_telekom_shares/ownership_structure (accessed March 17, 2009).
[127] See at https://www.otpbank.hu/OTP_Portal/online/IR_Ownership_structure.jsp and http://www.mol.hu/en/about_mol/investor_relations/shareholder_info/ownership_structure/ (accessed March 17, 2009).

Large French CAC 40 listed companies usually have concentrated ownership, with significant state or family owners or at least a majority of owners is French domestic. Connections and cross-holdings between French companies are typical, while directors usually have multiple seats in different companies. These facts would give one the impression that the owners control the companies, but the executive managers' and principally the PDG's extensive powers suggest otherwise. The second part of this chapter will examine certain CAC 40 companies' governance structure in order to assess who has real control and how the legal rules are fulfilled in practice.

3.1 Governance structure of the largest Hungarian listed corporations

This section is based on the author's research on the three most capitalized Hungarian BSE listed companies'[128] websites, articles of associations and by-laws. All these companies operate outside Hungary as well and all of them are the domestic leaders in their sectors.

The research covers their respective ownership structure, board structure, board composition, and the members of their board(s). Considerable emphasis was given to the companies' compliance with the BSE Recommendations. The aim of this section is to give an insight into the major Hungarian listed companies' management and evaluate their control mechanisms.

[128] Magyar Telekom, MOL and OTP.

3.1.1 Magyar Telekom

Magyar Telekom, MOL and OTP accounted for 79 per cent of the BSE's capitalization in June 2007.[129] Magyar Telekom has a two-tier board structure, with a Supervisory Board and a Board of Directors. The company confirmed its compliance with the BSE Recommendations in April 2008, with some minor exceptions.[130] As a listed company in New York, Magyar Telekom is also in compliance with the New York Stock Exchange's listing requirements.

The company has a Management Committee, composed of the CEO and all chief officers, that exercises the day-to-day management of the company. The company claimed in its 2008 Corporate Governance Report that both boards had a majority of independent directors. In fact, six members of the Board of Directors are elected on the proposal of the holding of Deutsche Telekom, while only two members were elected on the proposal of other shareholders.[131]

Most members of the Board of Directors held or currently hold positions within the Deutche Telekom Group according to the company's website. These statements are true for the Supervisory Board as well, because four of its eleven members are employee representatives, one is member of the Deutsche Telecom Group, and many others were Hungarian civil servants.[132]

[129] CEU Business School Working Paper, "Transferring Corporate Governance Codes: form or substance? Corporate Governance in Hungary.": 10, at http://www.Ceubusiness.org/content/rswp/Transferring%20Corporate%20Practices%20-%20Corporate%20Governance%20in%20Hungary.doc (accessed March 16, 2009).
[130] See http://www.bse.hu/newkibdata/100238152/MTELEKOM080426E.pdf (acessed March 17, 2009).
[131] See http://www.telekom.hu/investor_relations/corporate_governance/board_of_directors (acessed March 16, 2009).
[132] The State had a Golden Share in the company until June 2007.

The whole governance structure of Magyar Telekom suggests that senior officers run the company, while they are appointed on the proposal or with the consent of Deutsche Telekom. The Board of Directors concludes the major transactions, approves the company's strategy and business plan while the Management Committee is responsible for administering the company and fulfilling those plans.[133] We can see here that the majority shareholder controls the company through the appointment of Board members.

3.1.2 OTP

OTP is the successor of the National Savings Bank. Its privatization began in 1995. The bank is the largest financial institution in Hungary and operates in many countries of the Central Eastern European Region. It has a highly dispersed ownership structure. Its three largest shareholders have less than 30 per cent together. Foreign shareholders have 77 per cent of the shares in OTP.[134] The CEO had five per cent of the shares in 2005, but it diminished to about one per cent by the end of 2008.[135]

The bank declared its compliance with the majority of the BSE Recommendations in April 2008. One of the non-compliance areas was the lack of publication for the guidelines for evaluating and remunerating corporate management.[136]

[133] See http://www.telekom.hu/investor_relations/corporate_governance/corporate_governance_documents (accessed 17 March, 2009).
[134] See https://www.otpbank.hu/OTP_Portal/online/IR_Ownership_structure.jsp (accessed 17 March, 2009).
[135] CEU Business School Working Paper: 10.
[136] Ibid, at 14.

