

ABSTRACT

Conflicts of interest in supervisory boards and the possibilities of limiting them to improve corporate governance in German stock-listed companies

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Although the issue of corporate governance has been intensively explored by authors from many countries around the world for several decades, there are still areas that have not yet been sufficiently explored. One of them remains conflicts of interest, which is the subject of this dissertation entitled 'Conflicts of interest on supervisory boards and possibilities of limiting them to improve corporate governance in German listed companies.' The importance and impact of conflicts of interest on the work of corporate bodies was already noted in the times of Adam Smith and early literature on corporate governance issues, but they were particularly exposed in the agency theory published by William Meckling and Michael C. Jensen in 1976. This theory focuses on conflicts of interest that may arise between principals (shareholders) and agents (managers).

The supervisory board in the two-level corporate governance system is obliged to supervise the company's management, which is currently perceived not only as a supervisory function, but also as a control, advisory and interest-balancing function. The scope and importance of these obligations indicate that the existence of conflicts of interest may have a potentially large negative impact on the decision-making processes in the company. It is assumed that a conflict of interest occurs when the personal or professional interest of a member of the company's governing body (supervisory board) may influence the objectivity of his or her assessment, decisions, or actions in a manner detrimental to the company's interest.

This dissertation aims to identify and discuss the most important (typical) conflicts of interest in German listed companies and to analyze the existing methods of

resolving them offered by applicable regulations and the corporate governance code in order to avoid these conflicts or respond appropriately to them. Moreover, the aim of the dissertation is to formulate additional (new) recommendations for the German legislator, aimed at increasing the effectiveness of resolving conflicts of interest occurring in supervisory boards of listed companies.

The implementation of these goals was conditioned by in-depth knowledge of the most important research conducted in the field of corporate governance, relevant theories and systems of corporate governance, codes of good practice and their importance, and the German legal framework, especially those regarding the codetermination system.

In the empirical part of the dissertation, two stages of analysis are used, namely examining the relevant content of reports published by German listed companies belonging to the DAX 40 index, and then supplemented with qualitative interviews with experts. The annual reports of German listed companies include a report of the supervisory board for a given financial year, which should contain information on conflicts of interest existing between members of the supervisory board, both in terms of the socio-political sphere and the capital market. This analysis allowed for their diagnosis, assessment of the frequency of their occurrence, and ways of reducing (eliminating) them. In the second stage of the study, interviews were conducted with experienced experts, highly qualified members of supervisory boards, in order to obtain valuable insight from an internal perspective.

The conducted research proves that the German regulatory framework provides clear definitions of responses to conflicts of interest. However, the effectiveness of these solutions in practice depends on the decisions of individuals to disclose information regarding conflicts of interest. There is a lack of a culture of responding to potential conflicts, and information obligations in this area are part of the recommendations of the German Corporate Governance Code and are therefore not legally binding. German listed companies should focus on prioritizing preventive measures. One of the key aspects concerns the procedure for appointing and subsequent (re)election of members of the supervisory board. Currently, the current legal framework does not provide clear guidance on preventive measures, and the responsibility for establishing an effective process for selecting and appointing supervisory board members rests with each supervisory board, in particular the nomination committee established within it. Moreover, it is necessary to clarify the criteria for the independence of supervisory board members. When it comes to determination, it is important to recognize that conflict of

interest is inherent in the role played by employee representatives. The challenge is not to limit employee rights while simultaneously implementing more flexible rules of codetermination (co-determination) in joint-stock companies.

Keywords: Corporate governance // Supervisory Board // Stock-listed companies // conflict of interest // independence // codetermination