The second non-compliance area was the lack of published reporting guidelines.[137] The lack of publication of the company's risk management guidelines, insider trading guidelines and Corporate Governance code of practice also raised concerns.[138]

Only the minority of the OTP Board of Directors is independent in fact. The so-called 'independent' directors consist of eight persons. One of them is the CEO of the OTP CEO's vinery, one is ex Deputy CEO of OTP, one is a leading politician, one was a CEO of an OTP-affiliate, one is a former official of the state holding company and one was member of the Hungarian Monetary Council.[139] These six persons combined with the executive directors counts for a qualified majority of the votes in the Board of Directors. Two of the five members are current employees and one was civil servant, which implies that independency is questionable in the Supervisory Board as well. Therefore, we can add that the company did not meet the BSE's requirement for a majority of independent directors.[140]

The building blocks of Berle's and Means's classical management-control theory can be easily seen at OTP. The dispersed ownership structure of OTP alongside with those points of non-compliance with the BSE Recommendations and the CEO's large share ownership clearly shows that the company is run by its management.

[137] CEU Business School Working Paper: 14.
[138] Ibid, at 15.
[139] See https://www.otpbank.hu/OTP_Portal/online/IR_Senior_management_and_Board_of_directors.jsp (accessed March 17, 2009.
[140] CEU Business School Working Paper: 16.

3.1.3 MOL

MOL is the largest Hungarian oil company, founded in 1991 and privatized from 1993. Since 1998, it expanded in the CEE Region and by 2008; it became one of the biggest players in oil industry in the Region.[141] It has a two-tier board structure.

Like the two other observed companies, MOL did not fully comply with the BSE Recommendations with its April 2008 Corporate Governance Report. The 'one share-one vote' requirement was not fulfilled, because the articles of association do not allow any shareholder or shareholder group to exercise more than 10 per cent of the voting rights.[142] The company did not fulfill the disclosure requirement of individual Director remuneration and some other minor requirements were neglected as well.[143]

The ownership structure of MOL is dispersed and Hungarian ownership is only about 20 per cent in the company.[144] That structure has varied in the last two years, mainly because of the company's strategy against the merger with OMV.

The Board of Managers has twelve members. The company declared in 2008 that the majority of Managements and Supervisory Board members were independent.[145] However, according to MOL's independency criteria, a former employee becomes independent after a five-year period.[146] Nonetheless, we can find that the directors' independence is greater at MOL than at OTP or Magyar Telekom.

[141] CEU Business School Working Paper: 13.
[142] See Articles of Association, p 13 at http://www.mol.hu/repository/445023.pdf (accessed March 17, 2009).
[143] CEU Business School Working Paper: 14.
[144] For the exact structure See: http://www.mol.hu/en/about_mol/investor_relations/shareholder_info/ownership_structure/ (accessed March 17, 2009).
[145] CEU Business School Working Paper: 14.
[146] Ibid.

We can claim that the relatively high number of independent directors alongside with the fact that six owners have more than 5 per cent in the company calls for an ownership control over MOL. In fact, the opposite was true in the MOL-OMV struggle. The next section will show how the management prevented a merger between the two companies.

3.2 MOL-OMV struggle and the power of management

The factual backgrounds of this section are based on a Working Paper prepared by the CEU Business School.[147] That paper explains in detail the struggle between the two companies. The thesis only addresses the most important points that show the authority of managers and the usage of their wide powers.

OMV announced a bid for Mol ordinary shares in September 2007 to secure control over the company.[148] The OMV Board argued that a merger between the companies would create a more powerful entity that would serve the whole Region's interests. OMV promised equality between the two companies in the future. The new entity would have had a new senior management. The bid was "conditional on the removal of the 10 per cent voting cap … and cancellation of the shares under management control but currently parked with friendly partners, which OMV claimed were appropriately treasury shares and thus should not carry voting or financial rights."[149]

[147] CEU Business School Working Paper, "Transferring Corporate Governance Codes: form or substance? Corporate Governance in Hungary.":22-29, at http://www.Ceubusiness.org/content/rswp/Transferring%20Corporate%20Practices%20-%20Corporate%20Governance%20in%20Hungary.doc (accessed March 16, 2009).
[148] CEU Business School Working Paper: 23.
[149] Ibid.

The MOL Board of Directors was strongly against that proposed alliance, emphasizing the disadvantages of Austrian state-ownership in OMV, the possible alliance's effect on Hungarian economy and Hungarian jobs and the possible destruction of shareholder value.[150]

The MOL Board of Directors used powerful anti-takeover strategies alongside with the help of the Hungarian State. The Board repurchased the company's own shares and transferred them to friendly companies: OTP, MFB Invest, Magnolia Finance Ltd and BNP. OMV publicly criticized this method.

The company sold 8 per cent of its treasury shares to Oman Oil Corporation and then 7 per cent of its shares to CEZ, a Czech energy company.[151] All these ownership-modifying actions were made to add more so-called 'white knights'[152] in order to have enough votes to oppose the OMV bid.

The Hungarian State also played a role in this struggle with passing the 'Lex MOL' on 8 October 2007. The Lex MOL widened the definition of strategic companies, introduced powerful instruments against foreign takeovers, and emphasized its commitment to the independence of the management.[153]

The annual general meeting on 23 April 2008 was the zenith of the conflict between the two companies. OMV argued that the share-lending techniques of the Board had detrimental consequences on shareholder value and were contrary to good Corporate Governance.[154] The Board rejected OMV's reasoning.

[150] See , St Ignatius Jesuit College, "Report on the OMV-MOL controversy (Az OMV-MOL vita beszámolója)." At http://energia.szentignac.hu/?p=273 (accessed March 17, 2009)
[151] CEU Business School Working Paper: 25-26.
[152] According to Black's Law dictionary, 8th ed., s.v. "White knight" is a "person or corporation that rescues the target of an unfriendly corporate takeover, esp. by acquiring a controlling interest in the target corporation or by making a competing tender offer."
[153] CEU Business School Working Paper: 26.
[154] Ibid, at 27.

The general meeting was a great victory for the management because the CEO and the Deputy CEO were re-elected with huge majority of votes.[155] The meeting also decided that the company could possibly own 25 per cent of treasury shares instead of 10 per cent, widening the anti-takeover arsenal of the Board. On 6 August 2008, OMV accepted its defeat through withdrawing its bid.[156] The case showed certain features of the management of Hungarian companies.

The Management Board showed in this case that it has the real power at MOL. They used powerful techniques by lending shares to friendly corporations, invoking 'white knights', getting political support, and wisely conducting the general meeting. The creation of strong emotions in the public in order to affect shareholders was also a good move from the management.

This case suggests that soft law regarding Corporate Governance is just formally used in Hungary. The fulfillment of one share-one vote requirement would have possibly made it harder for the MOL Board to resist the OMV bid. The use of treasury shares to manipulate general meeting's voting blocks is also against good governance principles.

We can conclude regarding the situation in Hungary that the management has extensive powers and they use those powers to gain control over the company if large blockholders are not in the ownership structure. The Supervisory Board's influence on the management's actions is ineffective and the enforcement system in Hungary does not impede management control. Thus, the internal control mechanisms and the monitoring of the management's actions are weak in Hungary.

[155] Menedzsment Fórum, "The Mol-OMV struggle continues on the general meeting," entry posted April 23 2008, http://www.mfor.hu/cikkek/A_kozgyulesen_folytatodik_a_Mol_OMV_csata.html (accessed March 17, 2009).

[156] *See* Menedzsment Fórum, "OMV does not want MOL anymore (Már nem kell az OMV-nek a Mol),", entry posted August 6 2008, http://www.mfor.hu/cikkek/Mar_nem_kell_az_OMV_nek_a_Mol.html (accessed March 17, 2009).

Corporate management's control can also be reduced by the external monitoring by capital markets, the State or by the co-determination of worker's unions. Hungarian capital markets listing requirements regarding Corporate Governance is fulfilled with the formal declaration of compliance with the BSE Recommendations. Furthermore, share prices are not affected by companies' shortcomings on Corporate Governance.[157] So capital markets in Hungary are unable to effectively monitor or control the actions of listed companies' management.

The second external mechanism would be the State's direct ownership or its actions. State ownership in listed companies is negligible. The State's effect on Hungarian companies could be in its economical incentive actions. Although, the State made many wrong decisions in the past while it was trying to stimulate the economics.[158] The Hungarian privatization gave the majority of Hungarian assets into the hands of foreign investors[159], thereby encumbering the realization of Hungarian interests. The State cannot influence managers' behavior or cannot control any company under these circumstances.

The last external monitoring and controlling method is the workers' participation in the management of companies. Trade unions in Hungary do not have real co-determination rights and their influence on companies' management remarkably declined from the early 1990's.[160]

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[157] CEU Business School Working Paper: 18.
[158] For a further evaluation of the Hungarian State's past actions *See* Ádám Angyal, *Corporate Governance (Vállalati Kormányzás)*, (Budapest: Aula, 2001): 153-162.
[159] Ibid.
[160] CEU Business School Working Paper: 21.

Furthermore, the Act on Business Associations does not set a minimum number of workers' representatives under the unitary board and only large companies are required to have workers' representatives in their Supervisory Boards. As we could see, none of these external monitoring devices are effective in Hungary. Management has extensive powers and these powers are not restricted by external controls.

The role of management in Hungary therefore is in the administering and in many cases controlling the companies. Managers' wide powers shall be diminished to a reasonable extent in the future to protect the interest of other stakeholders. Better Laws, wider monitoring powers and more effective enforcement methods shall be introduced in the upcoming years in order to gain control over the management. External monitoring and control mechanisms shall also shortly be fortified in order to prevent manager-opportunism. The fulfillment of these proposals is not easy, but that would create balanced control mechanisms and avoid the mismanagement of companies.

3.3 Governance structure of the largest French listed corporations

The next section is based on the author's research on fifteen CAC 40 companies'[161] websites, articles of associations and by-laws. These companies' profiles are quite different, from automobiles, through banking to chemicals. All these companies operate outside France as well and most of them are amongst the leaders in their sectors.

[161] These companies are: Air France-KLM airlines, Alstom industrial machinery company, AXA insurance company, BNP Paribas financial institution, EDF electricity company, France Telecom, GDF Suez gas distribution company, Danone food products, L'Oréal cosmetics, PSA Peugeot Citoën automobiles, Renault automobiles, Sanofi-Aventis pharmaCEUticals, Société Générale financial institution, Total oil company and Vivendi entertainments.

The research covers their respective ownership structure, board structure, board composition, and the members of their board(s). Considerable emphasis was given to the ownerships between companies; to the backgrounds of board members and to the board membership interlocks. The research's aim is to give an insight into the French reality of listed companies' management and evaluate their control mechanisms.

3.3.1 Ownership structure of the examined companies

The ownership structure largely differs in the examined companies. The most concentrated ownership is the more than 70 per cent State ownership in EDF. The most dispersed ownership structure is Vivendi's, with the largest shareholder having less than five per cent.

The French State has interest in many companies whose activities are necessary to the public. These strategic companies include France Telecom, EDF, GDF-Suez, Renault and Air France-KLM.[162] Another remarkable fact is the families' dominating presence in PSA Peugeot Citroën and L'Oréal. Peugeot family has the 45 per cent of voting rights in PSA Peugeot Citroën and Mrs Bettencourt's family has 30 per cent ownership in L'Oréal. These large blocks enable the families to control their companies.

Domestic ownership is usually remarkable in large French listed companies. For example, 65 per cent of owners are French in Air France-KLM, 54 per cent in Alstom and 46 per cent in Sanofi-Aventis. Not every company displays the origin of its owners, but as most companies' boards are almost fully composed of French directors, we can suppose that the majority of their owners are French.

[162] The State has 15,7% ownership in Air France-KLM, 27% in France Telecom, 35,7% in GDF-Suez, 15% in Renault and more than 70% in EDF.

Another French peculiarity is the numerous relationships between listed companies. Bouygues have 30 per cent ownership in Alstom while Mr. Patrik Kron, PDG of Alstom is also member of the Board of Directors at Bouygues. AXA has ownership in BNP Paribas, while the latter has ownership in PSA Peugeot Citroën and Vivendi. Both L'Oréal and Total has more than 15 per cent in Sanofi-Aventis. The interlocking is even more significant between board memberships. These facts suggest that the French economical elite have a real web of interests.

The presence of institutional investors is common everywhere. Institutional investors have great blocks in French companies. Their voting power would suggest that they can easily control the companies, but in fact, they are rather interested in the return of their investments. Most of the institutional investors in French companies are domestic, like the Caisse des Dépôts, that has shares in Vivendi, Société Générale, PSA Peugeot Citroën, Danone. It is well worth to note that as a public financial institution, Caisse des Dépôts' declared intent is to serve the public interest and France's economic development.[163] These information and facts gives us the characteristics of French companies.

The State has dominant ownership in the strategic corporations. Its public financial institution invests to other remarkable French corporations while cross-shareholdings and close relationships are usual between companies. The French elite formed a web of interests and they are present in most companies that are important for the national economy. The majority of listed companies' owners are domestic, thus protecting French interests. The modern *dirigisme* or a certain degree of protectionism is still living in France. The next subsection on board structures and board members' backgrounds in the examined companies would certainly affirm these findings.

[163] See at http://www.caissedesdepots.fr/spip.php?article57 (accessed March 19, 2009).

3.3.2 Board structure of the observed companies

French Company Law gives the highest authority to the management under the unitary board model with a PDG. Checks and balances are most effective under the two-tier board model. The NRE set up a third model with the separated functions of the Chairman and the General Manager. The observed companies' board structures are various and represent all the three possible French models.

Only three companies have two-tier board out of fifteen: AXA, PSA Peugeot Citroën and Vivendi. The governance of AXA fulfills all soft law standards and seems to be quite balanced. However, French protectionism is present because the majority of Management and Supervisory Board members are French citizens.

Vivendi's ownership structure is dispersed without state ownership. However, two managing directors were public servants in the past. The representation ratio of French directors in Vivendi is even higher than in AXA. Four out of seven managing directors and eight out of thirteen Supervisory Board members are French. It is notable to mention that four Supervisory Board members serve or served directorship or supervisory position at AXA. Other interlocks are present with one Supervisory Board member's directorship at French retail chain Careffour and one has position at BNP Paribas.

The governance of PSA Peugeot Citroën represents the interests of the Peugeot family. They included in the by-laws that the Supervisory Board must approve almost every important decision of the Management Board. The family has majority in the Supervisory Board, so they control the company because their approval is needed for the management. The CEO of the company is a former PDG of the main glass supplier of PSA Peugeot Citroën. This practical link also symbolizes the above-mentioned web of interests and interlocks between French companies.

The NRE introduced in 2001 the separated functions of Chairman and general manager, and seven of the observed companies have opted for this model.[164] As the state has ownership in Air France-KLM, its representatives are also in the Board of Directors. Most of the company's non-State delegated directors have directorships or supervisory functions in other State-owned companies like EDF, GDF-Suez or the French Post. As a result, it can be deduced that the State has more control over Air France-KLM than its ownership would imply.

Members of the Board at BNP Paribas have many other positions at CAC 40 listed companies, like AXA, Michelin or Bouygues. The same phenomenon is true for Renault as well, but the State influence and the relationship with other companies, like Total is more significant there. Renault uses the lubricants and other products of Total and its affiliate ELF and suggesting them for its customers for a long time. Thierry Desmarest, Chairman of Total is also a board member at Renault. These facts underline the strategic cooperation between the two companies.

[164] Air France-KLM, BNP Paribas, L'Oréal, Renault, Sanofi-Aventis, Société Générale and Total.

The governance of L’Oréal is a good example for family-dominance. Mrs Bettencourt’s family controls the company alongside with Nestlé, the other large shareholder. L’Oréal’ Board of Directors does not have a majority of individual directors, and the two major shareholder’s representatives dominate the different Committees of the company as well. L’Oreal and Total has large ownership in Sanofi-Aventis, so their representatives are having seats at the company’s Board, thereby having considerable influence in its decisions.

Several Board members of Société Générale worked in the past as civil servants. For example, the Chairman of the board and the Chairman of the Managing Committee had State functions in the past. As Caisse des Dépôts has ownership in the financial institution and many of the bank’s directors served as State functionary, it can be inferred that the company is managed according to the State’s interests.

Total is a truly international company with the majority of shareholders from France and North America. Half of its board members are independent, but many of them have governmental backgrounds or board memberships in other French listed companies, like Sanofi-Aventis, Renault, GDF-Suez or Société Générale.

Five of the observed companies have a unitary board with PDG. The State has significant ownership in three of those companies. EDF has more than 70 per cent State ownership and its board is composed of eighteen members: six state delegates, six employees and six executives. As a strategic company, it is totally run by the State.

The board of GDF-Suez has twenty-two members; six of them are state delegates. However, many other directors were public servants or directors in other State-run companies, like Jean-Luis Beffa, who was the PDG of Gaz de France. The Board of France Telecom has fifteen members, with three State delegates and three employee directors. All directors are French citizen, thus serving French interests.

The representatives of Bouygues, its largest owner, dominate Alstom's Board. The proportion of independent directors at Alstom is only about 40 per cent. The majority of Danone's board members are French. Many of them have directorships at other CAC 40 companies as well.

The observed French companies' boards have some common peculiarities. Most of the directors are of French origin. Vast majority of them have function in other CAC 40 listed companies as well. Many directors served the State in the past and most of them still have directorships in State-owned companies. Many directors in State-influenced companies graduated from the ENA, like Jean-Cyrill Spinetta, Chairman of AIR France-KLM, Gérald Mestallet, PDG of GDF-Suez or Daniel Bouton, Chairman of Société Générale. Most of the observed companies have specialized "Executive Committee" that is doing the day-to-day business of the corporations.

These findings also suggest that the State has influence on the management of companies and the so-much-mentioned web of interests exists in France. Directors in France have extensive authority and they are traditionally powerful persons. Their duty is to run their companies and supervise the management. Their legal status would imply that they also control their companies, but in fact, owners have the power to replace directors anytime and even without cause.

3.4 Comparison of the Hungarian and French findings

As Berle's and Means' work suggest, the power to control a company is in the power to dictate directors. Shareholders have the power to control French companies, because of the high percentage of State ownership and the web of interests. They usually have the majority to put their people in the seats or to remove directors at their will. This phenomenon is contrary to the findings on large Hungarian listed companies.

While Magyar Telekom's ownership structure enables Deutsche Telekom, its parent company to dictate its affiliate's businesses; the ownership structure at MOL and OTP gives the power to control into the hands of the senior management. The rights and duties of managers are rather less restricted in Hungary than in France, although both countries regulations give extensive powers into their hands. These powers are less restricted in Hungary because of the ownership structure of companies, the lack of effective State-influence on companies, non-effective monitoring tools, virtually non-existent workers' representation[165] and the weak enforcement system.

External control over management in Hungary is non-existent. In contrast, French capital markets are well capitalized and the prices somehow react to the governance of the listed companies as well. Worker's representation is more remarkable in France, as workers can elect one-third of Board members.

[165] CEU Business School Working Paper: 21-22.

Furthermore, the State' huge influence on French economics and companies cannot be compared to the Hungarian situation. However, the French-type of *dirigisme* or protectionism cannot be a reality in Hungary because of the less centralized State and its low influence on companies. Therefore, only laws and internal control mechanisms can ensure control over Hungarian managers.

Hungarian regulations are in full compliance with EU Law and are relatively good. However, the factual backgrounds in Hungary does not allow stakeholders to have an effective control over the management and it can lead to the latter's control over Hungarian companies. French managers have extensive powers, but companies' ownership structures usually prevent their opportunism. Furthermore, the Supervisory Board under the two-tier system has wide monitoring rights and can disapprove certain acts of management, thereby controlling them.

To sum up, we can state that managers run companies both in Hungary and France, but they are less controlled in Hungary, while they have more powers in France. Both countries' legislators can learn from each other in order to fill the gaps in their Corporate Laws. French Law would require more detailed provisions on the duties of managers, while the Hungarian State could learn from the French solution on the extensive powers of Supervisory Boards. The State's stimulating influence on companies would also be an asset for Hungarian Corporate Governance.

CONCLUSION

The role of management and the separation of ownership and control are amongst the building blocks of Corporate Governance. The present work observed the topic of the role of management in Hungary and France. The aim of this research was to answer questions regarding what is the factual and legal position of management within listed corporations of Hungary and France in order to find out, who controls companies is the analyzed countries. Berle and Means emphasize that control by management is an existing feature of companies with dispersed ownership structure. When large blockholders are present in the ownership structure, the real control is in the election of the management.

Both Hungarian and French law assigns the management of companies to the Chairman alongside the executive officers under the unitary board model and to the members of the Management Board under the two-tier board model. Assistant general managers can also be elected to support the work of management.

Both countries' Corporate Laws gives extensive powers to the management. The directors have general authority, exercise approval rights and decide important issues, while executives run the day-to day management.[166] General Managers are invested with the most extensive rights to act on behalf of the company in both countries. When their office is cumulated with the position of Chairman, that creates the most powerful actor under both countries' Corporate Laws.

[166] Vüsal Quafarov, *Supervision over Management in Public Companies in France and the USA*, CEU Legal Studies IBL L.L.M. short thesis, Central European University, April 2006: 10.

The management has even more powers than the observed countries' Corporate Laws would imply. Rights and duties that are not assigned to any other organ of the company are allocated to the management in both countries. However, effective external and internal control mechanisms and monitoring can restrict managers' authority.

External control over companies in Hungary is non-existent, because of the relatively small capital markets, the weak worker's representation and the low State influence on companies. In contrast, French State is an active participant in the life of corporations and dictates the actions of many CAC 40 listed companies. Although capital markets and worker's representation is more developed in France than in Hungary, the State's influence is the overwhelming external control on companies' management.

Internal control mechanisms are the proper allocation and balance of shareholders' rights, management's authority and the monitoring over management's actions. Both countries' regulations give high authority to the management while balances are relatively low, especially under the unitary board model. The notion of independent directors that are monitoring the actions of executives is non-existent in French Law and not effective under Hungarian Law. Only soft law gives a complete definition on independence in both countries, but the enforceability of these regulations is questionable.

Internal control through monitoring is well developed under the French two-tier model. The Supervisory Board's right to disapprove certain acts of management gives the necessary control over the latter. Hungarian Law does not have any similar approval-requirement and the supervisory rights are less powerful, mainly because of the inadequate enforcement methods and the slow court system.

The last internal control method is the most powerful one. Both French and Hungarian Corporate Law enable shareholders to remove directors at any time, even without cause. This rule would theoretically ensure that directors should take into consideration the interests of shareholders while managing the company. However, the majority of shareholders' vote is required for the dismissal.

Large French listed companies usually have the required majority of votes, because of the large blockholders and the co-operation between French investors. The French plutocracy formed a web of interests and the majority of listed companies are managed according to their will. They have close relationships with the State and the latter's *dirigisme* or protectionism is even serving the interests of French investors. On the other hand, large Hungarian listed companies' ownership structure is dispersed, thereby obstructing the easy removal of managers. In addition, large Hungarian companies' shareholders are mainly foreigners and the Hungarian version of the web of interests could not emerge.

The management usually controls Hungarian companies, because of the non-existing external control mechanisms and the weak internal control over management. Contrary to Hungarian findings, large shareholders are dominant in French companies. Although French Company Law gives more authority to managers; their margin is limited because of the ownership structure of large French listed companies.

Both countries' Corporate Laws have gaps, but those of French Law are filled in with effective external and internal control mechanisms. The Hungarian Corporate Law is in itself advanced enough, but the lack of effective control mechanisms impedes the effective enforcement of the regulations. On the other hand, the French *dirigisme* or protectionism can be harmful to the interests of minority and foreign shareholders as well. The ideal governance system would be halfway between the two countries' extremes. Therefore, more effective external and internal control mechanisms shall be developed in both countries alongside with balances, that are taking into consideration the interests of all stakeholders as well.

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